

1 **** BILL NO. ****
2 INTRODUCED BY ****
3 BY REQUEST OF THE ****

4 THIS WORKING DRAFT REFLECTS THE RECOMMENDATIONS OF MT-PEC AND MT-PEC ASSISTED IN
5 PREPARING THE DRAFT

6 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING SCHOOL LAWS; REVISING THE DEFINITION OF
7 PUPIL TO INCLUDE 3- AND 4-YEAR-OLDS WHO ARE ENROLLED IN A PRESCHOOL OR KINDERGARTEN
8 PROGRAM OR RECEIVING SPECIAL EDUCATION SERVICES UNDER 20-7-411 AND ALLOWING THEM
9 TO BE INCLUDED IN ANB CALCULATIONS; ALLOWING TRUSTEES TO ENROLL 3- AND 4-YEAR-OLDS
10 AT THE TRUSTEES' DISCRETION REGARDLESS OF EXCEPTIONAL CIRCUMSTANCES; ELIMINATING
11 THE PROHIBITION ON PRESCHOOL PROGRAMS BEING FINANCIALLY SUPPORTED WITH STATE
12 EQUALIZATION AID; AMENDING SECTIONS 20-1-101, 20-5-101, 20-7-117, AND 20-9-311, MCA."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15
16 **Section 1.** Section 20-1-101, MCA, is amended to read:

17 **"20-1-101. Definitions.** As used in this title, unless the context clearly indicates otherwise, the
18 following definitions apply:

- 19 (1) "Accreditation standards" means the body of administrative rules governing standards such as:
20 (a) school leadership;
21 (b) educational opportunity;
22 (c) academic requirements;
23 (d) program area standards;
24 (e) content and performance standards;
25 (f) school facilities and records;
26 (g) student assessment; and
27 (h) general provisions.
28 (2) "Aggregate hours" means the hours of pupil instruction for which a school course or program is

1 offered or for which a pupil is enrolled.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (15) "Principal" means a person who holds a valid class 3 Montana teacher certificate with an
12 applicable principal'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 principal. For the purposes of this title, any reference to a teacher must be construed as including
15 a principal.

16 (16) "Pupil" means a child who is enrolled in a school established and maintained under the laws of the
17 state at public expense and who is 5 years of age or older on or before September 10 of the year in which the
18 child is to enroll or is at least 3 years of age or older on or before September 10 of the year in which the child is
19 to enroll and has been enrolled ~~by special permission at the discretion~~ of the board of trustees under 20-5-
20 101(3). ~~but who has not yet~~ To be included in the school district's calculation of average number belonging
21 pursuant to 20-9-311, a pupil must be at least 3 years of age and must not have reached 19 years of age on or
22 before September 10 of the year in which the pupil is to enroll. ~~and who is enrolled in a school established and~~
23 ~~maintained under the laws of the state at public expense. For purposes of calculating the average number~~
24 ~~belonging pursuant to 20-9-311, the definition of pupil includes a person who has not yet reached 19 years of~~
25 ~~age by September 10 of the year and is enrolled under 20-5-101(3) in a school established and maintained~~
26 ~~under the laws of the state at public expense.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (ii) the ability to successfully achieve in classrooms where the language of instruction is English; or
- 2 (iii) the opportunity to participate fully in society.

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

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

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

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

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

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

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

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

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

22 **"20-5-101. Admittance of child to school.** (1) The trustees shall assign and admit a child to a school
23 in the district when the child is:

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

26 (b) a resident of the district; and

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

28 (2) The trustees of a district may assign and admit any nonresident child to a school in the district

1 under the tuition provisions of this title.

2 (3) (a) The trustees may at their discretion assign and admit a child to a school in the district who is
3 under 5 years of age to enroll in a preschool or kindergarten program established under 20-7-117 or in a
4 special education program established under 20-7-411;

5 (b) ~~or~~ The trustees may at their discretion assign and admit to a school in the district an adult who is
6 19 years of age or older if there are exceptional circumstances that merit waiving the age provision of this
7 section. An adult enrolled and admitted pursuant to this subsection shall not be eligible for inclusion in the
8 school district's calculation of average number belonging pursuant to 20-9-311.

9 (c) The trustees may also admit an individual who has graduated from high school but is not yet 19
10 years of age even though no special circumstances exist for waiver of the age provision of this section. An
11 individual enrolled and admitted pursuant to this subsection shall be eligible for inclusion in the school district's
12 calculation of average number belonging pursuant to 20-9-311.

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

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

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

22

23 **Section 3.** Section 20-7-117, MCA, is amended to read:

24 **"20-7-117. Kindergarten and preschool programs.** (1) The trustees of an elementary district shall
25 establish or make available a kindergarten program capable of accommodating, at a minimum, all the children
26 in the district who will be 5 years old on or before September 10 of the school year for which the program is to
27 be conducted or who have been enrolled ~~by special permission~~ at the discretion of the board of trustees
28 pursuant to 20-5-101(3). The kindergarten program, which the trustees may designate as either a half-time or

1 full-time program, must be an integral part of the elementary school and must be financed and governed
 2 accordingly, provided that to be eligible for inclusion in the calculation of ANB pursuant to 20-9-311, a child
 3 must have reached 5 years of age on or before September 10 of the school year covered by the calculation or
 4 have been enrolled ~~by special permission at the discretion~~ of the board of trustees pursuant to 20-5-101(3). A
 5 kindergarten program must meet the minimum aggregate hour requirements established in 20-1-301. A
 6 kindergarten program that is designated as a full-time program must allow a parent, guardian, or other person
 7 who is responsible for the enrollment of a child in school, as provided in 20-5-102, to enroll the child half-time.

8 (2) The trustees of an elementary school district may establish and operate a free preschool program
 9 for children between the ages of 3 and 5 years. When preschool programs are established, they must be an
 10 integral part of the elementary school and must be governed accordingly. In order for children enrolled in a
 11 preschool program to be included in the school district's calculation of average number belonging, the
 12 preschool program must provide at least 180 hours of aggregate instruction per school year. The fractional
 13 enrollment for purposes of calculating average number belonging shall be according to the rules set forth in 20-
 14 9-311(4). ~~Financing of preschool programs may not be supported by money available from state equalization~~
 15 aid."

16
 17 **Section 4.** Section 20-9-311, MCA, is amended to read:

18 **"20-9-311. Calculation of average number belonging (ANB) -- 3-year averaging.** (1) Average
 19 number belonging (ANB) must be computed for each budget unit as follows:

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

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

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

28 (3) When a school district has approval to operate less than the minimum aggregate hours under 20-

1 9-806, the total ANB must be calculated in accordance with the provisions of 20-9-805.

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

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

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

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

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

11 (b) Except as provided in subsection (4)(d), enrollment in a program intended to provide fewer than
12 180 aggregate hours of pupil instruction per school year may not be included for purposes of ANB.

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

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

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

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

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

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

6 ~~(8)(7)~~ The average number belonging of the regularly enrolled pupils for the public schools of a district
7 must be based on the aggregate of all the regularly enrolled pupils attending the schools of the district, except
8 that:

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

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

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

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

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

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

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

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

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

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

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

14 ~~(9)(8)~~ The district shall provide the superintendent of public instruction with semiannual reports of
15 school attendance, absence, and enrollment for regularly enrolled students, using a format determined by the
16 superintendent.

17 ~~(10)(9)~~ (a) Except as provided in subsections ~~(10)(9)(b)~~ and ~~(10)(9)(c)~~, enrollment in a basic education
18 program provided by the district through any combination of onsite or offsite instruction may be included for
19 ANB purposes only if the pupil is offered access to the complete range of educational services for the basic
20 education program required by the accreditation standards adopted by the board of public education.

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

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

27 (d) This subsection ~~(10)(9)~~ may not be construed to require a school district to offer access to
28 activities governed by an organization having jurisdiction over interscholastic activities, contests, and

1 tournaments to a pupil who is not otherwise eligible under the rules of the organization.

2 ~~(11)~~(10) A district may include only, for ANB purposes, an enrolled pupil who is otherwise eligible
3 under this title and who is:

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

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

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

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

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

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

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

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

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

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

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

