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## Education Interim Committee

67th Montana Legislature

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LAURA SANKEY KEIP, Staff Attorney  
TBD, Secretary

TO: Education Interim Committee and Education Interim Budget Committee  
FROM: Pad McCracken, Committee Staff  
RE: School districts operating schools outside district boundaries  
DATE: March 1, 2022

At your January 24-25 meeting you received public comment (attached) from Sara Tempel, director of Bear Paw Cooperative, regarding an issue that the 2017-2018 Education Interim Committee examined—school districts operating schools outside district boundaries (and occasionally beyond county and cooperative boundaries). I am also attaching a memo I prepared on this issue in August 2018 as background. I have asked the Office of Public Instruction to offer their perspective on this issue at your March 14-15 meeting. The term "attendance center" may enter this conversation, and if it does, I'd encourage the committee to ask for a definition, as it is not a term I can locate in statute or administrative rule.



## **BEAR PAW COOPERATIVE**

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January 19, 2022

Chairperson Edie McClafferty  
Members of the Interim Education Committee  
Montana State Legislature  
PO Box 201706  
Helena, MT 59620-1706

Dear Chairperson McClafferty and Members of the Committee,

My name is Sara Tempel and I am the director of the Bear Paw Cooperative which provides special education and related services to our member school districts across north-central Montana. I have been asked to provide information to the committee regarding the impact that school district attendance centers have on our special education Cooperative, specifically, those attendance centers that are outside the geographic boundaries of our Cooperative.

In the fall of 2016, the Bear Paw Cooperative discovered that Liberty Elementary School District, located at Eagle Creek Colony in Liberty County, assumed responsibility of providing educational services to school attendance centers at Hillside Colony and Rimrock Colony, both located in Toole County. Liberty Elementary is located within the geographic boundaries of the Bear Paw Cooperative; Hillside and Rimrock are not. Bear Paw Cooperative was then informed that we were responsible for providing special education and related services to those attendance centers. Neither the Cooperative's Governing Board nor any of our 21 member school districts' Boards of Trustees were consulted as to the impact of this decision.

Despite the fact that Sunburst School District was willing to serve the students from these attendance centers at its schools, Liberty Elementary School District acquired the two attendance centers, both of which are more than 50 miles from its boundaries. In doing so, it unilaterally

committed the Bear Paw Cooperative and all its member districts to bear the costs of providing special education services to schools outside the Cooperative's boundaries.

During the first year in which the Cooperative provided services to Hillside and Rimrock sites, our providers traveled more than 250 miles in a day and were unable to serve any other Cooperative school on the same day. The time and travel costs of providing services to these attendance centers during that school year (approximately \$12,000) far exceeded Liberty Elementary's required district match (approximately \$850). Both state law and administrative rule were silent as to who would be responsible for the additional costs of providing services to attendance centers outside the boundaries of a special education cooperative. Nearly two years of dispute ensued. However, recognizing the students' need for services, the Cooperative continued to serve children with disabilities at these attendance centers unremunerated during this time.

When the time came for the Bear Paw Cooperative to renew our Interlocal Agreement with our member districts (July 2018), the following provision was approved by the Office of Public Instruction to be included in the Interlocal Agreement:

Special Education and related services provided by the Bear Paw Cooperative to students in attendance centers outside of the cooperative's geographic boundaries will be guided by an independent contract between the Bear Paw Cooperative and the Participating District contracting with the attendance center (s). This contract will be reviewed and adjusted annually based on the projected needs in the identified attendance center(s).

No retroactive costs were assessed to Liberty Elementary School District for services prior to July 2018 and all of our member districts approved the agreement with one exception: Liberty Elementary School District. In fact, their attorney stated that this provision in the Interlocal Agreement was "discriminatory."

Finally, after a series of lengthy meetings, some that included Liberty County superintendent of schools, Liberty County commissioners, school superintendents, paid consultants, the Office of Public Instruction, state legislators, Liberty County attorney, Liberty Elementary School District and the Bear Paw Cooperative Governing Board, an agreement was reached. The agreement was for Liberty Elementary to be assessed \$10,000 per year to cover the costs of providing services to schools outside of our geographic boundaries. That arrangement continues to this day. It is unfortunate, however, that there is a noticeable lack of guidance governing the acquisition of attendance centers by existing school districts that, had it existed, could have avoided this lengthy, and costly, situation.

A second concern is the construction of new school buildings that are called "attendance centers." Within our Cooperative area, many school districts over the past few years have had to consolidate their districts and, as a result, close existing school district buildings and reduce staff. When Chester and Joplin-Inverness districts consolidated, 2 buildings were closed in two separate communities. When Blue Sky and Kremlin-Gildford consolidated, one building was closed. In both cases, many school employees who were residents of those communities were


let go. When Liberty Elementary School District assumed Hillside and Rimrock attendance centers, they added two school buildings that were only five miles apart. Two school buildings within 5 miles of each other. To me, it is inexplicable how some districts are forced to abandon school buildings while others are allowed to acquire more. This inequity is startling.

Furthermore, Montana Code Annotated 20-6-104 states that, "...a school district may not initiate the creation of a new elementary district or a new high school district." While Liberty Elementary did not initiate the creation of a new district, it appears that the creation of "attendance centers" has become a loophole for certain groups, allowing new school buildings to be built for their convenience under the guise of "attendance centers" while students in other public school districts must travel lengthy distances, some up to an hour, in order to access their education.

Chairperson McClafferty and Members of the Committee, my intent of providing this lengthy narrative is to point out the necessity for binding procedural requirements or administrative regulations that will equitably govern the creation or assumption of attendance centers by existing school districts and the impact that the lack of such procedural guidance has had. For our particular case, two years of dispute, hundreds of hours of individuals' time, and costly attorneys' fees could have been avoided had there been this guidance in place.

Thank you for your consideration of this information.

Sincerely,

  
Sara Whaley Tempel, M.A., M.Ed.  
Director  
Bear Paw Cooperative



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**65th Montana Legislature**

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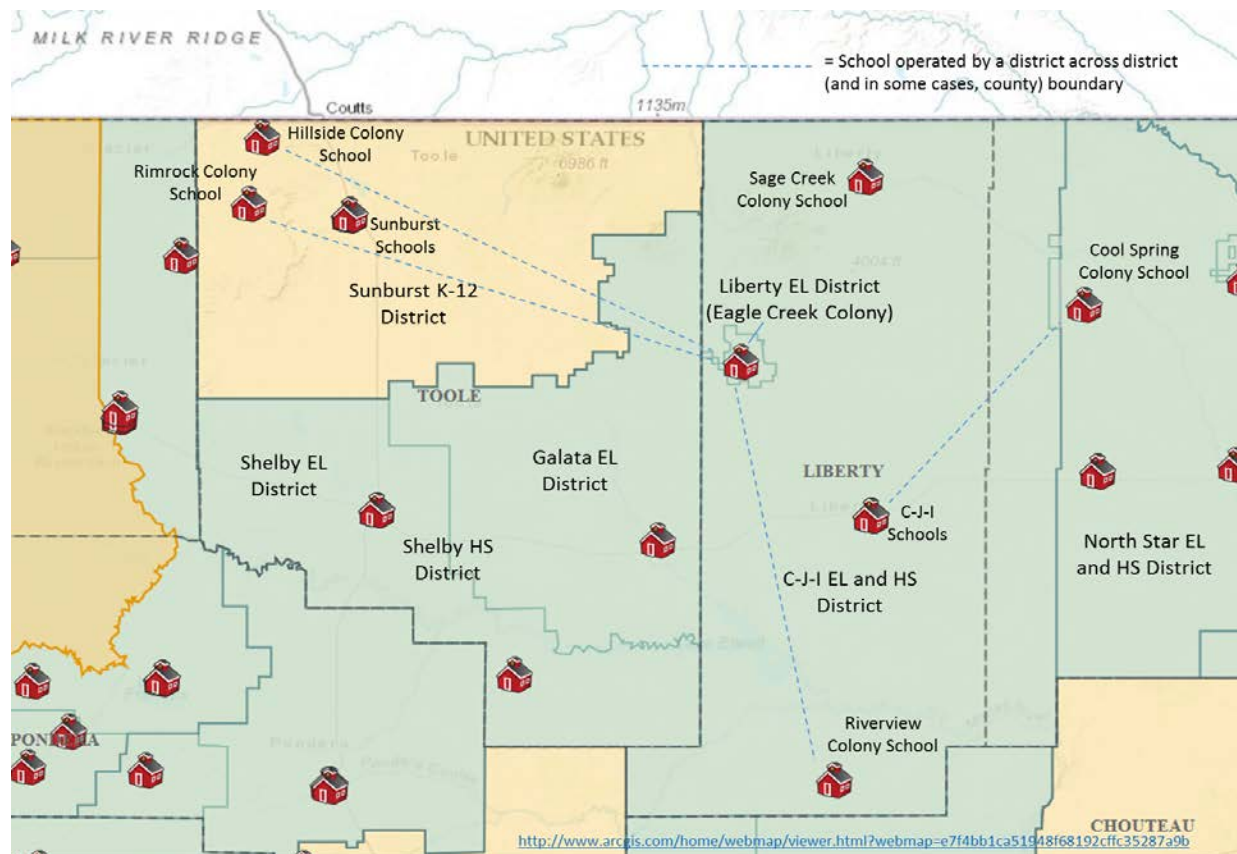
**COMMITTEE STAFF**

PAD MCCRACKEN, Lead Staff  
LAURA SANKEY, Staff Attorney  
JENNI CARR, Secretary

TO: Education Interim Committee  
FROM: Pad McCracken, Committee Staff  
RE: School districts operating schools inside another district’s boundaries  
DATE: August 31, 2018

At your June meeting, Sen. Tempel requested that staff examine an issue in Liberty County involving a billing dispute between the Bear Paw Special Education Cooperative and Liberty Elementary School District. The dispute results from the dynamic of Liberty EL School District operating two schools—Hillside Colony School and Rimrock Colony School—about 50 miles outside its own district boundary.

Looking at this on a map may help frame the discussion.



This specific circumstance came about when Sunburst K-12 determined to stop operating schools at Hillside and Rimrock, largely due to expense and staffing difficulty. The two colonies were not inclined to combine schools or bus their children to town and sought to become schools of Liberty EL district, across district, county, and special education cooperative boundaries. Sunburst K-12 and Liberty EL signed an interlocal agreement to “release” these kids and schools to Liberty EL.

At first glance, this might seem like a local dispute not warranting legislative attention; however, the underlying issue may be worthy of closer examination. This issue boils down to two basic questions:

- Should a school district be allowed to fully operate, administer, and control a school located inside another school district?
- What, if any, are the school funding ramifications of this happening?

### **Should a school district be allowed to operate a school located inside another school district?**

This is fundamentally a policy question, but it raises a couple of other questions:

- What authorizes a school district to operate a school within another district’s boundary?
- If this is allowed, what prevents a district from operating schools all over the state?

While I see nothing that clearly authorizes a school district operating a school within another school district’s boundary, I’m not sure statute clearly prohibits this either. My guess is that lawmakers never even contemplated this happening. I’m not sure how it meshes with [Article X, Section 8](#), of the Montana Constitution: “The supervision and control of schools in each school district shall be vested in a board of trustees to be elected as provided by law.”

As far as the second question goes, if the current dynamic is allowed, and if a district could find other districts willing to “release” students and schools, there is nothing preventing a district from operating schools all over the state.

### **What, if any, are the school funding ramifications of this happening?**

The funding ramifications of this specific situation include the following:

- Hillside and Rimrock pupils become ANB of Liberty EL<sup>1</sup>, which increases Liberty EL’s general fund budget limits and state funding. Conversely, this lowers Sunburst K-12’s ANB, budget limits, and state funding.

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<sup>1</sup> The legality of this under section [20-9-311, MCA](#), is not clear to me. Section 20-9-311(11)(a) stipulates that to be included in ANB counts, a student must be either a resident of the district or “a nonresident student admitted by trustees under a student attendance agreement.” Student attendance agreements are not defined in statute but are generally used when a student attends a school located outside their resident district (see [20-5-320, MCA](#), and [20-5-321, MCA](#)).

- Because Hillside and Rimrock are located a great distance from the other schools of Liberty EL, they are considered a “separate budget unit”<sup>2</sup> and generate one additional \$50,000 elementary basic entitlement for Liberty EL’s general fund budget (as does Riverview Colony School located in southern Liberty County). Hillside and Rimrock would not be eligible automatically for this additional basic entitlement as part of Sunburst K-12 because they are within 20 miles of Sunburst School.
- Liberty EL’s tiny taxable valuation does not change, so as its general fund budget and GTB area grow, it becomes eligible for much more state GTB aid. OPI preliminary budget data sheets for 2019 show Liberty EL’s mill value to be about \$164; the state GTB subsidy per mill for Liberty EL is estimated at \$3,756. Prior to acquiring Hillside and Rimrock, this subsidy was closer to \$1,000 per mill.<sup>3</sup> Sunburst K-12’s EL does not receive GTB aid, so Liberty EL’s GTB increase is a new expense for the state. (See attached graphic.)
- Because the teachers at Hillside and Rimrock are now employees of Liberty EL, taxpayers in Liberty County pay for their retirement costs.
- Because the Liberty-Toole county boundary is also the boundary of Bear Paw and Big Sky special education cooperatives, the question was raised about who should provide special education services to the children of Hillside and Rimrock and who should pay. This was the question that brought the larger issue forward when Bear Paw attempted to bill Liberty EL for the additional costs of serving Hillside and Rimrock.

### **How widespread is this?**

Not very. According to OPI, there are five schools that are being operated by districts other than the district in which they are located (four of these are shown on the map on page 1).

### **Possibilities**

If the existing dynamic is seen as problematic, there are several possible solutions:

1. OPI could reexamine the legal and financial ramifications of the current situation and determine to address the issue nonlegislatively. (This reexamination is underway.)
2. Legislation could clarify that a district operating a school within another school district is not allowed.
3. Legislation could clarify the funding dynamics for situations like this. For example, should schools like Rimrock and Hillside be eligible for additional basic entitlements as separate budget units? And, is Liberty EL allowed to include nonresident students in its ANB count without an out-of-district attendance agreement?

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<sup>2</sup> Typically, separate budget units are schools of a district that are geographically isolated from the other schools of the district. There are about a dozen such schools in the state. Examples include Babb School in Browning Elementary School District and Seeley-Swan High School in the Missoula High School District.

<sup>3</sup> The GTB multiplier also increased from 193 to 216 percent in 2019.

One way that districts could make a similar arrangement under existing law is through a multidistrict agreement. If Liberty EL (or any other district) wants to play a role in educating Hillside and Rimrock colony kids, Liberty EL and Sunburst K-12 districts could enter into a multidistrict agreement pursuant to section [20-3-363, MCA](#), to describe the services provided by Liberty EL to the two schools and how these services will be funded, including responsibility for special education and co-op reimbursement. The agreement could include Liberty EL contributing to the costs of educating Hillside and Rimrock students and helping to recruit teachers, responsibilities that Liberty EL currently takes on. The schools would remain schools of Sunburst K-12. The ANB for Hillside and Rimrock students would remain part of Sunburst K-12, and state and local revenue would be generated on their behalf.

Another possibility is for districts like Sunburst K-12 to utilize existing law to seek separate budget unit status and additional budget authority and funding to support small schools. Section [20-9-311\(8\)\(a\)\(iii\), MCA](#), allows districts to apply to the superintendent of public instruction for separate budget unit status when “any other condition exists that would result in an unusual hardship to the pupils of the school if they were transported to another school” in addition to the typical geographical conditions. This status would trigger an additional basic entitlement for the school, perhaps making them financially viable for Sunburst K-12.

#### **Other thoughts and related attorney general opinions from the Montana Code Annotated**

If this issue is addressed, the educational needs of children need to be at the forefront. Any change to the existing dynamic needs to be made in such a way that parents, students, and schools can make necessary adjustments.

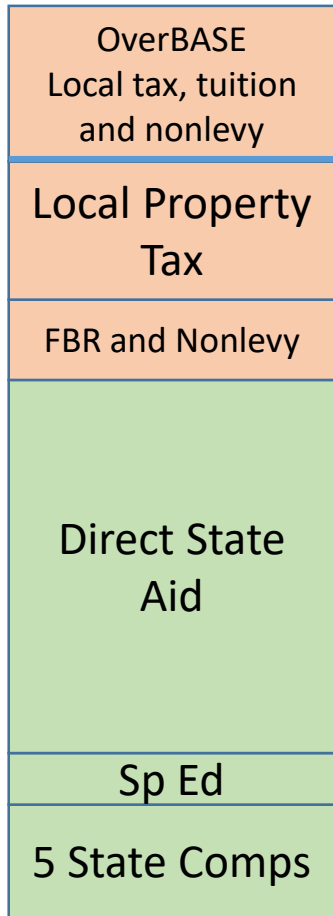
This dynamic also raises a question about representation and having a voice in one’s child’s education. Rimrock and Hillside parents do not vote in the elections for the Liberty EL trustees who have supervision and control of the schools their children attend. As residents of Sunburst K-12, they still pay taxes and vote in Sunburst K-12.

*Public Character of School Not Altered by Religion of Student Body:* An elementary school district composed entirely of property belonging to North Harlem Hutterite Colony would be eligible to receive public money for school purposes without violating any provision of 1972 Montana Constitution provided the school remains under the authority, control, and operation of the public school system by public school personnel and open to all persons eligible to attend this public school. 36 A.G. Op. 5 (1975).

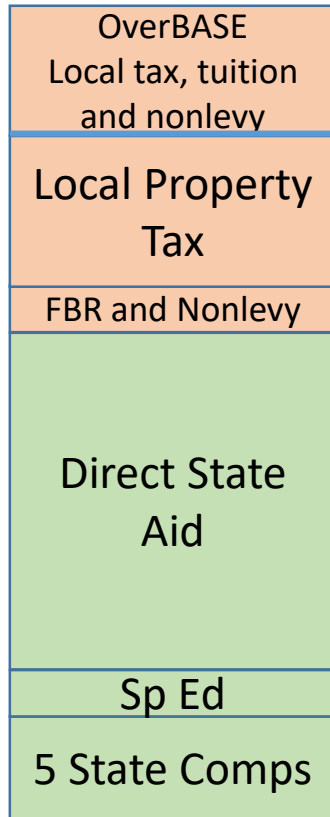
*Attendance Unit on Hutterite Colony Premises — Establishment — Closure — Finance:* A school district board of trustees may establish a separate attendance unit on the premises of a Hutterite colony located in the district. Closure of an attendance unit on the premises of a Hutterite colony is a matter within the discretion of the board of trustees of the school district involved, and the trustees have no authority to make an agreement to the contrary. The colony may effectively close an attendance unit by failing to renew the lease agreement if no similar space is available for its continued operation. Operational costs of an attendance unit must be budgeted and financed in the manner provided by law. Any agreement between the school district and the colony for private financing would be unenforceable. 38 A.G. Op. 26 (1979).



Sunburst K-12 in 2015 (operating Hillside and Rimrock)



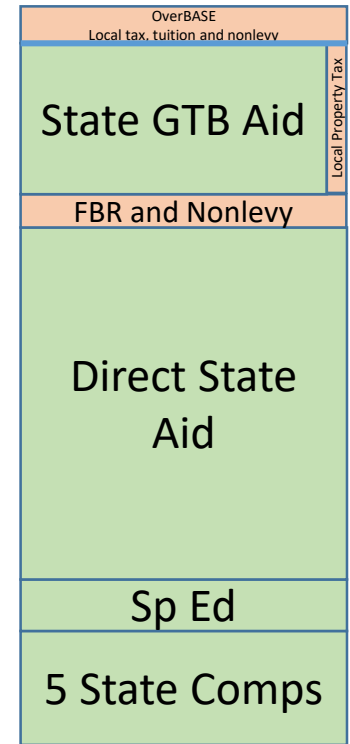
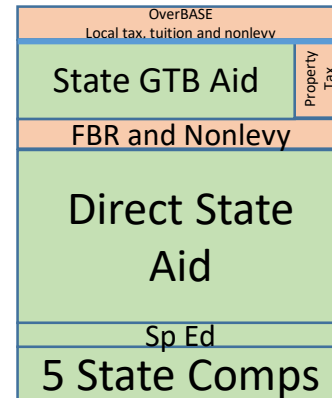
Sunburst K-12 in 2019 (Hillside and Rimrock absorbed by Liberty EL)  
Smaller budget  
Decreased state aid  
Lower local taxes\*



Note—these diagrams are not to scale but are intended to show that one result of Liberty EL taking on Hillside and Rimrock Schools was **not a transfer of the costs of educating these students from Sunburst K-12 and the state to Liberty EL and the state, but largely to the state.** This is because the additional ANB (and basic entitlement) added to Liberty EL’s budget makes Liberty EL appear “poorer,” triggering a higher GTB subsidy. The EL portion of Sunburst K-12’s budget does not receive GTB.

Liberty EL in 2019 (operating Hillside and Rimrock)  
Doubled students  
Doubled budget  
Same overBASE  
More generous GTB  
Much more state aid  
Fairly steady local taxes

Liberty EL in 2015 (not operating Hillside and Rimrock)  
Fewer students  
Smaller budget  
Modest overBASE  
Generous GTB



\*Local tax rates depend on numerous factors. In this scenario, Sunburst K-12’s taxes would have gone down, except that available nonlevy revenues (oil and gas) declined in this timespan, causing taxes to increase.