

HOUSE BILL NO. 168

INTRODUCED BY J. KARLEN, L. SMITH, T. CROWE, C. FITZPATRICK, C. KEOGH, K. KORTUM, E.

MATTHEWS, D. POWERS, M. ROMANO, E. STAFMAN, P. TUSS, J. WEBER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING SCHOOL FUNDING LAWS TO PROVIDE THAT 3-YEAR-OLD AND 4-YEAR-OLD CHILDREN WITH DISABILITIES PARTICIPATING IN SCHOOL DISTRICT SPECIAL EDUCATION PROGRAMS ARE ELIGIBLE FOR INCLUSION IN ANB CALCULATIONS; INCLUDING PRESCHOOL-AGED CHILDREN WITH DISABILITIES IN THE LIST OF EXCEPTIONAL CIRCUMSTANCES THAT ALLOWS TRUSTEES TO ADMIT CHILDREN BEYOND THE AGE RANGES OF 5 TO 19 TO ENSURE THAT PRESCHOOL-AGED CHILDREN WITH DISABILITIES IN A SPECIAL EDUCATION PROGRAM OF A DISTRICT ARE CONSIDERED PUPILS; AMENDING SECTION SECTIONS 20-5-101 AND 20-9-311, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

WHEREAS, section 20-7-411(3), MCA, obligates school districts to provide a special education program for each child with a disability beginning at age 3; and

WHEREAS, the prohibition on including preschool pupils in annual number belonging (ANB) counts under section 20-9-311(7), MCA, applies specifically to preschool programs created at trustees' discretion under section 20-7-117(2), MCA; and

WHEREAS, if preschool-aged children with disabilities receiving special education from a school district are not included in ANB counts, there is no mechanism for state financial support for their education.

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

Section 1. Section 20-5-101, MCA, is amended to read:

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

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

(b) a resident of the district; and

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

(2) The trustees of a district may assign and admit any nonresident child to a school in the district under the tuition provisions of this title.

(3) (a) The trustees may at their discretion assign and admit a child to a school in the district who is under 5 years of age or an adult who is 19 years of age or older if there are exceptional circumstances that merit waiving the age provision of this section. The trustees may also admit an individual who has graduated from high school but is not yet 19 years of age even though no special circumstances exist for waiver of the age provision of this section.

(b) As used in this subsection [\(3\)](#), "exceptional circumstances" means any of the following:

(i) the child is being admitted into a preschool program established by the trustees pursuant to 20-7-117;

(ii) the child is determined by the trustees to be ready for kindergarten and the child's parents have requested early entry into the district's regular 1-year kindergarten program;

(iii) the child is being admitted into an early literacy targeted intervention classroom or jumpstart program pursuant to Title 20, chapter 7, part 18;

[\(iv\) the child is a child with a disability and is being admitted into a special education program pursuant to 20-7-411; or](#)

[\(iv\)\(v\)](#) the adult is 19 years of age or older and in the trustees' determination would benefit from educational programs offered by a school of the district.

(c) The admittance of an individual under this subsection (3) does not in and of itself impact the ANB calculations governed by 20-9-311.

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

(5) The trustees shall assign and admit a child whose parent or guardian is being relocated to Montana under military orders to a school in the district and allow the child to preliminarily enroll in classes and apply for programs offered by the district prior to arrival and establishing residency.

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

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

(8) The trustees shall assign and admit a child who is enrolled in a nonpublic or home school and who meets the requirements of subsection (1) as a part-time enrollee at the request of the child's parent or guardian.

(9) For the purposes of this part, "part-time enrollee" means a qualifying pupil who is enrolled and admitted at one of the fractional levels that qualify for part-time ANB pursuant to 20-9-311(4)(a) or (4)(d)."

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

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

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

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

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

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

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

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

1 time enrollment;

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

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

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

8 (b) Except as provided in subsection (4)(d), enrollment in a program intended to provide fewer than
9 180 aggregate hours of pupil instruction per school year may not be included for purposes of ANB.

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

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

18 (e) (i) Except as provided in subsection (4)(e)(ii), a pupil ~~in kindergarten through grade 12~~ who is
19 concurrently enrolled in more than one public school, program, or district may not be counted as more than one
20 full-time pupil for ANB purposes. When a pupil is concurrently enrolled in more than one district, any fractional
21 enrollment under subsection (4)(a) must be attributed first to a pupil's nonresident district.

22 (ii) A pupil who participates in a jumpstart program under Title 20, chapter 7, part 18, may be
23 counted as up to 1 1/4 enrollment for ANB purposes. A district shall add one-quarter enrollment for a pupil who
24 participated in an early literacy jumpstart program to the pupil's regular enrollment count under this subsection
25 (4) in both the October and February enrollment counts following the student's participation in the jumpstart
26 program.

27 (5) For a district that is transitioning from a half-time to a full-time kindergarten program, the state
28 superintendent shall count kindergarten enrollment in the previous year as full-time enrollment for the purpose

1 of calculating ANB for the elementary programs offering full-time kindergarten in the current year. For the
2 purposes of calculating the 3-year ANB, the superintendent of public instruction shall count the kindergarten
3 enrollment as one-half enrollment and then add the additional kindergarten ANB to the 3-year average ANB for
4 districts offering full-time kindergarten.

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

8 (7) (a) (i) The enrollment of preschool pupils, in preschool programs created at the discretion of
9 trustees as provided in 20-7-117, may not be included in the ANB calculations.

10 (ii) Preschool children with disabilities receiving special education services as required under 20-7-
11 411(3) may be included in ANB calculations based on the aggregate hours of pupil instruction as provided in
12 subsection (4) of this section.

13 (b) Except as provided in subsection (7)(c), a pupil who has reached 19 years of age by
14 September 10 of the school year may not be included in the ANB calculations.

15 (c) A pupil with disabilities who is over 19 years of age and has not yet reached 21 years of age by
16 September 10 of the school year and who is receiving special education services from a school district pursuant
17 to 20-7-411(4)(a) may be included in the ANB calculations if:

18 (i) the student has not graduated;

19 (ii) the student is eligible for special education services and is likely to be eligible for adult services
20 for individuals with developmental disabilities due to the significance of the student's disability; and

21 (iii) the student's individualized education program has identified transition goals that focus on
22 preparation for living and working in the community following high school graduation since age 16 or the
23 student's disability has increased in significance after age 16.

24 (d) A school district providing special education services pursuant to subsection (7)(c) is
25 encouraged to collaborate with agencies and programs that serve adults with developmental disabilities in
26 meeting the goals of a student's transition plan.

27 (8) The average number belonging of the regularly enrolled pupils for the public schools of a
28 district must be based on the aggregate of all the regularly enrolled pupils attending the schools of the district,

1 except that:

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

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

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

11 (iii) the superintendent of public instruction approves an application not to aggregate when
12 geographic barriers exist affecting transportation, such as poor roads, mountains, rivers, or other obstacles to
13 travel, that would result in an unusual hardship to the pupils of the school if they were transported to another
14 school, the number of regularly enrolled pupils of the school must be calculated separately for ANB purposes
15 and the district must receive a basic entitlement for the school calculated separately from the other schools of
16 the district; or

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

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

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

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

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

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

1 high school pupils for ANB purposes; or

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

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

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

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

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

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

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

25 (a) a resident of the district or a nonresident student admitted by trustees under a student
26 attendance agreement and who is attending a school or an offsite instructional setting of the district;

27 (b) unable to attend school due to a medical reason certified by a medical doctor and receiving
28 individualized educational services supervised by the district, at district expense, at a home or facility that does

1 not offer an educational program;

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

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

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

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

12 (g) enrolled in an educational program or course provided at district expense using remote delivery
13 methods, including but not limited to tutoring, distance learning programs, online programs, and technology
14 delivered learning programs. The pupil:

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

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

18 (iii) must be enrolled in the educational program or course under a mandatory attendance
19 agreement as provided in 20-5-321; or

20 (iv) must be receiving remote instruction under 20-7-118(1)(c).

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

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

25 (13) (a) A district may, for ANB purposes, include in the October and February enrollment counts an
26 individual who is otherwise eligible under this title and who during the prior school year:

27 (i) resided in the district;

28 (ii) was not enrolled in the district or was not enrolled full time; and

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1 (iii) completed an extracurricular activity with a duration of at least 6 weeks.

2 (b) (i) Except as provided in subsection (13)(b)(ii), each completed extracurricular activity under
3 subsection (13)(a) may be counted as one-sixteenth enrollment for the individual, but under this subsection (13)
4 the individual may not be counted as more than one full-time enrollment for ANB purposes.

5 (ii) Each completed extracurricular activity lasting longer than 18 weeks may be counted as one-
6 eighth enrollment.

7 (c) For the purposes of this section, "extracurricular activity" means:

8 (i) a sport or activity sanctioned by an organization having jurisdiction over interscholastic
9 activities, contests, and tournaments;

10 (ii) an approved career and technical student organization, pursuant to 20-7-306; or

11 (iii) a school theater production.

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

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

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

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

23 (b) dividing the sum calculated under subsection (15)(a) by three."
24

25 **NEW SECTION. Section 3. Effective date.** [This act] is effective July 1, 2025.

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27 **NEW SECTION. Section 4. Applicability.** [This act] applies to enrollment counts and ANB
28 calculations conducted in school fiscal years beginning on or after July 1, 2025.

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