

1 HOUSE BILL NO. 451

2 INTRODUCED BY C. POPE, M. CAFERRO

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING SPECIAL EDUCATION PUPILS UP TO 21 YEARS OF
5 AGE TO BE INCLUDED IN AVERAGE NUMBER BELONGING CALCULATIONS; REVISING THE DEFINITION
6 OF "PUPIL"; AMENDING SECTIONS 20-1-101 AND 20-9-311, MCA; AND PROVIDING AN IMMEDIATE
7 EFFECTIVE DATE AND AN APPLICABILITY DATE."

8

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

10

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

12 **"20-1-101. Definitions.** As used in this title, unless the context clearly indicates otherwise, the following
13 definitions apply:

14 (1) "Accreditation standards" means the body of administrative rules governing standards such as:

15 (a) school leadership;

16 (b) educational opportunity;

17 (c) academic requirements;

18 (d) program area standards;

19 (e) content and performance standards;

20 (f) school facilities and records;

21 (g) student assessment; and

22 (h) general provisions.

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

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

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

29 (5) "Average number belonging" or "ANB" means the average number of regularly enrolled, full-time
30 pupils physically attending or receiving educational services at an offsite instructional setting from the public

1 schools of a district.

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (15) "Principal" means a person who holds a valid class 3 Montana teacher certificate with an applicable

1 principal's endorsement that has been issued by the superintendent of public instruction under the provisions of
 2 this title and the policies adopted by the board of public education and who has been employed by a district as
 3 a principal. For the purposes of this title, any reference to a teacher must be construed as including a principal.

4 (16) "Pupil" means ~~a child~~ an individual A CHILD who is ~~6 years of age or older on or before September~~
 5 ~~10 of the year in which the child is to enroll or has been enrolled by special permission of the board of trustees~~
 6 ~~under 20-5-101(3) but who has not yet reached 19 years of age and who is~~ admitted pursuant to 20-5-101 and
 7 6 YEARS OF AGE OR OLDER ON OR BEFORE SEPTEMBER 10 OF THE YEAR IN WHICH THE CHILD IS TO ENROLL OR HAS BEEN
 8 ENROLLED BY SPECIAL PERMISSION OF THE BOARD OF TRUSTEES UNDER 20-5-101(3) BUT WHO HAS NOT YET REACHED
 9 19 YEARS OF AGE AND WHO IS enrolled in a school established and maintained under the laws of the state at public
 10 expense. For purposes of calculating the average number belonging pursuant to 20-9-311, the definition of pupil
 11 includes a person who has not yet reached 19 years of age by September 10 of the year and is enrolled under
 12 20-5-101(3) in a school established and maintained under the laws of the state at public expense.

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

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

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

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

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

24 (22) "State university" means Montana state university-Bozeman.

25 (23) "Student with limited English proficiency" means any student:

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

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

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

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

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

4 (ii) the ability to successfully achieve in classrooms where the language of instruction is English; or

5 (iii) the opportunity to participate fully in society.

6 (24) "Superintendent of public instruction" means that state government official designated as a member
7 of the executive branch by the Montana constitution.

8 (25) "System" means the Montana university system.

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

14 (27) "Textbook" means a book or manual used as a principal source of study material for a given class
15 or group of students.

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

18 (29) "Trustees" means the governing board of a district.

19 (30) "University" means the university of Montana-Missoula.

20 (31) "Vocational-technical education" means vocational-technical education of vocational-technical
21 students that is conducted by a unit of the Montana university system, a community college, or a tribally controlled
22 community college, as designated by the board of regents."
23

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

25 **"20-9-311. Calculation of average number belonging (ANB) -- 3-year averaging.** (1) Average number
26 belonging (ANB) must be computed for each budget unit as follows:

27 (a) compute an average enrollment by adding a count of regularly enrolled full-time pupils who were
28 enrolled as of the first Monday in October of the prior school fiscal year to a count of regularly enrolled pupils on
29 the first Monday in December of the prior school fiscal year and to a count of regularly enrolled pupils on the first
30 Monday in February of the prior school fiscal year or the next school day if those dates do not fall on a school day,

1 and divide the sum by three; and

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

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

6 (3) When a school district has approval to operate less than the minimum aggregate hours under
7 20-9-806, the total ANB must be calculated in accordance with the provisions of 20-9-805.

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

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

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

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

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

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

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

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

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

29 (5) For a district that is transitioning from a half-time to a full-time kindergarten program, the state
30 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 days,
6 the pupil may not be included in the enrollment count used in the calculation of the ANB unless the pupil resumes
7 attendance prior to the day of the enrollment count.

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

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

12 (c) A pupil with disabilities who has not yet reached 22 years of age by September 10 of the school year,
13 who has not yet graduated, and who is receiving special education services from a school district pursuant to
14 20-7-411(4)(a) may be included in the ANB calculations.

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

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

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

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

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

1 for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the
2 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 and
4 the basic entitlements of the component districts must be calculated separately for a period of 3 years following
5 the consolidation or annexation. Each district shall retain a percentage of its basic entitlement for 3 additional
6 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, full-time pupils of the junior high school must be considered as high school district pupils for
12 ANB 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 high
15 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 full-time pupils attending the nonaccredited school are not eligible for average number belonging calculation
19 purposes, nor will an average number belonging for the nonaccredited school be used in determining the BASE
20 funding 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 program
25 provided by the district through any combination of onsite or offsite instruction may be included for ANB purposes
26 only if the pupil is offered access to the complete range of educational services for the basic education program
27 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
29 for special education may be limited to the programs and services specified in an approved individual education
30 plan supervised by the district.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (b) dividing the sum calculated under subsection (14)(a) by three."
17

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

19
20 NEW SECTION. **Section 4. Applicability.** [This act] applies to school years beginning on or after July
21 1, 2015.

22 - END -