

HOUSE BILL NO. 999

INTRODUCED BY PECK
BY REQUEST OF THE SUPERINTENDENT
OF PUBLIC INSTRUCTION

IN THE HOUSE

MARCH 18, 1991 INTRODUCED AND REFERRED TO COMMITTEE
 ON EDUCATION & CULTURAL RESOURCES.

 FIRST READING.

MARCH 23, 1991 COMMITTEE RECOMMEND BILL
 DO PASS. REPORT ADOPTED.

MARCH 25, 1991 PRINTING REPORT.

 ON MOTION, TAKEN FROM SECOND READING
 AND REREFERRED TO THE COMMITTEE
 ON APPROPRIATIONS.

MARCH 27, 1991 COMMITTEE RECOMMEND BILL
 DO PASS AS AMENDED. REPORT ADOPTED.

MARCH 28, 1991 PRINTING REPORT.

 SECOND READING, DO PASS.

 ENGROSSING REPORT.

 ON MOTION, RULES SUSPENDED. BILL
 PLACED ON THIRD READING THIS DAY.

 THIRD READING, PASSED.
 AYES, 59; NOES, 39.

 TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 28, 1991 INTRODUCED AND REFERRED TO COMMITTEE
 ON EDUCATION & CULTURAL RESOURCES.

 FIRST READING.

APRIL 12, 1991 COMMITTEE RECOMMEND BILL BE
 CONCURRED IN. REPORT ADOPTED.

APRIL 13, 1991 SECOND READING, CONCURRED IN.

APRIL 15, 1991

THIRD READING, CONCURRED IN.
AYES, 36; NOES, 12.

RETURNED TO HOUSE.

IN THE HOUSE

APRIL 16, 1991

RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 999
 2 INTRODUCED BY Jack
 3 BY REQUEST OF THE SUPERINTENDENT
 4 OF PUBLIC INSTRUCTION

5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 7 LAWS RELATING TO OUT-OF-DISTRICT PLACEMENT OF CHILDREN WITH
 8 DISABILITIES; TO PROVIDE STATE FUNDING FOR THE EDUCATIONAL
 9 PROGRAMS FOR ELIGIBLE CHILDREN PLACED IN IN-STATE
 10 RESIDENTIAL TREATMENT FACILITIES OR CHILDREN'S PSYCHIATRIC
 11 HOSPITALS; TO PROVIDE AN APPROPRIATION; AMENDING SECTIONS
 12 20-5-301, 20-5-311, 20-7-403, 20-7-420, 20-7-421, 20-7-422,
 13 AND 20-7-431, MCA; REPEALING SECTION 20-7-423, MCA; AND
 14 PROVIDING AN EFFECTIVE DATE."

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

17 **Section 1.** Section 20-5-301, MCA, is amended to read:

18 "20-5-301. (Temporary) Elementary tuition with
 19 mandatory approval. (1) Any child may be enrolled in and
 20 attend an elementary school outside of the elementary
 21 district in which the child resides when the elementary
 22 school is located in:

- 23 (a) any other district of the county of the child's
- 24 residence;
- 25 (b) a county adjoining the child's county of residence;

1 or
 2 (c) a district of another state that is adjacent to the
 3 county of the child's residence.

4 (2) When a parent or guardian of a child wishes to have
 5 the child attend a school under the provisions of this
 6 section, the parent or guardian shall apply to the county
 7 superintendent of the county of the parent or guardian's
 8 residence before July 1 of the school fiscal year for which
 9 approval is sought except in those cases when substantial
 10 changes in circumstances occurred subsequently to justify
 11 later application. The application must be made on a tuition
 12 agreement form supplied by the county superintendent and
 13 must be approved, before permission to enroll in and attend
 14 school outside of the district under the provisions of this
 15 section may be granted, by:

- 16 (a) the trustees of the elementary district in which
- 17 the child resides;
- 18 (b) the trustees of the district where the child wishes
- 19 to attend school; and
- 20 (c) the county superintendent of the county of the
- 21 child's residence.
- 22 (3) In considering the approval of a tuition
- 23 application, the tuition approval agents prescribed in this
- 24 section shall approve the application for a resident child
- 25 when:



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1 (a) the child resides more than 3 miles from any school
2 of his resident elementary district and the school the pupil
3 wishes to attend is less distant than the nearest school of
4 the resident elementary district;

5 (b) the child resides more than 3 miles from any school
6 of his resident elementary district and the district does
7 not provide transportation under the provisions of this
8 title;

9 (c) the child resides more than 3 miles from any school
10 of his resident elementary district, the resident district
11 does not provide transportation under the provisions of this
12 title, and school bus transportation is furnished by the
13 district operating the school which he wishes to attend;

14 (d) the child is a member of a family who must send
15 another child outside of the elementary district to attend
16 high school and the child of elementary age may more
17 conveniently attend an elementary school where the high
18 school is located, provided the child resides more than 3
19 miles from an elementary school of the resident district or
20 the parent must move to the elementary district where the
21 high school is located in order to enroll the other child in
22 high school;

23 (e) the child has been declared adjudicated by a court
24 of competent jurisdiction to be an abused, neglected, or
25 dependent child, as defined in 41-3-102, or a youth in need

1 of supervision or a delinquent youth, as defined in
2 41-5-103, and has been ~~ordered-to-be~~ placed in a licensed
3 youth care facility ~~which~~ that is approved by the department
4 of family services and as a result of the order the child is
5 required to attend elementary school outside of the district
6 of his residence (for purposes of this subsection, the
7 prescribed geographic relationship of the receiving district
8 to the district of residence does not apply); or

9 (f) the child is required to attend elementary school
10 outside the district of residence as the result of a
11 placement by a state agency or parent in a group home
12 licensed by the state or an order of a court of competent
13 jurisdiction. For the purposes of this subsection (f), the
14 following do not apply:

15 (i) the prescribed geographic relationship of the
16 receiving district to the district of residence in this
17 subsection (3); or

18 (ii) an order issued under Title 40, chapter 4, part 2.

19 (4) The Unless the child is a child with disabilities
20 who resides in the district, the trustees of the district
21 where the school to be attended is located may disapprove a
22 tuition agreement that satisfies any of the mandatory
23 approval conditions specified in subsection (3) when they
24 find that, due to insufficient room and overcrowding, the
25 accreditation of the school would be adversely affected by

1 the acceptance of the child. In the event of disapproval,
2 the trustees shall notify the parent in writing within 15
3 days of the first receipt of the application.

4 (5) When a child has been placed by a state agency in
5 an out-of-state residential program, the amount of daily
6 tuition may not be greater than the average daily cost per
7 student in the district of residence. The amount of annual
8 tuition may not be greater than the average annual cost per
9 student in the district of residence. For the purposes of
10 this subsection, the following do not apply:

11 (a) an order issued under Title 40, chapter 4, part 2;
12 (b) placement of a child with disabilities pursuant to
13 Title 20, chapter 7, part 4; or

14 (c) placement made in a state with a reciprocal tuition
15 agreement pursuant to 20-5-314. (Terminates June 30,
16 1992--sec. 3, Ch. 492, L. 1989.)

17 **20-5-301. (Effective July 1, 1992) Elementary tuition**
18 **with mandatory approval.** (1) Any child may be enrolled in
19 and attend an elementary school outside of the elementary
20 district in which he resides when such elementary school is
21 located in:

22 (a) any other district of the county of his residence;
23 (b) a county adjoining his county of residence; or
24 (c) a district of another state that is adjacent to the
25 county of his residence.

1 (2) When a parent or guardian of a child wishes to have
2 his child attend a school under the provisions of this
3 section, he shall apply to the county superintendent of the
4 county of his residence before July 1 of the school fiscal
5 year for which he seeks approval except in those cases when
6 substantial changes in circumstances occurred subsequently
7 to justify later application. The application shall be made
8 on a tuition agreement form supplied by the county
9 superintendent and shall be approved, before permission to
10 enroll in and attend school outside of the district under
11 the provisions of this section may be granted, by:

12 (a) the trustees of the elementary district in which
13 the child resides;

14 (b) the trustees of the district where the child wishes
15 to attend school; and

16 (c) the county superintendent of the child's residence.

17 (3) In considering the approval of a tuition
18 application, the tuition approval agents prescribed in this
19 section shall approve such application for a resident child
20 when:

21 (a) the child resides less than 3 miles from the school
22 which he wishes to attend and more than 3 miles from any
23 school of his resident elementary district;

24 (b) the child resides more than 3 miles from any school
25 of his resident elementary district and such district does

1 not provide transportation under the provisions of this
2 title;

3 (c) the child resides more than 3 miles from any school
4 of his resident elementary district, the resident district
5 does not provide transportation under the provisions of this
6 title, and school bus transportation is furnished by the
7 district operating the school which he wishes to attend;

8 (d) the child is a member of a family who must send
9 another child outside of the elementary district to attend
10 high school and the child of elementary age may more
11 conveniently attend an elementary school where the high
12 school is located, provided the child resides more than 3
13 miles from an elementary school of the resident district or
14 the parent must move to the elementary district where the
15 high school is located in order to enroll the other child in
16 high school;

17 (e) the child has been declared adjudicated by a court
18 of competent jurisdiction to be an abused, neglected, or
19 dependent child, as defined in 41-3-102, or a youth in need
20 of supervision or a delinquent youth, as defined in
21 41-5-103, and has been ordered-to-be placed in a licensed
22 youth care facility which that is approved by the department
23 of family services and as a result of the order the child is
24 required to attend elementary school outside of the district
25 of his residence; for purposes of this subsection, the

1 prescribed geographic relationship of the receiving district
2 to the district of residence does not apply; or

3 (f) the child is required to attend elementary school
4 outside the district of residence as the result of a
5 placement by a state agency or parent in a group home
6 licensed by the state or an order of a court of competent
7 jurisdiction. For the purposes of this subsection (f), the
8 following do not apply:

9 (i) the prescribed geographic relationship of the
10 receiving district to the district of residence in this
11 subsection (3); or

12 (ii) an order issued under Title 40, chapter 4, part 2.

13 (4) The Unless the child is a child with disabilities
14 who resides in the district, the trustees of the district
15 where the school to be attended is located may disapprove a
16 tuition agreement that satisfies any of the mandatory
17 approval conditions specified in subsection (3) above when
18 they find that, due to insufficient room and overcrowding,
19 the accreditation of the school would be adversely affected
20 by the acceptance of the child. In the event of disapproval,
21 the trustees shall so notify the parent in writing within 15
22 days of the first receipt of the application.

23 (5) When a child has been placed by a state agency in
24 an out-of-state residential program, the amount of daily
25 tuition may not be greater than the average daily cost per

1 student in the district of residence. The amount of annual
 2 tuition may not be greater than the average annual cost per
 3 student in the district of residence. For the purposes of
 4 this subsection, the following do not apply:

- 5 (a) an order issued under Title 40, chapter 4, part 2;
 6 (b) placement of a child with disabilities pursuant to
 7 Title 20, chapter 7, part 4; or
 8 (c) placement made in a state with a reciprocal tuition
 9 agreement pursuant to 20-5-314."

10 **Section 2.** Section 20-5-311, MCA, is amended to read:

11 **"20-5-311. High school tuition.** (1) **Any A** child may be
 12 enrolled in and attend a high school outside of the high
 13 school district in which he resides when **such the** high
 14 school is located in Montana or in a county of another state
 15 that is adjacent to the state of Montana. When a parent or
 16 guardian of a child wishes to have his child attend a school
 17 under the provisions of this section, he shall apply to the
 18 county superintendent of the county of his residence before
 19 July 1 of the school fiscal year for which he seeks approval
 20 except in those cases when substantial changes in
 21 circumstances occurred subsequently to justify later
 22 application. **Such The** application shall **must** be made on a
 23 tuition agreement form supplied by the county
 24 superintendent. The trustees of the district of residence,
 25 the trustees of the district in which the child wishes to

1 attend school, and the county superintendent are the
 2 approval agents for tuition to another high school within
 3 the county. The county superintendent of the county of
 4 residence and the trustees of the district in which the
 5 child wishes to attend school are the approval agents for
 6 attendance outside the county.

7 (2) (a) ~~(i)~~ The approval agents shall approve a tuition
 8 application when a child lives closer to a high school of
 9 another district than any high school located within his
 10 resident district or when, due to road or geographic
 11 conditions, it is impractical to attend the high school
 12 nearest his residence.

13 ~~(ii)~~ However, the approval agents are not required to
 14 approve a tuition application for a student seeking to
 15 attend a high school outside the state of Montana or the
 16 resident district if the resident district provides
 17 transportation. This exception does not apply when:

18 ~~(A)~~ the child resides in a county different from the
 19 county ~~wherein in which~~ the school he wishes to attend is
 20 located; or

21 ~~(B)~~ ~~the child has enrolled in a high school outside his~~
 22 ~~resident district and has received an approved tuition~~
 23 ~~agreement on or before April 30, 1985. For the purposes of~~
 24 ~~this subsection (2)(a)(ii)(B), the child has the right to~~
 25 ~~continue his high school education in the receiving high~~

1 ~~school outside his resident district on an approved tuition~~
2 ~~agreement subject to the provisions of this section.~~

3 (b) The approval agents shall approve a tuition
4 application when a child, as a result of a court order or
5 placement by a state agency or parent in a group home
6 licensed by the state, is required to attend high school
7 outside the district of residence:

8 (i) but within the state of Montana or another state
9 that maintains a reciprocal tuition agreement under
10 20-5-314; or

11 (ii) in a state that does not have a reciprocal tuition
12 agreement pursuant to 20-5-314. The amount of daily tuition
13 may not be greater than the average daily cost per student
14 in the district of residence. The amount of annual tuition
15 may not be greater than the average annual cost per student
16 in the district of residence. The county superintendent
17 shall calculate the average annual and the average daily
18 cost per student. For purposes of this subsection (b), the
19 following do not apply:

- 20 (A) an order issued under Title 40, chapter 4, part 2;
- 21 (B) placement of a child with disabilities pursuant to
22 Title 20, chapter 7, part 4.

23 (c) In approving a tuition agreement under this
24 provision, unless the child is a child with disabilities,
25 the approval agents may require the child to attend the high

1 school closest to his residence. The approval agents may
2 approve any other tuition application that satisfies the
3 geographic requirements of this section.

4 (3) The trustees of the district where the child wishes
5 to attend school shall approve or disapprove any tuition
6 application submitted to them under the provisions of this
7 section within 15 days after the receipt of the application.

8 (4) The county superintendent shall notify the parent
9 or guardian and the trustees of the district where the child
10 wishes to attend school of the tuition agreement approval or
11 disapproval. If a tuition agreement is disapproved by one or
12 more approval agents, the parent may appeal such disapproval
13 to the county superintendent and, subsequently, to the
14 superintendent of public instruction under the provision for
15 the appeal of controversies in this title.

16 (5) The approval of any tuition agreement by all of the
17 applicable approval agents or upon appeal shall authorize
18 the child named in such agreement to enroll in and attend
19 the school named in such agreement for the ensuing school
20 fiscal year."

21 **Section 3.** Section 20-7-403, MCA, is amended to read:
22 "20-7-403. **Duties of superintendent of public**
23 **instruction.** The superintendent of public instruction shall
24 supervise and coordinate the conduct of special education in
25 the state by:

1 (1) recommending to the board of public education
2 adoption of those policies necessary to establish a planned
3 and coordinated program of special education in the state;

4 (2) administering the policies adopted by the board of
5 public education;

6 (3) certifying special education teachers on the basis
7 of the special qualifications for such the teachers as
8 prescribed by the board of public education;

9 (4) establishing procedures to be used by school
10 district personnel in identifying handicapped children with
11 disabilities;

12 (5) recommending to districts the type of special
13 education class or program needed to serve the handicapped
14 children with disabilities of the districts and preparing
15 appropriate guides for developing individual education
16 programs;

17 (6) seeking for local districts appropriate
18 interdisciplinary assistance from public and private
19 agencies in diagnosing the special education needs of
20 children, in planning programs, and in admitting and
21 discharging children from such those programs;

22 (7) assisting local school districts, institutions, and
23 other agencies in developing full-service programs for all
24 handicapped children with disabilities;

25 (8) approving, as they are proposed and annually

1 thereafter, those special education classes or programs
2 which that comply with the laws of the state of Montana,
3 policies of the board of public education, and the
4 regulations of the superintendent of public instruction;

5 (9) providing technical assistance to district
6 superintendents, principals, teachers, and trustees;

7 (10) conducting conferences, offering advice, and
8 otherwise cooperating with parents and other interested
9 persons;

10 (11) preparing appropriate training and instructional
11 material for persons appointed as surrogate parents that
12 outlines their duties toward the child, limitations on what
13 they may do for the child, duties in relation to the child's
14 records, sources of assistance available to the surrogate
15 parent, and the need to seek competent legal assistance in
16 implementing hearing or appeal procedures;

17 (12) acting as the coordinating agency with federal
18 agencies, other state agencies, political subdivisions of
19 the state, and private bodies on matters concerning special
20 education, reserving to the other agencies and political
21 subdivisions their full responsibilities for other aspects
22 of the care of children needing special education;

23 (13) administering regional special education services
24 for children in need of special education in accordance with
25 policies of the board of public education; **and**

1 (14) contracting for the delivery of audiological
2 services to those children allowed by Montana law in
3 accordance with policies of the board of public education;
4 and

5 (15) contracting with a public school district or a
6 private residential facility for the provision of a free
7 appropriate public education for a child when a state agency
8 places a child with disabilities who is in need of special
9 education in:

10 (a) an in-state residential facility or children's
11 psychiatric hospital; or

12 (b) an out-of-state public school or private
13 residential facility."

14 **Section 4.** Section 20-7-420, MCA, is amended to read:

15 **"20-7-420. Residency requirements for -- financial**
16 **responsibility for special education.** (1) In accordance with
17 the provisions of 1-1-215, a child's district of residence
18 for special education purposes is the residence of his
19 parents or of his guardian unless otherwise determined by
20 the court. This applies to a child living at home, in an
21 institution, or under foster care. If the parent has left
22 the state, the parent's last known district of residence is
23 the child's district of residence.

24 (2) The district of residence is financially
25 responsible for tuition as established under 20-5-305 and

1 20-5-312 for special--education--students a child with
2 disabilities, as defined in 20-7-401, including a child who
3 has been placed by a state agency in a foster care or group
4 home licensed by the state. The district of residence is not
5 financially responsible for tuition for a child with
6 disabilities who is placed by a state agency in an
7 out-of-state public school or an out-of-state private
8 residential facility.

9 (3) If a child with disabilities who is in need of
10 special education is placed in an in-state residential
11 treatment facility or children's psychiatric hospital as
12 defined in [section 9] but the educational placement is in a
13 public school district, the district of residence is
14 responsible for tuition for the proportion of time the child
15 is served in the public school district unless the public
16 school district is operated primarily for the purpose of
17 providing education to children who attend the residential
18 facility or hospital.

19 (4) Under the provisions of 20-7-422, the
20 superintendent of public instruction shall provide funds for
21 the education fees required to provide a free appropriate
22 public education for a child with disabilities who is in
23 need of special education and is placed by a state agency in
24 an out-of-state private residential facility or out-of-state
25 public school, provided that, in determining the special

1 education services needed for the child with disabilities,
 2 the district of residence has complied with the rules
 3 promulgated under 20-7-402.

4 (5) A state agency that makes a placement of a child
 5 with disabilities is responsible for the room and board and
 6 the treatment of the child."

7 **Section 5.** Section 20-7-421, MCA, is amended to read:

8 "20-7-421. Arranging attendance in another district in
 9 lieu of a special education program -- tuition. (1) ~~With the~~
 10 ~~approval of the superintendent of public instruction~~ In
 11 accordance with a placement decision made by persons
 12 determining an individualized education program for a child
 13 with disabilities, the trustees may arrange for the
 14 attendance of a child in need of special education in ~~a~~
 15 ~~special education program~~ in another district within the
 16 state of Montana.

17 (2) Tuition as required under 20-5-305 and 20-5-312 may
 18 be charged as provided in 20-7-420."

19 **Section 6.** Section 20-7-422, MCA, is amended to read:

20 "20-7-422. ~~Out-of-state tuition for special education~~
 21 ~~children placement of children with disabilities -- payment~~
 22 ~~of costs.~~ (1) ~~If the trustees of any district recommend to~~
 23 ~~the superintendent of public instruction the attendance of a~~
 24 ~~child in need of special education~~ In accordance with a
 25 placement made by persons determining an individualized

1 education program for a child with disabilities, the
 2 trustees of a district may arrange for the attendance of the
 3 child in a special education program offered outside of the
 4 state of Montana, ~~the.~~ The arrangements are not subject to
 5 the out-of-state attendance provisions ~~of the laws governing~~
 6 ~~the attendance of pupils in schools outside the state of~~
 7 ~~Montana~~ in 20-5-301 and 20-5-311.

8 (2) (a) ~~Whenever the attendance of a child at an~~
 9 ~~out-of-state special education program is approved by the~~
 10 ~~superintendent of public instruction, the superintendent of~~
 11 ~~public instruction shall, in cooperation with the department~~
 12 ~~of family services, negotiate the program for the child and~~
 13 ~~the amount and manner of payment of tuition. The amount of~~
 14 ~~tuition must be included as a contracted service in~~
 15 ~~20-7-431(i)(a)(iii)(A) in the foundation program amount for~~
 16 ~~special education.~~ Except as provided in subsection (3),
 17 when the persons determining the individualized education
 18 program of a child with disabilities who is in need of
 19 special education recommend placement in an out-of-state
 20 private residential facility, the trustees of the district
 21 of residence shall negotiate the amount and manner of
 22 payment of all costs associated with the placement.

23 (b) If the placement of the child with disabilities has
 24 met the requirements of 20-7-402, the superintendent of
 25 public instruction shall approve the amount of special

1 education instructional fees to be included as a contracted
 2 service. Only the special education instructional fees may
 3 be included as a contracted service for the purposes of
 4 20-7-431(1)(a)(iii)(A).

5 (3) Whenever a child with disabilities who is in need
 6 of special education is adjudicated by a court of competent
 7 jurisdiction to be an abused, neglected, or dependent child
 8 as defined in 41-3-102 or a youth in need of supervision or
 9 delinquent youth as defined in 41-5-103 and is placed by a
 10 state agency in an out-of-state private residential
 11 facility, the superintendent of public instruction shall
 12 negotiate with:

13 (a) the provider for the amount and manner of payment
 14 of education fees consistent with the individualized
 15 education program determined for the child under the
 16 provisions of 20-7-402; and

17 (b) the state agency that makes the placement for the
 18 portion of the placement costs that represents the child's
 19 education program."

20 **Section 7.** Section 20-7-431, MCA, is amended to read:

21 **"20-7-431. Allowable cost schedule for special programs**
 22 **-- superintendent to make rules -- annual accounting. (1)**
 23 **For the purpose of determining the foundation program amount**
 24 **for special education as defined in 20-9-321, the following**
 25 **schedule of allowable costs must be followed by the school**

1 district in preparation of its special education budget for
 2 state aid request purposes and by the superintendent of
 3 public instruction in his review and approval of the budget
 4 (for the purposes of determining the amount of the
 5 foundation program for special education for the district,
 6 and as used in this schedule, "full-time special pupil" and
 7 "regular ANB" are to be determined in accordance with
 8 20-9-311 and 20-9-313):

9 (a) instruction: salaries, benefits, supplies,
 10 textbooks, and other expenses including:

11 (i) salaries and benefits of special program teachers,
 12 regular program teachers, teacher aides, special education
 13 supervisors, audiologists, and speech and hearing
 14 clinicians--the entire cost if employed full time in the
 15 special program; if such personnel are shared between
 16 special and regular programs--a portion of the entire cost
 17 corresponding to the entire working time which each person
 18 devotes to the special program;

19 (ii) teaching supplies and textbooks if used exclusively
 20 for special programs--the actual total cost;

21 (iii) other expenses:

22 (A) contracted services, including fees paid for
 23 professional advice and consultation regarding special
 24 students or the special program, and the delivery of special
 25 education services by public or private agencies--the actual

1 total cost;

2 (B) transportation costs for special education
3 personnel who travel on an itinerant basis from school to
4 school or district to district or to in-state child study
5 team meetings or in-state individualized education program
6 meetings--the actual cost to the district calculated on the
7 same mileage rate used by the district for other travel
8 reimbursement purposes;

9 (b) supportive services, including:

10 (i) salaries and benefits of professional supportive
11 personnel--the entire cost if employed full time in the
12 special program; if the personnel are shared between special
13 and regular programs--a portion of the entire cost
14 corresponding to the entire working time which each person
15 devotes to the special program. Professional supportive
16 personnel may include counselors, social workers,
17 psychologists, psychometrists, physicians, nurses, and
18 physical and occupational therapists.

19 (ii) salaries and benefits of clerical personnel who
20 assist professional personnel in supportive services--the
21 entire cost if employed full time in the special program; if
22 the personnel are shared between special and regular
23 programs--a portion of the entire cost corresponding to the
24 entire working time which each person devotes to the special
25 program;

1 (c) equipment:

2 (i) equipment--the actual total cost;

3 (ii) special equipment for district-owned school buses
4 necessary to accommodate special students--the actual total
5 cost;

6 (iii) special equipment for school buses contracted to
7 transport special students--that portion of the contract
8 price attributable to the cost of special equipment or
9 personnel required to accommodate special students--the
10 actual special cost;

11 (iv) repair and maintenance of equipment--the actual
12 total cost;

13 ~~(d)--room-and-board-costs-when-the-special-pupil-has--to~~
14 ~~attend--a--program--at--such--a--distance-from-his-home-that~~
15 ~~commuting-is-undesirable-as-determined-by-the-superintendent~~
16 ~~of-public-instruction.~~

17 (2) The superintendent of public instruction shall
18 adopt rules in accordance with the policies of the board of
19 public education for:

20 (a) keeping necessary records for supportive and
21 administrative personnel and any personnel shared between
22 special and regular programs;

23 (b) defining the total special program caseload that
24 must be assigned to specific support persons and the kinds
25 of professional specialties to be considered relevant to the

1 program before the district may count an allowable cost
2 under subsection (1)(b) of this section; and

3 (c) defining the kinds or types of equipment whose
4 costs may be counted under subsection (1)(c)(i) of this
5 section.

6 (3) An annual accounting of all expenditures of school
7 district general fund money for special education must be
8 made by the district trustees on forms furnished by the
9 superintendent of public instruction. The superintendent of
10 public instruction shall make rules for the accounting.

11 (4) If a board of trustees chooses to exceed the budget
12 approved by the superintendent of public instruction, costs
13 in excess of the approved budget may not be reimbursed under
14 the foundation program for special education.

15 (5) Allowable costs prescribed in this section do not
16 include the costs of the teachers' retirement system, the
17 public employees' retirement system, the federal social
18 security system, or the costs for unemployment compensation
19 insurance.

20 (6) (a) Notwithstanding other provisions of the law,
21 the superintendent of public instruction may not approve a
22 foundation program amount for special education that exceeds
23 legislative appropriations; however, any unexpended balance
24 from the first year of a biennial appropriation may be spent
25 in the second year of the biennium in addition to the second

1 year appropriation.

2 (b) If the total allowable cost of the special
3 education budgets exceeds legislative appropriations
4 available for special education, each district shall receive
5 a pro rata share of the available appropriations based upon
6 prioritized budget items as established by the
7 superintendent of public instruction. The amount of the
8 approved budgets in excess of the available appropriations
9 may not be reimbursed under the foundation program for
10 special education and is the responsibility of the school
11 district."

12 NEW SECTION. Section 8. Funding of educational
13 programs at in-state children's psychiatric hospitals and
14 in-state residential treatment programs for eligible
15 children with emotional disturbances. (1) It is the intent
16 of the legislature that eligible children in in-state
17 children's psychiatric hospitals and residential treatment
18 facilities be provided with an appropriate educational
19 opportunity in a cost-effective manner.

20 (2) The superintendent of public instruction may
21 contract with an in-state children's psychiatric hospital or
22 residential treatment facility for provision of an
23 educational program for an eligible child in the hospital or
24 treatment facility.

25 (3) Whenever the superintendent of public instruction

1 contracts with an in-state children's psychiatric hospital
 2 or residential treatment facility for provision of an
 3 educational program for an eligible child in the children's
 4 psychiatric hospital or residential treatment facility, the
 5 superintendent of public instruction shall:

6 (a) monitor the provision of an appropriate educational
 7 opportunity for the child attending the hospital or
 8 residential treatment facility;

9 (b) negotiate the approval of allowable costs under the
 10 provisions of 20-7-431 for allowable costs for providing
 11 special education, including the costs of retirement
 12 benefits, federal social security system contributions, and
 13 unemployment compensation insurance; and

14 (c) fund 100% of any approved allowable costs under
 15 this section from funds appropriated for this purpose. An
 16 appropriation in excess of the allowable costs required
 17 under the provisions of this section must revert to the
 18 state equalization aid account.

19 (4) A supplemental education fee or tuition may not be
 20 charged for an eligible Montana child who receives
 21 in-patient treatment in an in-state children's psychiatric
 22 hospital or residential treatment facility.

23 (5) If a children's psychiatric hospital or residential
 24 treatment facility fails to provide an appropriate
 25 educational opportunity for an eligible child at the

1 children's psychiatric hospital or residential treatment
 2 facility or fails to negotiate a contract under the
 3 provisions of subsection (2), the superintendent of public
 4 instruction shall negotiate with the school district in
 5 which the children's psychiatric hospital or residential
 6 treatment facility is located for the supervision and
 7 implementation of an appropriate educational program for a
 8 child attending the children's psychiatric hospital or
 9 residential treatment facility. The amount negotiated with
 10 the school district must be consistent with allowable costs
 11 that may be negotiated under the provisions of subsection
 12 (3).

13 (6) Funds provided to a district under this section:

14 (a) must be deposited in the miscellaneous programs
 15 fund of the district that provides the education program for
 16 an eligible child, regardless of the age or grade placement
 17 of the child who is served under a negotiated contract;

18 (b) are not subject to the budget limitations in
 19 20-9-315; and

20 (c) may not be included in the foundation program
 21 amount of the district.

22 **NEW SECTION. Section 9. Definitions.** For the purposes
 23 of [sections 8 and 9], the following definitions apply:

24 (1) (a) "Children's psychiatric hospital" means a
 25 freestanding hospital in Montana that:

1 (i) has the primary purpose of providing clinical care
2 for children whose clinical diagnosis and resulting
3 treatment plan require in-house residential psychiatric
4 care; and

5 (ii) is accredited by the joint commission on
6 accreditation of healthcare organizations, the standards of
7 the health care financing administration, or other
8 comparable accreditation.

9 (b) The term does not include programs for children and
10 youth that have the treatment of chemical dependency as the
11 primary reason for treatment.

12 (2) "Eligible child" means a child or youth who is less
13 than 19 years of age and is emotionally disturbed as defined
14 in 53-4-101 and whose emotional problem is so severe that
15 the child or youth has been placed in a children's
16 psychiatric hospital or residential treatment facility for
17 in-patient treatment of emotional problems.

18 (3) (a) "Residential treatment facility" means a
19 facility in the state that provides services for children
20 with emotional disturbances and that is licensed by the
21 state and operated for the primary purpose of providing
22 long-term treatment services for mental illness, in a
23 residential setting, to persons under 21 years of age.

24 (b) The term does not include programs for children and
25 youth who have the treatment of chemical dependency as a

1 primary reason for treatment.

2 NEW SECTION. **Section 10. Appropriation.** There is
3 appropriated from the general fund to the superintendent of
4 public instruction \$3,242,000 for the biennium ending June
5 30, 1993, to fund educational programs for children with
6 disabilities who are placed in an in-state children's
7 psychiatric hospital or residential treatment facility or in
8 an out-of-state public or private facility.

9 NEW SECTION. **Section 11. Repealer.** Section 20-7-423,
10 MCA, is repealed.

11 NEW SECTION. **Section 12. Codification instruction.**
12 [Sections 8 and 9] are intended to be codified as an
13 integral part of Title 20, chapter 7, and the provisions of
14 Title 20, chapter 7, apply to [sections 8 and 9].

15 NEW SECTION. **Section 13. Effective date.** [This act] is
16 effective July 1, 1991.

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0999, second reading, second printing.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to generally revise the laws relating to out-of-district placement of children with disabilities; to provide state funding for the educational programs for eligible children placed in in-state residential treatment facilities and children's psychiatric hospitals; to provide an appropriation; amending various sections.

ASSUMPTIONS:

1. Appropriations in this act will be used to pay the educational costs of all children placed in residential treatment facilities and children's psychiatric hospitals by school districts in Montana.
2. Educational costs for children placed in out-of-state residential facilities will be paid from county equalization funds which would otherwise have been used to fund the foundation program.
3. The Office of Public Instruction anticipates the educational cost for children placed in in-state residential facilities will be \$665,765 in FY92, and \$763,739 in FY93.
4. The Office of Public Instruction anticipates the educational cost for children placed in in-state children's psychiatric hospitals will be \$510,345 in FY92, and \$530,759 in FY93.
5. The Office of Public Instruction anticipates the educational cost for children placed in out-of-state residential facilities will be \$360,559 in FY92, and \$411,218 in FY93.
6. Savings in the special education budget which is appropriated in HB2 as a result of shifting educational costs of these children to the appropriation established in this act and to county equalization will be expended to increase payments for other special education children rather than be reverted to the general fund.

FISCAL IMPACT:

The minimum cost to the state general fund will be \$3,242,385 in the 1993 biennium as the \$2,471,000 appropriated for special education will revert to the school equalization account rather than the general fund if not expended and the amounts diverted from county equalization to fund out-of-state placements is made up with general fund to support the foundation program.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

School district costs should be reduced as the state assumes the educational cost for children placed in in-state residential treatment facilities and psychiatric hospitals.



ROD SUNDSTED, BUDGET DIRECTOR
Office of Budget and Program Planning

DATE

4-3-91



RAY PECK, PRIMARY SPONSOR

DATE

4-3-91

Fiscal Note for HB0999, second reading, second printing

HB 999-1

APPROVED BY COMM. ON EDUCATION AND CULTURAL RESOURCES

House BILL NO. 999 INTRODUCED BY [Signature]

BY REQUEST OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO OUT-OF-DISTRICT PLACEMENT OF CHILDREN WITH DISABILITIES; TO PROVIDE STATE FUNDING FOR THE EDUCATIONAL PROGRAMS FOR ELIGIBLE CHILDREN PLACED IN IN-STATE RESIDENTIAL TREATMENT FACILITIES OR CHILDREN'S PSYCHIATRIC HOSPITALS; TO PROVIDE AN APPROPRIATION; AMENDING SECTIONS 20-5-301, 20-5-311, 20-7-403, 20-7-420, 20-7-421, 20-7-422, AND 20-7-431, MCA; REPEALING SECTION 20-7-423, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 20-5-301, MCA, is amended to read:

"20-5-301. (Temporary) Elementary tuition with mandatory approval. (1) Any child may be enrolled in and attend an elementary school outside of the elementary district in which the child resides when the elementary school is located in:

(a) any other district of the county of the child's residence;

(b) a county adjoining the child's county of residence;

1 or

(c) a district of another state that is adjacent to the county of the child's residence.

(2) When a parent or guardian of a child wishes to have the child attend a school under the provisions of this section, the parent or guardian shall apply to the county superintendent of the county of the parent or guardian's residence before July 1 of the school fiscal year for which approval is sought except in those cases when substantial changes in circumstances occurred subsequently to justify later application. The application must be made on a tuition agreement form supplied by the county superintendent and must be approved, before permission to enroll in and attend school outside of the district under the provisions of this section may be granted, by:

(a) the trustees of the elementary district in which the child resides;

(b) the trustees of the district where the child wishes to attend school; and

(c) the county superintendent of the county of the child's residence.

(3) In considering the approval of a tuition application, the tuition approval agents prescribed in this section shall approve the application for a resident child when:



1 (a) the child resides more than 3 miles from any school
2 of his resident elementary district and the school the pupil
3 wishes to attend is less distant than the nearest school of
4 the resident elementary district;

5 (b) the child resides more than 3 miles from any school
6 of his resident elementary district and the district does
7 not provide transportation under the provisions of this
8 title;

9 (c) the child resides more than 3 miles from any school
10 of his resident elementary district, the resident district
11 does not provide transportation under the provisions of this
12 title, and school bus transportation is furnished by the
13 district operating the school which he wishes to attend;

14 (d) the child is a member of a family who must send
15 another child outside of the elementary district to attend
16 high school and the child of elementary age may more
17 conveniently attend an elementary school where the high
18 school is located, provided the child resides more than 3
19 miles from an elementary school of the resident district or
20 the parent must move to the elementary district where the
21 high school is located in order to enroll the other child in
22 high school;

23 (e) the child has been declared adjudicated by a court
24 of competent jurisdiction to be an abused, neglected, or
25 dependent child, as defined in 41-3-102, or a youth in need

1 of supervision or a delinquent youth, as defined in
2 41-5-103, and has been ~~ordered-to-be~~ placed in a licensed
3 youth care facility which that is approved by the department
4 of family services and as a result of the order the child is
5 required to attend elementary school outside of the district
6 of his residence (for purposes of this subsection, the
7 prescribed geographic relationship of the receiving district
8 to the district of residence does not apply); or

9 (f) the child is required to attend elementary school
10 outside the district of residence as the result of a
11 placement by a state agency or parent in a group home
12 licensed by the state or an order of a court of competent
13 jurisdiction. For the purposes of this subsection (f), the
14 following do not apply:

15 (i) the prescribed geographic relationship of the
16 receiving district to the district of residence in this
17 subsection (3); or

18 (ii) an order issued under Title 40, chapter 4, part 2.

19 (4) The Unless the child is a child with disabilities
20 who resides in the district, the trustees of the district
21 where the school to be attended is located may disapprove a
22 tuition agreement that satisfies any of the mandatory
23 approval conditions specified in subsection (3) when they
24 find that, due to insufficient room and overcrowding, the
25 accreditation of the school would be adversely affected by

1 the acceptance of the child. In the event of disapproval,
2 the trustees shall notify the parent in writing within 15
3 days of the first receipt of the application.

4 (5) When a child has been placed by a state agency in
5 an out-of-state residential program, the amount of daily
6 tuition may not be greater than the average daily cost per
7 student in the district of residence. The amount of annual
8 tuition may not be greater than the average annual cost per
9 student in the district of residence. For the purposes of
10 this subsection, the following do not apply:

11 (a) an order issued under Title 40, chapter 4, part 2;
12 (b) placement of a child with disabilities pursuant to
13 Title 20, chapter 7, part 4; or
14 (c) placement made in a state with a reciprocal tuition
15 agreement pursuant to 20-5-314. (Terminates June 30,
16 1992--sec. 3, Ch. 492, L. 1989.)

17 **20-5-301. (Effective July 1, 1992) Elementary tuition**
18 **with mandatory approval. (1) Any child may be enrolled in**
19 **and attend an elementary school outside of the elementary**
20 **district in which he resides when such elementary school is**
21 **located in:**

22 (a) any other district of the county of his residence;
23 (b) a county adjoining his county of residence; or
24 (c) a district of another state that is adjacent to the
25 county of his residence.

1 (2) When a parent or guardian of a child wishes to have
2 his child attend a school under the provisions of this
3 section, he shall apply to the county superintendent of the
4 county of his residence before July 1 of the school fiscal
5 year for which he seeks approval except in those cases when
6 substantial changes in circumstances occurred subsequently
7 to justify later application. The application shall be made
8 on a tuition agreement form supplied by the county
9 superintendent and shall be approved, before permission to
10 enroll in and attend school outside of the district under
11 the provisions of this section may be granted, by:

12 (a) the trustees of the elementary district in which
13 the child resides;
14 (b) the trustees of the district where the child wishes
15 to attend school; and
16 (c) the county superintendent of the child's residence.

17 (3) In considering the approval of a tuition
18 application, the tuition approval agents prescribed in this
19 section shall approve such application for a resident child
20 when:

21 (a) the child resides less than 3 miles from the school
22 which he wishes to attend and more than 3 miles from any
23 school of his resident elementary district;

24 (b) the child resides more than 3 miles from any school
25 of his resident elementary district and such district does

1 not provide transportation under the provisions of this
2 title;

3 (c) the child resides more than 3 miles from any school
4 of his resident elementary district, the resident district
5 does not provide transportation under the provisions of this
6 title, and school bus transportation is furnished by the
7 district operating the school which he wishes to attend;

8 (d) the child is a member of a family who must send
9 another child outside of the elementary district to attend
10 high school and the child of elementary age may more
11 conveniently attend an elementary school where the high
12 school is located, provided the child resides more than 3
13 miles from an elementary school of the resident district or
14 the parent must move to the elementary district where the
15 high school is located in order to enroll the other child in
16 high school;

17 (e) the child has been ~~declared~~ adjudicated by a court
18 of competent jurisdiction to be an abused, neglected, or
19 dependent child, as defined in 41-3-102, or a youth in need
20 of supervision or a delinquent youth, as defined in
21 41-5-103, and has been ~~ordered-to-be~~ placed in a licensed
22 youth care facility which that is approved by the department
23 of family services and as a result of the order the child is
24 required to attend elementary school outside of the district
25 of his residence; for purposes of this subsection, the

1 prescribed geographic relationship of the receiving district
2 to the district of residence does not apply; or

3 (f) the child is required to attend elementary school
4 outside the district of residence as the result of a
5 placement by a state agency or parent in a group home
6 licensed by the state or an order of a court of competent
7 jurisdiction. For the purposes of this subsection (f), the
8 following do not apply:

9 (i) the prescribed geographic relationship of the
10 receiving district to the district of residence in this
11 subsection (3); or

12 (ii) an order issued under Title 40, chapter 4, part 2.

13 (4) The Unless the child is a child with disabilities
14 who resides in the district, the trustees of the district
15 where the school to be attended is located may disapprove a
16 tuition agreement that satisfies any of the mandatory
17 approval conditions specified in subsection (3) above when
18 they find that, due to insufficient room and overcrowding,
19 the accreditation of the school would be adversely affected
20 by the acceptance of the child. In the event of disapproval,
21 the trustees shall so notify the parent in writing within 15
22 days of the first receipt of the application.

23 (5) When a child has been placed by a state agency in
24 an out-of-state residential program, the amount of daily
25 tuition may not be greater than the average daily cost per

1 student in the district of residence. The amount of annual
2 tuition may not be greater than the average annual cost per
3 student in the district of residence. For the purposes of
4 this subsection, the following do not apply:

- 5 (a) an order issued under Title 40, chapter 4, part 2;
- 6 (b) placement of a child with disabilities pursuant to
- 7 Title 20, chapter 7, part 4; or
- 8 (c) placement made in a state with a reciprocal tuition
- 9 agreement pursuant to 20-5-314."

10 **Section 2.** Section 20-5-311, MCA, is amended to read:

11 **"20-5-311. High school tuition.** (1) Any A child may be
12 enrolled in and attend a high school outside of the high
13 school district in which he resides when such the high
14 school is located in Montana or in a county of another state
15 that is adjacent to the state of Montana. When a parent or
16 guardian of a child wishes to have his child attend a school
17 under the provisions of this section, he shall apply to the
18 county superintendent of the county of his residence before
19 July 1 of the school fiscal year for which he seeks approval
20 except in those cases when substantial changes in
21 circumstances occurred subsequently to justify later
22 application. Such The application ~~shall~~ must be made on a
23 tuition agreement form supplied by the county
24 superintendent. The trustees of the district of residence,
25 the trustees of the district in which the child wishes to

1 attend school, and the county superintendent are the
2 approval agents for tuition to another high school within
3 the county. The county superintendent of the county of
4 residence and the trustees of the district in which the
5 child wishes to attend school are the approval agents for
6 attendance outside the county.

7 (2) (a) ~~(i)~~ The approval agents shall approve a tuition
8 application when a child lives closer to a high school of
9 another district than any high school located within his
10 resident district or when, due to road or geographic
11 conditions, it is impractical to attend the high school
12 nearest his residence.

13 ~~(ii)~~ However, the approval agents are not required to
14 approve a tuition application for a student seeking to
15 attend a high school outside the state of Montana or the
16 resident district if the resident district provides
17 transportation. This exception does not apply when:

18 ~~(A)~~ the child resides in a county different from the
19 county wherein in which the school he wishes to attend is
20 located; ~~or~~

21 ~~(B)~~ ~~the child has enrolled in a high school outside his~~
22 ~~resident district and has received an approved tuition~~
23 ~~agreement on or before April 30, 1985. For the purposes of~~
24 ~~this subsection (2)(a)(ii)(B), the child has the right to~~
25 ~~continue his high school education in the receiving high~~

1 ~~school outside his resident district on an approved tuition~~
2 ~~agreement, subject to the provisions of this section.~~

3 (b) The approval agents shall approve a tuition
4 application when a child, as a result of a court order or
5 placement by a state agency or parent in a group home
6 licensed by the state, is required to attend high school
7 outside the district of residence:

8 (i) but within the state of Montana or another state
9 that maintains a reciprocal tuition agreement under
10 20-5-314; or

11 (ii) in a state that does not have a reciprocal tuition
12 agreement pursuant to 20-5-314. The amount of daily tuition
13 may not be greater than the average daily cost per student
14 in the district of residence. The amount of annual tuition
15 may not be greater than the average annual cost per student
16 in the district of residence. The county superintendent
17 shall calculate the average annual and the average daily
18 cost per student. For purposes of this subsection (b), the
19 following do not apply:

20 (A) an order issued under Title 40, chapter 4, part 2;
21 (B) placement of a child with disabilities pursuant to
22 Title 20, chapter 7, part 4.

23 (c) In approving a tuition agreement under this
24 provision, unless the child is a child with disabilities,
25 the approval agents may require the child to attend the high

1 school closest to his residence. The approval agents may
2 approve any other tuition application that satisfies the
3 geographic requirements of this section.

4 (3) The trustees of the district where the child wishes
5 to attend school shall approve or disapprove any tuition
6 application submitted to them under the provisions of this
7 section within 15 days after the receipt of the application.

8 (4) The county superintendent shall notify the parent
9 or guardian and the trustees of the district where the child
10 wishes to attend school of the tuition agreement approval or
11 disapproval. If a tuition agreement is disapproved by one or
12 more approval agents, the parent may appeal such disapproval
13 to the county superintendent and, subsequently, to the
14 superintendent of public instruction under the provision for
15 the appeal of controversies in this title.

16 (5) The approval of any tuition agreement by all of the
17 applicable approval agents or upon appeal shall authorize
18 the child named in such agreement to enroll in and attend
19 the school named in such agreement for the ensuing school
20 fiscal year."

21 **Section 3.** Section 20-7-403, MCA, is amended to read:

22 **"20-7-403. Duties of superintendent of public**
23 **instruction.** The superintendent of public instruction shall
24 supervise and coordinate the conduct of special education in
25 the state by:

1 (1) recommending to the board of public education
2 adoption of those policies necessary to establish a planned
3 and coordinated program of special education in the state;

4 (2) administering the policies adopted by the board of
5 public education;

6 (3) certifying special education teachers on the basis
7 of the special qualifications for such the teachers as
8 prescribed by the board of public education;

9 (4) establishing procedures to be used by school
10 district personnel in identifying handicapped children with
11 disabilities;

12 (5) recommending to districts the type of special
13 education class or program needed to serve the handicapped
14 children with disabilities of the districts and preparing
15 appropriate guides for developing individual education
16 programs;

17 (6) seeking for local districts appropriate
18 interdisciplinary assistance from public and private
19 agencies in diagnosing the special education needs of
20 children, in planning programs, and in admitting and
21 discharging children from such those programs;

22 (7) assisting local school districts, institutions, and
23 other agencies in developing full-service programs for all
24 handicapped children with disabilities;

25 (8) approving, as they are proposed and annually

1 thereafter, those special education classes or programs
2 which that comply with the laws of the state of Montana,
3 policies of the board of public education, and the
4 regulations of the superintendent of public instruction;

5 (9) providing technical assistance to district
6 superintendents, principals, teachers, and trustees;

7 (10) conducting conferences, offering advice, and
8 otherwise cooperating with parents and other interested
9 persons;

10 (11) preparing appropriate training and instructional
11 material for persons appointed as surrogate parents that
12 outlines their duties toward the child, limitations on what
13 they may do for the child, duties in relation to the child's
14 records, sources of assistance available to the surrogate
15 parent, and the need to seek competent legal assistance in
16 implementing hearing or appeal procedures;

17 (12) acting as the coordinating agency with federal
18 agencies, other state agencies, political subdivisions of
19 the state, and private bodies on matters concerning special
20 education, reserving to the other agencies and political
21 subdivisions their full responsibilities for other aspects
22 of the care of children needing special education;

23 (13) administering regional special education services
24 for children in need of special education in accordance with
25 policies of the board of public education; and

1 (14) contracting for the delivery of audiological
2 services to those children allowed by Montana law in
3 accordance with policies of the board of public education;
4 and

5 (15) contracting with a public school district or a
6 private residential facility for the provision of a free
7 appropriate public education for a child when a state agency
8 places a child with disabilities who is in need of special
9 education in:

10 (a) an in-state residential facility or children's
11 psychiatric hospital; or

12 (b) an out-of-state public school or private
13 residential facility."

14 **Section 4.** Section 20-7-420, MCA, is amended to read:

15 **"20-7-420. Residency requirements for -- financial**
16 **responsibility for special education.** (1) In accordance with
17 the provisions of 1-1-215, a child's district of residence
18 for special education purposes is the residence of his
19 parents or of his guardian unless otherwise determined by
20 the court. This applies to a child living at home, in an
21 institution, or under foster care. If the parent has left
22 the state, the parent's last known district of residence is
23 the child's district of residence.

24 (2) The district of residence is financially
25 responsible for tuition as established under 20-5-305 and

1 20-5-312 for ~~special--education--students~~ a child with
2 disabilities, as defined in 20-7-401, including a child who
3 has been placed by a state agency in a foster care or group
4 home licensed by the state. The district of residence is not
5 financially responsible for tuition for a child with
6 disabilities who is placed by a state agency in an
7 out-of-state public school or an out-of-state private
8 residential facility.

9 (3) If a child with disabilities who is in need of
10 special education is placed in an in-state residential
11 treatment facility or children's psychiatric hospital as
12 defined in [section 9] but the educational placement is in a
13 public school district, the district of residence is
14 responsible for tuition for the proportion of time the child
15 is served in the public school district unless the public
16 school district is operated primarily for the purpose of
17 providing education to children who attend the residential
18 facility or hospital.

19 (4) Under the provisions of 20-7-422, the
20 superintendent of public instruction shall provide funds for
21 the education fees required to provide a free appropriate
22 public education for a child with disabilities who is in
23 need of special education and is placed by a state agency in
24 an out-of-state private residential facility or out-of-state
25 public school, provided that, in determining the special

1 education services needed for the child with disabilities,
 2 the district of residence has complied with the rules
 3 promulgated under 20-7-402.

4 (5) A state agency that makes a placement of a child
 5 with disabilities is responsible for the room and board and
 6 the treatment of the child."

7 **Section 5.** Section 20-7-421, MCA, is amended to read:

8 "20-7-421. Arranging attendance in another district in
 9 lieu of a special education program -- tuition. (1) With the
 10 approval of the superintendent of public instruction In
 11 accordance with a placement decision made by persons
 12 determining an individualized education program for a child
 13 with disabilities, the trustees may arrange for the
 14 attendance of a child in need of special education in a
 15 special education program in another district within the
 16 state of Montana.

17 (2) Tuition as required under 20-5-305 and 20-5-312 may
 18 be charged as provided in 20-7-420."

19 **Section 6.** Section 20-7-422, MCA, is amended to read:

20 "20-7-422. Out-of-state tuition for special education
 21 children- placement of children with disabilities -- payment
 22 of costs. (1) If the trustees of any district recommend to
 23 the superintendent of public instruction the attendance of a
 24 child in need of special education In accordance with a
 25 placement made by persons determining an individualized

1 education program for a child with disabilities, the
 2 trustees of a district may arrange for the attendance of the
 3 child in a special education program offered outside of the
 4 state of Montana; the. The arrangements are not subject to
 5 the out-of-state attendance provisions of the laws governing
 6 the attendance of pupils in schools outside the state of
 7 Montana in 20-5-301 and 20-5-311.

8 (2) (a) Whenever the attendance of a child at an
 9 out-of-state special education program is approved by the
 10 superintendent of public instruction, the superintendent of
 11 public instruction shall, in cooperation with the department
 12 of family services, negotiate the program for the child and
 13 the amount and manner of payment of tuition. The amount of
 14 tuition must be included as a contracted service in
 15 20-7-431(i)(a)(iii)(A) in the foundation program amount for
 16 special education. Except as provided in subsection (3),
 17 when the persons determining the individualized education
 18 program of a child with disabilities who is in need of
 19 special education recommend placement in an out-of-state
 20 private residential facility, the trustees of the district
 21 of residence shall negotiate the amount and manner of
 22 payment of all costs associated with the placement.

23 (b) If the placement of the child with disabilities has
 24 met the requirements of 20-7-402, the superintendent of
 25 public instruction shall approve the amount of special

1 education instructional fees to be included as a contracted
 2 service. Only the special education instructional fees may
 3 be included as a contracted service for the purposes of
 4 20-7-431(1)(a)(iii)(A).

5 (3) Whenever a child with disabilities who is in need
 6 of special education is adjudicated by a court of competent
 7 jurisdiction to be an abused, neglected, or dependent child
 8 as defined in 41-3-102 or a youth in need of supervision or
 9 delinquent youth as defined in 41-5-103 and is placed by a
 10 state agency in an out-of-state private residential
 11 facility, the superintendent of public instruction shall
 12 negotiate with:

13 (a) the provider for the amount and manner of payment
 14 of education fees consistent with the individualized
 15 education program determined for the child under the
 16 provisions of 20-7-402; and

17 (b) the state agency that makes the placement for the
 18 portion of the placement costs that represents the child's
 19 education program."

20 **Section 7.** Section 20-7-431, MCA, is amended to read:

21 **"20-7-431. Allowable cost schedule for special programs**
 22 **-- superintendent to make rules -- annual accounting. (1)**
 23 **For the purpose of determining the foundation program amount**
 24 **for special education as defined in 20-9-321, the following**
 25 **schedule of allowable costs must be followed by the school**

1 district in preparation of its special education budget for
 2 state aid request purposes and by the superintendent of
 3 public instruction in his review and approval of the budget
 4 (for the purposes of determining the amount of the
 5 foundation program for special education for the district,
 6 and as used in this schedule, "full-time special pupil" and
 7 "regular ANB" are to be determined in accordance with
 8 20-9-311 and 20-9-313):

9 (a) instruction: salaries, benefits, supplies,
 10 textbooks, and other expenses including:

11 (i) salaries and benefits of special program teachers,
 12 regular program teachers, teacher aides, special education
 13 supervisors, audiologists, and speech and hearing
 14 clinicians--the entire cost if employed full time in the
 15 special program; if such personnel are shared between
 16 special and regular programs--a portion of the entire cost
 17 corresponding to the entire working time which each person
 18 devotes to the special program;

19 (ii) teaching supplies and textbooks if used exclusively
 20 for special programs--the actual total cost;

21 (iii) other expenses:

22 (A) contracted services, including fees paid for
 23 professional advice and consultation regarding special
 24 students or the special program, and the delivery of special
 25 education services by public or private agencies--the actual

1 total cost;

2 (B) transportation costs for special education
3 personnel who travel on an itinerant basis from school to
4 school or district to district or to in-state child study
5 team meetings or in-state individualized education program
6 meetings--the actual cost to the district calculated on the
7 same mileage rate used by the district for other travel
8 reimbursement purposes;

9 (b) supportive services, including:

10 (i) salaries and benefits of professional supportive
11 personnel--the entire cost if employed full time in the
12 special program; if the personnel are shared between special
13 and regular programs--a portion of the entire cost
14 corresponding to the entire working time which each person
15 devotes to the special program. Professional supportive
16 personnel may include counselors, social workers,
17 psychologists, psychometrists, physicians, nurses, and
18 physical and occupational therapists.

19 (ii) salaries and benefits of clerical personnel who
20 assist professional personnel in supportive services--the
21 entire cost if employed full time in the special program; if
22 the personnel are shared between special and regular
23 programs--a portion of the entire cost corresponding to the
24 entire working time which each person devotes to the special
25 program;

1 (c) equipment:

2 (i) equipment--the actual total cost;

3 (ii) special equipment for district-owned school buses
4 necessary to accommodate special students--the actual total
5 cost;

6 (iii) special equipment for school buses contracted to
7 transport special students--that portion of the contract
8 price attributable to the cost of special equipment or
9 personnel required to accommodate special students--the
10 actual special cost;

11 (iv) repair and maintenance of equipment--the actual
12 total cost;

13 ~~(d)--room-and-board-costs-when-the-special-pupil-has--to~~
14 ~~attend--a--program--at--such--a--distance-from-his-home-that~~
15 ~~commuting-is-undesirable-as-determined-by-the-superintendent~~
16 ~~of-public-instruction.~~

17 (2) The superintendent of public instruction shall
18 adopt rules in accordance with the policies of the board of
19 public education for:

20 (a) keeping necessary records for supportive and
21 administrative personnel and any personnel shared between
22 special and regular programs;

23 (b) defining the total special program caseload that
24 must be assigned to specific support persons and the kinds
25 of professional specialties to be considered relevant to the

1 program before the district may count an allowable cost
2 under subsection (1)(b) of this section; and

3 (c) defining the kinds or types of equipment whose
4 costs may be counted under subsection (1)(c)(i) of this
5 section.

6 (3) An annual accounting of all expenditures of school
7 district general fund money for special education must be
8 made by the district trustees on forms furnished by the
9 superintendent of public instruction. The superintendent of
10 public instruction shall make rules for the accounting.

11 (4) If a board of trustees chooses to exceed the budget
12 approved by the superintendent of public instruction, costs
13 in excess of the approved budget may not be reimbursed under
14 the foundation program for special education.

15 (5) Allowable costs prescribed in this section do not
16 include the costs of the teachers' retirement system, the
17 public employees' retirement system, the federal social
18 security system, or the costs for unemployment compensation
19 insurance.

20 (6) (a) Notwithstanding other provisions of the law,
21 the superintendent of public instruction may not approve a
22 foundation program amount for special education that exceeds
23 legislative appropriations; however, any unexpended balance
24 from the first year of a biennial appropriation may be spent
25 in the second year of the biennium in addition to the second

1 year appropriation.

2 (b) If the total allowable cost of the special
3 education budgets exceeds legislative appropriations
4 available for special education, each district shall receive
5 a pro rata share of the available appropriations based upon
6 prioritized budget items as established by the
7 superintendent of public instruction. The amount of the
8 approved budgets in excess of the available appropriations
9 may not be reimbursed under the foundation program for
10 special education and is the responsibility of the school
11 district."

12 NEW SECTION. **Section 8.** Funding of educational
13 programs at in-state children's psychiatric hospitals and
14 in-state residential treatment programs for eligible
15 children with emotional disturbances. (1) It is the intent
16 of the legislature that eligible children in in-state
17 children's psychiatric hospitals and residential treatment
18 facilities be provided with an appropriate educational
19 opportunity in a cost-effective manner.

20 (2) The superintendent of public instruction may
21 contract with an in-state children's psychiatric hospital or
22 residential treatment facility for provision of an
23 educational program for an eligible child in the hospital or
24 treatment facility.

25 (3) Whenever the superintendent of public instruction

1 contracts with an in-state children's psychiatric hospital
 2 or residential treatment facility for provision of an
 3 educational program for an eligible child in the children's
 4 psychiatric hospital or residential treatment facility, the
 5 superintendent of public instruction shall:

6 (a) monitor the provision of an appropriate educational
 7 opportunity for the child attending the hospital or
 8 residential treatment facility;

9 (b) negotiate the approval of allowable costs under the
 10 provisions of 20-7-431 for allowable costs for providing
 11 special education, including the costs of retirement
 12 benefits, federal social security system contributions, and
 13 unemployment compensation insurance; and

14 (c) fund 100% of any approved allowable costs under
 15 this section from funds appropriated for this purpose. An
 16 appropriation in excess of the allowable costs required
 17 under the provisions of this section must revert to the
 18 state equalization aid account.

19 (4) A supplemental education fee or tuition may not be
 20 charged for an eligible Montana child who receives
 21 in-patient treatment in an in-state children's psychiatric
 22 hospital or residential treatment facility.

23 (5) If a children's psychiatric hospital or residential
 24 treatment facility fails to provide an appropriate
 25 educational opportunity for an eligible child at the

1 children's psychiatric hospital or residential treatment
 2 facility or fails to negotiate a contract under the
 3 provisions of subsection (2), the superintendent of public
 4 instruction shall negotiate with the school district in
 5 which the children's psychiatric hospital or residential
 6 treatment facility is located for the supervision and
 7 implementation of an appropriate educational program for a
 8 child attending the children's psychiatric hospital or
 9 residential treatment facility. The amount negotiated with
 10 the school district must be consistent with allowable costs
 11 that may be negotiated under the provisions of subsection
 12 (3).

13 (6) Funds provided to a district under this section:

14 (a) must be deposited in the miscellaneous programs
 15 fund of the district that provides the education program for
 16 an eligible child, regardless of the age or grade placement
 17 of the child who is served under a negotiated contract;

18 (b) are not subject to the budget limitations in
 19 20-9-315; and

20 (c) may not be included in the foundation program
 21 amount of the district.

22 **NEW SECTION. Section 9. Definitions.** For the purposes
 23 of [sections 8 and 9], the following definitions apply:

24 (1) (a) "Children's psychiatric hospital" means a
 25 freestanding hospital in Montana that:

1 (i) has the primary purpose of providing clinical care
2 for children whose clinical diagnosis and resulting
3 treatment plan require in-house residential psychiatric
4 care; and

5 (ii) is accredited by the joint commission on
6 accreditation of healthcare organizations, the standards of
7 the health care financing administration, or other
8 comparable accreditation.

9 (b) The term does not include programs for children and
10 youth that have the treatment of chemical dependency as the
11 primary reason for treatment.

12 (2) "Eligible child" means a child or youth who is less
13 than 19 years of age and is emotionally disturbed as defined
14 in 53-4-101 and whose emotional problem is so severe that
15 the child or youth has been placed in a children's
16 psychiatric hospital or residential treatment facility for
17 in-patient treatment of emotional problems.

18 (3) (a) "Residential treatment facility" means a
19 facility in the state that provides services for children
20 with emotional disturbances and that is licensed by the
21 state and operated for the primary purpose of providing
22 long-term treatment services for mental illness, in a
23 residential setting, to persons under 21 years of age.

24 (b) The term does not include programs for children and
25 youth who have the treatment of chemical dependency as a

1 primary reason for treatment.

2 NEW SECTION. Section 10. Appropriation. There is
3 appropriated from the general fund to the superintendent of
4 public instruction \$3,242,000 for the biennium ending June
5 30, 1993, to fund educational programs for children with
6 disabilities who are placed in an in-state children's
7 psychiatric hospital or residential treatment facility or in
8 an out-of-state public or private facility.

9 NEW SECTION. Section 11. Repealer. Section 20-7-423,
10 MCA, is repealed.

11 NEW SECTION. Section 12. Codification instruction.
12 [Sections 8 and 9] are intended to be codified as an
13 integral part of Title 20, chapter 7, and the provisions of
14 Title 20, chapter 7, apply to [sections 8 and 9].

15 NEW SECTION. Section 13. Effective date. [This act] is
16 effective July 1, 1991.

-End-

RE-REFERRED AND
APPROVED BY COMMITTEE
ON APPROPRIATIONS
AS AMENDED

1 HOUSE BILL NO. 999
2 INTRODUCED BY PECK
3 BY REQUEST OF THE SUPERINTENDENT
4 OF PUBLIC INSTRUCTION
5

6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
7 LAWS RELATING TO OUT-OF-DISTRICT PLACEMENT OF CHILDREN WITH
8 DISABILITIES; TO PROVIDE STATE FUNDING FOR THE EDUCATIONAL
9 PROGRAMS FOR ELIGIBLE CHILDREN PLACED IN IN-STATE
10 RESIDENTIAL TREATMENT FACILITIES OR CHILDREN'S PSYCHIATRIC
11 HOSPITALS; TO PROVIDE AN APPROPRIATION; AMENDING SECTIONS
12 20-5-301, 20-5-311, 20-7-403, 20-7-420, 20-7-421, 20-7-422,
13 AND 20-7-431, AND 20-9-334, MCA; REPEALING SECTION 20-7-423,
14 MCA; AND PROVIDING AN EFFECTIVE DATE."
15

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

17 Section 1. Section 20-5-301, MCA, is amended to read:

18 "20-5-301. (Temporary) Elementary tuition with
19 mandatory approval. (1) Any child may be enrolled in and
20 attend an elementary school outside of the elementary
21 district in which the child resides when the elementary
22 school is located in:

- 23 (a) any other district of the county of the child's
24 residence;
- 25 (b) a county adjoining the child's county of residence;

1 or
2 (c) a district of another state that is adjacent to the
3 county of the child's residence.

4 (2) When a parent or guardian of a child wishes to have
5 the child attend a school under the provisions of this
6 section, the parent or guardian shall apply to the county
7 superintendent of the county of the parent or guardian's
8 residence before July 1 of the school fiscal year for which
9 approval is sought except in those cases when substantial
10 changes in circumstances occurred subsequently to justify
11 later application. The application must be made on a tuition
12 agreement form supplied by the county superintendent and
13 must be approved, before permission to enroll in and attend
14 school outside of the district under the provisions of this
15 section may be granted, by:

- 16 (a) the trustees of the elementary district in which
17 the child resides;
- 18 (b) the trustees of the district where the child wishes
19 to attend school; and
- 20 (c) the county superintendent of the county of the
21 child's residence.

22 (3) In considering the approval of a tuition
23 application, the tuition approval agents prescribed in this
24 section shall approve the application for a resident child
25 when:



1 (a) the child resides more than 3 miles from any school
2 of his resident elementary district and the school the pupil
3 wishes to attend is less distant than the nearest school of
4 the resident elementary district;

5 (b) the child resides more than 3 miles from any school
6 of his resident elementary district and the district does
7 not provide transportation under the provisions of this
8 title;

9 (c) the child resides more than 3 miles from any school
10 of his resident elementary district, the resident district
11 does not provide transportation under the provisions of this
12 title, and school bus transportation is furnished by the
13 district operating the school which he wishes to attend;

14 (d) the child is a member of a family who must send
15 another child outside of the elementary district to attend
16 high school and the child of elementary age may more
17 conveniently attend an elementary school where the high
18 school is located, provided the child resides more than 3
19 miles from an elementary school of the resident district or
20 the parent must move to the elementary district where the
21 high school is located in order to enroll the other child in
22 high school;

23 (e) the child has been declared adjudicated by a court
24 of competent jurisdiction to be an abused, neglected, or
25 dependent child, as defined in 41-3-102, or a youth in need

1 of supervision or a delinquent youth, as defined in
2 41-5-103, and has been ~~ordered-to-be~~ placed in a licensed
3 youth care facility which that is approved by the department
4 of family services and as a result of the order the child is
5 required to attend elementary school outside of the district
6 of his residence (for purposes of this subsection, the
7 prescribed geographic relationship of the receiving district
8 to the district of residence does not apply); or

9 (f) the child is required to attend elementary school
10 outside the district of residence as the result of a
11 placement by a state agency or parent in a group home
12 licensed by the state or an order of a court of competent
13 jurisdiction. For the purposes of this subsection (f), the
14 following do not apply:

15 (i) the prescribed geographic relationship of the
16 receiving district to the district of residence in this
17 subsection (3); or

18 (ii) an order issued under Title 40, chapter 4, part 2.

19 (4) The Unless the child is a child with disabilities
20 who resides in the district, the trustees of the district
21 where the school to be attended is located may disapprove a
22 tuition agreement that satisfies any of the mandatory
23 approval conditions specified in subsection (3) when they
24 find that, due to insufficient room and overcrowding, the
25 accreditation of the school would be adversely affected by

1 the acceptance of the child. In the event of disapproval,
 2 the trustees shall notify the parent in writing within 15
 3 days of the first receipt of the application.

4 (5) When a child has been placed by a state agency in
 5 an out-of-state residential program, the amount of daily
 6 tuition may not be greater than the average daily cost per
 7 student in the district of residence. The amount of annual
 8 tuition may not be greater than the average annual cost per
 9 student in the district of residence. For the purposes of
 10 this subsection, the following do not apply:

- 11 (a) an order issued under Title 40, chapter 4, part 2;
- 12 (b) placement of a child with disabilities pursuant to
 13 Title 20, chapter 7, part 4; or
- 14 (c) placement made in a state with a reciprocal tuition
 15 agreement pursuant to 20-5-314. (Terminates June 30,
 16 1992--sec. 3, Ch. 492, L. 1989.)

17 **20-5-301. (Effective July 1, 1992) Elementary tuition**
 18 **with mandatory approval. (1) Any child may be enrolled in**
 19 **and attend an elementary school outside of the elementary**
 20 **district in which he resides when such elementary school is**
 21 **located in:**

- 22 (a) any other district of the county of his residence;
- 23 (b) a county adjoining his county of residence; or
- 24 (c) a district of another state that is adjacent to the
 25 county of his residence.

1 (2) When a parent or guardian of a child wishes to have
 2 his child attend a school under the provisions of this
 3 section, he shall apply to the county superintendent of the
 4 county of his residence before July 1 of the school fiscal
 5 year for which he seeks approval except in those cases when
 6 substantial changes in circumstances occurred subsequently
 7 to justify later application. The application shall be made
 8 on a tuition agreement form supplied by the county
 9 superintendent and shall be approved, before permission to
 10 enroll in and attend school outside of the district under
 11 the provisions of this section may be granted, by:

- 12 (a) the trustees of the elementary district in which
 13 the child resides;
 - 14 (b) the trustees of the district where the child wishes
 15 to attend school; and
 - 16 (c) the county superintendent of the child's residence.
- 17 (3) In considering the approval of a tuition
 18 application, the tuition approval agents prescribed in this
 19 section shall approve such application for a resident child
 20 when:

- 21 (a) the child resides less than 3 miles from the school
 22 which he wishes to attend and more than 3 miles from any
 23 school of his resident elementary district;
- 24 (b) the child resides more than 3 miles from any school
 25 of his resident elementary district and such district does

1 not provide transportation under the provisions of this
2 title;

3 (c) the child resides more than 3 miles from any school
4 of his resident elementary district, the resident district
5 does not provide transportation under the provisions of this
6 title, and school bus transportation is furnished by the
7 district operating the school which he wishes to attend;

8 (d) the child is a member of a family who must send
9 another child outside of the elementary district to attend
10 high school and the child of elementary age may more
11 conveniently attend an elementary school where the high
12 school is located, provided the child resides more than 3
13 miles from an elementary school of the resident district or
14 the parent must move to the elementary district where the
15 high school is located in order to enroll the other child in
16 high school;

17 (e) the child has been declared adjudicated by a court
18 of competent jurisdiction to be an abused, neglected, or
19 dependent child, as defined in 41-3-102, or a youth in need
20 of supervision or a delinquent youth, as defined in
21 41-5-103, and has been ordered-to-be placed in a licensed
22 youth care facility which that is approved by the department
23 of family services and as a result of the order the child is
24 required to attend elementary school outside of the district
25 of his residence; for purposes of this subsection, the

1 prescribed geographic relationship of the receiving district
2 to the district of residence does not apply; or

3 (f) the child is required to attend elementary school
4 outside the district of residence as the result of a
5 placement by a state agency or parent in a group home
6 licensed by the state or an order of a court of competent
7 jurisdiction. For the purposes of this subsection (f), the
8 following do not apply:

9 (i) the prescribed geographic relationship of the
10 receiving district to the district of residence in this
11 subsection (3); or

12 (ii) an order issued under Title 40, chapter 4, part 2.

13 (4) The Unless the child is a child with disabilities
14 who resides in the district, the trustees of the district
15 where the school to be attended is located may disapprove a
16 tuition agreement that satisfies any of the mandatory
17 approval conditions specified in subsection (3) above when
18 they find that, due to insufficient room and overcrowding,
19 the accreditation of the school would be adversely affected
20 by the acceptance of the child. In the event of disapproval,
21 the trustees shall so notify the parent in writing within 15
22 days of the first receipt of the application.

23 (5) When a child has been placed by a state agency in
24 an out-of-state residential program, the amount of daily
25 tuition may not be greater than the average daily cost per

1 student in the district of residence. The amount of annual
 2 tuition may not be greater than the average annual cost per
 3 student in the district of residence. For the purposes of
 4 this subsection, the following do not apply:

- 5 (a) an order issued under Title 40, chapter 4, part 2;
- 6 (b) placement of a child with disabilities pursuant to
 7 Title 20, chapter 7, part 4; or
- 8 (c) placement made in a state with a reciprocal tuition
 9 agreement pursuant to 20-5-314."

10 **Section 2.** Section 20-5-311, MCA, is amended to read:

11 "20-5-311. High school tuition. (1) Any A child may be
 12 enrolled in and attend a high school outside of the high
 13 school district in which he resides when such the high
 14 school is located in Montana or in a county of another state
 15 that is adjacent to the state of Montana. When a parent or
 16 guardian of a child wishes to have his child attend a school
 17 under the provisions of this section, he shall apply to the
 18 county superintendent of the county of his residence before
 19 July 1 of the school fiscal year for which he seeks approval
 20 except in those cases when substantial changes in
 21 circumstances occurred subsequently to justify later
 22 application. Such The application shall must be made on a
 23 tuition agreement form supplied by the county
 24 superintendent. The trustees of the district of residence,
 25 the trustees of the district in which the child wishes to

1 attend school, and the county superintendent are the
 2 approval agents for tuition to another high school within
 3 the county. The county superintendent of the county of
 4 residence and the trustees of the district in which the
 5 child wishes to attend school are the approval agents for
 6 attendance outside the county.

7 (2) (a) ~~(1)~~ The approval agents shall approve a tuition
 8 application when a child lives closer to a high school of
 9 another district than any high school located within his
 10 resident district or when, due to road or geographic
 11 conditions, it is impractical to attend the high school
 12 nearest his residence.

13 ~~(1)~~ However, the approval agents are not required to
 14 approve a tuition application for a student seeking to
 15 attend a high school outside the state of Montana or the
 16 resident district if the resident district provides
 17 transportation. This exception does not apply when:

18 (A) the child resides in a county different from the
 19 county wherein in which the school he wishes to attend is
 20 located; or

21 ~~(B) the child has enrolled in a high school outside his~~
 22 ~~resident district and has received an approved tuition~~
 23 ~~agreement on or before April 30, 1985. For the purposes of~~
 24 ~~this subsection (2)(a)(1)(B), the child has the right to~~
 25 ~~continue his high school education in the receiving high~~

1 ~~school-outside-his-resident-district-on-an-approved--tuition~~
2 ~~agreement,subject-to-the-provisions-of-this-section.~~

3 (b) The approval agents shall approve a tuition
4 application when a child, as a result of a court order or
5 placement by a state agency or parent in a group home
6 licensed by the state, is required to attend high school
7 outside the district of residence:

8 (i) but within the state of Montana or another state
9 that maintains a reciprocal tuition agreement under
10 20-5-314; or

11 (ii) in a state that does not have a reciprocal tuition
12 agreement pursuant to 20-5-314. The amount of daily tuition
13 may not be greater than the average daily cost per student
14 in the district of residence. The amount of annual tuition
15 may not be greater than the average annual cost per student
16 in the district of residence. The county superintendent
17 shall calculate the average annual and the average daily
18 cost per student. For purposes of this subsection (b), the
19 following do not apply:

20 (A) an order issued under Title 40, chapter 4, part 2;

21 (B) placement of a child with disabilities pursuant to
22 Title 20, chapter 7, part 4.

23 (c) In approving a tuition agreement under this
24 provision, unless the child is a child with disabilities,
25 the approval agents may require the child to attend the high

1 school closest to his residence. The approval agents may
2 approve any other tuition application that satisfies the
3 geographic requirements of this section.

4 (3) The trustees of the district where the child wishes
5 to attend school shall approve or disapprove any tuition
6 application submitted to them under the provisions of this
7 section within 15 days after the receipt of the application.

8 (4) The county superintendent shall notify the parent
9 or guardian and the trustees of the district where the child
10 wishes to attend school of the tuition agreement approval or
11 disapproval. If a tuition agreement is disapproved by one or
12 more approval agents, the parent may appeal such disapproval
13 to the county superintendent and, subsequently, to the
14 superintendent of public instruction under the provision for
15 the appeal of controversies in this title.

16 (5) The approval of any tuition agreement by all of the
17 applicable approval agents or upon appeal shall authorize
18 the child named in such agreement to enroll in and attend
19 the school named in such agreement for the ensuing school
20 fiscal year."

21 **Section 3.** Section 20-7-403, MCA, is amended to read:

22 "20-7-403. Duties of superintendent of public
23 instruction. The superintendent of public instruction shall
24 supervise and coordinate the conduct of special education in
25 the state by:

- 1 (1) recommending to the board of public education
2 adoption of those policies necessary to establish a planned
3 and coordinated program of special education in the state;
4 (2) administering the policies adopted by the board of
5 public education;
6 (3) certifying special education teachers on the basis
7 of the special qualifications for such the teachers as
8 prescribed by the board of public education;
9 (4) establishing procedures to be used by school
10 district personnel in identifying handicapped children with
11 disabilities;
12 (5) recommending to districts the type of special
13 education class or program needed to serve the handicapped
14 children with disabilities of the districts and preparing
15 appropriate guides for developing individual education
16 programs;
17 (6) seeking for local districts appropriate
18 interdisciplinary assistance from public and private
19 agencies in diagnosing the special education needs of
20 children, in planning programs, and in admitting and
21 discharging children from such those programs;
22 (7) assisting local school districts, institutions, and
23 other agencies in developing full-service programs for all
24 handicapped children with disabilities;
25 (8) approving, as they are proposed and annually

- 1 thereafter, those special education classes or programs
2 which that comply with the laws of the state of Montana,
3 policies of the board of public education, and the
4 regulations of the superintendent of public instruction;
5 (9) providing technical assistance to district
6 superintendents, principals, teachers, and trustees;
7 (10) conducting conferences, offering advice, and
8 otherwise cooperating with parents and other interested
9 persons;
10 (11) preparing appropriate training and instructional
11 material for persons appointed as surrogate parents that
12 outlines their duties toward the child, limitations on what
13 they may do for the child, duties in relation to the child's
14 records, sources of assistance available to the surrogate
15 parent, and the need to seek competent legal assistance in
16 implementing hearing or appeal procedures;
17 (12) acting as the coordinating agency with federal
18 agencies, other state agencies, political subdivisions of
19 the state, and private bodies on matters concerning special
20 education, reserving to the other agencies and political
21 subdivisions their full responsibilities for other aspects
22 of the care of children needing special education;
23 (13) administering regional special education services
24 for children in need of special education in accordance with
25 policies of the board of public education; and

1 (14) contracting for the delivery of audiological
 2 services to those children allowed by Montana law in
 3 accordance with policies of the board of public education;
 4 and

5 (15) contracting with a public school district or a
 6 private residential facility for the provision of a free
 7 appropriate public education for a child when a state agency
 8 places a child with disabilities who is in need of special
 9 education in:

10 (a) an in-state residential facility or children's
 11 psychiatric hospital; or

12 (b) an out-of-state public school or private
 13 residential facility."

14 **Section 4.** Section 20-7-420, MCA, is amended to read:

15 "20-7-420. Residency requirements for -- financial
 16 responsibility for special education. (1) In accordance with
 17 the provisions of 1-1-215, a child's district of residence
 18 for special education purposes is the residence of his
 19 parents or of his guardian unless otherwise determined by
 20 the court. This applies to a child living at home, in an
 21 institution, or under foster care. If the parent has left
 22 the state, the parent's last known district of residence is
 23 the child's district of residence.

24 (2) The district of residence is financially
 25 responsible for tuition as established under 20-5-305 and

1 20-5-312 for ~~special--education--students~~ a child with
 2 disabilities, as defined in 20-7-401, including a child who
 3 has been placed by a state agency in a foster care or group
 4 home licensed by the state. The district of residence is not
 5 financially responsible for tuition for a child with
 6 disabilities who is placed by a state agency in an
 7 out-of-state public school or an out-of-state private
 8 residential facility.

9 (3) If a child with disabilities who is in need of
 10 special education is placed in an in-state residential
 11 treatment facility or children's psychiatric hospital as
 12 defined in [section 9] but the educational placement is in a
 13 public school district, the district of residence is
 14 responsible for tuition for the proportion of time the child
 15 is served in the public school district unless the public
 16 school district is operated primarily for the purpose of
 17 providing education to children who attend the residential
 18 facility or hospital.

19 (4) Under the provisions of 20-7-422(3), the
 20 superintendent of public instruction shall provide funds for
 21 the education fees required to provide a free appropriate
 22 public education for a child with disabilities who is in
 23 need of special education and is placed by a state agency in
 24 an out-of-state private residential facility or out-of-state
 25 public school, provided that, in determining the special

1 education services needed for the child with disabilities,
 2 the district of residence has complied with the rules
 3 promulgated under 20-7-402.

4 (5) A state agency that makes a placement of a child
 5 with disabilities is responsible for the room and board and
 6 the treatment of the child."

7 **Section 5.** Section 20-7-421, MCA, is amended to read:

8 "20-7-421. Arranging attendance in another district in
 9 lieu of a special education program -- tuition. (1) With the
 10 approval of the superintendent of public instruction in
 11 accordance with a placement decision made by persons
 12 determining an individualized education program for a child
 13 with disabilities, the trustees may arrange for the
 14 attendance of a child in need of special education in ~~a~~
 15 ~~special education program~~ in another district within the
 16 state of Montana.

17 (2) Tuition as required under 20-5-305 and 20-5-312 may
 18 be charged as provided in 20-7-420."

19 **Section 6.** Section 20-7-422, MCA, is amended to read:

20 "20-7-422. ~~Out-of-state tuition for special education~~
 21 ~~children-~~ placement of children with disabilities -- payment
 22 of costs. (1) ~~If the trustees of any district recommend to~~
 23 ~~the superintendent of public instruction the attendance of a~~
 24 ~~child in need of special education~~ In accordance with a
 25 placement made by persons determining an individualized

1 education program for a child with disabilities, the
 2 trustees of a district may arrange for the attendance of the
 3 child in a special education program offered outside of the
 4 state of Montana, ~~the.~~ The arrangements are not subject to
 5 the out-of-state attendance provisions ~~of the laws governing~~
 6 ~~the attendance of pupils in schools outside the state of~~
 7 Montana in 20-5-301 and 20-5-311.

8 (2) (a) ~~Whenever the attendance of a child at an~~
 9 ~~out-of-state special education program is approved by the~~
 10 ~~superintendent of public instruction, the superintendent of~~
 11 ~~public instruction shall, in cooperation with the department~~
 12 ~~of family services, negotiate the program for the child and~~
 13 ~~the amount and manner of payment of tuition. The amount of~~
 14 ~~tuition must be included as a contracted service in~~
 15 ~~20-7-431(i)(a)(iii)(A) in the foundation program amount for~~
 16 ~~special education.~~ Except as provided in subsection (3),
 17 when the persons determining the individualized education
 18 program of a child with disabilities who is in need of
 19 special education recommend placement in an out-of-state
 20 private residential facility, the trustees of the district
 21 of residence shall negotiate the amount and manner of
 22 payment of all costs associated with the placement.

23 (b) If the placement of the child with disabilities has
 24 met the requirements of 20-7-402, the superintendent of
 25 public instruction shall approve the amount of special

1 education instructional fees to be included as a contracted
2 service. Only the special education instructional fees may
3 be included as a contracted service for the purposes of
4 20-7-431(1)(a)(iii)(A).

5 (3) Whenever a child with disabilities who is in need
6 of special education is adjudicated by a court of competent
7 jurisdiction to be an abused, neglected, or dependent child
8 as defined in 41-3-102 or a youth in need of supervision or
9 delinquent youth as defined in 41-5-103 and is placed by a
10 state agency in an out-of-state private residential
11 facility, the superintendent of public instruction shall
12 negotiate with:

13 (a) the provider for the amount and manner of payment
14 of education fees consistent with the individualized
15 education program determined for the child under the
16 provisions of 20-7-402; and

17 (b) the state agency that makes the placement for the
18 portion of the placement costs that represents the child's
19 education program.

20 (4) PAYMENTS FOR A CHILD WITH DISABILITIES AS
21 NEGOTIATED IN SUBSECTION (3) MUST BE PAID BY THE
22 SUPERINTENDENT OF PUBLIC INSTRUCTION FROM THE STATE SPECIAL
23 EDUCATION APPROPRIATION."

24 **Section 7.** Section 20-7-431, MCA, is amended to read:

25 "20-7-431. Allowable cost schedule for special programs

1 -- superintendent to make rules -- annual accounting. (1)
2 For the purpose of determining the foundation program amount
3 for special education as defined in 20-9-321, the following
4 schedule of allowable costs must be followed by the school
5 district in preparation of its special education budget for
6 state aid request purposes and by the superintendent of
7 public instruction in his review and approval of the budget
8 (for the purposes of determining the amount of the
9 foundation program for special education for the district,
10 and as used in this schedule, "full-time special pupil" and
11 "regular ANB" are to be determined in accordance with
12 20-9-311 and 20-9-313):

13 (a) instruction: salaries, benefits, supplies,
14 textbooks, and other expenses including:

15 (i) salaries and benefits of special program teachers,
16 regular program teachers, teacher aides, special education
17 supervisors, audiologists, and speech and hearing
18 clinicians--the entire cost if employed full time in the
19 special program; if such personnel are shared between
20 special and regular programs--a portion of the entire cost
21 corresponding to the entire working time which each person
22 devotes to the special program;

23 (ii) teaching supplies and textbooks if used exclusively
24 for special programs--the actual total cost;

25 (iii) other expenses:

1 (A) contracted services, including fees paid for
 2 professional advice and consultation regarding special
 3 students or the special program, and the delivery of special
 4 education services by public or private agencies--the actual
 5 total cost;

6 (B) transportation costs for special education
 7 personnel who travel on an itinerant basis from school to
 8 school or district to district or to in-state child study
 9 team meetings or in-state individualized education program
 10 meetings--the actual cost to the district calculated on the
 11 same mileage rate used by the district for other travel
 12 reimbursement purposes;

13 (b) supportive services, including:

14 (i) salaries and benefits of professional supportive
 15 personnel--the entire cost if employed full time in the
 16 special program; if the personnel are shared between special
 17 and regular programs--a portion of the entire cost
 18 corresponding to the entire working time which each person
 19 devotes to the special program. Professional supportive
 20 personnel may include counselors, social workers,
 21 psychologists, psychometrists, physicians, nurses, and
 22 physical and occupational therapists.

23 (ii) salaries and benefits of clerical personnel who
 24 assist professional personnel in supportive services--the
 25 entire cost if employed full time in the special program; if

1 the personnel are shared between special and regular
 2 programs--a portion of the entire cost corresponding to the
 3 entire working time which each person devotes to the special
 4 program;

5 (c) equipment:

6 (i) equipment--the actual total cost;

7 (ii) special equipment for district-owned school buses
 8 necessary to accommodate special students--the actual total
 9 cost;

10 (iii) special equipment for school buses contracted to
 11 transport special students--that portion of the contract
 12 price attributable to the cost of special equipment or
 13 personnel required to accommodate special students--the
 14 actual special cost;

15 (iv) repair and maintenance of equipment--the actual
 16 total cost;

17 ~~(d)--room--and--board--costs--when--the--special--pupil--has--to~~
 18 ~~attend--a--program--at--such--a--distance--from--his--home--that~~
 19 ~~commuting--is--undesirable--as--determined--by--the--superintendent~~
 20 ~~of--public--instruction.~~

21 (2) The superintendent of public instruction shall
 22 adopt rules in accordance with the policies of the board of
 23 public education for:

24 (a) keeping necessary records for supportive and
 25 administrative personnel and any personnel shared between

1 special and regular programs;

2 (b) defining the total special program caseload that
3 must be assigned to specific support persons and the kinds
4 of professional specialties to be considered relevant to the
5 program before the district may count an allowable cost
6 under subsection (1)(b) of this section; and

7 (c) defining the kinds or types of equipment whose
8 costs may be counted under subsection (1)(c)(i) of this
9 section.

10 (3) An annual accounting of all expenditures of school
11 district general fund money for special education must be
12 made by the district trustees on forms furnished by the
13 superintendent of public instruction. The superintendent of
14 public instruction shall make rules for the accounting.

15 (4) If a board of trustees chooses to exceed the budget
16 approved by the superintendent of public instruction, costs
17 in excess of the approved budget may not be reimbursed under
18 the foundation program for special education.

19 (5) Allowable costs prescribed in this section do not
20 include the costs of the teachers' retirement system, the
21 public employees' retirement system, the federal social
22 security system, or the costs for unemployment compensation
23 insurance.

24 (6) (a) Notwithstanding other provisions of the law,
25 the superintendent of public instruction may not approve a

1 foundation program amount for special education that exceeds
2 legislative appropriations; however, any unexpended balance
3 from the first year of a biennial appropriation may be spent
4 in the second year of the biennium in addition to the second
5 year appropriation.

6 (b) If the total allowable cost of the special
7 education budgets exceeds legislative appropriations
8 available for special education, each district shall receive
9 a pro rata share of the available appropriations based upon
10 prioritized budget items as established by the
11 superintendent of public instruction. The amount of the
12 approved budgets in excess of the available appropriations
13 may not be reimbursed under the foundation program for
14 special education and is the responsibility of the school
15 district."

16 **SECTION 8. SECTION 20-9-334, MCA, IS AMENDED TO READ:**

17 **"20-9-334. Apportionment of county equalization moneys**
18 **by county superintendent. The county superintendent shall**
19 **separately apportion the revenues deposited in the basic**
20 **county tax account and the revenues deposited in the basic**
21 **special tax for high schools account to the several**
22 **districts of the county on a monthly basis. The**
23 **apportionments shall be known as "county equalization**
24 **moneys". Before the county superintendent makes the monthly**
25 **apportionments, he shall:**

1 (1) deduct from the revenues available in the basic
2 county tax account the amount required for the month to pay
3 the county's obligation for elementary transportation
4 reimbursements and out-of-state tuition obligations; and

5 (2) deduct from the revenues available in the basic
6 special tax for high schools account the amount required for
7 the month to pay the county's obligation for high school
8 out-of-county tuition."

9 NEW SECTION. Section 9. Funding of educational
10 programs at in-state children's psychiatric hospitals and
11 in-state residential treatment programs for eligible
12 children with emotional disturbances. (1) It is the intent
13 of the legislature that eligible children in in-state
14 children's psychiatric hospitals and residential treatment
15 facilities be provided with an appropriate educational
16 opportunity in a cost-effective manner.

17 (2) The superintendent of public instruction may
18 contract with an in-state children's psychiatric hospital or
19 residential treatment facility for provision of an
20 educational program for an eligible child in the hospital or
21 treatment facility.

22 (3) Whenever the superintendent of public instruction
23 contracts with an in-state children's psychiatric hospital
24 or residential treatment facility for provision of an
25 educational program for an eligible child in the children's

1 psychiatric hospital or residential treatment facility, the
2 superintendent of public instruction shall:

3 (a) monitor the provision of an appropriate educational
4 opportunity for the child attending the hospital or
5 residential treatment facility;

6 (b) negotiate the approval of allowable costs under the
7 provisions of 20-7-431 for allowable costs for providing
8 special education, including the costs of retirement
9 benefits, federal social security system contributions, and
10 unemployment compensation insurance; and

11 (c) fund 100% of any approved allowable costs under
12 this section from funds appropriated for this purpose. An
13 appropriation in excess of the allowable costs required
14 under the provisions of this section must revert to the
15 state equalization aid account.

16 (4) A supplemental education fee or tuition may not be
17 charged for an eligible Montana child who receives
18 in-patient treatment in an in-state children's psychiatric
19 hospital or residential treatment facility.

20 (5) If a children's psychiatric hospital or residential
21 treatment facility fails to provide an appropriate
22 educational opportunity for an eligible child at the
23 children's psychiatric hospital or residential treatment
24 facility or fails to negotiate a contract under the
25 provisions of subsection (2), the superintendent of public

1 instruction shall negotiate with the school district in
 2 which the children's psychiatric hospital or residential
 3 treatment facility is located for the supervision and
 4 implementation of an appropriate educational program for a
 5 child attending the children's psychiatric hospital or
 6 residential treatment facility. The amount negotiated with
 7 the school district must be consistent with allowable costs
 8 that may be negotiated under the provisions of subsection
 9 (3).

10 (6) Funds provided to a district under this section:

11 (a) must be deposited in the miscellaneous programs
 12 fund of the district that provides the education program for
 13 an eligible child, regardless of the age or grade placement
 14 of the child who is served under a negotiated contract;

15 (b) are not subject to the budget limitations in
 16 20-9-315; and

17 (c) may not be included in the foundation program
 18 amount of the district.

19 **NEW SECTION. Section 10. Definitions.** For the purposes
 20 of [sections 8 and 9], the following definitions apply:

21 (1) (a) "Children's psychiatric hospital" means a
 22 freestanding hospital in Montana that:

23 (i) has the primary purpose of providing clinical care
 24 for children whose clinical diagnosis and resulting
 25 treatment plan require in-house residential psychiatric

1 care; and

2 (ii) is accredited by the joint commission on
 3 accreditation of healthcare organizations, the standards of
 4 the health care financing administration, or other
 5 comparable accreditation.

6 (b) The term does not include programs for children and
 7 youth that have the treatment of chemical dependency as the
 8 primary reason for treatment.

9 (2) "Eligible child" means a child or youth who is less
 10 than 19 years of age and is emotionally disturbed as defined
 11 in 53-4-101 and whose emotional problem is so severe that
 12 the child or youth has been placed in a children's
 13 psychiatric hospital or residential treatment facility for
 14 in-patient treatment of emotional problems.

15 (3) (a) "Residential treatment facility" means a
 16 facility in the state that provides services for children
 17 with emotional disturbances and that is licensed by the
 18 state and operated for the primary purpose of providing
 19 long-term treatment services for mental illness, in a
 20 residential setting, to persons under 21 years of age.

21 (b) The term does not include programs for children and
 22 youth who have the treatment of chemical dependency as a
 23 primary reason for treatment.

24 **NEW SECTION. SECTION 11. OUT-OF-STATE TUITION. (1) THE**
 25 **COUNTY SUPERINTENDENT OF SCHOOLS OF THE COUNTY OF THE**

1 DISTRICT OF RESIDENCE SHALL MAKE PAYMENTS FROM THE COUNTY
 2 BASIC TAX FOR ELEMENTARY SCHOOLS FOR CHILDREN WHO ARE PLACED
 3 IN FACILITIES OUTSIDE THE STATE OF MONTANA PURSUANT TO
 4 20-5-301(3)(E) BUT NOT UNDER THE PROVISIONS OF TITLE 20,
 5 CHAPTER 7, PART 4.

6 (2) THE COUNTY SUPERINTENDENT OF SCHOOLS OF THE COUNTY
 7 OF RESIDENCE SHALL MAKE PAYMENTS FROM THE COUNTY BASIC
 8 SPECIAL TAX FOR HIGH SCHOOLS AS PROVIDED IN 20-9-334 FOR
 9 CHILDREN WHO ARE PLACED IN FACILITIES OUTSIDE THE STATE OF
 10 MONTANA AS A RESULT OF A COURT ORDER OR PLACEMENT BY A STATE
 11 AGENCY. THIS PROVISION DOES NOT APPLY TO CHILDREN WITH
 12 DISABILITIES THAT ARE DEFINED UNDER THE PROVISIONS OF TITLE
 13 20, CHAPTER 7, PART 4.

14 NEW SECTION. Section 12. Appropriation. There is
 15 appropriated from the general fund to the superintendent of
 16 public instruction ~~93,242,000~~ \$2,471,000 for the biennium
 17 ending June 30, 1993, to fund educational programs for
 18 children with disabilities who are placed in an in-state
 19 children's psychiatric hospital or residential treatment
 20 facility ~~or in an out of state public or private facility.~~

21 NEW SECTION. Section 13. Repealer. Section 20-7-423,
 22 MCA, is repealed.

23 NEW SECTION. Section 14. Codification instruction.
 24 [Sections ~~8-and-9~~ 9 THROUGH 11] are intended to be codified
 25 as an integral part of Title 20, chapter 7, and the

1 provisions of Title 20, chapter 7, apply to [sections ~~8-and~~
 2 9 9 THROUGH 11].

3 NEW SECTION. Section 15. Effective date. [This act] is
 4 effective July 1, 1991.

-End-

1 HOUSE BILL NO. 999
 2 INTRODUCED BY PECK
 3 BY REQUEST OF THE SUPERINTENDENT
 4 OF PUBLIC INSTRUCTION
 5

6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 7 LAWS RELATING TO OUT-OF-DISTRICT PLACEMENT OF CHILDREN WITH
 8 DISABILITIES; TO PROVIDE STATE FUNDING FOR THE EDUCATIONAL
 9 PROGRAMS FOR ELIGIBLE CHILDREN PLACED IN IN-STATE
 10 RESIDENTIAL TREATMENT FACILITIES OR CHILDREN'S PSYCHIATRIC
 11 HOSPITALS; TO PROVIDE AN APPROPRIATION; AMENDING SECTIONS
 12 20-5-301, 20-5-311, 20-7-403, 20-7-420, 20-7-421, 20-7-422,
 13 AND 20-7-431, AND 20-9-334, MCA; REPEALING SECTION 20-7-423,
 14 MCA; AND PROVIDING AN EFFECTIVE DATE."
 15

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

17 **Section 1.** Section 20-5-301, MCA, is amended to read:
 18 "20-5-301. (Temporary) Elementary tuition with
 19 mandatory approval. (1) Any child may be enrolled in and
 20 attend an elementary school outside of the elementary
 21 district in which the child resides when the elementary
 22 school is located in:
 23 (a) any other district of the county of the child's
 24 residence;
 25 (b) a county adjoining the child's county of residence;

There are no changes in this bill,
 and will not be reprinted. Please
 refer to yellow second reading,
 second printing, for complete text.

1 HOUSE BILL NO. 999
 2 INTRODUCED BY PECK
 3 BY REQUEST OF THE SUPERINTENDENT
 4 OF PUBLIC INSTRUCTION

5
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 10 RESIDENTIAL TREATMENT FACILITIES OR CHILDREN'S PSYCHIATRIC
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 12 20-5-301, 20-5-311, 20-7-403, 20-7-420, 20-7-421, 20-7-422,
 13 AND 20-7-431, AND 20-9-334, MCA; REPEALING SECTION 20-7-423,
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16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 **Section 1.** Section 20-5-301, MCA, is amended to read:

18 "20-5-301. (Temporary) Elementary tuition with
 19 mandatory approval. (1) Any child may be enrolled in and
 20 attend an elementary school outside of the elementary
 21 district in which the child resides when the elementary
 22 school is located in:

- 23 (a) any other district of the county of the child's
- 24 residence;
- 25 (b) a county adjoining the child's county of residence;

1 or
 2 (c) a district of another state that is adjacent to the
 3 county of the child's residence.

4 (2) When a parent or guardian of a child wishes to have
 5 the child attend a school under the provisions of this
 6 section, the parent or guardian shall apply to the county
 7 superintendent of the county of the parent or guardian's
 8 residence before July 1 of the school fiscal year for which
 9 approval is sought except in those cases when substantial
 10 changes in circumstances occurred subsequently to justify
 11 later application. The application must be made on a tuition
 12 agreement form supplied by the county superintendent and
 13 must be approved, before permission to enroll in and attend
 14 school outside of the district under the provisions of this
 15 section may be granted, by:

- 16 (a) the trustees of the elementary district in which
- 17 the child resides;
- 18 (b) the trustees of the district where the child wishes
- 19 to attend school; and
- 20 (c) the county superintendent of the county of the
- 21 child's residence.

22 (3) In considering the approval of a tuition
 23 application, the tuition approval agents prescribed in this
 24 section shall approve the application for a resident child
 25 when:



1 (a) the child resides more than 3 miles from any school
2 of his resident elementary district and the school the pupil
3 wishes to attend is less distant than the nearest school of
4 the resident elementary district;

5 (b) the child resides more than 3 miles from any school
6 of his resident elementary district and the district does
7 not provide transportation under the provisions of this
8 title;

9 (c) the child resides more than 3 miles from any school
10 of his resident elementary district, the resident district
11 does not provide transportation under the provisions of this
12 title, and school bus transportation is furnished by the
13 district operating the school which he wishes to attend;

14 (d) the child is a member of a family who must send
15 another child outside of the elementary district to attend
16 high school and the child of elementary age may more
17 conveniently attend an elementary school where the high
18 school is located, provided the child resides more than 3
19 miles from an elementary school of the resident district or
20 the parent must move to the elementary district where the
21 high school is located in order to enroll the other child in
22 high school;

23 (e) the child has been declared adjudicated by a court
24 of competent jurisdiction to be an abused, neglected, or
25 dependent child, as defined in 41-3-102, or a youth in need

1 of supervision or a delinquent youth, as defined in
2 41-5-103, and has been ~~ordered-to-be~~ placed in a licensed
3 youth care facility which that is approved by the department
4 of family services and as a result of the order the child is
5 required to attend elementary school outside of the district
6 of his residence (for purposes of this subsection, the
7 prescribed geographic relationship of the receiving district
8 to the district of residence does not apply); or

9 (f) the child is required to attend elementary school
10 outside the district of residence as the result of a
11 placement by a state agency or parent in a group home
12 licensed by the state or an order of a court of competent
13 jurisdiction. For the purposes of this subsection (f), the
14 following do not apply:

15 (i) the prescribed geographic relationship of the
16 receiving district to the district of residence in this
17 subsection (3); or

18 (ii) an order issued under Title 40, chapter 4, part 2.

19 (4) The Unless the child is a child with disabilities
20 who resides in the district, the trustees of the district
21 where the school to be attended is located may disapprove a
22 tuition agreement that satisfies any of the mandatory
23 approval conditions specified in subsection (3) when they
24 find that, due to insufficient room and overcrowding, the
25 accreditation of the school would be adversely affected by

1 the acceptance of the child. In the event of disapproval,
2 the trustees shall notify the parent in writing within 15
3 days of the first receipt of the application.

4 (5) When a child has been placed by a state agency in
5 an out-of-state residential program, the amount of daily
6 tuition may not be greater than the average daily cost per
7 student in the district of residence. The amount of annual
8 tuition may not be greater than the average annual cost per
9 student in the district of residence. For the purposes of
10 this subsection, the following do not apply:

- 11 (a) an order issued under Title 40, chapter 4, part 2;
12 (b) placement of a child with disabilities pursuant to
13 Title 20, chapter 7, part 4; or
14 (c) placement made in a state with a reciprocal tuition
15 agreement pursuant to 20-5-314. (Terminates June 30,
16 1992--sec. 3, Ch. 492, L. 1989.)

17 **20-5-301. (Effective July 1, 1992) Elementary tuition**
18 **with mandatory approval. (1) Any child may be enrolled in**
19 **and attend an elementary school outside of the elementary**
20 **district in which he resides when such elementary school is**
21 **located in:**

- 22 (a) any other district of the county of his residence;
23 (b) a county adjoining his county of residence; or
24 (c) a district of another state that is adjacent to the
25 county of his residence.

1 (2) When a parent or guardian of a child wishes to have
2 his child attend a school under the provisions of this
3 section, he shall apply to the county superintendent of the
4 county of his residence before July 1 of the school fiscal
5 year for which he seeks approval except in those cases when
6 substantial changes in circumstances occurred subsequently
7 to justify later application. The application shall be made
8 on a tuition agreement form supplied by the county
9 superintendent and shall be approved, before permission to
10 enroll in and attend school outside of the district under
11 the provisions of this section may be granted, by:

- 12 (a) the trustees of the elementary district in which
13 the child resides;
14 (b) the trustees of the district where the child wishes
15 to attend school; and
16 (c) the county superintendent of the child's residence.
17 (3) In considering the approval of a tuition
18 application, the tuition approval agents prescribed in this
19 section shall approve such application for a resident child
20 when:

- 21 (a) the child resides less than 3 miles from the school
22 which he wishes to attend and more than 3 miles from any
23 school of his resident elementary district;
24 (b) the child resides more than 3 miles from any school
25 of his resident elementary district and such district does

1 not provide transportation under the provisions of this
2 title;

3 (c) the child resides more than 3 miles from any school
4 of his resident elementary district, the resident district
5 does not provide transportation under the provisions of this
6 title, and school bus transportation is furnished by the
7 district operating the school which he wishes to attend;

8 (d) the child is a member of a family who must send
9 another child outside of the elementary district to attend
10 high school and the child of elementary age may more
11 conveniently attend an elementary school where the high
12 school is located, provided the child resides more than 3
13 miles from an elementary school of the resident district or
14 the parent must move to the elementary district where the
15 high school is located in order to enroll the other child in
16 high school;

17 (e) the child has been declared adjudicated by a court
18 of competent jurisdiction to be an abused, neglected, or
19 dependent child, as defined in 41-3-102, or a youth in need
20 of supervision or a delinquent youth, as defined in
21 41-5-103, and has been ~~ordered-to-be~~ placed in a licensed
22 youth care facility which that is approved by the department
23 of family services and as a result of the order the child is
24 required to attend elementary school outside of the district
25 of his residence; for purposes of this subsection, the

1 prescribed geographic relationship of the receiving district
2 to the district of residence does not apply; or

3 (f) the child is required to attend elementary school
4 outside the district of residence as the result of a
5 placement by a state agency or parent in a group home
6 licensed by the state or an order of a court of competent
7 jurisdiction. For the purposes of this subsection (f), the
8 following do not apply:

9 (i) the prescribed geographic relationship of the
10 receiving district to the district of residence in this
11 subsection (3); or

12 (ii) an order issued under Title 40, chapter 4, part 2.

13 (4) ~~The~~ Unless the child is a child with disabilities
14 who resides in the district, the trustees of the district
15 where the school to be attended is located may disapprove a
16 tuition agreement that satisfies any of the mandatory
17 approval conditions specified in subsection (3) above when
18 they find that, due to insufficient room and overcrowding,
19 the accreditation of the school would be adversely affected
20 by the acceptance of the child. In the event of disapproval,
21 the trustees shall so notify the parent in writing within 15
22 days of the first receipt of the application.

23 (5) When a child has been placed by a state agency in
24 an out-of-state residential program, the amount of daily
25 tuition may not be greater than the average daily cost per

1 student in the district of residence. The amount of annual
 2 tuition may not be greater than the average annual cost per
 3 student in the district of residence. For the purposes of
 4 this subsection, the following do not apply:

- 5 (a) an order issued under Title 40, chapter 4, part 2;
- 6 (b) placement of a child with disabilities pursuant to
 7 Title 20, chapter 7, part 4; or
- 8 (c) placement made in a state with a reciprocal tuition
 9 agreement pursuant to 20-5-314."

10 **Section 2.** Section 20-5-311, MCA, is amended to read:

11 "20-5-311. High school tuition. (1) Any A child may be
 12 enrolled in and attend a high school outside of the high
 13 school district in which he resides when such the high
 14 school is located in Montana or in a county of another state
 15 that is adjacent to the state of Montana. When a parent or
 16 guardian of a child wishes to have his child attend a school
 17 under the provisions of this section, he shall apply to the
 18 county superintendent of the county of his residence before
 19 July 1 of the school fiscal year for which he seeks approval
 20 except in those cases when substantial changes in
 21 circumstances occurred subsequently to justify later
 22 application. Such The application shall must be made on a
 23 tuition agreement form supplied by the county
 24 superintendent. The trustees of the district of residence,
 25 the trustees of the district in which the child wishes to

1 attend school, and the county superintendent are the
 2 approval agents for tuition to another high school within
 3 the county. The county superintendent of the county of
 4 residence and the trustees of the district in which the
 5 child wishes to attend school are the approval agents for
 6 attendance outside the county.

7 (2) (a) ~~{i}~~ The approval agents shall approve a tuition
 8 application when a child lives closer to a high school of
 9 another district than any high school located within his
 10 resident district or when, due to road or geographic
 11 conditions, it is impractical to attend the high school
 12 nearest his residence.

13 ~~{ii}~~ However, the approval agents are not required to
 14 approve a tuition application for a student seeking to
 15 attend a high school outside the state of Montana or the
 16 resident district if the resident district provides
 17 transportation. This exception does not apply when:

18 ~~{A}~~ the child resides in a county different from the
 19 county wherein in which the school he wishes to attend is
 20 located; or

21 ~~{B}~~ ~~the child has enrolled in a high school outside his~~
 22 ~~resident district and has received an approved tuition~~
 23 ~~agreement on or before April 30, 1985. For the purposes of~~
 24 ~~this subsection {2}{a}{ii}{B}, the child has the right to~~
 25 ~~continue his high school education in the receiving high~~

1 ~~school outside his resident district on an approved tuition~~
 2 ~~agreement, subject to the provisions of this section.~~

3 (b) The approval agents shall approve a tuition
 4 application when a child, as a result of a court order or
 5 placement by a state agency or parent in a group home
 6 licensed by the state, is required to attend high school
 7 outside the district of residence:

8 (i) but within the state of Montana or another state
 9 that maintains a reciprocal tuition agreement under
 10 20-5-314; or

11 (ii) in a state that does not have a reciprocal tuition
 12 agreement pursuant to 20-5-314. The amount of daily tuition
 13 may not be greater than the average daily cost per student
 14 in the district of residence. The amount of annual tuition
 15 may not be greater than the average annual cost per student
 16 in the district of residence. The county superintendent
 17 shall calculate the average annual and the average daily
 18 cost per student. For purposes of this subsection (b), the
 19 following do not apply:

20 (A) an order issued under Title 40, chapter 4, part 2;

21 (B) placement of a child with disabilities pursuant to
 22 Title 20, chapter 7, part 4.

23 (c) In approving a tuition agreement under this
 24 provision, unless the child is a child with disabilities,
 25 the approval agents may require the child to attend the high

1 school closest to his residence. The approval agents may
 2 approve any other tuition application that satisfies the
 3 geographic requirements of this section.

4 (3) The trustees of the district where the child wishes
 5 to attend school shall approve or disapprove any tuition
 6 application submitted to them under the provisions of this
 7 section within 15 days after the receipt of the application.

8 (4) The county superintendent shall notify the parent
 9 or guardian and the trustees of the district where the child
 10 wishes to attend school of the tuition agreement approval or
 11 disapproval. If a tuition agreement is disapproved by one or
 12 more approval agents, the parent may appeal such disapproval
 13 to the county superintendent and, subsequently, to the
 14 superintendent of public instruction under the provision for
 15 the appeal of controversies in this title.

16 (5) The approval of any tuition agreement by all of the
 17 applicable approval agents or upon appeal shall authorize
 18 the child named in such agreement to enroll in and attend
 19 the school named in such agreement for the ensuing school
 20 fiscal year."

21 **Section 3.** Section 20-7-403, MCA, is amended to read:

22 **"20-7-403. Duties of superintendent of public**
 23 **instruction.** The superintendent of public instruction shall
 24 supervise and coordinate the conduct of special education in
 25 the state by:

1 (1) recommending to the board of public education
2 adoption of those policies necessary to establish a planned
3 and coordinated program of special education in the state;

4 (2) administering the policies adopted by the board of
5 public education;

6 (3) certifying special education teachers on the basis
7 of the special qualifications for such the teachers as
8 prescribed by the board of public education;

9 (4) establishing procedures to be used by school
10 district personnel in identifying handicapped children with
11 disabilities;

12 (5) recommending to districts the type of special
13 education class or program needed to serve the handicapped
14 children with disabilities of the districts and preparing
15 appropriate guides for developing individual education
16 programs;

17 (6) seeking for local districts appropriate
18 interdisciplinary assistance from public and private
19 agencies in diagnosing the special education needs of
20 children, in planning programs, and in admitting and
21 discharging children from such those programs;

22 (7) assisting local school districts, institutions, and
23 other agencies in developing full-service programs for all
24 handicapped children with disabilities;

25 (8) approving, as they are proposed and annually

1 thereafter, those special education classes or programs
2 which that comply with the laws of the state of Montana,
3 policies of the board of public education, and the
4 regulations of the superintendent of public instruction;

5 (9) providing technical assistance to district
6 superintendents, principals, teachers, and trustees;

7 (10) conducting conferences, offering advice, and
8 otherwise cooperating with parents and other interested
9 persons;

10 (11) preparing appropriate training and instructional
11 material for persons appointed as surrogate parents that
12 outlines their duties toward the child, limitations on what
13 they may do for the child, duties in relation to the child's
14 records, sources of assistance available to the surrogate
15 parent, and the need to seek competent legal assistance in
16 implementing hearing or appeal procedures;

17 (12) acting as the coordinating agency with federal
18 agencies, other state agencies, political subdivisions of
19 the state, and private bodies on matters concerning special
20 education, reserving to the other agencies and political
21 subdivisions their full responsibilities for other aspects
22 of the care of children needing special education;

23 (13) administering regional special education services
24 for children in need of special education in accordance with
25 policies of the board of public education; and

1 (14) contracting for the delivery of audiological
 2 services to those children allowed by Montana law in
 3 accordance with policies of the board of public education;
 4 and

5 (15) contracting with a public school district or a
 6 private residential facility for the provision of a free
 7 appropriate public education for a child when a state agency
 8 places a child with disabilities who is in need of special
 9 education in:

10 (a) an in-state residential facility or children's
 11 psychiatric hospital; or

12 (b) an out-of-state public school or private
 13 residential facility."

14 **Section 4.** Section 20-7-420, MCA, is amended to read:

15 "20-7-420. **Residency requirements for -- financial**
 16 **responsibility for special education.** (1) In accordance with
 17 the provisions of 1-1-215, a child's district of residence
 18 for special education purposes is the residence of his
 19 parents or of his guardian unless otherwise determined by
 20 the court. This applies to a child living at home, in an
 21 institution, or under foster care. If the parent has left
 22 the state, the parent's last known district of residence is
 23 the child's district of residence.

24 (2) The district of residence is financially
 25 responsible for tuition as established under 20-5-305 and

1 20-5-312 for special--education--students a child with
 2 disabilities, as defined in 20-7-401, including a child who
 3 has been placed by a state agency in a foster care or group
 4 home licensed by the state. The district of residence is not
 5 financially responsible for tuition for a child with
 6 disabilities who is placed by a state agency in an
 7 out-of-state public school or an out-of-state private
 8 residential facility.

9 (3) If a child with disabilities who is in need of
 10 special education is placed in an in-state residential
 11 treatment facility or children's psychiatric hospital as
 12 defined in [section 9] but the educational placement is in a
 13 public school district, the district of residence is
 14 responsible for tuition for the proportion of time the child
 15 is served in the public school district unless the public
 16 school district is operated primarily for the purpose of
 17 providing education to children who attend the residential
 18 facility or hospital.

19 (4) Under the provisions of 20-7-422(3), the
 20 superintendent of public instruction shall provide funds for
 21 the education fees required to provide a free appropriate
 22 public education for a child with disabilities who is in
 23 need of special education and is placed by a state agency in
 24 an out-of-state private residential facility or out-of-state
 25 public school, provided that, in determining the special

1 education services needed for the child with disabilities,
 2 the district of residence has complied with the rules
 3 promulgated under 20-7-402.

4 (5) A state agency that makes a placement of a child
 5 with disabilities is responsible for the room and board and
 6 the treatment of the child."

7 **Section 5.** Section 20-7-421, MCA, is amended to read:

8 "20-7-421. Arranging attendance in another district in
 9 lieu of a special education program -- tuition. (1) With the
 10 approval of the superintendent of public instruction in
 11 accordance with a placement decision made by persons
 12 determining an individualized education program for a child
 13 with disabilities, the trustees may arrange for the
 14 attendance of a child in need of special education in a
 15 special education program in another district within the
 16 state of Montana.

17 (2) Tuition as required under 20-5-305 and 20-5-312 may
 18 be charged as provided in 20-7-420."

19 **Section 6.** Section 20-7-422, MCA, is amended to read:

20 "20-7-422. Out-of-state tuition for special education
 21 children- placement of children with disabilities -- payment
 22 of costs. (1) If the trustees of any district recommend to
 23 the superintendent of public instruction the attendance of a
 24 child in need of special education in accordance with a
 25 placement made by persons determining an individualized

1 education program for a child with disabilities, the
 2 trustees of a district may arrange for the attendance of the
 3 child in a special education program offered outside of the
 4 state of Montana, the. The arrangements are not subject to
 5 the out-of-state attendance provisions of the laws governing
 6 the attendance of pupils in schools outside the state of
 7 Montana in 20-5-301 and 20-5-311.

8 (2) (a) Whenever the attendance of a child at an
 9 out-of-state special education program is approved by the
 10 superintendent of public instruction, the superintendent of
 11 public instruction shall, in cooperation with the department
 12 of family services, negotiate the program for the child and
 13 the amount and manner of payment of tuition. The amount of
 14 tuition must be included as a contracted service in
 15 20-7-431(1)(a)(iii)(A) in the foundation program amount for
 16 special education. Except as provided in subsection (3),
 17 when the persons determining the individualized education
 18 program of a child with disabilities who is in need of
 19 special education recommend placement in an out-of-state
 20 private residential facility, the trustees of the district
 21 of residence shall negotiate the amount and manner of
 22 payment of all costs associated with the placement.

23 (b) If the placement of the child with disabilities has
 24 met the requirements of 20-7-402, the superintendent of
 25 public instruction shall approve the amount of special

1 education instructional fees to be included as a contracted
2 service. Only the special education instructional fees may
3 be included as a contracted service for the purposes of
4 20-7-431(1)(a)(iii)(A).

5 (3) Whenever a child with disabilities who is in need
6 of special education is adjudicated by a court of competent
7 jurisdiction to be an abused, neglected, or dependent child
8 as defined in 41-3-102 or a youth in need of supervision or
9 delinquent youth as defined in 41-5-103 and is placed by a
10 state agency in an out-of-state private residential
11 facility, the superintendent of public instruction shall
12 negotiate with:

13 (a) the provider for the amount and manner of payment
14 of education fees consistent with the individualized
15 education program determined for the child under the
16 provisions of 20-7-402; and

17 (b) the state agency that makes the placement for the
18 portion of the placement costs that represents the child's
19 education program.

20 (4) PAYMENTS FOR A CHILD WITH DISABILITIES AS
21 NEGOTIATED IN SUBSECTION (3) MUST BE PAID BY THE
22 SUPERINTENDENT OF PUBLIC INSTRUCTION FROM THE STATE SPECIAL
23 EDUCATION APPROPRIATION."

24 **Section 7.** Section 20-7-431, MCA, is amended to read:
25 **"20-7-431. Allowable cost schedule for special programs**

1 -- superintendent to make rules -- annual accounting. (1)
2 For the purpose of determining the foundation program amount
3 for special education as defined in 20-9-321, the following
4 schedule of allowable costs must be followed by the school
5 district in preparation of its special education budget for
6 state aid request purposes and by the superintendent of
7 public instruction in his review and approval of the budget
8 (for the purposes of determining the amount of the
9 foundation program for special education for the district,
10 and as used in this schedule, "full-time special pupil" and
11 "regular ANB" are to be determined in accordance with
12 20-9-311 and 20-9-313):

13 (a) instruction: salaries, benefits, supplies,
14 textbooks, and other expenses including:

15 (i) salaries and benefits of special program teachers,
16 regular program teachers, teacher aides, special education
17 supervisors, audiologists, and speech and hearing
18 clinicians--the entire cost if employed full time in the
19 special program; if such personnel are shared between
20 special and regular programs--a portion of the entire cost
21 corresponding to the entire working time which each person
22 devotes to the special program;

23 (ii) teaching supplies and textbooks if used exclusively
24 for special programs--the actual total cost;

25 (iii) other expenses:

1 (A) contracted services, including fees paid for
 2 professional advice and consultation regarding special
 3 students or the special program, and the delivery of special
 4 education services by public or private agencies--the actual
 5 total cost;

6 (B) transportation costs for special education
 7 personnel who travel on an itinerant basis from school to
 8 school or district to district or to in-state child study
 9 team meetings or in-state individualized education program
 10 meetings--the actual cost to the district calculated on the
 11 same mileage rate used by the district for other travel
 12 reimbursement purposes;

13 (b) supportive services, including:

14 (i) salaries and benefits of professional supportive
 15 personnel--the entire cost if employed full time in the
 16 special program; if the personnel are shared between special
 17 and regular programs--a portion of the entire cost
 18 corresponding to the entire working time which each person
 19 devotes to the special program. Professional supportive
 20 personnel may include counselors, social workers,
 21 psychologists, psychometrists, physicians, nurses, and
 22 physical and occupational therapists.

23 (ii) salaries and benefits of clerical personnel who
 24 assist professional personnel in supportive services--the
 25 entire cost if employed full time in the special program; if

1 the personnel are shared between special and regular
 2 programs--a portion of the entire cost corresponding to the
 3 entire working time which each person devotes to the special
 4 program;

5 (c) equipment:

6 (i) equipment--the actual total cost;

7 (ii) special equipment for district-owned school buses
 8 necessary to accommodate special students--the actual total
 9 cost;

10 (iii) special equipment for school buses contracted to
 11 transport special students--that portion of the contract
 12 price attributable to the cost of special equipment or
 13 personnel required to accommodate special students--the
 14 actual special cost;

15 (iv) repair and maintenance of equipment--the actual
 16 total cost;

17 ~~{d}--room--and--board--costs--when--the--special--pupil--has--to~~
 18 ~~attend--a--program--at--such--a--distance--from--his--home--that~~
 19 ~~commuting--is--undesirable--as--determined--by--the--superintendent~~
 20 ~~of--public--instruction.~~

21 (2) The superintendent of public instruction shall
 22 adopt rules in accordance with the policies of the board of
 23 public education for:

24 (a) keeping necessary records for supportive and
 25 administrative personnel and any personnel shared between

1 special and regular programs;

2 (b) defining the total special program caseload that
3 must be assigned to specific support persons and the kinds
4 of professional specialties to be considered relevant to the
5 program before the district may count an allowable cost
6 under subsection (1)(b) of this section; and

7 (c) defining the kinds or types of equipment whose
8 costs may be counted under subsection (1)(c)(i) of this
9 section.

10 (3) An annual accounting of all expenditures of school
11 district general fund money for special education must be
12 made by the district trustees on forms furnished by the
13 superintendent of public instruction. The superintendent of
14 public instruction shall make rules for the accounting.

15 (4) If a board of trustees chooses to exceed the budget
16 approved by the superintendent of public instruction, costs
17 in excess of the approved budget may not be reimbursed under
18 the foundation program for special education.

19 (5) Allowable costs prescribed in this section do not
20 include the costs of the teachers' retirement system, the
21 public employees' retirement system, the federal social
22 security system, or the costs for unemployment compensation
23 insurance.

24 (6) (a) Notwithstanding other provisions of the law,
25 the superintendent of public instruction may not approve a

1 foundation program amount for special education that exceeds
2 legislative appropriations; however, any unexpended balance
3 from the first year of a biennial appropriation may be spent
4 in the second year of the biennium in addition to the second
5 year appropriation.

6 (b) If the total allowable cost of the special
7 education budgets exceeds legislative appropriations
8 available for special education, each district shall receive
9 a pro rata share of the available appropriations based upon
10 prioritized budget items as established by the
11 superintendent of public instruction. The amount of the
12 approved budgets in excess of the available appropriations
13 may not be reimbursed under the foundation program for
14 special education and is the responsibility of the school
15 district."

16 **SECTION 8. SECTION 20-9-334, MCA, IS AMENDED TO READ:**

17 "20-9-334. Apportionment of county equalization moneys
18 by county superintendent. The county superintendent shall
19 separately apportion the revenues deposited in the basic
20 county tax account and the revenues deposited in the basic
21 special tax for high schools account to the several
22 districts of the county on a monthly basis. The
23 apportionments shall be known as "county equalization
24 moneys". Before the county superintendent makes the monthly
25 apportionments, he shall:

1 (1) deduct from the revenues available in the basic
2 county tax account the amount required for the month to pay
3 the county's obligation for elementary transportation
4 reimbursements and out-of-state tuition obligations; and

5 (2) deduct from the revenues available in the basic
6 special tax for high schools account the amount required for
7 the month to pay the county's obligation for high school
8 out-of-county tuition."

9 NEW SECTION. Section 9. Funding of educational
10 programs at in-state children's psychiatric hospitals and
11 in-state residential treatment programs for eligible
12 children with emotional disturbances. (1) It is the intent
13 of the legislature that eligible children in in-state
14 children's psychiatric hospitals and residential treatment
15 facilities be provided with an appropriate educational
16 opportunity in a cost-effective manner.

17 (2) The superintendent of public instruction may
18 contract with an in-state children's psychiatric hospital or
19 residential treatment facility for provision of an
20 educational program for an eligible child in the hospital or
21 treatment facility.

22 (3) Whenever the superintendent of public instruction
23 contracts with an in-state children's psychiatric hospital
24 or residential treatment facility for provision of an
25 educational program for an eligible child in the children's

1 psychiatric hospital or residential treatment facility, the
2 superintendent of public instruction shall:

3 (a) monitor the provision of an appropriate educational
4 opportunity for the child attending the hospital or
5 residential treatment facility;

6 (b) negotiate the approval of allowable costs under the
7 provisions of 20-7-431 for allowable costs for providing
8 special education, including the costs of retirement
9 benefits, federal social security system contributions, and
10 unemployment compensation insurance; and

11 (c) fund 100% of any approved allowable costs under
12 this section from funds appropriated for this purpose. An
13 appropriation in excess of the allowable costs required
14 under the provisions of this section must revert to the
15 state equalization aid account.

16 (4) A supplemental education fee or tuition may not be
17 charged for an eligible Montana child who receives
18 in-patient treatment in an in-state children's psychiatric
19 hospital or residential treatment facility.

20 (5) If a children's psychiatric hospital or residential
21 treatment facility fails to provide an appropriate
22 educational opportunity for an eligible child at the
23 children's psychiatric hospital or residential treatment
24 facility or fails to negotiate a contract under the
25 provisions of subsection (2), the superintendent of public

1 instruction shall negotiate with the school district in
 2 which the children's psychiatric hospital or residential
 3 treatment facility is located for the supervision and
 4 implementation of an appropriate educational program for a
 5 child attending the children's psychiatric hospital or
 6 residential treatment facility. The amount negotiated with
 7 the school district must be consistent with allowable costs
 8 that may be negotiated under the provisions of subsection
 9 (3).

10 (6) Funds provided to a district under this section:

11 (a) must be deposited in the miscellaneous programs
 12 fund of the district that provides the education program for
 13 an eligible child, regardless of the age or grade placement
 14 of the child who is served under a negotiated contract;

15 (b) are not subject to the budget limitations in
 16 20-9-315; and

17 (c) may not be included in the foundation program
 18 amount of the district.

19 **NEW SECTION. Section 10. Definitions.** For the purposes
 20 of [sections 8 and 9], the following definitions apply:

21 (1) (a) "Children's psychiatric hospital" means a
 22 freestanding hospital in Montana that:

23 (i) has the primary purpose of providing clinical care
 24 for children whose clinical diagnosis and resulting
 25 treatment plan require in-house residential psychiatric

1 care; and

2 (ii) is accredited by the joint commission on
 3 accreditation of healthcare organizations, the standards of
 4 the health care financing administration, or other
 5 comparable accreditation.

6 (b) The term does not include programs for children and
 7 youth that have the treatment of chemical dependency as the
 8 primary reason for treatment.

9 (2) "Eligible child" means a child or youth who is less
 10 than 19 years of age and is emotionally disturbed as defined
 11 in 53-4-101 and whose emotional problem is so severe that
 12 the child or youth has been placed in a children's
 13 psychiatric hospital or residential treatment facility for
 14 in-patient treatment of emotional problems.

15 (3) (a) "Residential treatment facility" means a
 16 facility in the state that provides services for children
 17 with emotional disturbances and that is licensed by the
 18 state and operated for the primary purpose of providing
 19 long-term treatment services for mental illness, in a
 20 residential setting, to persons under 21 years of age.

21 (b) The term does not include programs for children and
 22 youth who have the treatment of chemical dependency as a
 23 primary reason for treatment.

24 **NEW SECTION. SECTION 11. OUT-OF-STATE TUITION. (1) THE**
 25 **COUNTY SUPERINTENDENT OF SCHOOLS OF THE COUNTY OF THE**

1 DISTRICT OF RESIDENCE SHALL MAKE PAYMENTS FROM THE COUNTY
 2 BASIC TAX FOR ELEMENTARY SCHOOLS FOR CHILDREN WHO ARE PLACED
 3 IN FACILITIES OUTSIDE THE STATE OF MONTANA PURSUANT TO
 4 20-5-301(3)(E) BUT NOT UNDER THE PROVISIONS OF TITLE 20,
 5 CHAPTER 7, PART 4.

6 (2) THE COUNTY SUPERINTENDENT OF SCHOOLS OF THE COUNTY
 7 OF RESIDENCE SHALL MAKE PAYMENTS FROM THE COUNTY BASIC
 8 SPECIAL TAX FOR HIGH SCHOOLS AS PROVIDED IN 20-9-334 FOR
 9 CHILDREN WHO ARE PLACED IN FACILITIES OUTSIDE THE STATE OF
 10 MONTANA AS A RESULT OF A COURT ORDER OR PLACEMENT BY A STATE
 11 AGENCY. THIS PROVISION DOES NOT APPLY TO CHILDREN WITH
 12 DISABILITIES THAT ARE DEFINED UNDER THE PROVISIONS OF TITLE
 13 20, CHAPTER 7, PART 4.

14 NEW SECTION. Section 12. Appropriation. There is
 15 appropriated from the general fund to the superintendent of
 16 public instruction ~~93,242,000~~ \$2,471,000 for the biennium
 17 ending June 30, 1993, to fund educational programs for
 18 children with disabilities who are placed in an in-state
 19 children's psychiatric hospital or residential treatment
 20 facility ~~or-in-an-out-of-state-public-or-private-facility.~~

21 NEW SECTION. Section 13. Repealer. Section 20-7-423,
 22 MCA, is repealed.

23 NEW SECTION. Section 14. Codification instruction.
 24 [Sections ~~8-and-9~~ 9 THROUGH 11] are intended to be codified
 25 as an integral part of Title 20, chapter 7, and the

1 provisions of Title 20, chapter 7, apply to [sections ~~8-and~~
 2 9 9 THROUGH 11].

3 NEW SECTION. Section 15. Effective date. [This act] is
 4 effective July 1, 1991.

-End-

GOVERNOR'S AMENDMENTS TO
HOUSE BILL 999
(REFERENCE COPY, AS AMENDED)
April 25, 1991

1. Title, line 14.

Following: "MCA;"

Insert: "PROVIDING A COORDINATION INSTRUCTION;"

2. Page 30, following line 4.

Insert: "NEW SECTION. Section 16. Coordination Instruction.

[This Act] is contingent upon the special education and special education contingency general fund appropriations in House Bill 2 being reduced to a total of not greater than \$65,252,293 for fiscal years 1992 and 1993."

Gov Amend
HB 999