

House BILL NO. *816*

INTRODUCED BY *Dussault* *in behalf of House Education Committee*

A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE GENERAL REVISION OF LAWS RELATING TO SPECIAL EDUCATION; AMENDING SECTIONS 75-7801, 75-7802, 75-7803, 75-7804, 75-7805, 75-7806, 75-7807, 75-7808, 75-7809, 75-7811, 75-7813.1, 75-7814, AND 75-7816, R.C.M. 1947; REPEALING SECTION 75-7812, R.C.M. 1947."

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

Section 1. Section 75-7801, R.C.M. 1947, is amended to read as follows:

"75-7801. Definitions. ~~As used in~~ In this Title, unless the context clearly indicates otherwise, the following definitions apply:

~~"Special education" means the kind of instruction requiring special facilities or programs for mentally retarded or physically handicapped children or for educationally handicapped persons.~~

~~A "mentally retarded child" means any child who is not capable of profiting from the regular instruction of a school because his mental ability is substantially below the mental ability of an average child of the same sex. Mentally retarded children are classified as follows:~~

~~(a) An "educable mentally retarded child" means a child who, at maturity, cannot be expected to attain a level of intellectual functioning greater than that commonly expected of an eleven year old child, but not less than that of a seven year old child.~~

~~(b) A "trainable mentally retarded child" means a child who, at maturity, cannot be expected to attain a level of intellectual functioning greater than that commonly expected of a seven year old child and, for entrance into a training program, is capable of walking, of clean body habits, and of obedience to simple commands.~~

~~(c) A "custodial mentally retarded child" means a child who does not show a likelihood of attaining clean body habits, responsiveness to directions, or means of intelligible communication.~~

~~A "physically handicapped child" means a child who is capable of profiting from the regular instruction with the assistance of special equipment, special services, or transportation to compensate for physical disabilities such as, but not limited to, cardiac impairment, cerebral palsy, chronic health problems, or inadequate speech, hearing or vision.~~

~~An "educationally handicapped person" means a child or young adult under the age of twenty one (21) years who requires special assistance to the extent that he cannot~~

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1 ~~reasonably profit from the regular education programs~~

2 ~~An educationally handicapped person's learning~~
 3 ~~disorders include, but are not limited to, conditions which~~
 4 ~~have been referred to as visual perception handicap, brain~~
 5 ~~injury, minimal brain dysfunction, dyslexia, behavioral~~
 6 ~~maladjustment and emotional disturbances. An educationally~~
 7 ~~handicapped person's disorders are not the result of~~
 8 ~~problems with visual acuity, hearing impairment, physical~~
 9 ~~handicap, cultural or instructional factors, and mental~~
 10 ~~retardation.~~

11 (1) "Special education" means specially designed
 12 instruction, given at no cost to the parents or guardians,
 13 to meet the unique needs of a handicapped child, including
 14 but not limited to classroom instruction, instruction in
 15 physical education, home instruction, and instruction in
 16 hospitals and institutions. The term includes but is not
 17 limited to speech pathology, audiology, occupational
 18 therapy, and physical therapy.

19 (2) "Handicapped child" means a child evaluated as
 20 being mentally retarded, hard-of-hearing, deaf,
 21 speech-impaired, visually handicapped, seriously emotionally
 22 disturbed, orthopedically impaired, other health-impaired,
 23 or as having specific learning disabilities, who because of
 24 those impairments needs special education and related
 25 services.

1 (3) "Deaf" means a hearing impairment which is so
 2 severe that the child's hearing is nonfunctional for the
 3 purpose of educational performance.

4 (4) "Hard-of-hearing" means a hearing impairment,
 5 whether permanent or fluctuating, which adversely affects a
 6 child's educational performance but which is not included
 7 within the definition of "deaf".

8 (5) "Mentally retarded" means significantly subaverage
 9 general intellectual functioning existing concurrently with
 10 deficits in adaptive behavior and manifested during the
 11 developmental period, which adversely affects a child's
 12 educational performance.

13 (6) "Orthopedically impaired" means a severe
 14 orthopedic impairment which adversely affects a child's
 15 educational performance. The term includes but is not
 16 limited to impairment caused by congenital anomaly (e.g.,
 17 clubfoot or absence of some member), impairments caused by
 18 disease (e.g., poliomyelitis, bone tuberculosis), and
 19 impairments from other causes (e.g., fractures or burns
 20 which cause contractures, amputation, cerebral palsy).

21 (7) "Other health-impaired" means limited strength,
 22 vitality, or alertness due to chronic or acute health
 23 problems such as a heart condition, tuberculosis, rheumatic
 24 fever, nephritis, asthma, sickle-cell anemia, hemophilia,
 25 epilepsy, lead poisoning, leukemia, or diabetes.

1 (8) "Seriously emotionally disturbed and behaviorally
 2 maladjusted" refers to a person who has been identified,
 3 based on a comprehensive evaluation, as having observable
 4 behavioral patterns which seriously inhibit the academic and
 5 social or emotional growth of the individual or the
 6 educational rights of others to the point that supportive
 7 services are required. These behavioral patterns may include
 8 but are not limited to:

9 (a) excessive physical or verbal aggression toward
 10 oneself or others and a lack of response to regular
 11 educational intervention;

12 (b) high frequency of persistent inattention to
 13 academic or social tasks associated with regular classroom
 14 performance; or

15 (c) persistent withdrawal from peer or adult
 16 interactions associated with the expected social development
 17 in a regular educational environment.

18 (9) "Seriously emotionally disturbed" means a
 19 condition exhibiting, to a marked degree and over a long
 20 period of time, an inability to learn which cannot be
 21 explained by intellectual, sensory, or health factors; an
 22 inability to build or maintain satisfactory interpersonal
 23 relationships with peers and teachers; inappropriate types
 24 of behavior or feelings under normal circumstances; a
 25 general pervasive mood of unhappiness or depression; or a

1 tendency to develop physical symptoms, pains, or fears
 2 associated with personal or school problems. The term does
 3 not include children who are socially maladjusted. The
 4 seriously emotionally disturbed category may include
 5 students who also have been diagnosed by appropriate
 6 specialists as autistic, psychotic, sociopathic, or
 7 schizophrenic. A seriously emotionally disturbed child's
 8 disorders are not primarily the result of problems with
 9 visual acuity, hearing impairment, physical handicaps,
 10 cultural or instructional factors, or mental retardation.

11 (10) "Specific learning disability" means a disorder in
 12 one or more of the basic psychological processes involved in
 13 understanding or in using language, spoken or written, which
 14 may manifest itself in an imperfect ability to listen,
 15 think, speak, read, write, spell, or do mathematical
 16 calculations. The term includes but is not limited to such
 17 conditions as perceptual handicaps, brain injury, minimal
 18 brain dysfunction, dyslexia, and developmental aphasia. The
 19 term does not include children who have learning problems
 20 which are primarily the result of visual, hearing, or motor
 21 handicaps, mental retardation, or environmental, cultural,
 22 or economic disadvantages.

23 (11) "Speech-impaired" means a communication disorder
 24 such as stuttering, impaired articulation, or language or
 25 voice impairment which adversely affects a child's

1 educational performance.

2 (12) "Visually handicapped" means a visual impairment
 3 which, after correction, adversely affects a child's
 4 educational performance. The term includes both partially
 5 seeing and blind children."

6 Section 2. Section 75-7802, R.C.M. 1947, is amended to
 7 read as follows:

8 "75-7802. Conduct of special education to comply with
 9 board of public education policies. (1) The conduct of
 10 special education programs shall comply with the policies
 11 recommended by the superintendent of public instruction and
 12 adopted by the board of public education. These policies may
 13 ~~shall assure and include, but are not limited to:~~
 14 ~~regulation of class size, class grouping, curriculum,~~
 15 ~~methods of instruction, teacher qualifications, distances of~~
 16 ~~travel to classes or programs, necessary equipment and other~~
 17 ~~special services.~~

18 (a) placement of handicapped children in the least
 19 restrictive alternative setting;

20 (b) due process for all handicapped children;

21 (c) use of child study teams to identify handicapped
 22 children and plan individual education programs;

23 (d) comprehensive evaluation for each handicapped
 24 child; and

25 (e) other policies needed to regulate eligibility for

1 enrollment, class size, grouping, curriculum, equipment
 2 purchases, and other special services.

3 (2) The superintendent of public instruction shall
 4 promulgate rules to administer the policies of the board of
 5 public education."

6 Section 3. Section 75-7803, R.C.M. 1947, is amended to
 7 read as follows:

8 "75-7803. Duties of superintendent of public
 9 instruction. The superintendent of public instruction shall
 10 supervise and co-ordinate the conduct of special education
 11 in the state by:

12 (1) recommending to the board of public education for
 13 adoption of those policies necessary to establish a planned
 14 and co-ordinated program of special education in the state;

15 (2) administering the policies adopted by the board of
 16 public education;

17 (3) certifying special education teachers on the basis
 18 of the special qualifications for such teachers as
 19 prescribed by the board of public education;

20 (4) ~~discovering through observation, examination or~~
 21 ~~testing the children in the state who are in need of special~~
 22 ~~education establishing procedures to be used by school~~
 23 ~~district personnel in identifying handicapped children;~~

24 (5) ~~determining the type of instruction required by~~
 25 ~~children needing special education and preparing appropriate~~

1 ~~curriculum guides for such instruction recommending to~~
 2 ~~districts the type of special education class or program~~
 3 ~~needed to serve the special education children of the~~
 4 ~~districts and preparing appropriate guides for developing~~
 5 ~~individual education programs;~~

6 (6) seeking ~~for local districts~~ appropriate medical,
 7 ~~psychiatric, and psychological interdisciplinary~~ assistance
 8 ~~from the state department of health and other public and~~
 9 ~~private~~ agencies in diagnosing the special education needs
 10 of children, in planning programs, and in admitting and
 11 discharging children from such programs;

12 (7) ~~recommending to districts the type of special~~
 13 ~~education class or program needed to serve the special~~
 14 ~~education children of such district assisting local school~~
 15 ~~districts, institutions, and other agencies in developing~~
 16 ~~full-service programs for all handicapped children;~~

17 (8) approving, as they are established or proposed and
 18 annually thereafter, those special education classes or
 19 programs which comply with the laws of the state of Montana,
 20 policies of the board of public education, and the
 21 regulations of the superintendent of public instruction;

22 (9) ~~providing supervision for and consulting with~~
 23 ~~technical assistance to~~ district superintendents,
 24 principals, teachers and trustees;

25 (10) conducting conferences, offering advice and

1 otherwise co-operating with parents and other interested
 2 persons;

3 (11) acting as the co-ordinating agency with federal
 4 agencies, other state agencies, political subdivisions of
 5 the state, and private bodies on matters concerning special
 6 education, reserving to the other agencies and political
 7 subdivisions their full responsibilities for other aspects
 8 of the care of children needing special education; and

9 (12) ~~establishing administering~~ regional special
 10 education services for children in need of special education
 11 in accordance with policies of the board of public
 12 education. ~~Funds for such services shall be appropriated to~~
 13 ~~the superintendent of public instruction from state~~
 14 ~~equalization funds and shall be coordinated with other~~
 15 ~~federal, state, and local funds as may be made available to~~
 16 ~~support regional special education programs and services."~~

17 Section 4. There is a new R.C.M. section that reads as
 18 follows:

19 Regional special education services. (1) There is
 20 established a regional special education services program to
 21 provide special education services to handicapped children
 22 who cannot efficiently be served by a program operated by an
 23 individual school district or by several cooperating school
 24 districts. Regional special education services shall be
 25 limited to:

1 (a) providing direct services to handicapped children
2 that are not served by a district program;

3 (b) initiating special services for handicapped
4 children as a service model which may then be continued as
5 an individual district or cooperative district program;

6 (c) coordinating and conducting in-service training
7 for special education and local district personnel in the
8 region; and

9 (d) assisting local districts in the region in the
10 development and expansion of individual district or
11 cooperative district programs.

12 (2) Funds for such services shall be appropriated to
13 the superintendent of public instruction from state
14 equalization funds and shall be available to support
15 regional special education programs and services. Such funds
16 may be supplemented by appropriate federal funds. The
17 authorization for regional special education services for
18 children expires on June 30, 1980.

19 Section 5. Section 75-7804, R.C.M. 1947, is amended to
20 read as follows:

21 "75-7804. Co-operation of state agencies. The state
22 department of health, the department of institutions, ~~the~~
23 ~~department of social and rehabilitation services,~~ and the
24 state school for the deaf and blind shall ~~assist cooperate~~
25 ~~with~~ the superintendent of public instruction in assisting

1 school districts in discovering children in need of special
2 education, ~~in determining the type of special education for~~
3 ~~these children, and in generally supervising and~~
4 ~~co-ordinating special education in the state.~~ Nothing
5 herein shall be construed to interfere with the purpose and
6 function of these state agencies."

7 Section 6. Section 75-7805, R.C.M. 1947, is amended to
8 read as follows:

9 "75-7805. ~~Mandatory establishment~~ Establishment of
10 special education program. (1) ~~The trustees of any district~~
11 ~~shall establish and maintain at least one applicable special~~
12 ~~education program when there are ten (10) or more educable~~
13 ~~mentally retarded children in the district and at least one~~
14 ~~(1) applicable special education program when there are~~
15 ~~seven (7) or more trainable mentally retarded children in~~
16 ~~the district, and at least one (1) applicable special~~
17 ~~education program when there are ten (10) or more physically~~
18 ~~handicapped children in the district.~~ All handicapped
19 children in Montana are entitled to a free appropriate
20 public education provided in the least restrictive
21 alternative setting. To the maximum extent appropriate,
22 handicapped children, including children in public or
23 private institutions or other care facilities, shall be
24 educated with children who are not handicapped. Separate
25 schooling or other removal of handicapped children from the

1 ~~regular educational environment may occur only when the~~
 2 ~~nature or severity of the handicap is such that education in~~
 3 ~~regular classes with the use of supplementary aids and~~
 4 ~~services cannot be achieved satisfactorily.~~ After ~~July 1,~~
 5 ~~1979~~ September 1, 1978, the board of trustees of every
 6 school district must provide or establish and maintain a
 7 special education program for every handicapped person as
 8 herein defined between the ages of ~~six (6)~~ and ~~twenty-one~~
 9 ~~(21), inclusive in the district who cannot benefit~~
 10 ~~sufficiently from the regular programs of instruction by~~
 11 ~~reason of his mental, physical, emotional or learning~~
 12 ~~problems.~~ After September 1, 1980, such services shall be
 13 provided for all handicapped children between the ages of 3
 14 and 21, inclusive.

15 (2) The board of trustees of any school district may
 16 meet its obligation to serve handicapped persons by
 17 establishing its own special education program, by
 18 establishing a cooperative special education program, or by
 19 participating in a regional services program.

20 ~~(3) Eligibility for enrollment in special education~~
 21 ~~programs shall be determined under regulations of the~~
 22 ~~superintendent of public instruction issued pursuant to~~
 23 ~~policies adopted by the board of public education."~~

24 Section 7. Section 75-7806, R.C.M. 1947, is amended to
 25 read as follows:

1 "75-7806. ~~Discretionary establishment~~ Establishment of
 2 individual district special education program. (1) The
 3 trustees of any district, ~~upon obtaining the approval of the~~
 4 ~~superintendent of public instruction, may shall~~ establish
 5 and maintain a special education program ~~for~~

6 ~~(1) four (4) or more educable mentally retarded~~
 7 ~~children;~~

8 ~~(2) four (4) or more physically handicapped children;~~

9 ~~(3) four (4) or more trainable mentally retarded~~
 10 ~~children;~~

11 ~~(4) four (4) or more educationally handicapped persons~~
 12 ~~between the ages of six (6) and twenty-one (21);~~ whenever,
 13 in the judgment of the trustees and the superintendent of
 14 public instruction:

15 (a) there are sufficient numbers of handicapped
 16 children in the district to justify the establishment of a
 17 program; or

18 ~~(5)(b) an individual children-requiring child requires~~
 19 special education services such as home or hospital
 20 tutoring, school-to-home telephone communication, or other
 21 individual programs; or,

22 ~~(6)(2) educable mentally retarded children, trainable~~
 23 ~~mentally retarded children, educationally handicapped~~
 24 ~~children, or physically~~ Prior to September 1, 1980, programs
 25 may be established for handicapped children under the age of

1 ~~six-(6)~~ years of age when the superintendent of public
2 instruction ~~has~~ and the trustees have determined that such
3 programs will:

4 (a) assist a child to achieve levels of competence
5 that will enable him to participate in the regular
6 instruction of the district when he could not participate
7 without special education;

8 (b) permit the conservation or early acquisition of
9 skills which will provide the child with an equal
10 opportunity to participate in the regular instruction of the
11 district; or

12 (c) provide other demonstrated educational advantages
13 which will materially benefit the child; ~~or,~~

14 ~~(7) educable mentally retarded persons, educationally~~
15 ~~handicapped persons, or physically handicapped persons who~~
16 ~~are not less than twenty one (21) or more than twenty five~~
17 ~~(25) years of age when the superintendent of public~~
18 ~~instruction has determined that such programs will assist a~~
19 ~~person to achieve levels of competence that will enable him~~
20 ~~to better participate in society;~~

21 ~~(8) eligibility for enrollment in special education~~
22 ~~programs shall be determined under regulations of the~~
23 ~~superintendent of public instruction issued pursuant to~~
24 ~~policies adopted by the board of public education."~~

25 Section 9. Section 75-7807, R.C.M. 1947, is amended to

1 read as follows:

2 "75-7807. Petition of parents for establishment of
3 special education program. The parents of ~~four (4) or more~~
4 ~~persons requiring special education of the kind provided for~~
5 ~~educable mentally retarded children, trainable mentally~~
6 ~~retarded children, educationally handicapped persons or~~
7 ~~physically handicapped children~~ may petition the board of
8 trustees to establish a an individual district special
9 education program. Parents residing in several districts may
10 petition the board of trustees of each district to
11 co-operatively establish a special education program ~~of one~~
12 ~~kind for four (4) or more persons.~~ The interlocal
13 co-operative agreement authorized in chapter 49 of Title 16,
14 R.C.M. 1947, may be used to establish a multi-district
15 special education program."

16 Section 9. Section 75-7808, R.C.M. 1947, is amended to
17 read as follows:

18 "75-7808. Arranging attendance in another district in
19 lieu of a special education program. ~~In lieu of providing~~
20 ~~special education in the district with the approval of the~~
21 superintendent of public instruction, the trustees may
22 arrange for the attendance of a child in need of special
23 education in a special education program ~~approved by the~~
24 ~~superintendent of public instruction and offered in another~~
25 district within the state of Montana. Arrangements for the

1 attendance of a child in need of special education are not
2 subject to the laws governing the attendance of pupils in
3 schools outside the district and no tuition shall be charged
4 the district of residence."

5 Section 10. Section 75-7809, R.C.M. 1947, is amended
6 to read as follows:

7 "75-7809. Out-of-state tuition for special education
8 children. ~~The~~ If the trustees of any district ~~may arrange~~
9 ~~for~~ recommend to the superintendent of public instruction
10 the attendance of a child in need of special education in a
11 special education program offered outside of the state of
12 Montana, ~~such such~~ arrangements shall not be subject to the
13 out-of-state attendance provisions of the laws governing the
14 attendance of pupils in schools outside the state of
15 Montana.

16 Whenever the attendance of a child at an out-of-state
17 special education program is ~~arranged, the board of trustees~~
18 ~~may approved, it shall be the responsibility of the~~
19 ~~superintendent of public instruction, in cooperation with~~
20 ~~the department of social and rehabilitation services and the~~
21 ~~department of institutions, to negotiate the program for the~~
22 ~~child and the~~ amount and manner of payment of tuition. The
23 amount of tuition shall be included as a contracted service
24 in section 75-7813.1(b)(iv)(A) in the
25 maximum-budget-without-a-vote for special education."

1 Section 11. There is a new R.C.M. section that reads
2 as follows:

3 Arranging attendance in a private institution. Whenever
4 the trustees determine that a handicapped child is in need
5 of services that can only be provided by a private
6 institution and the superintendent of public instruction so
7 approves, the board of trustees may negotiate the amount and
8 manner of payment of tuition and it shall be included as a
9 contracted service as allowed in 75-7813.1(1)(b)(iv)(A).

10 Section 12. Section 75-7811, R.C.M. 1947, is amended
11 to read as follows:

12 "75-7811. Determination of need for special education
13 ~~by trustees~~ and approval of classes and programs by
14 superintendent of public instruction. The determination of
15 the children requiring special education and the type of
16 special education needed by these children shall ~~not~~ be the
17 responsibility of the trustees, ~~but shall be the~~
18 ~~responsibility of the superintendent of public instruction,~~
19 ~~and such determination shall be made in compliance with the~~
20 ~~procedures established in the rules of the superintendent of~~
21 ~~public instruction.~~ Whenever the trustees of any district
22 intend to establish a special education class or program,
23 they shall apply for approval and funding of the class or
24 program by the superintendent of public instruction. The
25 superintendent of public instruction shall approve or

1 disapprove the application for the special education class
 2 or program on the basis of its compliance with the laws of
 3 the state of Montana, the special education policies adopted
 4 by the board of public education, and the regulations rules
 5 of the superintendent of public instruction. ~~No special
 6 education class shall be operated by the trustees without
 7 the approval of the superintendent of public instruction.~~
 8 Each special education class or program must be approved
 9 annually to be funded as part of the
 10 maximum budget without a vote for special education."

11 Section 13. Section 75-7813.1, R.C.M. 1947, is amended
 12 to read as follows:

13 "75-7813.1. Allowable cost schedule for special
 14 programs -- the superintendent of public instruction to make
 15 rules -- annual accounting. (1) For the purpose of
 16 determining the ~~maximum budget without a vote~~ for special
 17 education as defined in sections 75-6905(20) and
 18 75-6905(21), the following schedule of allowable costs shall
 19 be followed by the school district in preparation of its
 20 special education budget for state aid request purposes and
 21 by the superintendent of public instruction in his review
 22 and approval of the budget for the purposes of determining
 23 the amount of the ~~maximum budget without a vote~~ for special
 24 education for the district, and as used in this schedule,
 25 "full-time special pupil" and "regular ANB" are to be

1 determined in accordance with sections 75-6902 and 75-6903.

2 (a) Administration; salaries, benefits, supplies and
 3 other expenses of the superintendent's office, the office of
 4 the board of trustees, and the business office including:

5 (i) salaries of professional administrative
 6 personnel--a portion of the entire cost corresponding to the
 7 portion of entire working time which each such person
 8 devotes to the special program;

9 (ii) salaries of clerical personnel for administrative
 10 staff--the amount allowed for budget purposes per full-time
 11 special pupil may not exceed the amount budgeted per regular
 12 ANB for the current year;

13 (iii) supplies and other expenses--the amount allowed
 14 for budget purposes per full-time special pupil may not
 15 exceed the amount budgeted per regular ANB for the current
 16 year.

17 (b) Instruction; salaries, benefits, supplies,
 18 textbooks and other expenses including:

19 (i) salaries of principals and clerical personnel--a
 20 portion of the entire cost corresponding to the portion of
 21 the entire working time which each such person devotes to
 22 the special program but not to exceed one and seventy-five
 23 hundredths (1.75) times the amount budgeted per regular ANB
 24 for the current year;

25 (ii) salaries and benefits of special program teachers,

1 regular program teachers, teacher aides, special education
2 supervisors, audiologists, and speech and hearing
3 clinicians--the entire cost if employed full-time in the
4 special program. If such personnel are shared between
5 special and regular programs--a portion of the entire cost
6 corresponding to the entire working time which each such
7 person devotes to the special program;

8 (iii) teaching supplies and textbooks--if used
9 exclusively for special programs the actual total cost. If
10 shared with regular programs--the amount allowed for budget
11 purposes per full-time special pupil may not exceed the
12 amount budgeted per regular ANB for the current year;

13 (iv) other expenses--with the exception of the
14 following items, the amount allowed for budget purposes per
15 full-time special pupil may not exceed the amount budgeted
16 per regular ANB for the current year:

17 (A) Contracted services, including fees paid for
18 professional advice and consultation regarding special
19 students or the special program, and the delivery of special
20 education services by nonprofit agencies--the actual total
21 cost.

22 (B) Transportation costs for special education
23 personnel who must travel ~~on an itinerant basis from school~~
24 ~~to school or district to district in order to fulfill the~~
25 ~~responsibilities of their particular job description--the~~

1 actual cost to the district calculated on the same mileage
2 ~~rate basis~~ used by the district for other travel
3 reimbursement purposes. ~~Such travel may include in- or~~
4 ~~out-of-district in-service-training programs as specified in~~
5 ~~the rules promulgated by the superintendent of public~~
6 ~~instruction.~~

7 ~~(C) Special equipment for school buses necessary to~~
8 ~~accommodate special students--the actual total cost.~~

9 (c) Library services; salaries, books and periodicals
10 and other expenses--the amount allowed for budget purposes
11 per full-time special pupil may not exceed the amount
12 budgeted per regular ANB for the current year.

13 (d) Supportive services; salaries, benefits and other
14 expenses:

15 (i) salaries and benefits of professional supportive
16 personnel--the entire cost if employed full-time in the
17 special program. If such personnel are shared between
18 special and regular programs--a portion of the entire cost
19 corresponding to the entire working time which each such
20 person devotes to the special program.

21 Professional supportive personnel may include
22 counselors, social workers, psychologists, psychometrists,
23 physicians, nurses, and physical and occupational
24 therapists.

25 (ii) salaries and benefits of clerical personnel for

1 professional personnel in supportive services—the entire
 2 cost if employed full-time in the special program. If such
 3 personnel are shared between special and regular programs—a
 4 portion of the entire cost corresponding to the entire
 5 working time which each such person devotes to the special
 6 program;

7 (iii) other expenses—the amount allowed for budget
 8 purposes per full-time special pupil may not exceed the
 9 amount budgeted per regular ANB for the current year.

10 (e) Operation of plant; salaries, benefits, heat for
 11 buildings, utilities except heating, and other supplies and
 12 expenses—the superintendent of public instruction shall
 13 make regulations fixing a ratio for operation spending per
 14 full-time special pupil to such spending per current year's
 15 regular ANB. The proration shall be based on the ratio
 16 between the number of special pupils per class and the
 17 number of regular pupils per class and any other relevant
 18 factors.

19 (f) Maintenance of plant; salaries, benefits,
 20 replacements and parts, contracted services—the
 21 superintendent of public instruction shall make regulations
 22 fixing a ratio for maintenance spending per full-time
 23 special pupil to such spending per current year's regular
 24 ANB. The proration shall be based on the ratio between the
 25 number of special pupils per class and the number of regular

1 pupils per class and any other relevant factors.

2 (g) School food services—the amount allowed for
 3 budget purposes per full-time special pupil may not exceed
 4 the amount budgeted per regular ANB for the current year.

5 (h) Student body and auxiliary services; salaries and
 6 other expenses—the amount allowed for budget purposes per
 7 full-time special pupil may not exceed the amount budgeted
 8 per regular ANB for the current year.

9 (i) Other current charges; insurance, rental of land
 10 and buildings, and other expenses:

11 (i) rental of land and buildings, when such premises
 12 meet all requirements of the board of public education and
 13 the department of health and environmental sciences—no such
 14 costs may be charged to the special program without specific
 15 authorization from the superintendent of public instruction
 16 unless the land and buildings are shared between the special
 17 and regular pupils, and the amount of the total cost that
 18 may be charged to the special program may not exceed
 19 whatever proportion the number of special full-time pupils
 20 are to the total enrollment of the school district of the
 21 previous year. Provided, however, that any school district
 22 renting land and buildings for special education purposes
 23 prior to the 1974-75 school year is not subject to this
 24 requirement, and will charge a portion of the total cost
 25 when shared with regular programs, to be prorated based on

1 the amount of building space used by each type of program;

2 (ii) insurance--the superintendent of public
3 instruction shall make regulations fixing a ratio for
4 insurance spending per full-time special pupil to such
5 spending per current year's regular ANB. The proration shall
6 be based on the ratio between the number of special pupils
7 per class and the number of regular pupils per class and any
8 other relevant factors;

9 (iii) all other expenses--the amount allowed for budget
10 purposes per full-time special pupil for a school year may
11 not exceed the amount budgeted per regular ANB for the
12 current school year.

13 (j) Capital outlay; sites, buildings, remodeling and
14 improvements, equipment and other:

15 (i) classroom remodeling and improvements for a
16 program for physically handicapped students--the actual
17 total cost; all other remodeling and improvements--the
18 amount allowed for budget purposes per full-time special
19 pupil for a school year may not exceed the amount budgeted
20 per regular ANB for the current school year;

21 (ii) equipment--the actual total cost;

22 ~~(iii) sites buildings no such costs may be charged~~
23 ~~to the special program unless the sites and/or buildings are~~
24 ~~shared between the special and regular students; and the~~
25 ~~amount of the total cost that may be charged to the special~~

1 ~~program may not exceed whatever proportion the number of~~
2 ~~special full-time pupils are to the total full-time~~
3 ~~enrollment of the schools;~~

4 ~~(iv)(iii) other--the amount allowed for budget purposes~~
5 ~~may not exceed the amount budgeted per regular ANB for the~~
6 ~~current year.~~

7 (k) Room and board costs when the special pupil has to
8 attend a program at such a distance from his home that
9 commuting is undesirable as determined by the superintendent
10 of public instruction.

11 (2) The superintendent of public instruction shall,
12 prior to the time when a district must have prepared its
13 budget for the 1975-1976 1977-1978 year, ~~promulgate~~ revise
14 the rules and regulations, in accordance with the policies
15 of the board of public education, for:

16 (a) keeping necessary records for supportive and
17 administrative personnel and any personnel shared between
18 special and regular programs;

19 (b) defining the total special program caseload that
20 shall be assigned to specific support persons and the kinds
21 of professional specialties to be considered relevant to the
22 program before the district may count an allowable cost
23 under subsection (1)(d) of this section;

24 (c) defining the kinds or types of equipment whose
25 costs may be counted under subsections (1)(j)(ii) of this

1 section; and

2 (d) prescribing formulas for calculating the portion
3 of operation and maintenance costs, insurance, building and
4 rental costs properly allocable to the special programs, as
5 prescribed by subsections (1)(e), (1)(f), (1)(i)(i), and
6 (1)(i)(ii) of this section.

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

12 ~~(4) If a board of trustees chooses to exceed the~~
13 ~~budget approved by the superintendent of public instruction,~~
14 ~~costs in excess of the approved budget may not be reimbursed~~
15 ~~under the maximum budget without a vote for special~~
16 ~~education."~~

17 Section 14. Section 75-7814, R.C.M. 1947, is amended
18 to read as follows:

19 "75-7814. Special education child eligibility for
20 transportation. With the approval of the superintendent of
21 public instruction, any special education child shall be
22 eligible for transportation when:

- 23 (1) he is enrolled in a special education class or
24 program operated by the district of such child's residence;
25 (2) he is enrolled ~~under an approved tuition agreement~~

1 in a special education class or program operated by a
2 Montana district other than the child's resident district;
3 or

4 (3) he is enrolled under an approved tuition agreement
5 in a special education class or program operated outside of
6 the state of Montana; ~~or~~

7 ~~(4) he is enrolled under an approved tuition agreement~~
8 ~~in a private institution."~~

9 Section 15. Section 75-7816, R.C.M. 1947, is amended
10 to read as follows:

11 "75-7816. Financial assistance for under-six ~~(6)~~
12 year-old special education class or program. Any district
13 operating an approved special education class or program for
14 children under the age of six ~~(6)~~ years ~~or for people who~~
15 ~~are not less than twenty-one (21) or more than twenty-five~~
16 ~~(25) years of age~~ shall be eligible for financial assistance
17 in accordance with ~~section 75-7813~~ 75-7813.1 and for
18 transportation reimbursement under section 75-7815."

19 Section 16. Repealer. Section 75-7812, R.C.M. 1947, is
20 repealed.

-End-

STATE OF MONTANA

REQUEST NO. 598-77

FISCAL NOTE

Form BD-15

In compliance with a written request received February 24, 1977 there is hereby submitted a Fiscal Note for House Bill 816 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 816 provides considerable revision to special education laws. Changes in eligibility requirements potentially increase the number of persons served; allowable travel costs for special education personnel are broadened; special equipment for school buses is included as an allowable cost; a restriction on allowable costs for sites and buildings is eliminated; numerous responsibilities are shifted from the Superintendent of Public Instruction to School Trustees.

ASSUMPTIONS:

Eligibility Requirements

1. Changes in definitions, eligibility requirements, and program establishment criteria suggest that House Bill 816 could result in increased state expenditures; however, special education personnel within the Office of the Superintendent of Public Instruction claim there will be no such fiscal impact.

Bus Equipment and Special Education Travel

1. Three (3) percent of the 1,400 school buses in Montana would be converted or replaced by buses equipped for special education.
2. The additional special education costs for buses would be \$1,500 per bus.
3. There are 25 special education administrators and 1,500 teachers in the state.
4. Administrators would attend one out-of-state meeting and five in-state meetings per year. Teachers would attend one state meeting per year.

Allowable Costs for Sites and Buildings (Provisions similar to House Bill 467)

1. Estimated expenditure for special education will be \$4,500 per year under current law. (Such expenditure could potentially be much greater.)

Other

1. There are numerous other changes in House Bill 467 which will likely have a fiscal impact but such impact is indeterminable. i.e., Amendments to Section 75-811 shift responsibilities from the Superintendent of Public Instruction to School Trustees.

FISCAL IMPACT:

	<u>FY 78</u>	<u>FY 79</u>
Eligibility requirements	"Indeterminable"	
Bus equipment	\$ 63,000	\$ 0
Special education travel	168,500	178,600
Building and site acquisition	(4,500)	(4,500)
Other	"Indeterminable"	
Total	<u>\$227,000</u>	<u>\$174,100</u>

Richard L. Dranga

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-25-77

SECOND READING

MISSING

1 HOUSE BILL NO. 816

2 INTRODUCED BY DUSSAULT

3 ON BEHALF OF THE HOUSE EDUCATION COMMITTEE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE GENERAL
6 REVISION OF LAWS RELATING TO SPECIAL EDUCATION; AMENDING
7 SECTIONS 75-7801, 75-7802, 75-7803, 75-7804, 75-7805,
8 75-7906, 75-7807, 75-7808, 75-7809, 75-7811, 75-7813.1,
9 75-7814, AND 75-7816, R.C.M. 1947; REPEALING SECTION
10 75-7812, R.C.M. 1947."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Section 75-7801, R.C.M. 1947, is amended to
14 read as follows:

15 "75-7801. Definitions. ~~As used in~~ In this Title,
16 unless the context clearly indicates otherwise, the
17 following definitions apply:

18 "~~Special education~~" means the kind of instruction
19 requiring special facilities or programs for mentally
20 retarded or physically handicapped children or for
21 educationally handicapped persons;

22 "~~mentally retarded child~~" means any child who is not
23 capable of profiting from the regular instruction of a
24 school because his mental ability is substantially below the
25 mental ability of an average child of the same age. Mentally

1 ~~retarded children are classified as follows:~~

2 (a) "~~An educable mentally retarded child~~" means a
3 child who, at maturity, cannot be expected to attain a level
4 of intellectual functioning greater than that commonly
5 expected of an eleven-year-old child, but not less than that
6 of a seven-year-old child;

7 (b) "~~A trainable mentally retarded child~~" means a
8 child who, at maturity, cannot be expected to attain a level
9 of intellectual functioning greater than that commonly
10 expected of a seven-year-old child and, for entrance into a
11 training program, is capable of walking, of clean body
12 habits, and of obedience to simple commands;

13 (c) "~~A custodial mentally retarded child~~" means a
14 child who does not show a likelihood of attaining clean body
15 habits, responsiveness to directions, or means of
16 intelligible communication;

17 A "~~physically handicapped child~~" means a child who is
18 capable of profiting from the regular instruction with the
19 assistance of special equipment, special services, or
20 transportation to compensate for physical disabilities such
21 as, but not limited to, cardiac impairment, cerebral palsy,
22 chronic health problems, or inadequate speech, hearing, or
23 vision;

24 An "~~educationally handicapped person~~" means a child or
25 young adult under the age of twenty-one (21) years who

1 requires special assistance to the extent that he cannot
2 reasonably profit from the regular education program.

3 An educationally handicapped person's learning
4 disorders include but are not limited to conditions which
5 have been referred to as visual perception handicaps, brain
6 injury, minimal brain dysfunction, dyslexia, behavior
7 maladjustment and emotional disturbances. An educationally
8 handicapped person's disorders are not the result of
9 problems with visual acuity, hearing impairment, physical
10 handicaps, cultural or instructional factors, and mental
11 retardation.

12 (1) "Special education" means specially designed
13 instruction, given at no cost to the parents or guardians,
14 to meet the unique needs of a handicapped child, including
15 but not limited to classroom instruction, instruction in
16 physical education, home instruction, and instruction in
17 hospitals and institutions. The term includes but is not
18 limited to speech pathology, audiology, occupational
19 therapy, and physical therapy.

20 (2) "Handicapped child" means a child evaluated as
21 being mentally retarded, hard-of-hearing, deaf,
22 speech-impaired, visually handicapped, seriously emotionally
23 disturbed, orthopedically impaired, other health-impaired,
24 or as having specific learning disabilities, who because of
25 those impairments needs special education and related

1 services.

2 (3) "Deaf" means a hearing impairment which is so
3 severe that the child's hearing is nonfunctional for the
4 purpose of educational performance.

5 (4) "Hard-of-hearing" means a hearing impairment,
6 whether permanent or fluctuating, which adversely affects a
7 child's educational performance but which is not included
8 within the definition of "deaf".

9 (5) "Mentally retarded" means significantly subaverage
10 general intellectual functioning existing concurrently with
11 deficits in adaptive behavior and manifested during the
12 developmental period, which adversely affects a child's
13 educational performance.

14 (6) "Orthopedically impaired" means a severe
15 orthopedic impairment which adversely affects a child's
16 educational performance. The term includes but is not
17 limited to impairment caused by congenital anomaly (e.g.,
18 clubfoot or absence of some member), impairments caused by
19 disease (e.g., poliomyelitis, bone tuberculosis), and
20 impairments from other causes (e.g., fractures or burns
21 which cause contractures, amputation, cerebral palsy).

22 (7) "Other health-impaired" means limited strength,
23 vitality, or alertness due to chronic or acute health
24 problems such as a heart condition, tuberculosis, rheumatic
25 fever, nephritis, asthma, sickle-cell anemia, hemophilia,

1 epilepsy, lead poisoning, leukemia, or diabetes.

2 (8) "~~Seriously emotionally disturbed and behaviorally~~
 3 BEHAVIORALLY maladjusted" refers to a person who has been
 4 identified, based on a comprehensive evaluation, as having
 5 observable behavioral patterns which seriously inhibit the
 6 academic and social or emotional growth of the individual or
 7 the educational rights of others to the point that
 8 supportive services are required. These behavioral patterns
 9 may include but are not limited to:

10 (a) excessive physical or verbal aggression toward
 11 oneself or others and a lack of response to regular
 12 educational intervention;

13 (b) high frequency of persistent inattention to
 14 academic or social tasks associated with regular classroom
 15 performance; or

16 (c) persistent withdrawal from peer or adult
 17 interactions associated with the expected social development
 18 in a regular educational environment.

19 (9) "Seriously emotionally disturbed" means a
 20 condition exhibiting, to a marked degree and over a long
 21 period of time, an inability to learn which cannot be
 22 explained by intellectual, sensory, or health factors; an
 23 inability to build or maintain satisfactory interpersonal
 24 relationships with peers and teachers; inappropriate types
 25 of behavior or feelings under normal circumstances; a

1 general pervasive mood of unhappiness or depression; or a
 2 tendency to develop physical symptoms, pains, or fears
 3 associated with personal or school problems. The term does
 4 not include children who are socially maladjusted. The
 5 seriously emotionally disturbed category may include
 6 students who also have been diagnosed by appropriate
 7 specialists as autistic, psychotic, sociopathic, or
 8 schizophrenic. A seriously emotionally disturbed child's
 9 disorders are not primarily the result of problems with
 10 visual acuity, hearing impairment, physical handicaps,
 11 cultural or instructional factors, or mental retardation.

12 (10) "Specific learning disability" means a disorder in
 13 one or more of the basic psychological processes involved in
 14 understanding or in using language, spoken or written, which
 15 may manifest itself in an imperfect ability to listen,
 16 think, speak, read, write, spell, or do mathematical
 17 calculations. The term includes but is not limited to such
 18 conditions as perceptual handicaps, brain injury, minimal
 19 brain dysfunction, dyslexia, and developmental aphasia. The
 20 term does not include children who have learning problems
 21 which are primarily the result of visual, hearing, or motor
 22 handicaps, mental retardation, or environmental, cultural,
 23 or economic disadvantages.

24 (11) "Speech-/LANGUAGE impaired" means a communication
 25 disorder such as stuttering, impaired articulation, or a

1 language or voice impairment which adversely affects a
 2 child's INTERPERSONAL RELATIONSHIPS OR educational
 3 performance.

4 (12) "Visually handicapped" means a visual impairment
 5 which, after correction, adversely affects a child's
 6 educational performance. The term includes both partially
 7 seeing and blind children."

8 Section 2. Section 75-7802, R.C.M. 1947, is amended to
 9 read as follows:

10 *75-7802. Conduct of special education to comply with
 11 board of public education policies. (1) The conduct of
 12 special education programs shall comply with the policies
 13 recommended by the superintendent of public instruction and
 14 adopted by the board of public education. These policies may
 15 shall assure and include but are not limited to:
 16 ~~regulation of class size, class grouping, curriculum,~~
 17 ~~methods of instruction, teacher qualifications, distances of~~
 18 ~~travel to classes or programs, necessary equipment and other~~
 19 ~~special services.~~

20 (a) placement of handicapped children in the least
 21 restrictive alternative setting;

22 (b) due process for all handicapped children;

23 (c) use of child study teams to identify handicapped
 24 children and USE OF INSTRUCTIONAL TEAMS TO plan individual
 25 education programs;

1 (d) comprehensive evaluation for each handicapped
 2 child; and

3 (e) other policies needed to regulate eligibility for
 4 enrollment, class size, grouping, curriculum, equipment
 5 purchases and other special services ASSURE A FULL AND
 6 APPROPRIATE PUBLIC EDUCATION.

7 (2) The superintendent of public instruction shall
 8 promulgate rules to administer the policies of the board of
 9 public education."

10 Section 3. Section 75-7803, R.C.M. 1947, is amended to
 11 read as follows:

12 *75-7803. Duties of superintendent of public
 13 instruction. The superintendent of public instruction shall
 14 supervise and co-ordinate the conduct of special education
 15 in the state by:

16 (1) recommending to the board of public education for
 17 adoption of those policies necessary to establish a planned
 18 and co-ordinated program of special education in the state;

19 (2) administering the policies adopted by the board of
 20 public education;

21 (3) certifying special education teachers on the basis
 22 of the special qualifications for such teachers as
 23 prescribed by the board of public education;

24 (4) ~~discovering through observation, examination or~~
 25 ~~testing the children in the state who are in need of special~~

1 ~~education establishing procedures to be used by school~~
2 ~~district personnel in identifying handicapped children;~~

3 (5) ~~determining the type of instruction required by~~
4 ~~children needing special education and preparing appropriate~~
5 ~~curriculum guides for such instruction recommending to~~
6 ~~districts the type of special education class or program~~
7 ~~needed to serve the special education children of the~~
8 ~~districts and preparing appropriate guides for developing~~
9 ~~individual education programs;~~

10 (6) seeking for local districts appropriate medical
11 psychiatric and psychological interdisciplinary assistance
12 from the state department of health and other public and
13 private agencies in diagnosing the special education needs
14 of children, in planning programs, and in admitting and
15 discharging children from such programs;

16 (7) ~~recommending to districts the type of special~~
17 ~~education class or program needed to serve the special~~
18 ~~education children of such district assisting local school~~
19 ~~districts, institutions, and other agencies in developing~~
20 ~~full-service programs for all handicapped children;~~

21 (8) approving, as they are established or proposed and
22 annually thereafter, those special education classes or
23 programs which comply with the laws of the state of Montana,
24 policies of the board of public education, and the
25 regulations of the superintendent of public instruction;

1 (9) ~~providing supervision for and consulting with~~
2 ~~technical assistance to~~ district superintendents,
3 principals, teachers and trustees;

4 (10) conducting conferences, offering advice and
5 otherwise co-operating with parents and other interested
6 persons;

7 (11) acting as the co-ordinating agency with federal
8 agencies, other state agencies, political subdivisions of
9 the state, and private bodies on matters concerning special
10 education, reserving to the other agencies and political
11 subdivisions their full responsibilities for other aspects
12 of the care of children needing special education; and

13 (12) ~~establishing administering~~ regional special
14 education services for children in need of special education
15 in accordance with policies of the board of public
16 education. ~~Funds for such services shall be appropriated to~~
17 ~~the superintendent of public instruction from state~~
18 ~~equalization funds and shall be coordinated with other~~
19 ~~federal, state, and local funds as may be made available to~~
20 ~~support regional special education programs and services."~~

21 Section 4. There is a new R.C.M. section that reads as
22 follows:

23 Regional special education services. (1) There is
24 established a regional special education services program to
25 provide special education services to handicapped children

1 who cannot efficiently be served by a program operated by an
2 individual school district or by several cooperating school
3 districts. Regional special education services shall be
4 limited to:

5 (a) providing direct services to handicapped children
6 that are not ADEQUATELY served by a district program;

7 (b) initiating special services for handicapped
8 children as a service model which may then be continued as
9 an individual district or cooperative district program;

10 (c) coordinating and conducting in-service training
11 for special education and local district personnel in the
12 region; and

13 (d) assisting local districts in the region in the
14 development and expansion of individual district or
15 cooperative district programs.

16 (2) Funds for such services shall be appropriated to
17 the superintendent of public instruction from state
18 equalization funds and shall be available to support
19 regional special education programs and services. Such funds
20 may be supplemented by appropriate federal funds. The
21 authorization for regional special education services for
22 children expires on June 30, 1980.

23 Section 5. Section 75-7804, R.C.M. 1947, is amended to
24 read as follows:

25 "75-7804. Co-operation of state agencies. The state

1 department of health, the department of institutions, ~~the~~
2 ~~department of social and rehabilitation services,~~ and the
3 state school for the deaf and blind shall ~~assist~~ cooperate
4 with the superintendent of public instruction in assisting
5 school districts in discovering children in need of special
6 education ~~in determining the type of special education for~~
7 ~~these children and in generally supervising and~~
8 ~~co-ordinating special education in the state.~~ Nothing
9 herein shall be construed to interfere with the purpose and
10 function of these state agencies."

11 Section 6. Section 75-7805, R.C.M. 1947, is amended to
12 read as follows:

13 "75-7805. ~~Mandatory establishment~~ Establishment of
14 special education program. (1) ~~The trustees of any district~~
15 ~~shall establish and maintain at least one applicable special~~
16 ~~education program when there are ten (10) or more educable~~
17 ~~mentally retarded children in the district and at least one~~
18 ~~(1) applicable special education program when there are~~
19 ~~seven (7) or more trainable mentally retarded children in~~
20 ~~the district and at least one (1) applicable special~~
21 ~~education program when there are ten (10) or more physically~~
22 ~~handicapped children in the district.~~ All handicapped
23 children in Montana are entitled to a free appropriate
24 public education provided in the least restrictive
25 alternative setting. To the maximum extent appropriate,

1 handicapped children, including children in public or
 2 private institutions or other care facilities, shall be
 3 educated with children who are not handicapped. Separate
 4 schooling or other removal of handicapped children from the
 5 regular educational environment may occur only when the
 6 nature or severity of the handicap is such that education in
 7 regular classes with the use of supplementary aids and
 8 services cannot be achieved satisfactorily. After July 1,
 9 1979 September 1, 1978, the board of trustees of every
 10 school district must provide or establish and maintain a
 11 special education program for every handicapped person as
 12 herein defined between the ages of six (6) and twenty-one
 13 (21) 18, inclusive in the district who cannot benefit
 14 sufficiently from the regular programs of instruction by
 15 reason of his mental, physical, emotional or learning
 16 problems. After September 1, 1980, such services shall be
 17 provided for all handicapped children between the ages of 3
 18 and 21, inclusive.

19 (2) The board of trustees of any school district may
 20 meet its obligation to serve handicapped persons by
 21 establishing its own special education program, by
 22 establishing a cooperative special education program, or by
 23 participating in a regional services program.

24 ~~(3) Eligibility for enrollment in special education~~
 25 ~~programs shall be determined under regulations of the~~

1 ~~superintendent of public instruction issued pursuant to~~
 2 ~~policies adopted by the board of public education.~~"

3 Section 75-7806, R.C.M. 1947, is amended to
 4 read as follows:

5 "75-7806. ~~Discretionary establishment~~ Establishment of
 6 individual district special education program. (1) The
 7 trustees of any district, upon obtaining the approval of the
 8 superintendent of public instruction, may shall establish
 9 and maintain a special education program for:

10 ~~(1) four (4) or more educable mentally retarded~~
 11 ~~children;~~

12 ~~(2) four (4) or more physically handicapped children;~~

13 ~~(3) four (4) or more trainable mentally retarded~~
 14 ~~children;~~

15 ~~(4) four (4) or more educationally handicapped persons~~
 16 ~~between the ages of six (6) and twenty-one (21); whenever,~~
 17 ~~in the judgment of the trustees and the superintendent of~~
 18 ~~public instruction:~~

19 (a) there are sufficient numbers of handicapped
 20 children in the district to justify the establishment of a
 21 program; or

22 ~~(5) (b) an individual children requiring child requires~~
 23 special education services such as home or hospital
 24 tutoring, school-to-home telephone communication, or other
 25 individual programs; or,

1 ~~(6)(2) educable--mentally-retarded-children; trainable~~
 2 ~~mentally--retarded---children;---educationally---handicapped~~
 3 ~~children; or physically~~ Prior to September 1, 1980, programs
 4 ~~may be established for~~ handicapped children under the age of
 5 ~~six (6) years of age~~ AGES 3 THROUGH 5 AND AFTER SEPTEMBER 1,
 6 1980, CHILDREN AGES 0 THROUGH 2 MAY BE PROVIDED SERVICE when
 7 the superintendent of public instruction has and the
 8 trustees have determined that such programs will:

9 (a) assist a child to achieve levels of competence
 10 that will enable him to participate in the regular
 11 instruction of the district when he could not participate
 12 without special education;

13 (b) permit the conservation or early acquisition of
 14 skills which will provide the child with an equal
 15 opportunity to participate in the regular instruction of the
 16 district; or

17 (c) provide other demonstrated educational advantages
 18 which will materially benefit the child; or,

19 ~~(7)--educable-mentally-retarded-persons;--educationally~~
 20 ~~handicapped--persons;--or--physically-handicapped-persons--who~~
 21 ~~are--not--less--than--twenty--one--(21)--or--more--than--twenty--five~~
 22 ~~(25)--years--of--age--when--the--superintendent--of--public~~
 23 ~~instruction--has--determined--that--such--programs--will--assist--a~~
 24 ~~person--to--achieve--levels--of--competence--that--will--enable--him~~
 25 ~~to--better--participate--in--society;~~

1 ~~(8)--eligibility-for-enrollment--in--special--education~~
 2 ~~programs--shall--be--determined--under--regulations--of--the~~
 3 ~~superintendent-of--public--instruction--issued--pursuant--to~~
 4 ~~policies-adopted-by-the-board-of-public-education;~~

5 (2) PRIOR TO SEPTEMBER 1, 1980, PROGRAMS MAY BE
 6 ESTABLISHED FOR HANDICAPPED PERSONS BETWEEN THE AGES OF 18
 7 AND 21 INCLUSIVE WHEN THE SUPERINTENDENT OF PUBLIC
 8 INSTRUCTION AND THE TRUSTEES HAVE DETERMINED THAT SUCH
 9 PROGRAMS WILL CONTRIBUTE TO THE EDUCATIONAL DEVELOPMENT OF
 10 THOSE PERSONS.

11 (4) WHEN AN AGENCY WHICH HAS RESPONSIBILITY FOR A
 12 HANDICAPPED PERSON OVER 21 BUT NOT MORE THAN 25, INCLUSIVE,
 13 CANNOT PROVIDE APPROPRIATE SERVICES TO THAT PERSON, THE
 14 AGENCY MAY CONTRACT WITH THE LOCAL SCHOOL DISTRICT TO
 15 PROVIDE SUCH SERVICES.

16 THE MONEYS RECEIVED BY THE LOCAL DISTRICT THROUGH SUCH
 17 CONTRACTED SERVICES WOULD REDUCE THE SPECIAL EDUCATION
 18 FOUNDATION MONEYS ACCORDINGLY."

19 Section B. Section 75-7807, R.C.M. 1947, is amended to
 20 read as follows:

21 "75-7807. Petition of parents for establishment of
 22 special education program. The parents of four ~~(4)~~ or more
 23 persons requiring special education of the kind provided for
 24 ~~educable--mentally--retarded--children;--trainable--mentally~~
 25 ~~retarded--children;--educationally--handicapped--persons--or~~

1 ~~physically-handicapped-children~~ may petition the board of
 2 trustees to establish a an individual district special
 3 education program. Parents residing in several districts may
 4 petition the board of trustees of each district to
 5 co-operatively establish a special education program ~~of one~~
 6 ~~kind--for--four--(4)--or--more---persons~~. The interlocal
 7 co-operative agreement authorized in chapter 49 of Title 16,
 8 R.C.M. 1947, may be used to establish a multi-district
 9 special education program."

10 Section 9. Section 75-7808, R.C.M. 1947, is amended to
 11 read as follows:

12 "75-7808. Arranging attendance in another district in
 13 lieu of a special education program. ~~in-lieu-of-providing~~
 14 ~~special-education-in-the-district~~ With the approval of the
 15 superintendent of public instruction, the trustees may
 16 arrange for the attendance of a child in need of special
 17 education in a special education program ~~approved-by-the~~
 18 ~~superintendent-of-public-instruction-and-offered~~ in another
 19 district within the state of Montana. Arrangements for the
 20 attendance of a child in need of special education are not
 21 subject to the laws governing the attendance of pupils in
 22 schools outside the district and no tuition shall be charged
 23 the district of residence. HOWEVER, TUITION AS REQUIRED
 24 UNDER 75-6320 MAY BE CHARGED FOR CHILDREN WHO ARE NOT
 25 CONSIDERED FULL-TIME SPECIAL EDUCATION PUPILS AS DEFINED IN

1 ~~75-6922.~~"

2 Section 10. Section 75-7809, R.C.M. 1947, is amended
 3 to read as follows:

4 "75-7809. Out-of-state tuition for special education
 5 children. ~~The~~ If the trustees of any district ~~may arrange~~
 6 ~~for~~ recommend to the superintendent of public instruction
 7 the attendance of a child in need of special education in a
 8 special education program offered outside of the state of
 9 Montana. ~~Such~~ such arrangements shall not be subject to the
 10 out-of-state attendance provisions of the laws governing the
 11 attendance of pupils in schools outside the state of
 12 Montana.

13 whenever the attendance of a child at an out-of-state
 14 special education program is arranged, ~~the board of trustees~~
 15 ~~may approved BY THE SUPERINTENDENT OF PUBLIC INSTRUCTION, it~~
 16 shall be the responsibility of the superintendent of public
 17 instruction, in cooperation with the department of social
 18 and rehabilitation services and the department of
 19 institutions, to negotiate the program for the child and the
 20 amount and manner of payment of tuition. The amount of
 21 tuition shall be included as a contracted service in section
 22 75-7813.1(b)(iv)(A) in the maximum-budget-without-a-vote for
 23 special education."

24 Section 11. There is a new R.C.M. section that reads
 25 as follows:

1 Arranging attendance in a private institution. Whenever
 2 the trustees determine that a handicapped child is in need
 3 of services that can only be provided by a private
 4 institution and the superintendent of public instruction so
 5 approves, the board of trustees may negotiate the amount and
 6 manner of payment of tuition and it shall be included as a
 7 contracted service as allowed in 75-7813.1(1)(b)(iv)(A).

8 Section 12. Section 75-7811, R.C.M. 1947, is amended
 9 to read as follows:

10 "75-7811. Determination of need for special education
 11 ~~by trustees~~ and approval of classes and programs by
 12 superintendent of public instruction. The determination of
 13 the children requiring special education and the type of
 14 special education needed by these children shall ~~not~~ be the
 15 responsibility of the trustees, ~~but shall be the~~
 16 ~~responsibility of the superintendent of public instruction~~
 17 ~~and such determination shall be made in compliance with the~~
 18 ~~procedures established in the rules of the superintendent of~~
 19 ~~public instruction.~~ Whenever the trustees of any district
 20 intend to establish a special education class or program,
 21 they shall apply for approval ~~and funding~~ of the class or
 22 program by the superintendent of public instruction. The
 23 superintendent of public instruction shall approve or
 24 disapprove the application for the special education class
 25 or program on the basis of its compliance with the laws of

1 the state of Montana, the special education policies adopted
 2 by the board of public education, and the regulations rules
 3 of the superintendent of public instruction. ~~No special~~
 4 ~~education class shall be operated by the trustees without~~
 5 ~~the approval of the superintendent of public instruction. NO~~
 6 ~~SPECIAL EDUCATION CLASS SHALL BE OPERATED BY THE TRUSTEES~~
 7 ~~WITHOUT THE APPROVAL OF THE SUPERINTENDENT OF PUBLIC~~
 8 ~~INSTRUCTION.~~ Each special education class or program must be
 9 approved annually ~~to be funded as part of the~~
 10 ~~maximum budget without a vote for special education."~~

11 Section 13. Section 75-7813.1, R.C.M. 1947, is amended
 12 to read as follows:

13 "75-7813.1. Allowable cost schedule for special
 14 programs -- the superintendent of public instruction to make
 15 rules -- annual accounting. (1) For the purpose of
 16 determining the ~~maximum budget without a vote~~ for special
 17 education as defined in sections 75-6905(20) and
 18 75-6905(21), the following schedule of allowable costs shall
 19 be followed by the school district in preparation of its
 20 special education budget for state aid request purposes and
 21 by the superintendent of public instruction in his review
 22 and approval of the budget for the purposes of determining
 23 the amount of the ~~maximum budget without a vote~~ for special
 24 education for the district, and as used in this schedule,
 25 "full-time special pupil" and "regular ANB" are to be

1 determined in accordance with sections 75-6902 and 75-6903.

2 (a) Administration; salaries, benefits, supplies and
3 other expenses of the superintendent's office, the office of
4 the board of trustees, and the business office including:

5 (i) salaries of professional administrative
6 personnel--a portion of the entire cost corresponding to the
7 portion of entire working time which each such person
8 devotes to the special program;

9 (ii) salaries of clerical personnel for administrative
10 staff--the amount allowed for budget purposes per full-time
11 special pupil may not exceed the amount budgeted per regular
12 ANB for the current year;

13 (iii) supplies and other expenses--the amount allowed
14 for budget purposes per full-time special pupil may not
15 exceed the amount budgeted per regular ANB for the current
16 year.

17 (b) Instruction; salaries, benefits, supplies,
18 textbooks and other expenses including:

19 (i) salaries of principals and clerical personnel--a
20 portion of the entire cost corresponding to the portion of
21 the entire working time which each such person devotes to
22 the special program but not to exceed one and seventy-five
23 hundredths (1.75) times the amount budgeted per regular ANB
24 for the current year;

25 (ii) salaries and benefits of special program teachers,

1 regular program teachers, teacher aides, special education
2 supervisors, audiologists, and speech and hearing
3 clinicians--the entire cost if employed full-time in the
4 special program. If such personnel are shared between
5 special and regular programs--a portion of the entire cost
6 corresponding to the entire working time which each such
7 person devotes to the special program;

8 (iii) teaching supplies and textbooks--if used
9 exclusively for special programs the actual total cost. If
10 shared with regular programs--the amount allowed for budget
11 purposes per full-time special pupil may not exceed the
12 amount budgeted per regular ANB for the current year;

13 (iv) other expenses--with the exception of the
14 following items, the amount allowed for budget purposes per
15 full-time special pupil may not exceed the amount budgeted
16 per regular ANB for the current year:

17 (A) Contracted services, including fees paid for
18 professional advice and consultation regarding special
19 students or the special program, and the delivery of special
20 education services by nonprofit PUBLIC OR PRIVATE
21 agencies--the actual total cost.

22 (B) Transportation costs for special education
23 personnel who must travel on-an-itinerent-basis-from-school
24 to-school-or-district-to-district in order to fulfill the
25 responsibilities of their particular job description--the

1 actual cost to the district calculated on the same mileage
 2 rate basis used by the district for other travel
 3 reimbursement purposes. Such travel may include in- or
 4 out-of-district in-service-training programs as specified in
 5 the rules promulgated by the superintendent of public
 6 instruction.

7 ~~(f) Special equipment for school buses necessary to~~
 8 ~~accommodate special students--the actual total cost~~

9 (c) Library services; salaries, books and periodicals
 10 and other expenses--the amount allowed for budget purposes
 11 per full-time special pupil may not exceed the amount
 12 budgeted per regular ANB for the current year.

13 (d) Supportive services; salaries, benefits and other
 14 expenses:

15 (i) salaries and benefits of professional supportive
 16 personnel--the entire cost if employed full-time in the
 17 special program. If such personnel are shared between
 18 special and regular programs--a portion of the entire cost
 19 corresponding to the entire working time which each such
 20 person devotes to the special program.

21 Professional supportive personnel may include
 22 counselors, social workers, psychologists, psychometrists,
 23 physicians, nurses, and physical and occupational
 24 therapists.

25 (ii) salaries and benefits of clerical personnel for

1 professional personnel in supportive services--the entire
 2 cost if employed full-time in the special program. If such
 3 personnel are shared between special and regular programs--a
 4 portion of the entire cost corresponding to the entire
 5 working time which each such person devotes to the special
 6 program;

7 (iii) other expenses--the amount allowed for budget
 8 purposes per full-time special pupil may not exceed the
 9 amount budgeted per regular ANB for the current year.

10 (e) Operation of plant; salaries, benefits, heat for
 11 buildings, utilities except heating, and other supplies and
 12 expenses--the superintendent of public instruction shall
 13 make regulations fixing a ratio for operation spending per
 14 full-time special pupil to such spending per current year's
 15 regular ANB. The proration shall be based on the ratio
 16 between the number of special pupils per class and the
 17 number of regular pupils per class and any other relevant
 18 factors.

19 (f) Maintenance of plant; salaries, benefits,
 20 replacements and parts, contracted services--the
 21 superintendent of public instruction shall make regulations
 22 fixing a ratio for maintenance spending per full-time
 23 special pupil to such spending per current year's regular
 24 ANB. The proration shall be based on the ratio between the
 25 number of special pupils per class and the number of regular

1 pupils per class and any other relevant factors.

2 (g) School food services--the amount allowed for
3 budget purposes per full-time special pupil may not exceed
4 the amount budgeted per regular ANB for the current year.

5 (h) Student body and auxiliary services; salaries and
6 other expenses-- the amount allowed for budget purposes per
7 full-time special pupil may not exceed the amount budgeted
8 per regular ANB for the current year.

9 (i) Other current charges; insurance, rental of land
10 and buildings, and other expenses:

11 (i) rental of land and buildings, when such premises
12 meet all requirements of the board of public education and
13 the department of health and environmental sciences--no such
14 costs may be charged to the special program without specific
15 authorization from the superintendent of public instruction
16 unless the land and buildings are shared between the special
17 and regular pupils, and the amount of the total cost that
18 may be charged to the special program may not exceed
19 whatever proportion the number of special full-time pupils
20 are to the total enrollment of the school district of the
21 previous year. Provided, however, that any school district
22 renting land and buildings for special education purposes
23 prior to the 1974-75 school year is not subject to this
24 requirement, and will charge a portion of the total cost
25 when shared with regular programs, to be prorated based on

1 the amount of building space used by each type of program;

2 (ii) insurance--the superintendent of public
3 instruction shall make regulations fixing a ratio for
4 insurance spending per full-time special pupil to such
5 spending per current year's regular ANB. The proration shall
6 be based on the ratio between the number of special pupils
7 per class and the number of regular pupils per class and any
8 other relevant factors;

9 (iii) all other expenses--the amount allowed for budget
10 purposes per full-time special pupil for a school year may
11 not exceed the amount budgeted per regular ANB for the
12 current school year.

13 (j) Capital outlay; ~~sites--buildings~~, remodeling and
14 improvements, equipment and other:

15 (i) classroom remodeling and improvements for a
16 program for physically handicapped students--the actual
17 total cost; all other remodeling and improvements--the
18 amount allowed for budget purposes per full-time special
19 pupil for a school year may not exceed the amount budgeted
20 per regular ANB for the current school year;

21 (ii) equipment--the actual total cost;

22 ~~(iii)--sites--buildings--no-such-costs-may--be--charged~~
23 ~~to-the-special-program-unless-the-sites-and/or-buildings-are~~
24 ~~shared--between--the--special--and-regular-students, and the~~
25 ~~amount-of-the-total-cost-that-may-be-charged-to-the--special~~

1 program--may--not--exceed--whatever-proportion-the-number-of
 2 special--full-time-pupils-are-to-the---total---full-time
 3 enrollment-of-the-school;

4 (iii) SPECIAL EQUIPMENT FOR SCHOOL BUSES NECESSARY TO
 5 ACCOMMODATE SPECIAL STUDENTS--THE ACTUAL TOTAL COST.

6 ~~(iv) (iii)~~ (iv) other--the amount allowed for budget
 7 purposes may not exceed the amount budgeted per regular ANB
 8 for the current year.

9 (k) Room and board costs when the special pupil has to
 10 attend a program at such a distance from his home that
 11 commuting is undesirable as determined by the superintendent
 12 of public instruction.

13 (2) The superintendent of public instruction shall,
 14 prior to the time when a district must have prepared its
 15 budget for the 1975-1976 ~~1977-1978~~ year SEPTEMBER 1, 1977,
 16 promulgate ~~revise the~~ rules and regulations, in accordance
 17 with the policies of the board of public education, for:

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

21 (b) defining the total special program caseload that
 22 shall be assigned to specific support persons and the kinds
 23 of professional specialties to be considered relevant to the
 24 program before the district may count an allowable cost
 25 under subsection (1)(d) of this section;

1 (c) defining the kinds or types of equipment whose
 2 costs may be counted under subsections (1)(j)(ii) of this
 3 section; and

4 (d) prescribing formulas for calculating the portion
 5 of operation and maintenance costs, insurance, building and
 6 rental costs properly allocable to the special programs, as
 7 prescribed by subsections (1)(e), (1)(f), (1)(i)(i), and
 8 (1)(i)(ii) of this section.

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

14 (4) If a board of trustees chooses to exceed the
 15 budget approved by the superintendent of public instruction,
 16 costs in excess of the approved budget may not be reimbursed
 17 under the maximum-budget-without-a-vote for special
 18 education."

19 Section 14. Section 75-7814, R.C.M. 1947, is amended
 20 to read as follows:

21 "75-7814. Special education child eligibility for
 22 transportation. With the approval of the superintendent of
 23 public instruction, any special education child shall be
 24 eligible for transportation WHICH SHALL BE PROVIDED BY THE
 25 RESIDENT DISTRICT when:

1 (1) he is enrolled in a special education class or
2 program operated by the district of such child's residence;

3 (2) he is enrolled ~~under an approved tuition agreement~~
4 in a special education class or program operated by a
5 Montana district other than the child's resident district;
6 or

7 (3) he is enrolled under an approved tuition agreement
8 in a special education class or program operated outside of
9 the state of Montana; or

10 (4) he is enrolled under an approved tuition agreement
11 in a private institution."

12 Section 15. Section 75-7816, R.C.M. 1947, is amended
13 to read as follows:

14 "75-7816. Financial assistance for under-six ~~(6)~~
15 year-old special education class or program. Any district
16 operating an approved special education class or program for
17 children under the age of six ~~(6)~~ years ~~or for people who~~
18 ~~are not less than twenty-one (21) or more than twenty-five~~
19 ~~(25) years of age~~ shall be eligible for financial assistance
20 in accordance with ~~section 75-7813~~ 75-7813.1 and for
21 transportation reimbursement under section 75-7815."

22 Section 16. Repealer. Section 75-7812, R.C.M. 1947, is
23 repealed.

-End-

April 4, 1977

STANDING COMMITTEE REPORT
Senate Committee on Education

That House Bill No. 816 be amended as follows:

1. Amend page 3, section 1, line 22.

Following: "handicapped,"

Strike: "seriously"

2. Amend page 5, section 1, line 3 through line 11 on page 6.

Following: line 2

Strike: line 3 on page 5 through line 11 on page 6 in their entirety

Insert: " "Emotionally disturbed" means a condition exhibiting one or more of the following characteristics to a marked degree and over a long period of time: an inability to learn which cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms, pains, or fears associated with personal or school problems. The term does not include children who are socially maladjusted. The emotionally disturbed category may include students who also may have been diagnosed by appropriate specialists as autistic, psychotic, sociopathic, or schizophrenic. An emotionally disturbed child's disorders are not primarily the result of problems with visual acuity, hearing impairment, physical handicaps, cultural or instructional factors, or mental retardation. "Emotionally disturbed" refers to a person who has been identified, based on a comprehensive evaluation, as having observable behavioral patterns which seriously inhibit the academic and social or emotional growth of the individual or the educational rights of others to the point that supportive services are required. These behavioral patterns may include:

- (a) excessive physical or verbal aggression toward oneself or others and a lack of response to regular educational intervention;
- (b) high frequency of persistent inattention to academic or social tasks associated with regular classroom performance; and
- (c) persistent withdrawal from peer or adult interactions associated with the expected social development in a regular educational environment."

Renumber: All subsequent subsections

3. Amend page 6, section 1, line 25.

Following: "or"

Insert: "or"

4. Amend page 8, section 2, line 5.

Following: "A"

Strike: "FULL"

Insert: "FREE"

5. Amend page 9, section 3, line 7.
Following: "serve the"
Strike: "special education"
Insert: "handicapped"

6. Amend page 11, section 4, line 6.
Following: line 5
Strike: "that"
Insert: "who"

7. Amend page 13, section 6, line 9.
Following: "September 1,"
Strike: "1978"
Insert: "1977"

8. Amend page 16, section 7, lines 16 through 18.
Following: line 15
Strike: lines 16 through 18 in their entirety

9. Amend page 20, section 12, line 6.
Following: "CLASS"
Strike: "SHALL"
Insert: "MAY"

10. Amend page 22, section 13, lines 24 and 25.
Following: "district"
Strike: "in order to fulfill the responsibilities of their particular job description"
Insert: "on an itinerant basis from school to school or district to district"

11. Amend page 23, section 13, line 2.
Following: "rate"
Strike: "basis"
Insert: "mileage rate"

12. Amend page 23, section 13, lines 3 through 6.
Following: "purposes."
Strike: lines 3 through 6 in their entirety

13. Amend page 26, section 13, line 16.
Following: "for"
Strike: "physically"
Following: "students"
Insert: "who need special facilities"

14. Amend page 27, section 13, line 4.
Following: "FOR"
Insert: "DISTRICT-OWNED"

April 7, 1977

SENATE
COMMITTEE OF THE WHOLE

That House Bill No. 816 be amended as follows:

1. Amend page 27, section 13, line 6.

Following: line 5

Insert: "(iv) Special equipment for school busses contracted to transport special students -- that portion of the contract price attributable to the cost of special equipment or personnel required to accomodate special students -- the actual special cost."

Renumber: subsequent sections

1 HOUSE BILL NO. 816

2 INTRODUCED BY DUSSAULT

3 ON BEHALF OF THE HOUSE EDUCATION COMMITTEE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE GENERAL
6 REVISION OF LAWS RELATING TO SPECIAL EDUCATION; AMENDING
7 SECTIONS 75-7801, 75-7802, 75-7803, 75-7804, 75-7805,
8 75-7806, 75-7807, 75-7808, 75-7809, 75-7811, 75-7813, 1,
9 75-7814, AND 75-7816, R.C.M. 1947; REPEALING SECTION
10 75-7812, R.C.M. 1947."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Section 75-7801, R.C.M. 1947, is amended to
14 read as follows:

15 "75-7801. Definitions. ~~As used in~~ In this Title,
16 unless the context clearly indicates otherwise, ~~the~~
17 following definitions apply:

18 "~~Special education~~" means the kind of instruction
19 requiring special facilities or programs for ~~mentally~~
20 ~~retarded or physically handicapped children or for~~
21 ~~educationally handicapped persons.~~

22 "A ~~mentally retarded child~~" means any child who is not
23 capable of profiting from the regular instruction of a
24 school because his mental ability is substantially below the
25 mental ability of an average child of the same age. Mentally

1 ~~retarded children are classified as follows:~~

2 ~~(a) An "educable mentally retarded child" means a~~
3 ~~child who, at maturity, cannot be expected to attain a level~~
4 ~~of intellectual functioning greater than that commonly~~
5 ~~expected of an eleven-year-old child, but not less than that~~
6 ~~of a seven-year-old child.~~

7 ~~(b) A "trainable mentally retarded child" means a~~
8 ~~child who, at maturity, cannot be expected to attain a level~~
9 ~~of intellectual functioning greater than that commonly~~
10 ~~expected of a seven-year-old child and, for entrance into a~~
11 ~~training program, is capable of walking, of clean body~~
12 ~~habits, and of obedience to simple commands.~~

13 ~~(c) A "custodial mentally retarded child" means a~~
14 ~~child who does not show a likelihood of attaining clean body~~
15 ~~habits, responsiveness to directions, or means of~~
16 ~~intelligible communication.~~

17 "A ~~physically handicapped child~~" means a child who is
18 capable of profiting from the regular instruction with the
19 assistance of special equipment, special services, or
20 transportation to compensate for physical disabilities such
21 as, but not limited to, cardiac impairment, cerebral palsy,
22 chronic health problems, or inadequate speech, hearing or
23 vision.

24 "An ~~educationally handicapped person~~" means a child or
25 young adult under the age of twenty-one (21) years who

1 requires special assistance to the extent that he cannot
2 reasonably profit from the regular education program.

3 An educationally handicapped person's learning
4 disorders include, but are not limited to, conditions which
5 have been referred to as visual perception handicaps, brain
6 injury, minimal brain dysfunction, dyslexia, behavioral
7 maladjustment, and emotional disturbances. An educationally
8 handicapped person's disorders are not the result of
9 problems with visual acuity, hearing impairment, physical
10 handicaps, cultural or instructional factors, and mental
11 retardation.

12 (1) "Special education" means specially designed
13 instruction, given at no cost to the parents or guardians,
14 to meet the unique needs of a handicapped child, including
15 but not limited to classroom instruction, instruction in
16 physical education, home instruction, and instruction in
17 hospitals and institutions. The term includes but is not
18 limited to speech pathology, audiology, occupational
19 therapy, and physical therapy.

20 (2) "Handicapped child" means a child evaluated as
21 being mentally retarded, hard-of-hearing, deaf,
22 speech-impaired, visually handicapped, seriously emotionally
23 disturbed, orthopedically impaired, other health-impaired,
24 or as having specific learning disabilities, who because of
25 those impairments needs special education and related

1 services.

2 (3) "Deaf" means a hearing impairment which is so
3 severe that the child's hearing is nonfunctional for the
4 purpose of educational performance.

5 (4) "Hard-of-hearing" means a hearing impairment,
6 whether permanent or fluctuating, which adversely affects a
7 child's educational performance but which is not included
8 within the definition of "deaf".

9 (5) "Mentally retarded" means significantly subaverage
10 general intellectual functioning existing concurrently with
11 deficits in adaptive behavior and manifested during the
12 developmental period, which adversely affects a child's
13 educational performance.

14 (6) "Orthopedically impaired" means a severe
15 orthopedic impairment which adversely affects a child's
16 educational performance. The term includes but is not
17 limited to impairment caused by congenital anomaly (e.g.,
18 clubfoot or absence of some member), impairments caused by
19 disease (e.g., poliomyelitis, bone tuberculosis), and
20 impairments from other causes (e.g., fractures or burns
21 which cause contractures, amputation, cerebral palsy).

22 (7) "Other health-impaired" means limited strength,
23 vitality, or alertness due to chronic or acute health
24 problems such as a heart condition, tuberculosis, rheumatic
25 fever, nephritis, asthma, sickle-cell anemia, hemophilia,

1 epilepsy, lead poisoning, leukemia, or diabetes.

2 (B) ~~"seriously emotionally disturbed and behaviorally~~
 3 ~~BEHAVIORALLY maladjusted"~~ refers to a person who has been
 4 identified based on a comprehensive evaluation as having
 5 observable behavioral patterns which seriously inhibit the
 6 academic and social or emotional growth of the individual or
 7 the educational rights of others to the point that
 8 supportive services are required. These behavioral patterns
 9 may include but are not limited to:

10 (a) ~~excessive physical or verbal aggression toward~~
 11 ~~oneself or others and a lack of response to regular~~
 12 ~~educational intervention;~~

13 (b) ~~high frequency of persistent inattention to~~
 14 ~~academic or social tasks associated with regular classroom~~
 15 ~~performance; or~~

16 (c) ~~persistent withdrawal from peer or adult~~
 17 ~~interactions associated with the expected social development~~
 18 ~~in a regular educational environment;~~

19 (f) ~~"seriously emotionally disturbed" means a~~
 20 ~~condition exhibiting to a marked degree and over a long~~
 21 ~~period of time, an inability to learn which cannot be~~
 22 ~~explained by intellectual, sensory, or health factors; an~~
 23 ~~inability to build or maintain satisfactory interpersonal~~
 24 ~~relationships with peers and teachers; inappropriate types~~
 25 ~~of behavior or feelings under normal circumstances; a~~

1 ~~general pervasive mood of unhappiness or depression; or a~~
 2 ~~tendency to develop physical symptoms, pains, or fears~~
 3 ~~associated with personal or school problems; the term does~~
 4 ~~not include children who are socially maladjusted; the~~
 5 ~~seriously emotionally disturbed category may include~~
 6 ~~students who also have been diagnosed by appropriate~~
 7 ~~specialists as autistic, psychotic, sociopathic, or~~
 8 ~~schizophrenic. A seriously emotionally disturbed child's~~
 9 ~~disorders are not primarily the result of problems with~~
 10 ~~visual acuity, hearing impairment, physical handicaps,~~
 11 ~~cultural or instructional factors, or mental retardation;~~

12 ~~"EMOTIONALLY DISTURBED" MEANS A CONDITION EXHIBITING ONE OR~~
 13 ~~MORE OF THE FOLLOWING CHARACTERISTICS TO A MARKED DEGREE AND~~
 14 ~~OVER A LONG PERIOD OF TIME: AN INABILITY TO LEARN WHICH~~
 15 ~~CANNOT BE EXPLAINED BY INTELLECTUAL, SENSORY, OR HEALTH~~
 16 ~~FACTORS; AN INABILITY TO BUILD OR MAINTAIN SATISFACTORY~~
 17 ~~INTERPERSONAL RELATIONSHIPS WITH PEERS AND TEACHERS;~~
 18 ~~INAPPROPRIATE TYPES OF BEHAVIOR OR FEELINGS UNDER NORMAL~~
 19 ~~CIRCUMSTANCES; A GENERAL PERVASIVE MOOD OF UNHAPPINESS OR~~
 20 ~~DEPRESSION; OR A TENDENCY TO DEVELOP PHYSICAL SYMPTOMS,~~
 21 ~~PAINS, OR FEARS ASSOCIATED WITH PERSONAL OR SCHOOL PROBLEMS.~~
 22 ~~THE TERM DOES NOT INCLUDE CHILDREN WHO ARE SOCIALLY~~
 23 ~~MALADJUSTED. THE EMOTIONALLY DISTURBED CATEGORY MAY INCLUDE~~
 24 ~~STUDENTS WHO ALSO MAY HAVE BEEN DIAGNOSED BY APPROPRIATE~~
 25 ~~SPECIALISTS AS AUTISTIC, PSYCHOTIC, SOCIOPATHIC, OR~~

1 SCHIZOPHRENIC, AN EMOTIONALLY DISTURBED CHILD'S DISORDERS
 2 ARE NOT PRIMARILY THE RESULT OF PROBLEMS WITH VISUAL ACUITY,
 3 HEARING IMPAIRMENT, PHYSICAL HANDICAPS, CULTURAL OR
 4 INSTRUCTIONAL FACTORS, OR MENTAL RETARDATION. "EMOTIONALLY
 5 DISTURBED" REFERS TO A PERSON WHO HAS BEEN IDENTIFIED, BASED
 6 ON A COMPREHENSIVE EVALUATION, AS HAVING OBSERVABLE
 7 BEHAVIORAL PATTERNS WHICH SERIOUSLY INHIBIT THE ACADEMIC AND
 8 SOCIAL OR EMOTIONAL GROWTH OF THE INDIVIDUAL OR THE
 9 EDUCATIONAL RIGHTS OF OTHERS TO THE POINT THAT SUPPORTIVE
 10 SERVICES ARE REQUIRED. THESE BEHAVIORAL PATTERNS MAY
 11 INCLUDE:

12 (A) EXCESSIVE PHYSICAL OR VERBAL AGGRESSION TOWARD
 13 ONESELF OR OTHERS AND A LACK OF RESPONSE TO REGULAR
 14 EDUCATIONAL INTERVENTION;

15 (B) HIGH FREQUENCY OF PERSISTENT INATTENTION TO
 16 ACADEMIC OR SOCIAL TASKS ASSOCIATED WITH REGULAR CLASSROOM
 17 PERFORMANCE; AND

18 (C) PERSISTENT WITHDRAWAL FROM PEER OR ADULT
 19 INTERACTIONS ASSOCIATED WITH THE EXPECTED SOCIAL DEVELOPMENT
 20 IN A REGULAR EDUCATIONAL ENVIRONMENT.

21 †††(9) "Specific learning disability" means a
 22 disorder in one or more of the basic psychological processes
 23 involved in understanding or in using language, spoken or
 24 written, which may manifest itself in an imperfect ability
 25 to listen, think, speak, read, etc. spell, or do

1 mathematical calculations. The term includes but is not
 2 limited to such conditions as perceptual handicaps, brain
 3 injury, minimal brain dysfunction, dyslexia, and
 4 developmental aphasia. The term does not include children
 5 who have learning problems which are primarily the result of
 6 visual, hearing, or motor handicaps, mental retardation, or
 7 environmental, cultural, or economic disadvantages.

8 †††(10) "Speech-/LANGUAGE impaired" means a
 9 communication disorder such as stuttering, impaired
 10 articulation, or OR a language or voice impairment which
 11 adversely affects a child's INTERPERSONAL RELATIONSHIPS OR
 12 educational performance.

13 †††(11) "Visually handicapped" means a visual
 14 impairment which, after correction, adversely affects a
 15 child's educational performance. The term includes both
 16 partially seeing and blind children."

17 Section 2. Section 75-7802, R.C.M. 1947, is amended to
 18 read as follows:

19 "75-7802. Conduct of special education to comply with
 20 board of public education policies. (1) The conduct of
 21 special education programs shall comply with the policies
 22 recommended by the superintendent of public instruction and
 23 adopted by the board of public education. These policies may
 24 shall assure and include, but are not limited to:
 25 regulation--of--class--size,--class--grouping,--curriculum

1 ~~methods of instruction, teacher qualifications, distances of~~
 2 ~~travel to classes or programs, necessary equipment and other~~
 3 ~~special services;~~

4 (a) placement of handicapped children in the least
 5 restrictive alternative setting;

6 (b) due process for all handicapped children;

7 (c) use of child study teams to identify handicapped
 8 children and USE OF INSTRUCTIONAL TEAMS TO plan individual
 9 education programs;

10 (d) comprehensive evaluation for each handicapped
 11 child; and

12 ~~(e) other policies needed to regulate eligibility for~~
 13 ~~enrollment, class size, groupings, curriculum, equipment~~
 14 ~~purchases, and other special services~~ ASSURE A FULL FREE AND
 15 APPROPRIATE PUBLIC EDUCATION.

16 (2) The superintendent of public instruction shall
 17 promulgate rules to administer the policies of the board of
 18 public education."

19 Section 3. Section 75-7803, R.C.M. 1947, is amended to
 20 read as follows:

21 "75-7803. Duties of superintendent of public
 22 instruction. The superintendent of public instruction shall
 23 supervise and co-ordinate the conduct of special education
 24 in the state by:

25 (1) recommending to the board of public education for

1 adoption of those policies necessary to establish a planned
 2 and co-ordinated program of special education in the state;

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

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

8 ~~(4) discovering through observation, examination or~~
 9 ~~testing the children in the state who are in need of special~~
 10 ~~education establishing procedures to be used by school~~
 11 ~~district personnel in identifying handicapped children;~~

12 (5) ~~determining the type of instruction required by~~
 13 ~~children needing special education and preparing appropriate~~
 14 ~~curriculum guides for such instruction recommending to~~
 15 ~~districts the type of special education class or program~~
 16 ~~needed to serve the special education HANDICAPPED children~~
 17 ~~of the districts and preparing appropriate guides for~~
 18 ~~developing individual education programs;~~

19 (6) seeking for local districts appropriate ~~medical~~
 20 ~~psychiatric and psychological interdisciplinary~~ assistance
 21 from the state department of health and other public and
 22 private agencies in diagnosing the special education needs
 23 of children, in planning programs, and in admitting and
 24 discharging children from such programs;

25 (7) ~~recommending to districts the type of special~~

1 ~~education class or program needed to serve the special~~
 2 ~~education children of such district~~ assisting local school
 3 districts, institutions, and other agencies in developing
 4 full-service programs for all handicapped children;

5 (8) approving, as they are ~~established or~~ proposed and
 6 annually thereafter, those special education classes or
 7 programs which comply with the laws of the state of Montana,
 8 policies of the board of public education, and the
 9 regulations of the superintendent of public instruction;

10 (9) providing ~~supervision for and consulting with~~
 11 technical assistance to district superintendents,
 12 principals, teachers and trustees;

13 (10) conducting conferences, offering advice and
 14 otherwise co-operating with parents and other interested
 15 persons;

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

22 (12) ~~establishing~~ administering regional special
 23 education services for children in need of special education
 24 in accordance with policies of the board of public
 25 education. ~~Funds for such services shall be appropriated to~~

1 ~~the superintendent of public instruction from state~~
 2 ~~equalization funds and shall be coordinated with other~~
 3 ~~federal, state, and local funds as may be made available to~~
 4 ~~support regional special education programs and services."~~

5 Section 4. There is a new R.C.M. section that reads as
 6 follows:

7 Regional special education services. (1) There is
 8 established a regional special education services program to
 9 provide special education services to handicapped children
 10 who cannot efficiently be served by a program operated by an
 11 individual school district or by several cooperating school
 12 districts. Regional special education services shall be
 13 limited to:

14 (a) providing direct services to handicapped children
 15 that ~~WHO~~ are not ADEQUATELY served by a district program;

16 (b) initiating special services for handicapped
 17 children as a service model which may then be continued as
 18 an individual district or cooperative district program;

19 (c) coordinating and conducting in-service training
 20 for special education and local district personnel in the
 21 region; and

22 (d) assisting local districts in the region in the
 23 development and expansion of individual district or
 24 cooperative district programs.

25 (2) Funds for such services shall be appropriated to

1 the superintendent of public instruction from state
2 equalization funds and shall be available to support
3 regional special education programs and services. Such funds
4 may be supplemented by appropriate federal funds. The
5 authorization for regional special education services for
6 children expires on June 30, 1980.

7 Section 5. Section 75-7804, R.C.M. 1947, is amended to
8 read as follows:

9 "75-7804. Co-operation of state agencies. The state
10 department of health, the department of institutions, ~~the~~
11 ~~department of social and rehabilitation services,~~ and the
12 state school for the deaf and blind shall ~~assist~~ cooperate
13 with the superintendent of public instruction in assisting
14 school districts in discovering children in need of special
15 education, ~~in determining the type of special education for~~
16 ~~these children, and in generally supervising and~~
17 ~~co-ordinating special education in the state.~~ Nothing
18 herein shall be construed to interfere with the purpose and
19 function of these state agencies."

20 Section 6. Section 75-7805, R.C.M. 1947, is amended to
21 read as follows:

22 "~~75-7805. Mandatory establishment~~ Establishment of
23 special education program. (1) ~~The trustees of any district~~
24 ~~shall establish and maintain at least one applicable special~~
25 ~~education program when there are ten (10) or more educable~~

1 ~~mentally-retarded children in the district and at least one~~
2 ~~(1) applicable special education program when there are~~
3 ~~seven (7) or more trainable mentally-retarded children in~~
4 ~~the district, and at least one (1) applicable special~~
5 ~~education program when there are ten (10) or more physically~~
6 ~~handicapped children in the district. All handicapped~~
7 children in Montana are entitled to a free appropriate
8 public education provided in the least restrictive
9 alternative setting. To the maximum extent appropriate,
10 handicapped children, including children in public or
11 private institutions or other care facilities, shall be
12 educated with children who are not handicapped. Separate
13 schooling or other removal of handicapped children from the
14 regular educational environment may occur only when the
15 nature or severity of the handicap is such that education in
16 regular classes with the use of supplementary aids and
17 services cannot be achieved satisfactorily. After July 1,
18 1979 September 1, 1979 1977, the board of trustees of every
19 school district must provide or establish and maintain a
20 special education program for every handicapped person as
21 herein defined between the ages of ~~six (6)~~ and ~~twenty-one~~
22 ~~(21)~~ 18, inclusive in the district who cannot benefit
23 sufficiently from the regular programs of instruction by
24 reason of his mental, physical, emotional or learning
25 problems. After September 1, 1980, such services shall be

1 provided for all handicapped children between the ages of 3
 2 and 21, inclusive.

3 (2) The board of trustees of any school district may
 4 meet its obligation to serve handicapped persons by
 5 establishing its own special education program, by
 6 establishing a cooperative special education program, or by
 7 participating in a regional services program.

8 ~~(3) Eligibility for enrollment in special education~~
 9 ~~programs shall be determined under regulations of the~~
 10 ~~superintendent of public instruction issued pursuant to~~
 11 ~~policies adopted by the board of public education."~~

12 Section 7. Section 75-7806, R.C.M. 1947, is amended to
 13 read as follows:

14 "75-7806. ~~Discretionary establishment~~ Establishment of
 15 individual district special education program. (1) The
 16 trustees of any district, upon obtaining the approval of the
 17 superintendent of public instruction, may shall establish
 18 and maintain a special education program for:

19 ~~(1) four (4) or more educable mentally retarded~~
 20 ~~children;~~

21 ~~(2) four (4) or more physically handicapped children;~~

22 ~~(3) four (4) or more trainable mentally retarded~~
 23 ~~children;~~

24 ~~(4) four (4) or more educationally handicapped persons~~
 25 ~~between the ages of six (6) and twenty-one (21); whenever.~~

1 in the judgment of the trustees and the superintendent of
 2 public instruction:

3 (a) there are sufficient numbers of handicapped
 4 children in the district to justify the establishment of a
 5 program; or

6 ~~(5)(b) an individual children-requiring child requires~~
 7 special education services such as home or hospital
 8 tutoring, school-to-home telephone communication, or other
 9 individual programs; or,

10 ~~(6)(2) educable mentally retarded children, trainable~~
 11 ~~mentally retarded children, educationally handicapped~~
 12 ~~children or physically Prior to September 1, 1980, programs~~
 13 may be established for handicapped children under the age of
 14 six (6) years of age AGES 3 THROUGH 5 AND AFTER SEPTEMBER 1,
 15 1980, CHILDREN AGES 0 THROUGH 2 MAY BE PROVIDED SERVICE when
 16 the superintendent of public instruction has and the
 17 trustees have determined that such programs will:

18 (a) assist a child to achieve levels of competence
 19 that will enable him to participate in the regular
 20 instruction of the district when he could not participate
 21 without special education;

22 (b) permit the conservation or early acquisition of
 23 skills which will provide the child with an equal
 24 opportunity to participate in the regular instruction of the
 25 district; or

1 (c) provide other demonstrated educational advantages
 2 which will materially benefit the child or,

3 ~~{7}--educable--mentally-retarded-persons, educationally~~
 4 ~~handicapped-persons, or physically handicapped persons who~~
 5 ~~are not less than twenty one (21) or more than twenty five~~
 6 ~~{25} years of age when the superintendent of public~~
 7 ~~instruction has determined that such programs will assist a~~
 8 ~~person to achieve levels of competence that will enable him~~
 9 ~~to better participate in society;~~

10 ~~{8} eligibility for enrollment in special education~~
 11 ~~programs shall be determined under regulations of the~~
 12 ~~superintendent of public instruction issued pursuant to~~
 13 ~~policies adopted by the board of public education;~~

14 {3} PRIOR TO SEPTEMBER 1, 1980, PROGRAMS MAY BE
 15 ESTABLISHED FOR HANDICAPPED PERSONS BETWEEN THE AGES OF 18
 16 AND 21 INCLUSIVE WHEN THE SUPERINTENDENT OF PUBLIC
 17 INSTRUCTION AND THE TRUSTEES HAVE DETERMINED THAT SUCH
 18 PROGRAMS WILL CONTRIBUTE TO THE EDUCATIONAL DEVELOPMENT OF
 19 THOSE PERSONS.

20 {4} WHEN AN AGENCY WHICH HAS RESPONSIBILITY FOR A
 21 HANDICAPPED PERSON OVER 21 BUT NOT MORE THAN 25, INCLUSIVE,
 22 CANNOT PROVIDE APPROPRIATE SERVICES TO THAT PERSON, THE
 23 AGENCY MAY CONTRACT WITH THE LOCAL SCHOOL DISTRICT TO
 24 PROVIDE SUCH SERVICES.

25 ~~THE MONEYS RECEIVED BY THE LOCAL DISTRICT THROUGH SUCH~~

1 ~~CONTRACTED SERVICES WOULD REDUCE THE SPECIAL EDUCATION~~
 2 ~~FOUNDATION MONIES ACCORDINGLY."~~

3 Section 8. Section 75-7807, R.C.M. 1947, is amended to
 4 read as follows:

5 "75-7807. Petition of parents for establishment of
 6 special education program. The parents of ~~four (4) or more~~
 7 ~~persons requiring special education of the kind provided for~~
 8 ~~educable mentally retarded children, trainable mentally~~
 9 ~~retarded children, educationally handicapped persons or~~
 10 ~~physically handicapped children may petition the board of~~
 11 ~~trustees to establish a an individual district special~~
 12 ~~education program. Parents residing in several districts may~~
 13 ~~petition the board of trustees of each district to~~
 14 ~~co-operatively establish a special education program of one~~
 15 ~~kind for four (4) or more persons. The interlocal~~
 16 ~~co-operative agreement authorized in chapter 49 of Title 16,~~
 17 ~~R.C.M. 1947, may be used to establish a multi-district~~
 18 ~~special education program."~~

19 Section 9. Section 75-7808, R.C.M. 1947, is amended to
 20 read as follows:

21 "75-7808. Arranging attendance in another district in
 22 lieu of a special education program. ~~in lieu of providing~~
 23 ~~special education in the district with the approval of the~~
 24 ~~superintendent of public instruction, the trustees may~~
 25 ~~arrange for the attendance of a child in need of special~~

1 education in a special education program ~~approved by the~~
 2 ~~superintendent of public instruction and~~ offered in another
 3 district within the state of Montana. Arrangements for the
 4 attendance of a child in need of special education are not
 5 subject to the laws governing the attendance of pupils in
 6 schools outside the district and no tuition shall be charged
 7 the district of residence. HOWEVER, TUITION AS REQUIRED
 8 UNDER 75-6320 MAY BE CHARGED FOR CHILDREN WHO ARE NOT
 9 CONSIDERED FULL-TIME SPECIAL EDUCATION PUPILS AS DEFINED IN
 10 75-6902."

11 Section 10. Section 75-7809, R.C.M. 1947, is amended
 12 to read as follows:

13 "75-7809. Out-of-state tuition for special education
 14 children. ~~The~~ If the trustees of any district ~~may arrange~~
 15 ~~for~~ recommend to the superintendent of public instruction
 16 the attendance of a child in need of special education in a
 17 special education program offered outside of the state of
 18 Montana, ~~such such~~ arrangements shall not be subject to the
 19 out-of-state attendance provisions of the laws governing the
 20 attendance of pupils in schools outside the state of
 21 Montana.

22 Whenever the attendance of a child at an out-of-state
 23 special education program is ~~arranged by the board of trustees~~
 24 ~~may approved~~ BY THE SUPERINTENDENT OF PUBLIC INSTRUCTION, it
 25 ~~shall be the responsibility of the superintendent of public~~

1 instruction, in cooperation with the department of social
 2 and rehabilitation services and the department of
 3 institutions, to negotiate the program for the child and the
 4 amount and manner of payment of tuition. The amount of
 5 tuition shall be included as a contracted service in section
 6 75-7813.1(b)(iv)(A) in the ~~maximum budget without a vote for~~
 7 special education."

8 Section 11. There is a new R.C.M. section that reads
 9 as follows:

10 Arranging attendance in a private institution. Whenever
 11 the trustees determine that a handicapped child is in need
 12 of services that can only be provided by a private
 13 institution and the superintendent of public instruction so
 14 approves, the board of trustees may negotiate the amount and
 15 manner of payment of tuition and it shall be included as a
 16 contracted service as allowed in 75-7813.1(1)(b)(iv)(A).

17 Section 12. Section 75-7811, R.C.M. 1947, is amended
 18 to read as follows:

19 "75-7811. Determination of need for special education
 20 by trustees and approval of classes and programs by
 21 superintendent of public instruction. The determination of
 22 the children requiring special education and the type of
 23 special education needed by these children shall ~~not~~ be the
 24 responsibility of the trustees, ~~but shall be the~~
 25 ~~responsibility of the superintendent of public instruction.~~

1 ~~and such determination shall be made in compliance with the~~
 2 ~~procedures established in the rules of the superintendent of~~
 3 ~~public instruction.~~ Whenever the trustees of any district
 4 intend to establish a special education class or program,
 5 they shall apply for approval ~~and funding~~ of the class or
 6 program by the superintendent of public instruction. The
 7 superintendent of public instruction shall approve or
 8 disapprove the application for the special education class
 9 or program on the basis of its compliance with the laws of
 10 the state of Montana, the special education policies adopted
 11 by the board of public education, and the ~~regulations rules~~
 12 of the superintendent of public instruction. ~~No special~~
 13 ~~education class shall be operated by the trustees without~~
 14 ~~the approval of the superintendent of public instruction. NO~~
 15 ~~SPECIAL EDUCATION CLASS SHALL MAY BE OPERATED BY THE~~
 16 ~~TRUSTEES WITHOUT THE APPROVAL OF THE SUPERINTENDENT OF~~
 17 ~~PUBLIC INSTRUCTION.~~ Each special education class or program
 18 must be approved annually ~~to be funded as part of the~~
 19 ~~maximum-budget-without-a-vote for special education."~~

20 Section 13. Section 75-7813.1, R.C.M. 1947, is amended
 21 to read as follows:

22 "75-7813.1. Allowable cost schedule for special
 23 programs -- the superintendent of public instruction to make
 24 rules -- annual accounting. (1) For the purpose of
 25 determining the ~~maximum-budget-without-a-vote~~ for special

1 education as defined in sections 75-6905(20) and
 2 75-6905(21), the following schedule of allowable costs shall
 3 be followed by the school district in preparation of its
 4 special education budget for state aid request purposes and
 5 by the superintendent of public instruction in his review
 6 and approval of the budget for the purposes of determining
 7 the amount of the ~~maximum-budget-without-a-vote~~ for special
 8 education for the district, and as used in this schedule,
 9 "full-time special pupil" and "regular ANB" are to be
 10 determined in accordance with sections 75-6902 and 75-6903.

11 (a) Administration; salaries, benefits, supplies and
 12 other expenses of the superintendent's office, the office of
 13 the board of trustees, and the business office including:

14 (i) salaries of professional administrative
 15 personnel--a portion of the entire cost corresponding to the
 16 portion of entire working time which each such person
 17 devotes to the special program;

18 (ii) salaries of clerical personnel for administrative
 19 staff--the amount allowed for budget purposes per full-time
 20 special pupil may not exceed the amount budgeted per regular
 21 ANB for the current year;

22 (iii) supplies and other expenses--the amount allowed
 23 for budget purposes per full-time special pupil may not
 24 exceed the amount budgeted per regular ANB for the current
 25 year.

1 (b) Instruction; salaries, benefits, supplies,
2 textbooks and other expenses including:

3 (i) salaries of principals and clerical personnel--a
4 portion of the entire cost corresponding to the portion of
5 the entire working time which each such person devotes to
6 the special program but not to exceed one and seventy-five
7 hundredths (1.75) times the amount budgeted per regular ANB
8 for the current year;

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

17 (iii) teaching supplies and textbooks--if used
18 exclusively for special programs the actual total cost. If
19 shared with regular programs--the amount allowed for budget
20 purposes per full-time special pupil may not exceed the
21 amount budgeted per regular ANB for the current year;

22 (iv) other expenses--with the exception of the
23 following items, the amount allowed for budget purposes per
24 full-time special pupil may not exceed the amount budgeted
25 per regular ANB for the current year:

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 nonprofit PUBLIC OR PRIVATE
5 agencies--the actual total cost.

6 (B) Transportation costs for special education
7 personnel who must travel ~~on an itinerant basis from school~~
8 ~~to school or district to district in order to fulfill the~~
9 ~~responsibilities of their particular job description ON AN~~
10 ~~ITINERANT BASIS FROM SCHOOL TO SCHOOL OR DISTRICT TO~~
11 ~~DISTRICT~~--the actual cost to the district calculated on the
12 same mileage-rate basis MILEAGE RATE used by the district
13 for other travel reimbursement purposes. ~~Such travel may~~
14 ~~include in or out of district in service training programs~~
15 ~~as specified in the rules promulgated by the superintendent~~
16 ~~of public instruction~~

17 ~~(f) Special equipment for school buses necessary to~~
18 ~~accommodate special students; the actual total cost~~

19 (c) Library services; salaries, books and periodicals
20 and other expenses--the amount allowed for budget purposes
21 per full-time special pupil may not exceed the amount
22 budgeted per regular ANB for the current year.

23 (d) Supportive services; salaries, benefits and other
24 expenses:

25 (i) salaries and benefits of professional supportive

1 personnel--the entire cost if employed full-time in the
 2 special program. If such personnel are shared between
 3 special and regular programs--a portion of the entire cost
 4 corresponding to the entire working time which each such
 5 person devotes to the special program.

6 Professional supportive personnel may include
 7 counselors, social workers, psychologists, psychometrists,
 8 physicians, nurses, and physical and occupational
 9 therapists.

10 (ii) salaries and benefits of clerical personnel for
 11 professional personnel in supportive services--the entire
 12 cost if employed full-time in the special program. If such
 13 personnel are shared between special and regular programs--a
 14 portion of the entire cost corresponding to the entire
 15 working time which each such person devotes to the special
 16 program;

17 (iii) other expenses--the amount allowed for budget
 18 purposes per full-time special pupil may not exceed the
 19 amount budgeted per regular ANB for the current year.

20 (e) Operation of plant; salaries, benefits, heat for
 21 buildings, utilities except heating, and other supplies and
 22 expenses--the superintendent of public instruction shall
 23 make regulations fixing a ratio for operation spending per
 24 full-time special pupil to such spending per current year's
 25 regular ANB. The proration shall be based on the ratio

1 between the number of special pupils per class and the
 2 number of regular pupils per class and any other relevant
 3 factors.

4 (f) Maintenance of plant; salaries, benefits,
 5 replacements and parts, contracted services--the
 6 superintendent of public instruction shall make regulations
 7 fixing a ratio for maintenance spending per full-time
 8 special pupil to such spending per current year's regular
 9 ANB. The proration shall be based on the ratio between the
 10 number of special pupils per class and the number of regular
 11 pupils per class and any other relevant factors.

12 (g) School food services--the amount allowed for
 13 budget purposes per full-time special pupil may not exceed
 14 the amount budgeted per regular ANB for the current year.

15 (h) Student body and auxiliary services; salaries and
 16 other expenses-- the amount allowed for budget purposes per
 17 full-time special pupil may not exceed the amount budgeted
 18 per regular ANB for the current year.

19 (i) Other current charges; insurance, rental of land
 20 and buildings, and other expenses:

21 (i) rental of land and buildings, when such premises
 22 meet all requirements of the board of public education and
 23 the department of health and environmental sciences--no such
 24 costs may be charged to the special program without specific
 25 authorization from the superintendent of public instruction

1 unless the land and buildings are shared between the special
 2 and regular pupils, and the amount of the total cost that
 3 may be charged to the special program may not exceed
 4 whatever proportion the number of special full-time pupils
 5 are to the total enrollment of the school district of the
 6 previous year. Provided, however, that any school district
 7 renting land and buildings for special education purposes
 8 prior to the 1974-75 school year is not subject to this
 9 requirement, and will charge a portion of the total cost
 10 when shared with regular programs, to be prorated based on
 11 the amount of building space used by each type of program;

12 (ii) insurance--the superintendent of public
 13 instruction shall make regulations fixing a ratio for
 14 insurance spending per full-time special pupil to such
 15 spending per current year's regular ANB. The proration shall
 16 be based on the ratio between the number of special pupils
 17 per class and the number of regular pupils per class and any
 18 other relevant factors;

19 (iii) all other expenses--the amount allowed for budget
 20 purposes per full-time special pupil for a school year may
 21 not exceed the amount budgeted per regular ANB for the
 22 current school year.

23 (j) Capital outlay; ~~sites, buildings,~~ remodeling and
 24 improvements, equipment and other:

25 (i) classroom remodeling and improvements for a

1 program for physically handicapped students WHO NEED SPECIAL
 2 FACILITIES--the actual total cost; all other remodeling and
 3 improvements--the amount allowed for budget purposes per
 4 full-time special pupil for a school year may not exceed the
 5 amount budgeted per regular ANB for the current school year;

6 (ii) equipment--the actual total cost;
 7 ~~(iii) sites, buildings, no such costs may be charged~~
 8 ~~to the special program unless the sites and/or buildings are~~
 9 ~~shared between the special and regular students, and the~~
 10 ~~amount of the total cost that may be charged to the special~~
 11 ~~program may not exceed whatever proportion the number of~~
 12 ~~special full-time pupils are to the total full-time~~
 13 ~~enrollment of the school;~~

14 (III) SPECIAL EQUIPMENT FOR DISTRICT-OWNED SCHOOL BUSES
 15 NECESSARY TO ACCOMMODATE SPECIAL STUDENTS--THE ACTUAL TOTAL
 16 COST.

17 (IV) SPECIAL EQUIPMENT FOR SCHOOL BUSES CONTRACTED TO
 18 TRANSPORT SPECIAL STUDENTS--THAT PORTION OF THE CONTRACT
 19 PRICE ATTRIBUTABLE TO THE COST OF SPECIAL EQUIPMENT OR
 20 PERSONNEL REQUIRED TO ACCOMMODATE SPECIAL STUDENTS--THE
 21 ACTUAL SPECIAL COST.

22 ~~(iv) (iii) (iv) (v)~~ other--the amount allowed for budget
 23 purposes may not exceed the amount budgeted per regular ANB
 24 for the current year.

25 (k) Room and board costs when the special pupil has to

1 attend a program at such a distance from his home that
2 commuting is undesirable as determined by the superintendent
3 of public instruction.

4 (2) The superintendent of public instruction shall,
5 prior to ~~the time when a district must have prepared its~~
6 ~~budget for the 1975-1976~~ 1977-1978 year SEPTEMBER 1, 1977,
7 promulgate ~~revise~~ the rules and regulations, in accordance
8 with the policies of the board of public education, for:

9 (a) keeping necessary records for supportive and
10 administrative personnel and any personnel shared between
11 special and regular programs;

12 (b) defining the total special program caseload that
13 shall be assigned to specific support persons and the kinds
14 of professional specialties to be considered relevant to the
15 program before the district may count an allowable cost
16 under subsection (1)(d) of this section;

17 (c) defining the kinds or types of equipment whose
18 costs may be counted under subsections (1)(j)(ii) of this
19 section; and

20 (d) prescribing formulas for calculating the portion
21 of operation and maintenance costs, insurance, building and
22 rental costs properly allocable to the special programs, as
23 prescribed by subsections (1)(e), (1)(f), (1)(i)(i), and
24 (1)(i)(ii) of this section.

25 (3) An annual accounting of all expenditures of school

1 district general fund monies for special education shall be
2 made by the district trustees on forms furnished by the
3 superintendent of public instruction. The superintendent of
4 public instruction shall make rules for such accounting.

5 ~~(4) If a board of trustees chooses to exceed the~~
6 ~~budget approved by the superintendent of public instruction,~~
7 ~~costs in excess of the approved budget may not be reimbursed~~
8 ~~under the maximum budget without a vote for special~~
9 ~~education."~~

10 Section 14. Section 75-7814, R.C.M. 1947, is amended
11 to read as follows:

12 "75-7814. Special education child eligibility for
13 transportation. With the approval of the superintendent of
14 public instruction, any special education child shall be
15 eligible for transportation WHICH SHALL BE PROVIDED BY THE
16 RESIDENT DISTRICT when:

17 (1) he is enrolled in a special education class or
18 program operated by the district of such child's residence;

19 (2) he is enrolled ~~under an approved tuition agreement~~
20 in a special education class or program operated by a
21 Montana district other than the child's resident district;
22 or

23 (3) he is enrolled under an approved tuition agreement
24 in a special education class or program operated outside of
25 the state of Montana; or

1 ~~(4) he is enrolled under an approved tuition agreement~~
2 ~~in a private institution."~~

3 Section 15. Section 75-7816, R.C.M. 1947, is amended
4 to read as follows:

5 "75-7816. Financial assistance for under-six ~~(6)~~
6 year-old special education class or program. Any district
7 operating an approved special education class or program for
8 children under the age of ~~six (6)~~ years ~~or for people who~~
9 ~~are not less than twenty-one (21) or more than twenty-five~~
10 ~~(25) years of age~~ shall be eligible for financial assistance
11 in accordance with ~~section 75-7813~~ 75-7813.1 and for
12 transportation reimbursement under ~~section 75-7815.~~"

13 Section 16. Repealer. Section 75-7812, R.C.M. 1947, is
14 repealed.

-End-