

SENATE BILL NO. 278

INTRODUCED BY CHRISTIAENS  
BY REQUEST OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION

IN THE SENATE

JANUARY 29, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON FINANCE & CLAIMS.
	FIRST READING.
FEBRUARY 19, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 20, 1993	PRINTING REPORT.
	SECOND READING, DO PASS.
FEBRUARY 22, 1993	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 48; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 23, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON EDUCATION & CULTURAL RESOURCES.
	FIRST READING.
MARCH 2, 1993	ON MOTION, REREFERRED TO SELECT COMMITTEE ON SCHOOL FUNDING.
MARCH 17, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
	ON MOTION, REREFERRED TO COMMITTEE ON EDUCATION & CULTURAL RESOURCES.
MARCH 29, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 30, 1993	SECOND READING, CONCURRED IN.
APRIL 1, 1993	THIRD READING, CONCURRED IN. AYES, 97; NOES, 1.

RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 3, 1993

SECOND READING, AMENDMENTS  
CONCURRED IN.

APRIL 5, 1993

THIRD READING, AMENDMENTS  
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *Senate* BILL NO **278**  
 2 INTRODUCED BY *Christina*  
 3 BY REQUEST OF THE/SUPERINTENDENT OF PUBLIC INSTRUCTION  
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE  
 6 LAWS RELATED TO EDUCATIONAL SERVICES IN CHILDREN'S  
 7 PSYCHIATRIC HOSPITALS AND RESIDENTIAL TREATMENT FACILITIES;  
 8 LIMITING STATE GENERAL FUND APPROPRIATIONS TO COSTS THAT ARE  
 9 NOT REIMBURSABLE UNDER OTHER PROVISIONS OF STATE OR FEDERAL  
 10 LAW; CLARIFYING RESPONSIBILITIES AMONG AGENCIES; AMENDING  
 11 SECTIONS 20-7-420, 20-7-421, 20-7-422, 20-7-435, AND  
 12 20-7-436, MCA; AND PROVIDING AN EFFECTIVE DATE."  
 13

14 STATEMENT OF INTENT

15 A statement of intent is required for this bill because  
 16 [section 6] gives the superintendent of public instruction  
 17 authority to adopt rules, including but not limited to the  
 18 calculation of tuition, the calculation and distribution of  
 19 funding, and the determination of responsibilities of  
 20 children's psychiatric hospitals, residential treatment  
 21 facilities, and public schools.  
 22

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

24 Section 1. Section 20-7-420, MCA, is amended to read:

25 "20-7-420. Residency requirements -- financial

1 responsibility for special education. (1) In accordance with  
 2 the provisions of 1-1-215, a child's district of residence  
 3 for special education purposes is the residence of his the  
 4 child's parents or of his the child's guardian if the  
 5 parents are deceased, unless otherwise determined by the  
 6 court. This applies to a child living at home, in an  
 7 institution, or under foster care. If the parent has left  
 8 the state, the parent's last known district of residence is  
 9 the child's district of residence.

10 (2) The district of residence is financially  
 11 responsible for tuition as established under 20-5-305 and  
 12 20-5-312 for a child with disabilities, as defined in  
 13 20-7-401, including a child who has been placed by a state  
 14 agency in a foster care or group home licensed by the state.  
 15 The district of residence is not financially responsible for  
 16 tuition for a child with disabilities who is placed by a  
 17 state agency in an out-of-state public school or an  
 18 out-of-state private residential facility.

19 (3) If ~~a--child--with--disabilities--who-is-in-need-of~~  
 20 special-education-is-placed an eligible child, as defined in  
 21 20-7-436, is receiving inpatient treatment in an in-state  
 22 residential treatment facility or children's psychiatric  
 23 hospital, as defined in 20-7-436, but and the educational  
 24 ~~placement--is--in~~ services are provided by a public school  
 25 district under the provisions of 20-7-411 or 20-7-435, the

district of residence is responsible for tuition for the proportion of time the child is served in the public school district unless the public school district is operated primarily for the purpose of providing education to children who attend the residential facility or hospital.

(4) Under the provisions of 20-7-422(3), the superintendent of public instruction shall provide funds for the education fees required to provide a free appropriate public education for a child with disabilities who is in need of special education and related services and is placed by a state agency in an out-of-state private residential facility or out-of-state public school, provided that, in determining the special education services needed for the child with disabilities, the district of residence has complied with the rules promulgated under 20-7-402.

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

**Section 2.** Section 20-7-421, MCA, is amended to read:

"20-7-421. Arranging attendance in another district in lieu of a special education program -- tuition. (1) In accordance with a placement decision made by persons determining an individualized education program for a child with disabilities, the trustees may arrange for the attendance of a child in need of special education and

related services in another district within the state of Montana.

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

**Section 3.** Section 20-7-422, MCA, is amended to read:

"20-7-422. Out-of-state placement of children with disabilities -- payment of costs. (1) In accordance with a placement made by persons determining an individualized education program for a child with disabilities, the trustees of a district may arrange for the attendance of the child in a special education program offered outside of the state of Montana. The arrangements are not subject to the out-of-state attendance provisions in 20-5-301 and 20-5-311.

(2) (a) Except as provided in subsection (3), when the persons determining the individualized education program of a child with disabilities who is in need of special education recommend placement in an out-of-state private residential facility, the trustees of the district of residence shall negotiate the amount and manner of payment of all costs associated with the placement.

(b) If the placement of the child with disabilities has met the requirements of 20-7-402, the superintendent of public instruction shall approve the amount of special education instructional fees to be included as a contracted service. Only the special education instructional fees may

be included as a contracted service for the purposes of 20-7-431(1)(a)(iii)(A).

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

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

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

(4) Payments for a child with disabilities as negotiated in subsection (3) must be paid by the superintendent of public instruction from the state special education appropriation."

**Section 4.** Section 20-7-435, MCA, is amended to read:

"20-7-435. Funding of educational programs at in-state children's psychiatric hospitals and in-state residential treatment programs for eligible children with emotional

disturbances. (1) It is the intent of the legislature that eligible children in in-state children's psychiatric hospitals and residential treatment facilities be provided with an appropriate educational opportunity in a cost-effective manner, including the provision of a free appropriate public education for eligible children with disabilities that is consistent with state standards for the provision of special education and related services. General education programs for eligible children without disabilities must be provided in accordance with the requirements for a nonpublic school under the provisions of 20-5-109.

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

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

(a) monitor ensure the provision of an a free appropriate educational opportunity--for--the--child public

1 education and an education that is consistent with the  
 2 requirements for a nonpublic school in 20-5-109 for children  
 3 attending the hospital or residential treatment facility;

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

9 (c) fund up to 100% of any approved allowable costs  
 10 under this section from funds appropriated for this purpose,  
 11 with the exception of educational or vocational services for  
 12 which reimbursement is made under any provision of state or  
 13 federal law or a health insurance policy, subject to the  
 14 limitations in federal law that restrict access to parental  
 15 funds for a child with disabilities based on the child's  
 16 right to a free appropriate public education; and--An  
 17 appropriation--in--excess--of--the--allowable--costs--required  
 18 under--the--provisions--of--this--section--must--revert--to--the  
 19 state--equalization--aid--account--

20 (d) provide funding for allowable costs according to a  
 21 proration based on average daily membership.

22 (4) A supplemental education fee or tuition may not be  
 23 charged for an eligible Montana child who receives inpatient  
 24 treatment in and an education under contract with an  
 25 in-state children's psychiatric hospital or residential

1 treatment facility.

2 (5) If a children's psychiatric hospital or residential  
 3 treatment facility fails to provide an appropriate  
 4 educational--opportunity education in accordance with  
 5 20-5-109 or a free appropriate public education under the  
 6 provisions of this part for an eligible child at the  
 7 children's psychiatric hospital or residential treatment  
 8 facility or fails to negotiate a contract under the  
 9 provisions of subsection (2), the--superintendent--of--public  
 10 instruction--shall--negotiate--with the school district in  
 11 which the children's psychiatric hospital or residential  
 12 treatment facility is located for--the--supervision--and  
 13 implementation--of shall supervise and implement an  
 14 appropriate educational program for--a--child that is  
 15 consistent with accreditation standards provided for in  
 16 20-7-111 and with the provisions of 20-7-402 for children  
 17 attending the children's psychiatric hospital or residential  
 18 treatment facility. The--amount--negotiated--with--the--school  
 19 district--must--be--consistent--with--allowable--costs--that--may--be  
 20 negotiated--under--the--provisions--of--subsection--(3)--Funding  
 21 for the school district must be at the rate established  
 22 under the provisions of subsection (3)(d).

23 (6) Funds provided to a district under this section,  
 24 including funds received under the provisions of 20-7-420:

25 (a) must be deposited in the miscellaneous programs

fund of the district that provides the education program for an eligible child, regardless of the age or grade placement of the child who is served under a negotiated contract;

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

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

**Section 5.** Section 20-7-436, MCA, is amended to read:

"20-7-436. Definitions. For the purposes of 20-7-435 and this section, the following definitions apply:

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

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

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

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

(2) "Eligible child" means a child or youth who is less than 19 years of age and is emotionally disturbed as defined

in 20-7-401 or 52-2-101 and whose emotional problem is so severe that the child or youth has been placed in a children's psychiatric hospital or residential treatment facility for inpatient treatment of emotional problems.

(3) (a) "Residential treatment facility" means a facility in the state that:

(i) provides services for children with emotional disturbances and that is licensed by the state and operated for the primary purpose of providing long-term treatment services for mental illness, in a residential setting, to persons under 21 years of age;

(ii) operates for the primary purpose of providing residential psychiatric care to persons under 21 years of age;

(iii) is licensed by the department of health and environmental sciences; and

(iv) participates in the Montana medicaid program for psychiatric facilities or programs providing psychiatric services to individuals under 21 years of age.

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

**NEW SECTION. Section 6.** Rules. The superintendent of public instruction shall adopt rules for the implementation of 20-7-420, 20-7-421, 20-7-422, 20-7-435, and 20-7-436,

including but not limited to:

- (1) the calculation of tuition under 20-7-420;
- (2) the calculation and distribution of funds under 20-7-435; and
- (3) the determination of responsibilities of children's psychiatric hospitals, residential treatment facilities, and public schools.

**NEW SECTION. Section 7. Codification instruction.**  
[Section 6] is intended to be codified as an integral part of Title 20, chapter 7, and the provisions of Title 20, chapter 7, apply to [section 6].

**NEW SECTION. Section 8. Effective date.** [This act] is effective July 1, 1993.

-End-



STATE OF MONTANA - FISCAL NOTE

Form BD-15

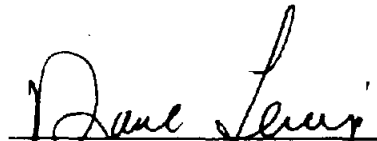
In compliance with a written request, there is hereby submitted a Fiscal Note for SB0278, as introduced.


**DESCRIPTION OF PROPOSED LEGISLATION:** An act generally revising the laws related to educational services in children's psychiatric hospitals and residential treatment facilities, limiting state general fund appropriations to costs that are not reimbursable under other provisions of state or federal law, and clarifying responsibilities among agencies.

**ASSUMPTIONS:**

1. About 70% of the students in the facilities are eligible for Medicaid.
2. All current facilities access fully the Medicaid reimbursement for residents of psychiatric facilities or programs providing psychiatric services to individuals under 21 even though Section 5 amends the definition of "residential treatment facility" and may eliminate current facilities from receiving education reimbursement from OPI.
3. The projected number of students to be served is 219 in FY94 and 222 in FY95.
4. The facilities include no more than 10% traditional academic coursework in their programs.
5. Clarification from the Health Care Finance Administration (HCFA) will confirm that individualized instruction which is part of the approved treatment plan is Medicaid reimbursable.
6. Indirect costs that are Medicaid reimbursable increase fundable costs by 30%.
7. 100% of facility requested allowable costs under current statute also are fully approvable allowable costs as set out in current statute: \$2,610,000 for FY94 and \$2,755,000 for FY95.
8. Of the \$3,270,000 of state general fund dollars designated for educational services in children's psychiatric hospitals and residential treatment facilities, \$1,285,000 will be used for Medicaid match.
9. The general fund match requirements are 28.98% for FY94 and 29.5% for FY95.
10. The executive budget includes a \$2,649,791 general fund biennial appropriation for in-state residential treatment. However, this amount is not displayed for the purposes of this fiscal note because it is a biennial appropriation.
11. The Department of Health and Environmental Sciences assumes there will be no fiscal impact on its agency.
12. Education costs are not the responsibility of the Department of Family Services.
13. General fund money not used for the Medicaid match requirement will be used to fund in-state residential treatment costs not covered by Medicaid reimbursed funds.

(Continued)

 2-5-93  
DAVID LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

 2/9/93  
CHRIS CHRISTIAENS, PRIMARY SPONSOR      DATE

Fiscal Note for SB0278, as introduced

**SB 278**

FISCAL IMPACT:

	<u>FY '94</u>			<u>FY '95</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
<u>Expenditures:</u>						
Allowable Costs	2,610,000	1,585,000	(1,025,000)	2,755,000	1,685,000	(1,070,000)
Federal Medicaid	<u>0</u>	<u>1,518,000</u>	<u>1,518,000</u>	<u>0</u>	<u>1,591,000</u>	<u>1,591,000</u>
Total	2,610,000	3,103,000	493,000	2,755,000	3,276,000	521,000
	<u>FY '94</u>			<u>FY '95</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
<u>Revenues:</u>						
Federal Medicaid	0	1,518,000	1,518,000	0	1,591,000	1,591,000
<u>Net Impact:</u>						
General Fund Savings			1,025,000			1,070,000

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

The facilities will actually experience a increase in funding because Medicaid includes some costs that are not included in the current allowable costs.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The \$1.3 million that will be used for Medicaid match will generate an additional \$3.109 million federal Medicaid funding for Montana. The general fund savings for the 1995 biennium should continue into the future.

TECHNICAL NOTES:

Approximately \$1,285,000 of this appropriation will be required to be available to the Department of Family Services for Medicaid match. The remainder will be for direct payments to the facilities.

APPROVED BY COMM. ON  
FINANCE AND CLAIMS

SENATE BILL NO. 278

INTRODUCED BY CHRISTIAENS

BY REQUEST OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATED TO EDUCATIONAL SERVICES IN CHILDREN'S PSYCHIATRIC HOSPITALS AND RESIDENTIAL TREATMENT FACILITIES; LIMITING STATE GENERAL-FUND APPROPRIATIONS TO COSTS THAT ARE NOT REIMBURSABLE UNDER OTHER PROVISIONS OF STATE OR FEDERAL LAW; CLARIFYING RESPONSIBILITIES AMONG AGENCIES; AMENDING SECTIONS 20-7-420, 20-7-421, 20-7-422, 20-7-435, AND 20-7-436, AND 20-9-343, MCA; AND PROVIDING AN EFFECTIVE DATE."

## STATEMENT OF INTENT

A statement of intent is required for this bill because [section 6 7] gives the superintendent of public instruction authority to adopt rules, including but not limited to the calculation of tuition, the calculation and distribution of funding, and the determination of responsibilities of children's psychiatric hospitals, residential treatment facilities, and public schools.

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

**Section 1.** Section 20-7-420, MCA, is amended to read:

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

(2) The district of residence is financially responsible for tuition as established under 20-5-305 and 20-5-312 for a child with disabilities, as defined in 20-7-401, including a child who has been placed by a state agency in a foster care or group home licensed by the state. The district of residence is not financially responsible for tuition for a child with disabilities who is placed by a state agency in an out-of-state public school or an out-of-state private residential facility.

(3) If ~~a--child--with--disabilities--who-is-in-need-of special-education-is-placed~~ an eligible child, as defined in 20-7-436, is receiving inpatient treatment in an in-state residential treatment facility or children's psychiatric hospital, as defined in 20-7-436, ~~but and~~ the educational placement--is--in services are provided by a public school

district under the provisions of 20-7-411 or 20-7-435, the district--of--residence--is--responsible-for-tuition-for-the proportion-of-time-the-child-is-served-in-the-public--school district--unless--the--public--school--district--is-operated primarily-for-the-purpose-of-providing-education-to-children who---attend---the---residential---facility---or---hospital-- SUPERINTENDENT OF PUBLIC INSTRUCTION SHALL REIMBURSE THE DISTRICT PROVIDING THE SERVICES FOR THE NEGOTIATED AMOUNT, AS ESTABLISHED PURSUANT TO 20-7-435(5), THAT REPRESENTS THE DISTRICT'S COSTS OF PROVIDING EDUCATION AND RELATED SERVICES. PAYMENTS MUST BE MADE FROM FUNDS APPROPRIATED FOR THIS PURPOSE. IF THE NEGOTIATED AMOUNT EXCEEDS THE DAILY MEMBERSHIP RATE UNDER 20-7-435(3) AND ANY PER-ANB AMOUNT PAID ON THE FOUNDATION PROGRAM SCHEDULES AS PROVIDED IN 20-9-318 THROUGH 20-9-320, THE SUPERINTENDENT OF PUBLIC INSTRUCTION SHALL PAY THE REMAINING BALANCE FROM THE STATE EQUALIZATION AID ACCOUNT. HOWEVER, THE AMOUNT SPENT FROM THE STATE EQUALIZATION AID ACCOUNT FOR THIS PURPOSE MAY NOT EXCEED \$500,000 DURING ANY BIENNIUM.

(4) Under the provisions of 20-7-422(3), the superintendent of public instruction shall provide funds for the education fees required to provide a free appropriate public education for a child with disabilities who is in need of special education and related services and is placed by a state agency in an out-of-state private residential

facility or out-of-state public school, provided that, in determining the special education services needed for the child with disabilities, the district of residence has complied with the rules promulgated under 20-7-402.

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

**Section 2.** Section 20-7-421, MCA, is amended to read:

"20-7-421. Arranging attendance in another district in lieu of a special education program -- tuition. (1) In accordance with a placement decision made by persons determining an individualized education program for a child with disabilities, the trustees may arrange for the attendance of a child in need of special education and related services in another district within the state of Montana.

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

**Section 3.** Section 20-7-422, MCA, is amended to read:

"20-7-422. Out-of-state placement of children with disabilities -- payment of costs. (1) In accordance with a placement made by persons determining an individualized education program for a child with disabilities, the trustees of a district may arrange for the attendance of the child in a special education program offered outside of the

1 state of Montana. The arrangements are not subject to the  
2 out-of-state attendance provisions in 20-5-301 and 20-5-311.

3 (2) (a) Except as provided in subsection (3), when the  
4 persons determining the individualized education program of  
5 a child with disabilities who is in need of special  
6 education recommend placement in an out-of-state private  
7 residential facility, the trustees of the district of  
8 residence shall negotiate the amount and manner of payment  
9 of all costs associated with the placement.

10 (b) If the placement of the child with disabilities has  
11 met the requirements of 20-7-402, the superintendent of  
12 public instruction shall approve the amount of special  
13 education instructional fees to be included as a contracted  
14 service. Only the special education instructional fees may  
15 be included as a contracted service for the purposes of  
16 20-7-431(1)(a)(iii)(A).

17 (3) Whenever a child with disabilities who is in need  
18 of special education and related services is adjudicated by  
19 a court of competent jurisdiction to be an abused,  
20 neglected, or dependent child as defined in 41-3-102 or a  
21 youth in need of supervision or delinquent youth as defined  
22 in 41-5-103 and is placed by a state agency in an  
23 out-of-state private residential facility, the  
24 superintendent of public instruction shall negotiate with:

25 (a) the provider for the amount and manner of payment

1 of education fees consistent with the individualized  
2 education program determined for the child under the  
3 provisions of 20-7-402; and

4 (b) the state agency that makes the placement for the  
5 portion of the placement costs that represents the child's  
6 education program.

7 (4) Payments for a child with disabilities as  
8 negotiated in subsection (3) must be paid by the  
9 superintendent of public instruction from the state special  
10 education appropriation."

11 **Section 4.** Section 20-7-435, MCA, is amended to read:

12 "20-7-435. Funding of educational programs at in-state  
13 children's psychiatric hospitals and in-state residential  
14 treatment programs for eligible children with emotional  
15 disturbances. (1) It is the intent of the legislature that  
16 eligible children in in-state children's psychiatric  
17 hospitals and residential treatment facilities be provided  
18 with an appropriate educational opportunity in a  
19 cost-effective manner, including the provision of a free  
20 appropriate public education for eligible children with  
21 disabilities that is consistent with state standards for the  
22 provision of special education and related services. General  
23 education programs for eligible children without  
24 disabilities must be provided in accordance with the  
25 requirements for a nonpublic school under the provisions of

1 20-5-109.

2 (2) The superintendent of public instruction may  
3 contract with an in-state children's psychiatric hospital or  
4 residential treatment facility for provision of an  
5 educational program for an eligible child in the hospital or  
6 treatment facility.

7 (3) Whenever the superintendent of public instruction  
8 contracts with an in-state children's psychiatric hospital  
9 or residential treatment facility for provision of an  
10 educational program for an eligible child in the children's  
11 psychiatric hospital or residential treatment facility, the  
12 superintendent of public instruction shall:

13 (a) monitor ensure the provision of an a free  
14 appropriate educational--opportunity--for--the-child public  
15 education and an education that is consistent with the  
16 requirements for a nonpublic school in 20-5-109 for children  
17 attending the hospital or residential treatment facility;

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

23 (c)--fund-up-to-100%-of--any--approved--allowable--costs  
24 under-this-section-from-funds-appropriated-for-this-purpose;  
25 with-the-exception-of-educational-or-vocational-services-for

1 which--reimbursement-is-made-under-any-provision-of-state-or  
2 federal-law-or-a-health-insurance--policy;--subject--to--the  
3 limitations--in-federal-law-that-restrict-access-to-parental  
4 funds-for-a-child-with-disabilities--based--on--the--child's  
5 right--to--a--free--appropriate--public--education;--and--An  
6 appropriation-in-excess--of--the--allowable--costs--required  
7 under--the--provisions--of--this--section-must-revert-to-the  
8 state-equalization-aid-account;

9 (C) FROM APPROPRIATIONS PROVIDED FOR THIS PURPOSE, FUND  
10 ANY APPROVED ALLOWABLE COSTS UNDER THIS SECTION, WITH THE  
11 EXCEPTION OF SERVICES FOR WHICH REIMBURSEMENT IS MADE UNDER  
12 ANY PROVISION OF STATE OR FEDERAL LAW OR AN INSURANCE  
13 POLICY;

14 (d) provide funding for allowable costs according to a  
15 proration based on average daily membership.

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

21 (5) If a children's psychiatric hospital or residential  
22 treatment facility fails to provide an appropriate  
23 educational--opportunity education in accordance with  
24 20-5-109 or a free appropriate public education under the  
25 provisions of this part for an eligible child at the

1 children's psychiatric hospital or residential treatment  
 2 facility or fails to negotiate a contract under the  
 3 provisions of subsection (2), ~~the superintendent of public~~  
 4 ~~instruction--shall--negotiate--with~~ THE SUPERINTENDENT OF  
 5 PUBLIC INSTRUCTION SHALL NEGOTIATE WITH the school district  
 6 in which the children's psychiatric hospital or residential  
 7 treatment facility is located ~~for--the--supervision--and~~  
 8 ~~implementation-of shall--supervise--and--implement~~ FOR THE  
 9 SUPERVISION AND IMPLEMENTATION OF an appropriate educational  
 10 program ~~for--a--child that is consistent with accreditation~~  
 11 ~~standards provided for in 20-7-111 and with the provisions~~  
 12 ~~of 20-7-402 for children attending the children's~~  
 13 ~~psychiatric hospital or residential treatment facility. The~~  
 14 ~~amount---negotiated---with---the--school--district--must--be~~  
 15 ~~consistent-with-allowable-costs-that-may-be-negotiated-under~~  
 16 ~~the-provisions-of-subsection-(3); Funding--for--the--school~~  
 17 ~~district---must---be--at--the--rate--established--under--the~~  
 18 ~~provisions-of-subsection-(3)(d);~~ THE AMOUNT NEGOTIATED WITH  
 19 THE SCHOOL DISTRICT MUST INCLUDE ALL EDUCATION AND RELATED  
 20 SERVICES COSTS THAT MAY BE NEGOTIATED UNDER THE PROVISIONS  
 21 OF SUBSECTION (3) AND ALL EDUCATION AND RELATED SERVICES  
 22 COSTS NECESSARY TO FULFILL THE REQUIREMENTS OF PROVIDING THE  
 23 CHILD WITH AN EDUCATION.  
 24 (6) Funds provided to a district under this section,  
 25 including funds received under the provisions of 20-7-420:

1 (a) must be deposited in the miscellaneous programs  
 2 fund of the district that provides the education program for  
 3 an eligible child, regardless of the age or grade placement  
 4 of the child who is served under a negotiated contract;  
 5 (b) are not subject to the budget limitations in  
 6 20-9-315; and  
 7 (c) may not be included in the foundation program  
 8 amount of the district."

9 **Section 5.** Section 20-7-436, MCA, is amended to read:  
 10 "20-7-436. Definitions. For the purposes of 20-7-435  
 11 and this section, the following definitions apply:  
 12 (1) (a) "Children's psychiatric hospital" means a  
 13 freestanding hospital in Montana that:  
 14 (i) has the primary purpose of providing clinical care  
 15 for children whose clinical diagnosis and resulting  
 16 treatment plan require in-house residential psychiatric  
 17 care; and  
 18 (ii) is accredited by the joint commission on  
 19 accreditation of healthcare organizations, the standards of  
 20 the health care financing administration, or other  
 21 comparable accreditation.  
 22 (b) The term does not include programs for children and  
 23 youth that have the treatment of chemical dependency as the  
 24 primary reason for treatment.  
 25 (2) "Eligible child" means a child or youth who is less

than 19 years of age and is emotionally disturbed as defined in 20-7-401 or 52-2-101 and whose emotional problem is so severe that the child or youth has been placed in a children's psychiatric hospital or residential treatment facility for inpatient treatment of emotional problems.

(3) (a) "Residential treatment facility" means a facility in the state that:

(i) provides services for children with emotional disturbances ~~and that is licensed by the state and operated for the primary purpose of providing long-term treatment services for mental illness, in a residential setting, to persons under 21 years of age;~~

(ii) operates for the primary purpose of providing residential psychiatric care to persons under 21 years of age;

(iii) is licensed by the department of health and environmental sciences; and

(iv) participates in the Montana medicaid program for psychiatric facilities or programs providing psychiatric services to individuals under 21 years of age; OR

(v) NOTWITHSTANDING THE PROVISIONS OF SUBSECTIONS (3)(A)(III) AND (3)(A)(IV), HAS RECEIVED A CERTIFICATE OF NEED FROM THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES PURSUANT TO TITLE 50, CHAPTER 5, PART 3, PRIOR TO JANUARY 1, 1992.

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

#### **SECTION 6. SECTION 20-9-343, MCA, IS AMENDED TO READ:**

"20-9-343. (Temporary) Definition of and revenue for state equalization aid. (1) As used in this title, the term "state equalization aid" means the money deposited in the state special revenue fund as required in this section plus any legislative appropriation of money from other sources for:

(a) distribution to the public schools for the payment of guaranteed tax base aid and for equalization of the foundation program;

(b) the Montana educational telecommunications network as provided in 20-32-101; and

(c) filing fees for school district audits as required by 2-7-514(2).

(2) The superintendent of public instruction may spend funds appropriated for state equalization aid, as required by subsections (1)(a) and (1)(b), throughout the biennium.

(3) The following must be paid into the state special revenue fund for state equalization aid to public schools of the state:

(a) money received from the collection of income taxes under chapter 30 of Title 15, as provided by 15-1-501;



1 (b) except as provided in 15-31-702, money received  
2 from the collection of corporation license and income taxes  
3 under chapter 31 of Title 15, as provided by 15-1-501;

4 (c) money allocated to state equalization from the  
5 collection of the severance tax on coal;

6 (d) money received from the treasurer of the United  
7 States as the state's shares of oil, gas, and other mineral  
8 royalties under the federal Mineral Lands Leasing Act, as  
9 amended;

10 (e) interest and income money described in 20-9-341 and  
11 20-9-342;

12 (f) money received from the state equalization aid levy  
13 under 20-9-360;

14 (g) income from the lottery, as provided in 23-7-402;

15 (h) the surplus revenues collected by the counties for  
16 foundation program support according to 20-9-331 and  
17 20-9-333;

18 (i) investment income earned by investing money in the  
19 state equalization aid account in the state special revenue  
20 fund; and

21 (j) 15% of the income and earnings of all coal  
22 severance tax funds as provided in 17-5-704.

23 (4) The superintendent of public instruction shall  
24 request the board of investments to invest the money in the  
25 state equalization aid account to maximize investment

1 earnings to the account.

2 (5) Any surplus revenue in the state equalization aid  
3 account in the second year of a biennium may be used to  
4 reduce any appropriation required for the next succeeding  
5 biennium. (Terminates June 30, 1993--sec. 5, Ch. 729, L.  
6 1991.)

7 20-9-343. (Effective July 1, 1993) Definition of and  
8 revenue for state equalization aid. (1) As used in this  
9 title, the term "state equalization aid" means the money  
10 deposited in the state special revenue fund as required in  
11 this section plus any legislative appropriation of money  
12 from other sources for:

13 (a) distribution to the public schools for the purposes  
14 of payment of guaranteed tax base aid and equalization of  
15 the foundation program;

16 (b) negotiated payments authorized under 20-7-420(3) up  
17 to \$500,000 per biennium; and

18 (c) for the Montana educational telecommunications  
19 network as provided in 20-32-101.

20 (2) The superintendent of public instruction may spend  
21 funds appropriated for state equalization aid as required  
22 for the purposes of guaranteed tax base aid, the foundation  
23 program, negotiated payments authorized under 20-7-420(3),  
24 and the Montana educational telecommunications network,  
25 throughout the biennium.

1 (3) The following must be paid into the state special  
2 revenue fund for state equalization aid to public schools of  
3 the state:

4 (a) money received from the collection of income taxes  
5 under chapter 30 of Title 15, as provided by 15-1-501;

6 (b) except as provided in 15-31-702, money received  
7 from the collection of corporation license and income taxes  
8 under chapter 31 of Title 15, as provided by 15-1-501;

9 (c) money allocated to state equalization from the  
10 collection of the severance tax on coal;

11 (d) money received from the treasurer of the United  
12 States as the state's shares of oil, gas, and other mineral  
13 royalties under the federal Mineral Lands Leasing Act, as  
14 amended;

15 (e) interest and income money described in 20-9-341 and  
16 20-9-342;

17 (f) money received from the state equalization aid levy  
18 under 20-9-360;

19 (g) income from the lottery, as provided in 23-7-402;

20 (h) the surplus revenues collected by the counties for  
21 foundation program support according to 20-9-331 and  
22 20-9-333;

23 (i) investment income earned by investing money in the  
24 state equalization aid account in the state special revenue  
25 fund; and

1 (j) 15% of the income and earnings of all coal  
2 severance tax funds as provided in 17-5-704.

3 (4) The superintendent of public instruction shall  
4 request the board of investments to invest the money in the  
5 state equalization aid account to maximize investment  
6 earnings to the account.

7 (5) Any surplus revenue in the state equalization aid  
8 account in the second year of a biennium may be used to  
9 reduce any appropriation required for the next succeeding  
10 biennium."

11 **NEW SECTION. Section 7. Rules.** The superintendent of  
12 public instruction shall adopt rules for the implementation  
13 of 20-7-420, 20-7-421, 20-7-422, 20-7-435, and 20-7-436,  
14 including but not limited to:

15 (1) the calculation of tuition under 20-7-420;

16 (2) the calculation and distribution of funds under  
17 20-7-435; and

18 (3) the determination of responsibilities of children's  
19 psychiatric hospitals, residential treatment facilities, and  
20 public schools.

21 **NEW SECTION. Section 8. Codification** instruction.  
22 [Section 6 7] is intended to be codified as an integral part  
23 of Title 20, chapter 7, and the provisions of Title 20,  
24 chapter 7, apply to [section 6 7].

25 **NEW SECTION. Section 9. Effective date.** [This act] is

SB 0278/02

1 effective July 1, 1993.

-End-

## 1 SENATE BILL NO. 278

2 INTRODUCED BY CHRISTIAENS

3 BY REQUEST OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE  
6 LAWS RELATED TO EDUCATIONAL SERVICES IN CHILDREN'S  
7 PSYCHIATRIC HOSPITALS AND RESIDENTIAL TREATMENT FACILITIES;  
8 LIMITING STATE GENERAL-FUND APPROPRIATIONS TO COSTS THAT ARE  
9 NOT REIMBURSABLE UNDER OTHER PROVISIONS OF STATE OR FEDERAL  
10 LAW; CLARIFYING RESPONSIBILITIES AMONG AGENCIES; AMENDING  
11 SECTIONS 20-7-420, 20-7-421, 20-7-422, 20-7-435, AND  
12 20-7-436, AND 20-9-343, MCA; AND PROVIDING AN EFFECTIVE  
13 DATE."  
14

## 15 STATEMENT OF INTENT

16 A statement of intent is required for this bill because  
17 [section 6 7] gives the superintendent of public instruction  
18 authority to adopt rules, including but not limited to the  
19 calculation of tuition, the calculation and distribution of  
20 funding, and the determination of responsibilities of  
21 children's psychiatric hospitals, residential treatment  
22 facilities, and public schools.  
23

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

25 Section 1. Section 20-7-420, MCA, is amended to read:

1 "20-7-420. Residency requirements -- financial  
2 responsibility for special education. (1) In accordance with  
3 the provisions of 1-1-215, a child's district of residence  
4 for special education purposes is the residence of his the  
5 child's parents or of his the child's guardian if the  
6 parents are deceased, unless otherwise determined by the  
7 court. This applies to a child living at home, in an  
8 institution, or under foster care. If the parent has left  
9 the state, the parent's last known district of residence is  
10 the child's district of residence.

11 (2) The district of residence is financially  
12 responsible for tuition as established under 20-5-305 and  
13 20-5-312 for a child with disabilities, as defined in  
14 20-7-401, including a child who has been placed by a state  
15 agency in a foster care or group home licensed by the state.  
16 The district of residence is not financially responsible for  
17 tuition for a child with disabilities who is placed by a  
18 state agency in an out-of-state public school or an

THERE ARE NO CHANGES IN THIS BILL  
AND WILL NOT BE REPRINTED. PLEASE  
REFER TO YELLOW COPY FOR COMPLETE TEXT.

HOUSE STANDING COMMITTEE REPORT

March 29, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Education and Cultural Resources report that Senate Bill 278 (third reading copy -- blue) be concurred in as amended .

Signed: H. S. "Sonny" Hanson  
Sonny Hanson, Chair

And, that such amendments read:

Carried by: Rep. Harrington

1. Page 11, line 25.  
Strike: "1992"  
Insert: "1993"

-END-

SB 278

Committee Vote:  
Yes 17 , No 1 .

HOUSE

## SENATE BILL NO. 278

INTRODUCED BY CHRISTIAENS

BY REQUEST OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATED TO EDUCATIONAL SERVICES IN CHILDREN'S PSYCHIATRIC HOSPITALS AND RESIDENTIAL TREATMENT FACILITIES; LIMITING STATE GENERAL-FUND APPROPRIATIONS TO COSTS THAT ARE NOT REIMBURSABLE UNDER OTHER PROVISIONS OF STATE OR FEDERAL LAW; CLARIFYING RESPONSIBILITIES AMONG AGENCIES; AMENDING SECTIONS 20-7-420, 20-7-421, 20-7-422, 20-7-435, AND 20-7-436, AND 20-9-343, MCA; AND PROVIDING AN EFFECTIVE DATE."

## STATEMENT OF INTENT

A statement of intent is required for this bill because [section 6 ] gives the superintendent of public instruction authority to adopt rules, including but not limited to the calculation of tuition, the calculation and distribution of funding, and the determination of responsibilities of children's psychiatric hospitals, residential treatment facilities, and public schools.

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

Section 1. Section 20-7-420, MCA, is amended to read:

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

(2) The district of residence is financially responsible for tuition as established under 20-5-305 and 20-5-312 for a child with disabilities, as defined in 20-7-401, including a child who has been placed by a state agency in a foster care or group home licensed by the state. The district of residence is not financially responsible for tuition for a child with disabilities who is placed by a state agency in an out-of-state public school or an out-of-state private residential facility.

(3) If ~~a--child--with--disabilities--who-is-in-need-of special-education-is-placed~~ an eligible child, as defined in 20-7-436, is receiving inpatient treatment in an in-state residential treatment facility or children's psychiatric hospital, as defined in 20-7-436, but and the educational ~~placement--is--in~~ services are provided by a public school

1 district under the provisions of 20-7-411 or 20-7-435, the  
 2 ~~district--of--residence--is--responsible-for-tuition-for-the~~  
 3 ~~proportion-of-time-the-child-is-served-in-the-public--school~~  
 4 ~~district--unless--the--public--school--district--is-operated~~  
 5 ~~primarily-for-the-purpose-of-providing-education-to-children~~  
 6 ~~who---attend---the---residential---facility---or---hospital--~~  
 7 SUPERINTENDENT OF PUBLIC INSTRUCTION SHALL REIMBURSE THE  
 8 DISTRICT PROVIDING THE SERVICES FOR THE NEGOTIATED AMOUNT,  
 9 AS ESTABLISHED PURSUANT TO 20-7-435(5), THAT REPRESENTS THE  
 10 DISTRICT'S COSTS OF PROVIDING EDUCATION AND RELATED  
 11 SERVICES. PAYMENTS MUST BE MADE FROM FUNDS APPROPRIATED FOR  
 12 THIS PURPOSE. IF THE NEGOTIATED AMOUNT EXCEEDS THE DAILY  
 13 MEMBERSHIP RATE UNDER 20-7-435(3) AND ANY PER-ANB AMOUNT  
 14 PAID ON THE FOUNDATION PROGRAM SCHEDULES AS PROVIDED IN  
 15 20-9-318 THROUGH 20-9-320, THE SUPERINTENDENT OF PUBLIC  
 16 INSTRUCTION SHALL PAY THE REMAINING BALANCE FROM THE STATE  
 17 EQUALIZATION AID ACCOUNT. HOWEVER, THE AMOUNT SPENT FROM THE  
 18 STATE EQUALIZATION AID ACCOUNT FOR THIS PURPOSE MAY NOT  
 19 EXCEED \$500,000 DURING ANY BIENNIUM.

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

1 facility or out-of-state public school, provided that, in  
 2 determining the special education services needed for the  
 3 child with disabilities, the district of residence has  
 4 complied with the rules promulgated under 20-7-402.

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

8 **Section 2.** Section 20-7-421, MCA, is amended to read:

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

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

19 **Section 3.** Section 20-7-422, MCA, is amended to read:

20 "20-7-422. Out-of-state placement of children with  
 21 disabilities -- payment of costs. (1) In accordance with a  
 22 placement made by persons determining an individualized  
 23 education program for a child with disabilities, the  
 24 trustees of a district may arrange for the attendance of the  
 25 child in a special education program offered outside of the

state of Montana. The arrangements are not subject to the out-of-state attendance provisions in 20-5-301 and 20-5-311.

(2) (a) Except as provided in subsection (3), when the persons determining the individualized education program of a child with disabilities who is in need of special education recommend placement in an out-of-state private residential facility, the trustees of the district of residence shall negotiate the amount and manner of payment of all costs associated with the placement.

(b) If the placement of the child with disabilities has met the requirements of 20-7-402, the superintendent of public instruction shall approve the amount of special education instructional fees to be included as a contracted service. Only the special education instructional fees may be included as a contracted service for the purposes of 20-7-431(1)(a)(iii)(A).

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

(a) the provider for the amount and manner of payment

of education fees consistent with the individualized education program determined for the child under the provisions of 20-7-402; and

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

(4) Payments for a child with disabilities as negotiated in subsection (3) must be paid by the superintendent of public instruction from the state special education appropriation."

**Section 4.** Section 20-7-435, MCA, is amended to read:

"20-7-435. Funding of educational programs at in-state children's psychiatric hospitals and in-state residential treatment programs for eligible children with emotional disturbances. (1) It is the intent of the legislature that eligible children in in-state children's psychiatric hospitals and residential treatment facilities be provided with an appropriate educational opportunity in a cost-effective manner, including the provision of a free appropriate public education for eligible children with disabilities that is consistent with state standards for the provision of special education and related services. General education programs for eligible children without disabilities must be provided in accordance with the requirements for a nonpublic school under the provisions of



20-5-109.

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

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

(a) monitor ensure the provision of an a free appropriate educational--opportunity--for--the-child public education and an education that is consistent with the requirements for a nonpublic school in 20-5-109 for children attending the hospital or residential treatment facility;

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

(c)--fund-up-to-100%-of--any--approved--allowable--costs under-this-section-from-funds-appropriated-for-this-purpose, with-the-exception-of-educational-or-vocational-services-for

which--reimbursement-is-made-under-any-provision-of-state-or federal-law-or-a-health-insurance-policy,--subject--to--the limitations--in-federal-law-that-restrict-access-to-parental funds-for-a-child-with-disabilities--based--on--the--child's right--to--a--free--appropriate--public--education,--and--An appropriation-in-excess--of--the--allowable--costs--required under--the--provisions--of--this--section-must-revert-to-the state-equalization-aid-account.

(C) FROM APPROPRIATIONS PROVIDED FOR THIS PURPOSE, FUND ANY APPROVED ALLOWABLE COSTS UNDER THIS SECTION, WITH THE EXCEPTION OF SERVICES FOR WHICH REIMBURSEMENT IS MADE UNDER ANY PROVISION OF STATE OR FEDERAL LAW OR AN INSURANCE POLICY;

(d) provide funding for allowable costs according to a proration based on average daily membership.

(4) A supplemental education fee or tuition may not be charged for an eligible Montana child who receives inpatient treatment in and an education under contract with an in-state children's psychiatric hospital or residential treatment facility.

(5) If a children's psychiatric hospital or residential treatment facility fails to provide an appropriate educational--opportunity education in accordance with 20-5-109 or a free appropriate public education under the provisions of this part for an eligible child at the

1 children's psychiatric hospital or residential treatment  
 2 facility or fails to negotiate a contract under the  
 3 provisions of subsection (2), ~~the superintendent of public~~  
 4 ~~instruction--shall--negotiate--with~~ THE SUPERINTENDENT OF  
 5 PUBLIC INSTRUCTION SHALL NEGOTIATE WITH the school district  
 6 in which the children's psychiatric hospital or residential  
 7 treatment facility is located ~~for--the--supervision--and~~  
 8 ~~implementation of shall--supervise--and--implement~~ FOR THE  
 9 SUPERVISION AND IMPLEMENTATION OF an appropriate educational  
 10 program ~~for--a--child that is consistent with accreditation~~  
 11 ~~standards provided for in 20-7-111 and with the provisions~~  
 12 ~~of 20-7-402 for children attending the children's~~  
 13 ~~psychiatric hospital or residential treatment facility. The~~  
 14 ~~amount---negotiated---with---the--school--district--must--be~~  
 15 ~~consistent-with-allowable-costs-that-may-be-negotiated-under~~  
 16 ~~the-provisions-of-subsection-(3); Funding--for--the--school~~  
 17 ~~district---must---be--at--the--rate--established--under--the~~  
 18 ~~provisions-of-subsection-(3)(d);~~ THE AMOUNT NEGOTIATED WITH  
 19 THE SCHOOL DISTRICT MUST INCLUDE ALL EDUCATION AND RELATED  
 20 SERVICES COSTS THAT MAY BE NEGOTIATED UNDER THE PROVISIONS  
 21 OF SUBSECTION (3) AND ALL EDUCATION AND RELATED SERVICES  
 22 COSTS NECESSARY TO FULFILL THE REQUIREMENTS OF PROVIDING THE  
 23 CHILD WITH AN EDUCATION.

24 (6) Funds provided to a district under this section,  
 25 including funds received under the provisions of 20-7-420:

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

5 (b) are not subject to the budget limitations in  
 6 20-9-315; and

7 (c) may not be included in the foundation program  
 8 amount of the district."

9 **Section 5.** Section 20-7-436, MCA, is amended to read:

10 **"20-7-436. Definitions.** For the purposes of 20-7-435  
 11 and this section, the following definitions apply:

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

14 (i) has the primary purpose of providing clinical care  
 15 for children whose clinical diagnosis and resulting  
 16 treatment plan require in-house residential psychiatric  
 17 care; and

18 (ii) is accredited by the joint commission on  
 19 accreditation of healthcare organizations, the standards of  
 20 the health care financing administration, or other  
 21 comparable accreditation.

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

25 (2) "Eligible child" means a child or youth who is less

than 19 years of age and is emotionally disturbed as defined in 20-7-401 or 52-2-101 and whose emotional problem is so severe that the child or youth has been placed in a children's psychiatric hospital or residential treatment facility for inpatient treatment of emotional problems.

(3) (a) "Residential treatment facility" means a facility in the state that:

(i) provides services for children with emotional disturbances and that is licensed by the state and operated for the primary purpose of providing long-term treatment services for mental illness, in a residential setting, to persons under 21 years of age;

(ii) operates for the primary purpose of providing residential psychiatric care to persons under 21 years of age;

(iii) is licensed by the department of health and environmental sciences; and

(iv) participates in the Montana medicaid program for psychiatric facilities or programs providing psychiatric services to individuals under 21 years of age; OR

(V) NOTWITHSTANDING THE PROVISIONS OF SUBSECTIONS (3)(A)(III) AND (3)(A)(IV), HAS RECEIVED A CERTIFICATE OF NEED FROM THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES PURSUANT TO TITLE 50, CHAPTER 5, PART 3, PRIOR TO JANUARY 1, 1992 1993.

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

**SECTION 6. SECTION 20-9-343, MCA, IS AMENDED TO READ:**

**"20-9-343. (Temporary) Definition of and revenue for state equalization aid.** (1) As used in this title, the term "state equalization aid" means the money deposited in the state special revenue fund as required in this section plus any legislative appropriation of money from other sources for:

(a) distribution to the public schools for the payment of guaranteed tax base aid and for equalization of the foundation program;

(b) the Montana educational telecommunications network as provided in 20-32-101; and

(c) filing fees for school district audits as required by 2-7-514(2).

(2) The superintendent of public instruction may spend funds appropriated for state equalization aid, as required by subsections (1)(a) and (1)(b), throughout the biennium.

(3) The following must be paid into the state special revenue fund for state equalization aid to public schools of the state:

(a) money received from the collection of income taxes under chapter 30 of Title 15, as provided by 15-1-501;

(b) except as provided in 15-31-702, money received from the collection of corporation license and income taxes under chapter 31 of Title 15, as provided by 15-1-501;

(c) money allocated to state equalization from the collection of the severance tax on coal;

(d) money received from the treasurer of the United States as the state's shares of oil, gas, and other mineral royalties under the federal Mineral Lands Leasing Act, as amended;

(e) interest and income money described in 20-9-341 and 20-9-342;

(f) money received from the state equalization aid levy under 20-9-360;

(g) income from the lottery, as provided in 23-7-402;

(h) the surplus revenues collected by the counties for foundation program support according to 20-9-331 and 20-9-333;

(i) investment income earned by investing money in the state equalization aid account in the state special revenue fund; and

(j) 15% of the income and earnings of all coal severance tax funds as provided in 17-5-704.

(4) The superintendent of public instruction shall request the board of investments to invest the money in the state equalization aid account to maximize investment

earnings to the account.

(5) Any surplus revenue in the state equalization aid account in the second year of a biennium may be used to reduce any appropriation required for the next succeeding biennium. (Terminates June 30, 1993--sec. 5, Ch. 729, L. 1991.)

20-9-343. (Effective July 1, 1993) Definition of and revenue for state equalization aid. (1) As used in this title, the term "state equalization aid" means the money deposited in the state special revenue fund as required in this section plus any legislative appropriation of money from other sources for:

(a) distribution to the public schools for the purposes of payment of guaranteed tax base aid and equalization of the foundation program;

(b) negotiated payments authorized under 20-7-420(3) up to \$500,000 per biennium; and

(c) for the Montana educational telecommunications network as provided in 20-32-101.

(2) The superintendent of public instruction may spend funds appropriated for state equalization aid as required for the purposes of guaranteed tax base aid, the foundation program, negotiated payments authorized under 20-7-420(3), and the Montana educational telecommunications network, throughout the biennium.

(3) The following must be paid into the state special revenue fund for state equalization aid to public schools of the state:

(a) money received from the collection of income taxes under chapter 30 of Title 15, as provided by 15-1-501;

(b) except as provided in 15-31-702, money received from the collection of corporation license and income taxes under chapter 31 of Title 15, as provided by 15-1-501;

(c) money allocated to state equalization from the collection of the severance tax on coal;

(d) money received from the treasurer of the United States as the state's shares of oil, gas, and other mineral royalties under the federal Mineral Lands Leasing Act, as amended;

(e) interest and income money described in 20-9-341 and 20-9-342;

(f) money received from the state equalization aid levy under 20-9-360;

(g) income from the lottery, as provided in 23-7-402;

(h) the surplus revenues collected by the counties for foundation program support according to 20-9-331 and 20-9-333;

(i) investment income earned by investing money in the state equalization aid account in the state special revenue fund; and

(j) 15% of the income and earnings of all coal severance tax funds as provided in 17-5-704.

(4) The superintendent of public instruction shall request the board of investments to invest the money in the state equalization aid account to maximize investment earnings to the account.

(5) Any surplus revenue in the state equalization aid account in the second year of a biennium may be used to reduce any appropriation required for the next succeeding biennium."

**NEW SECTION. Section 7. Rules.** The superintendent of public instruction shall adopt rules for the implementation of 20-7-420, 20-7-421, 20-7-422, 20-7-435, and 20-7-436, including but not limited to:

(1) the calculation of tuition under 20-7-420;

(2) the calculation and distribution of funds under 20-7-435; and

(3) the determination of responsibilities of children's psychiatric hospitals, residential treatment facilities, and public schools.

**NEW SECTION. Section 8. Codification instruction.** [Section 6 7] is intended to be codified as an integral part of Title 20, chapter 7, and the provisions of Title 20, chapter 7, apply to [section 6 7].

**NEW SECTION. Section 9. Effective date.** [This act] is

SB 0278/03

1 effective July 1, 1993.

-End-