

House BILL NO. 110

INTRODUCED BY

Marge Fisk Ellen Bergman Josh

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO PAY FOR THE OUT-OF-STATE PLACEMENT OF A CHILD WITH DISABILITIES WHEN A HEARINGS OFFICER OR A COURT OF COMPETENT JURISDICTION DETERMINES THAT SUCH PLACEMENT IS THE MOST APPROPRIATE SPECIAL EDUCATION PROGRAM FOR THE CHILD; AMENDING SECTIONS 20-7-420 AND 20-7-422, MCA; AND PROVIDING AN EFFECTIVE DATE."

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 the child's parents or of 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~~ last-known district of residence is the child's district of residence.

(2) The county of residence is financially responsible for tuition and transportation, as established under 20-5-323, 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 county of residence is not financially responsible for tuition and transportation 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 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, and the educational services are provided by a public school district under the provisions of 20-7-411 or 20-7-435, the 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 of direct state aid,

1 the superintendent of public instruction shall pay the remaining balance from the state equalization aid
 2 account. However, the amount spent from the state equalization aid account for this purpose may not
 3 exceed \$500,000 during any biennium.

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

10 (5) A state agency that makes a placement of a child with disabilities is responsible for the financial
 11 costs of room and board and the treatment of the child. When a hearings officer determines in a final order
 12 or when a court of competent jurisdiction determines in a subsequent decision that an out-of-state
 13 placement is the most appropriate placement for a child with disabilities, the superintendent of public
 14 instruction is responsible for the financial costs of the room and board and the treatment of the child."
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16 **Section 2.** Section 20-7-422, MCA, is amended to read:

17 **"20-7-422. Out-of-state placement of children with disabilities -- payment of costs.** (1) In
 18 accordance with a placement made by persons determining an individualized education program for a child
 19 with disabilities, the trustees of a district may arrange for the attendance of the child in a special education
 20 program offered outside of the state of Montana.

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

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

30 (a) the provider for the amount and manner of payment of education fees consistent with the

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

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

4 (4) When a hearings officer determines in a final order or when a court of competent jurisdiction
5 determines in a subsequent decision that an out-of-state placement is the most appropriate placement of
6 a child with disabilities, the superintendent of public instruction shall negotiate with the provider for the
7 amount and manner of payment of education fees consistent with the individualized education program
8 determined for the child under the provisions of 20-7-402.

9 ~~(4)~~(5) Payments for a child with disabilities as negotiated in ~~subsection~~ subsections (3) and (4)
10 must be paid by the superintendent of public instruction from the state special education appropriation."

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12 NEW SECTION. Section 3. Effective date. [This act] is effective July 1, 1995.

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-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB00110, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act requiring the superintendent of public instruction to pay for the out-of-state placement of a child with disabilities when a hearings officer or a court of competent jurisdiction determines that such placement is the most appropriate special education program for the child.

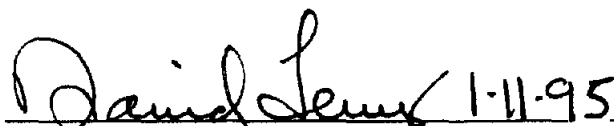
ASSUMPTIONS:

1. In FY 1994, the Office of Public Instruction awarded \$60,000 to the Kalispell district from special education contingency funds to cover the cost of treating a student in an out-of-state residential treatment facility. For fiscal 1995, the Kalispell district has budgeted \$103,100 to pay the residential treatment costs associated with this student.
2. In general, the placement for a child with disabilities is determined by the parent and the school district through the IEP (individualized education program) process. If the parent and the school district cannot agree, the case is referred to a hearings officer and, if appealed, to the court.
3. Under current law, once the appropriate placement is determined for a child with the disabilities, the school district negotiates the amount and manner of payment of all costs associated with the placement.
4. This proposal creates the financial incentive for school districts not to reach resolution and to bring the determination of an out-of-state placement of a child to a hearings officer. If the hearings officer orders the out-of-state placement, the district is not responsible for the financial costs of the room and board and treatment of the child.
5. It is unknown how many cases will be referred to hearings officers as a direct result of this proposal.

FISCAL IMPACT: The fiscal impact is unclear. To the extent that disputes concerning out-of-state placement of children with disabilities are resolved through courts or hearing officers state costs will increase.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

When a hearings officer or a court determines that a child with disabilities should be placed in an out-of-state special education program, the local district would no longer be obligated to pay the financial costs of the room and board and the treatment of the child. The local tax burden would be reduced because the costs of room, board, and treatment associated with the child would be assumed by the state.

 1-11-95

DAVID LEWIS, BUDGET DIRECTOR DATE MARJORIE FISHER, PRIMARY SPONSOR DATE
Office of Budget and Program Planning

Fiscal Note for HB00110, as introduced

HB 110

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The state's financial obligation for educating and treating children with disabilities in out-of-state facilities would increase.

TECHNICAL NOTES:

1. The bill does not contain an appropriation for paying for these additional state costs.

2. Section 1 of the bill states that the superintendent of public instruction is responsible for the financial costs of the "room and board and treatment of the child." Section 2 requires the superintendent of public instruction to negotiate with the out-of-state provider for the amount and manner of payment of "education fees consistent with the individualized education program determined for the child..." It is difficult to tell if these two references are to the same costs.

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George Fuler Ellen Bergman Josh

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(2) The county of residence is financially responsible for tuition and transportation, as established under 20-5-323, 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 county of residence is not financially responsible for tuition and transportation 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.

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(3) If 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, and the educational services are provided by a public school district under the provisions of 20-7-411 or 20-7-435, the 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 of direct state aid,

1 the superintendent of public instruction shall pay the remaining balance from the state equalization aid
2 account. However, the amount spent from the state equalization aid account for this purpose may not
3 exceed \$500,000 during any biennium.

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

10 (5) A state agency that makes a placement of a child with disabilities is responsible for the financial
11 costs of room and board and the treatment of the child. When a hearings officer determines in a final order
12 or when a court of competent jurisdiction determines in a subsequent decision that an out-of-state
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18 accordance with a placement made by persons determining an individualized education program for a child
19 with disabilities, the trustees of a district may arrange for the attendance of the child in a special education
20 program offered outside of the state of Montana.

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

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

30 (a) the provider for the amount and manner of payment of education fees consistent with the

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

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6 a child with disabilities, the superintendent of public instruction shall negotiate with the provider for the
7 amount and manner of payment of education fees consistent with the individualized education program
8 determined for the child under the provisions of 20-7-402.

9 ~~(4)(5)~~ Payments for a child with disabilities as negotiated in ~~subsection~~ subsections (3) and (4)
10 must be paid by the superintendent of public instruction from the state special education appropriation."
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12 NEW SECTION. Section 3. Effective date. [This act] is effective July 1, 1995.

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 2 account. However, the amount spent from the state equalization aid account for this purpose may not
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9 ~~(4)~~(5)(4) Payments for a child with disabilities as negotiated in ~~subsection~~ subsections (3) and (4)
10 (2) AND (3) must be paid by the superintendent of public instruction from the state special education
11 appropriation."

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