

## 1 HOUSE BILL NO. 104

2 INTRODUCED BY HAGENER

3 BY REQUEST OF THE OFFICE OF PUBLIC INSTRUCTION  
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TRANSFERRING THE RESPONSIBILITY FOR PAYMENT OF  
6 EDUCATION COSTS FOR A STUDENT PLACED IN AN OUT-OF-STATE TREATMENT FACILITY TO THE  
7 STATE AGENCY RESPONSIBLE FOR THE PLACEMENT DECISION; AMENDING SECTIONS 20-5-316,  
8 20-5-321, 20-5-323, 20-5-324, 20-7-403, 20-7-420, AND 20-7-422, MCA; AND PROVIDING AN  
9 EFFECTIVE DATE."

10  
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
1213 **Section 1.** Section 20-5-316, MCA, is amended to read:

14 **"20-5-316. Out-of-state tuition -- exemption.** (1) The county superintendent of schools of the  
15 county of the district of residence shall make payments from the elementary county ~~basic tax for~~  
16 ~~elementary schools~~ equalization fund for children who are placed in facilities outside the state of Montana  
17 ~~pursuant to 20-5-321 but not under the provisions of Title 20, chapter 7, part 4.~~

18 (2) The county superintendent of schools of the county of residence shall make payments from the  
19 high school county ~~basic special tax for high schools as provided in 20-9-334~~ equalization fund for children  
20 who are placed in facilities outside the state of Montana as a result of a court order or placement by a state  
21 agency. This provision does not apply to children with disabilities that are defined under the provisions of  
22 Title 20, chapter 7, part 4.

23 (3) The provisions of this section do not apply to out-of-state placements made by state agencies  
24 pursuant to 20-7-422."

25  
26 **Section 2.** Section 20-5-321, MCA, is amended to read:

27 **"20-5-321. Attendance with mandatory approval -- tuition and transportation.** (1) An out-of-district  
28 attendance agreement that allows a child to enroll in and attend a school in a Montana school district that  
29 is outside of the child's district of residence or in a public school district of a state or province that is  
30 adjacent to the county of the child's residence is mandatory whenever:

1 (a) the child resides closer to the school that the child wishes to attend and more than 3 miles from  
2 the school the child would attend in the resident district and:

3 (i) the resident district does not provide transportation; or

4 (ii) the district of residence provides transportation and is not within the same county as the child's  
5 school district of choice;

6 (b) the child resides in a location where, due to road or geographic conditions, it is impractical to  
7 attend the school nearest the child's residence;

8 (c) the child is a member of a family that is required to send another child outside of the elementary  
9 district to attend high school and the child of elementary age may more conveniently attend an elementary  
10 school where the high school is located, provided that the child resides more than 3 miles from an  
11 elementary school in the resident district or that the parent is required to move to the elementary district  
12 where the high school is located to enroll another child in high school;

13 (d) the child is under the protective care of a state agency or has been adjudicated by a court of  
14 ~~competent jurisdiction to be an abused or neglected child, as defined in 41-3-102, or to be a youth in need~~  
15 ~~of supervision or a delinquent youth, as defined in 41-5-103, and has been placed in a licensed youth care~~  
16 ~~facility that is approved by the department of public health and human services and, as a result of the~~  
17 ~~placement, is required to attend school outside of the child's district of residence; or~~

18 (e) the child is required to attend school outside of the district of residence as the result of a  
19 placement ~~by a state agency or parent in a group home licensed by the state or an order of a court of~~  
20 ~~competent jurisdiction in foster care or a group home licensed by the state.~~

21 (2) (a) Whenever a parent or guardian of a child, an agency of the state, or a court wishes to have  
22 a child attend a school under the provisions of this section, the parent or guardian, agency, or court shall  
23 complete an out-of-district attendance agreement in consultation with an appropriate official of the district  
24 the child will attend.

25 (b) The attendance agreement must set forth the financial obligations, if any, for costs incurred for  
26 tuition and transportation as provided in 20-5-323 and Title 20, chapter 10.

27 (c) The trustees of the district of choice may waive any or all of the tuition rate, but any waiver  
28 must be applied equally to all students.

29 (3) Except as provided in subsection (4), the trustees of the resident district and the trustees of  
30 the district of choice shall approve the out-of-district attendance agreement and notify the county

1 superintendent of schools of the county of the child's residence of the approval of the agreement within  
 2 10 days. The county superintendent shall approve the agreement for payment under 20-5-324(5).

3 (4) Unless the child is a child with disabilities who resides in the district, the trustees of the district  
 4 where the school to be attended is located may disapprove an out-of-district attendance agreement  
 5 whenever they find that, due to insufficient room and overcrowding, the accreditation of the school would  
 6 be adversely affected by the acceptance of the child."

7

8 **Section 3.** Section 20-5-323, MCA, is amended to read:

9 **"20-5-323. Tuition and transportation rates.** (1) Except as provided in subsections (3) ~~and (4)~~  
 10 through (5), whenever a child has approval to attend a school outside of the child's district of residence  
 11 under the provisions of 20-5-320 or 20-5-321, the basis of the rate of tuition is a flat rate for each of the  
 12 15 district-size groupings determined by rule by the superintendent of public instruction by March 15 of  
 13 each year, using statewide district expenditure and revenue data for the general fund, debt service fund,  
 14 and retirement fund to determine the average district contribution.

15 (2) The tuition for children with disabilities must be determined under rules adopted by the  
 16 superintendent of public instruction for the calculation of tuition for special education pupils.

17 (3) The tuition rate for out-of-district placement pursuant to 20-5-321(1)(d) and (1)(e) for a student  
 18 without disabilities who requires a program with costs that exceed the average district costs must be  
 19 determined as the actual individual costs of providing that program according to the following:

20 (a) the district of attendance and the district, person, or entity responsible for the tuition payments  
 21 shall approve an agreement with the district of attendance for the tuition cost; and

22 (b) for a Montana resident student, the average district per-ANB foundation payment amount  
 23 received in the year for which the tuition charges are calculated must be subtracted from the per-student  
 24 program costs for a Montana resident student.

25 (4) When a child attends a public school of another state or province ~~or has been placed by a state~~  
 26 ~~agency in an out-of-state residential program~~, the amount of daily tuition may not be greater than the  
 27 average annual cost per student in the child's district of residence. This calculation for tuition purposes is  
 28 determined by totaling all of the expenditures for all of the district budgeted funds for the preceding school  
 29 fiscal year and dividing that amount by the October 1 enrollment in the preceding school fiscal year. For  
 30 the purposes of this subsection, the following do not apply:

1 (a) placement of a child with disabilities pursuant to Title 20, chapter 7, part 4;

2 (b) placement made in a state or province with a reciprocal tuition agreement pursuant to  
3 20-5-314; or

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

5 (5) When a child is placed by a state agency in an out-of-state residential facility, the state agency  
6 making the placement is responsible for the education costs resulting from the placement.

7 ~~(6)~~(6) The amount, if any, charged for transportation may not exceed the lesser of the average  
8 transportation cost per student in the child's district of residence or 21.25 cents per mile. The average  
9 expenditures for the district transportation fund for the preceding school fiscal year must be calculated by  
10 dividing the transportation fund expenditures by the October 1 enrollment for the preceding fiscal year."

11

12 **Section 4.** Section 20-5-324, MCA, is amended to read:

13 **"20-5-324. Tuition report and payment provisions -- exemption.** (1) At the close of the school term  
14 of each school fiscal year and before July 15, the trustees of a district shall report to the county  
15 superintendent:

16 (a) the name and district of residence of each child who is attending a school of the district under  
17 an approved mandatory out-of-district attendance agreement;

18 (b) the number of days of enrollment for each child reported under the provisions of subsection  
19 (1)(a);

20 (c) the annual tuition rate for each child's tuition payment, as determined under the provisions of  
21 20-5-323, and the tuition cost for each reported child; and

22 (d) the names, districts of attendance, and amount of tuition to be paid by the district for resident  
23 students attending public schools out of state.

24 (2) The county superintendent shall send, as soon as practicable, the reported information to the  
25 county superintendent of the county in which a reported child resides.

26 (3) Before July 30, the county superintendent shall report the information in subsection (1)(d) to  
27 the superintendent of public instruction, who shall determine the total per-ANB entitlement for which the  
28 district would be eligible if the student were enrolled in the resident district. The reimbursement amount  
29 is the difference between the actual amount paid and the amount calculated in this subsection.

30 (4) Notwithstanding the requirements of subsection (5), tuition payment provisions for

1 out-of-district placement of students with disabilities must be determined pursuant to Title 20, chapter 7,  
2 part 4.

3 (5) Except as provided in subsection (6), when a child has approval to attend a school outside the  
4 child's district of residence under the provisions of 20-5-320 or 20-5-321, the district of residence shall  
5 finance the tuition amount from the district tuition fund and any transportation amount from the  
6 transportation fund.

7 (6) When a child has mandatory approval under the provisions of 20-5-321, the tuition and  
8 transportation obligation for an elementary school child attending a school outside of the child's county of  
9 residence must be financed by the county basic tax for elementary districts, as provided in 20-9-331, for  
10 the child's county of residence or for a high school child attending a school outside the county of residence  
11 by the county basic tax for high school districts, as provided in 20-9-333, for the child's county of  
12 residence.

13 (7) By December 31 of the school fiscal year, the county superintendent or the trustees shall pay  
14 at least one-half of any tuition and transportation obligation established under this section out of the money  
15 realized to date from the appropriate basic county tax account provided for in 20-9-334 or from the district  
16 tuition or transportation fund. The remaining tuition and transportation obligation must be paid by June 15  
17 of the school fiscal year. The payments must be made to the county treasurer in each county with a school  
18 district that is entitled to tuition and transportation. Except as provided in subsection (9), the county  
19 treasurer shall credit tuition receipts to the general fund of a school district entitled to a tuition payment.  
20 The tuition receipts must be used in accordance with the provisions of 20-9-141. The county treasurer shall  
21 credit transportation receipts to the transportation fund of a school district entitled to a transportation  
22 payment.

23 (8) The superintendent of public instruction shall reimburse the district of residence for the per-ANB  
24 entitlement determined in subsection (3).

25 (9) (a) Any tuition receipts received under the provisions of Title 20, chapter 7, part 4, or  
26 20-5-323(3) for the current school fiscal year that exceed the tuition receipts of the prior year may be  
27 deposited in the district miscellaneous programs fund and must be used for that year in the manner  
28 provided for in 20-9-507 to support the costs of the program for which the tuition was received.

29 (b) Any other tuition receipts received for the current school fiscal year that exceed the tuition  
30 receipts of the prior year may be deposited in the district miscellaneous programs fund and may be used

1 for that year in the manner provided for in that fund. For the ensuing school fiscal year, the receipts must  
2 be credited to the district general fund budget.

3 (10) The provisions of this section do not apply to out-of-state placements made by a state agency  
4 pursuant to 20-7-422."

5

6 **Section 5.** Section 20-7-403, MCA, is amended to read:

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

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

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

12 (3) certifying special education teachers on the basis of the special qualifications for the teachers  
13 as prescribed by the board of public education;

14 (4) establishing procedures to be used by school district personnel in identifying children with  
15 disabilities;

16 (5) recommending to districts the type of special education class or program needed to serve the  
17 children with disabilities of the districts and preparing appropriate guides for developing individualized  
18 education programs;

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

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

24 (8) approving, as they are proposed and annually after approval, those special education classes  
25 or programs that comply with the laws of the state of Montana, policies of the board of public education,  
26 and the regulations of the superintendent of public instruction;

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

28 (10) conducting conferences, offering advice, and otherwise cooperating with parents and other  
29 interested persons;

30 (11) ensuring appropriate training and instructional material for persons appointed as surrogate

1 parents that outlines their duties toward the child, limitations on what they may do for the child, duties in  
 2 relation to the child's records, sources of assistance available to the surrogate parent, and the need to seek  
 3 competent legal assistance in implementing hearing or appeal procedures;

4 (12) ensuring that the requirements of the Individuals With Disabilities Education Act are met and  
 5 that each educational program for children with disabilities administered within the state, including each  
 6 program administered by any other agency, is under the general supervision of the superintendent of public  
 7 instruction, meets the education standards of the board of public education, and meets the requirements  
 8 of the superintendent of public instruction, reserving to the other agencies and political subdivisions their  
 9 full responsibilities for other aspects of the care of children needing special education or for providing or  
 10 paying for some or all of the costs of a free appropriate public education to children with disabilities within  
 11 the state;

12 (13) contracting for the delivery of audiological services to those children allowed by Montana law  
 13 in accordance with policies of the board of public education; and

14 (14) except for those children who qualify for residential services under the Montana public mental  
 15 health program pursuant to Title 53, chapter 6, contracting with a public school district or a private  
 16 residential facility for the provision of a free appropriate public education for a child ~~when a state agency~~  
 17 ~~places a child with disabilities who is in need of special education in:~~

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

19 ~~(b) an out-of-state public school or private residential facility placed in an in-state residential facility~~  
 20 or children's psychiatric hospital."

21

22 **Section 6.** Section 20-7-420, MCA, is amended to read:

23 **"20-7-420. Residency requirements -- financial responsibility for special education.** (1) In  
 24 accordance with the provisions of 1-1-215, a child's district of residence for special education purposes  
 25 is the residence of the child's parents or of the child's guardian if the parents are deceased, unless  
 26 otherwise determined by the court. This applies to a child living at home, in an institution, or under foster  
 27 care. If the parent has left the state, the parent's last-known district of residence is the child's district of  
 28 residence.

29 (2) The county of residence is financially responsible for tuition and transportation as established  
 30 under 20-5-323 for a child with disabilities, as defined in 20-7-401, including a child who has been placed

1 by a state agency in a foster care or group home licensed by the state. The county of residence is not  
 2 financially responsible for tuition and transportation for a child ~~with disabilities~~ who is placed by a state  
 3 agency in an out-of-state public school or an out-of-state private residential facility.

4 (3) If an eligible child, as defined in 20-7-436, is receiving inpatient treatment in an in-state  
 5 residential treatment facility or children's psychiatric hospital, as defined in 20-7-436, and the educational  
 6 services are provided by a public school district under the provisions of 20-7-411 or 20-7-435, the  
 7 superintendent of public instruction shall reimburse the district providing the services for the negotiated  
 8 amount, as established pursuant to 20-7-435(5), that represents the district's costs of providing education  
 9 and related services. Payments must be made from funds appropriated for this purpose. If the negotiated  
 10 amount exceeds the daily membership rate under 20-7-435(3) and any per-ANB amount of direct state aid,  
 11 the superintendent of public instruction shall pay the remaining balance from available funds. However, the  
 12 amount spent from available funds for this purpose may not exceed \$500,000 during any biennium.

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

19 ~~(5)~~(4) A state agency that makes a placement of a child with disabilities is responsible for the  
 20 financial costs of room and board and the treatment of the child and the education fees required to provide  
 21 a free appropriate public education that complies with the requirements of Title 20, chapter 7, part 4."

22  
 23 **Section 7.** Section 20-7-422, MCA, is amended to read:

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

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



1 and manner of payment of all costs associated with the placement.

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

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

9 (b) ~~the state agency that makes the placement for the portion of the placement costs that~~  
10 ~~represents the child's education program~~ pay the education costs resulting from the placement.

11 (4) ~~Payments for a child with disabilities as negotiated in subsection (3) must be paid by the~~  
12 ~~superintendent of public instruction from the state special education appropriation~~ The state agency shall  
13 place the child with disabilities in a facility that will provide the child with a free appropriate public  
14 education that complies with the requirements of Title 20, chapter 7, part 4."

15  
16 NEW SECTION. Section 8. Effective date. [This act] is effective July 1, 1997.

17 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0104, as introduced

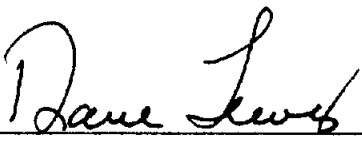
DESCRIPTION OF PROPOSED LEGISLATION: An act transferring the responsibility for payment of education costs for a student placed in an out-of-state treatment facility to the state agency responsible for the placement decision.

ASSUMPTIONS:

1. Under current law, education costs for students placed out-of-state by state agencies are paid from two revenue sources. If the student is a student with disabilities, payment is made by OPI from the state general fund appropriation for special education. The special education appropriation is the primary funding source for schools for special education. If the student is a student without disabilities (general education), tuition payments are deducted from the county equalization account prior to remittance of county equalization monies to the state. In both instances, the payment of education costs are funded from state sources.
2. HB 104 removes the obligation of the special education appropriation and the county equalization account to pay for education costs for students placed out of state by state agencies.
3. Special education costs for out-of-state placements since fiscal year 1992 are as shown below.

FY 92	\$600,000
FY 93	\$656,880
FY 94	\$417,639
FY 95	\$355,779
FY 96	\$933,759

4. For placements in FY95 county superintendents deducted a total of \$152,128 from the county equalization accounts for tuition to pay for education costs associated with out-of-state residential placements for students without disabilities. Based on a sample of counties these costs are anticipated to increase 8% in FY96 to \$164,298.
5. The state share of total expenses incurred is based on the ratio of current (FY97) placements of students with disabilities made by the Department of Corrections (53%) and the Department of Public Health and Human Services (47%).
6. The obligation for payment of education costs will shift to the "placing agency," i.e. the Department of Corrections and the Department of Public Health and Human Services. It is anticipated that the two departments together would incur additional expenses totaling \$1,095,000. The share of the total expenses to be incurred by the Department of Corrections is 53 percent or \$580,350; the Department of Public Health and Human Services is 47 percent or \$514,650.
7. To carry out the intent of this legislation, the appropriation in HB 2 for special education allowable costs will be reduced by \$921,589 per year from \$33,737,561 to \$32,815,972 in each year of the 1999 biennium.
8. Revenues collected by the state from the county equalization levies (22 and 33 mills) will increase by \$164,298 in FY98 and FY99 as county payments for out of state placement of students without disabilities are no longer deducted.

  
DAVE LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

  
TONI HAGENER, PRIMARY SPONSOR DATE

Fiscal Note for HB0104, as introduced

**HB 104**

FISCAL IMPACT:

<u>Expenditures:</u>	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
Office of Public Instruction	(921,589)	(921,589)
Department of Corrections	580,350	580,350
Dept Public Health and Human Svcs	<u>514,650</u>	<u>514,650</u>
Total Expenditures	164,289	164,289
 <u>Funding:</u>		
General Fund (01)	164,289	164,289
 <u>Revenues</u>		
General Fund - County Equalization	164,289	164,289
 <u>Net Impact on Fund Balance (revenue minus expenditure)</u>		
General Fund	0	0

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES: County expenditures for out-of-state placements (as reported on the county treasurers report to OPI) will decrease by the same amount that remittances to the state treasury on the monthly county collections report will increase. The net fiscal impact on counties is zero.

County superintendents will continue to account for, and deduct from the county equalization accounts, tuition payments for students who are attending public schools in other counties.

If these funds are able to be combined with the department's "Communities Intervening in Delinquency" proposal in the Executive Budget, counties would have greater resources at their disposal to meet the needs of their own juvenile population, which would include out-of-state placements and associated education costs.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION: Payments for education costs associated with out-of-state placements of students with disabilities will no longer be deducted from the special education distributions to school districts. Special education distributions to schools will be more stable as they will no longer be tied to the some what volatile cost of out-of-state placements.

TECHNICAL NOTES: To carry out the intent of this legislation, HB 2 will need to include appropriations to the Departments of Corrections and Public Health and Human Services to pay for the education costs associated with out-of state placements. OPI's appropriation for special education allowable costs would be reduced to reflect this shift in responsibilities.

APPROVED BY COM ON EDUCATION

## HOUSE BILL NO. 104

INTRODUCED BY HAGENER

BY REQUEST OF THE OFFICE OF PUBLIC INSTRUCTION

A BILL FOR AN ACT ENTITLED: "AN ACT TRANSFERRING THE RESPONSIBILITY FOR PAYMENT OF EDUCATION COSTS FOR A STUDENT PLACED IN AN OUT-OF-STATE TREATMENT FACILITY TO THE STATE AGENCY RESPONSIBLE FOR THE PLACEMENT DECISION; AMENDING SECTIONS ~~20-5-316~~, 20-5-321, 20-5-323, 20-5-324, 20-7-403, 20-7-420, AND 20-7-422, MCA; REPEALING SECTION 20-5-316, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

~~Section 1. Section 20-5-316, MCA, is amended to read:~~

~~"20-5-316. Out of state tuition exemption. (1) The county superintendent of schools of the county of the district of residence shall make payments from the elementary county basic tax for elementary schools equalization fund for children who are placed in facilities outside the state of Montana pursuant to 20-5-321 but not under the provisions of Title 20, chapter 7, part 4.~~

~~(2) The county superintendent of schools of the county of residence shall make payments from the high school county basic special tax for high schools as provided in 20-9-334 equalization fund for children who are placed in facilities outside the state of Montana as a result of a court order or placement by a state agency. This provision does not apply to children with disabilities that are defined under the provisions of Title 20, chapter 7, part 4.~~

~~(3) The provisions of this section do not apply to out of state placements made by state agencies pursuant to 20-7-422."~~

Section 1. Section 20-5-321, MCA, is amended to read:

"20-5-321. Attendance with mandatory approval -- tuition and transportation. (1) An out-of-district attendance agreement that allows a child to enroll in and attend a school in a Montana school district that is outside of the child's district of residence or in a public school district of a state or province that is adjacent to the county of the child's residence is mandatory whenever:

1 (a) the child resides closer to the school that the child wishes to attend and more than 3 miles from  
2 the school the child would attend in the resident district and:

3 (i) the resident district does not provide transportation; or

4 (ii) the district of residence provides transportation and is not within the same county as the child's  
5 school district of choice;

6 (b) the child resides in a location where, due to road or geographic conditions, it is impractical to  
7 attend the school nearest the child's residence;

8 (c) the child is a member of a family that is required to send another child outside of the elementary  
9 district to attend high school and the child of elementary age may more conveniently attend an elementary  
10 school where the high school is located, provided that the child resides more than 3 miles from an  
11 elementary school in the resident district or that the parent is required to move to the elementary district  
12 where the high school is located to enroll another child in high school;

13 (d) the child is under the protective care of a state agency or has been adjudicated by a court of  
14 competent jurisdiction to be an abused or neglected child, as defined in 41-3-102, or to be a youth in need  
15 of supervision or a delinquent youth, as defined in 41-5-103, and has been placed in a licensed youth care  
16 facility that is approved by the department of public health and human services and, as a result of the  
17 placement, is required to attend school outside of the child's district of residence; or

18 (e) the child is required to attend school outside of the district of residence as the result of a  
19 placement by a state agency or parent in a group home licensed by the state or an order of a court of  
20 competent jurisdiction in foster care or a group home licensed by the state.

21 (2) (a) Whenever a parent or guardian of a child, an agency of the state, or a court wishes to have  
22 a child attend a school under the provisions of this section, the parent or guardian, agency, or court shall  
23 complete an out-of-district attendance agreement in consultation with an appropriate official of the district  
24 the child will attend.

25 (b) The attendance agreement must set forth the financial obligations, if any, for costs incurred for  
26 tuition and transportation as provided in 20-5-323 and Title 20, chapter 10.

27 (c) The trustees of the district of choice may waive any or all of the tuition rate, but any waiver  
28 must be applied equally to all students.

29 (3) Except as provided in subsection (4), the trustees of the resident district and the trustees of  
30 the district of choice shall approve the out-of-district attendance agreement and notify the county

1 superintendent of schools of the county of the child's residence of the approval of the agreement within  
 2 10 days. The county superintendent shall approve the agreement for payment under 20-5-324(5).

3 (4) Unless the child is a child with disabilities who resides in the district, the trustees of the district  
 4 where the school to be attended is located may disapprove an out-of-district attendance agreement  
 5 whenever they find that, due to insufficient room and overcrowding, the accreditation of the school would  
 6 be adversely affected by the acceptance of the child."

7

8 **Section 2.** Section 20-5-323, MCA, is amended to read:

9 **"20-5-323. Tuition and transportation rates.** (1) Except as provided in subsections (3) ~~and (4)~~  
 10 through (5), whenever a child has approval to attend a school outside of the child's district of residence  
 11 under the provisions of 20-5-320 or 20-5-321, the basis of the rate of tuition is a flat rate for each of the  
 12 15 district-size groupings determined by rule by the superintendent of public instruction by March 15 of  
 13 each year, using statewide district expenditure and revenue data for the general fund, debt service fund,  
 14 and retirement fund to determine the average district contribution.

15 (2) The tuition for children with disabilities must be determined under rules adopted by the  
 16 superintendent of public instruction for the calculation of tuition for special education pupils.

17 (3) The tuition rate for out-of-district placement pursuant to 20-5-321(1)(d) and (1)(e) for a student  
 18 without disabilities who requires a program with costs that exceed the average district costs must be  
 19 determined as the actual individual costs of providing that program according to the following:

20 (a) the district of attendance and the district, person, or entity responsible for the tuition payments  
 21 shall approve an agreement with the district of attendance for the tuition cost; and

22 (b) for a Montana resident student, the average district per-ANB foundation payment amount  
 23 received in the year for which the tuition charges are calculated must be subtracted from the per-student  
 24 program costs for a Montana resident student.

25 (4) When a child attends a public school of another state or province ~~or has been placed by a state~~  
 26 ~~agency in an out-of-state residential program~~, the amount of daily tuition may not be greater than the  
 27 average annual cost per student in the child's district of residence. This calculation for tuition purposes is  
 28 determined by totaling all of the expenditures for all of the district budgeted funds for the preceding school  
 29 fiscal year and dividing that amount by the October 1 enrollment in the preceding school fiscal year. For  
 30 the purposes of this subsection, the following do not apply:

- 1 (a) placement of a child with disabilities pursuant to Title 20, chapter 7, part 4;
- 2 (b) placement made in a state or province with a reciprocal tuition agreement pursuant to
- 3 20-5-314; ~~or~~
- 4 (c) an order issued under Title 40, chapter 4, part 2; OR
- 5 (D) OUT-OF-STATE PLACEMENT BY A STATE AGENCY.
- 6 (5) When a child is placed by a state agency in an out-of-state residential facility, the state agency
- 7 making the placement is responsible for the education costs resulting from the placement.
- 8 ~~(5)(6)~~ The amount, if any, charged for transportation may not exceed the lesser of the average
- 9 transportation cost per student in the child's district of residence or 21.25 cents per mile. The average
- 10 expenditures for the district transportation fund for the preceding school fiscal year must be calculated by
- 11 dividing the transportation fund expenditures by the October 1 enrollment for the preceding fiscal year."
- 12

13 **Section 3.** Section 20-5-324, MCA, is amended to read:

14 **"20-5-324. Tuition report and payment provisions -- exemption.** (1) At the close of the school term

15 of each school fiscal year and before July 15, the trustees of a district shall report to the county

16 superintendent:

17 (a) the name and district of residence of each child who is attending a school of the district under

18 an approved mandatory out-of-district attendance agreement;

19 (b) the number of days of enrollment for each child reported under the provisions of subsection

20 (1)(a);

21 (c) the annual tuition rate for each child's tuition payment, as determined under the provisions of

22 20-5-323, and the tuition cost for each reported child; and

23 (d) the names, districts of attendance, and amount of tuition to be paid by the district for resident

24 students attending public schools out of state.

25 (2) The county superintendent shall send, as soon as practicable, the reported information to the

26 county superintendent of the county in which a reported child resides.

27 (3) Before July 30, the county superintendent shall report the information in subsection (1)(d) to

28 the superintendent of public instruction, who shall determine the total per-ANB entitlement for which the

29 district would be eligible if the student were enrolled in the resident district. The reimbursement amount

30 is the difference between the actual amount paid and the amount calculated in this subsection.

1 (4) Notwithstanding the requirements of subsection (5), tuition payment provisions for  
2 out-of-district placement of students with disabilities must be determined pursuant to Title 20, chapter 7,  
3 part 4.

4 (5) Except as provided in subsection (6), when a child has approval to attend a school outside the  
5 child's district of residence under the provisions of 20-5-320 or 20-5-321, the district of residence shall  
6 finance the tuition amount from the district tuition fund and any transportation amount from the  
7 transportation fund.

8 (6) When a child has mandatory approval under the provisions of 20-5-321, the tuition and  
9 transportation obligation for an elementary school child attending a school outside of the child's county of  
10 residence must be financed by the county basic tax for elementary districts, as provided in 20-9-331, for  
11 the child's county of residence or for a high school child attending a school outside the county of residence  
12 by the county basic tax for high school districts, as provided in 20-9-333, for the child's county of  
13 residence.

14 (7) By December 31 of the school fiscal year, the county superintendent or the trustees shall pay  
15 at least one-half of any tuition and transportation obligation established under this section out of the money  
16 realized to date from the appropriate basic county tax account provided for in 20-9-334 or from the district  
17 tuition or transportation fund. The remaining tuition and transportation obligation must be paid by June 15  
18 of the school fiscal year. The payments must be made to the county treasurer in each county with a school  
19 district that is entitled to tuition and transportation. Except as provided in subsection (9), the county  
20 treasurer shall credit tuition receipts to the general fund of a school district entitled to a tuition payment.  
21 The tuition receipts must be used in accordance with the provisions of 20-9-141. The county treasurer shall  
22 credit transportation receipts to the transportation fund of a school district entitled to a transportation  
23 payment.

24 (8) The superintendent of public instruction shall reimburse the district of residence for the per-ANB  
25 entitlement determined in subsection (3).

26 (9) (a) Any tuition receipts received under the provisions of Title 20, chapter 7, part 4, or  
27 20-5-323(3) for the current school fiscal year that exceed the tuition receipts of the prior year may be  
28 deposited in the district miscellaneous programs fund and must be used for that year in the manner  
29 provided for in 20-9-507 to support the costs of the program for which the tuition was received.

30 (b) Any other tuition receipts received for the current school fiscal year that exceed the tuition



1 receipts of the prior year may be deposited in the district miscellaneous programs fund and may be used  
2 for that year in the manner provided for in that fund. For the ensuing school fiscal year, the receipts must  
3 be credited to the district general fund budget.

4 (10) The provisions of this section do not apply to out-of-state placements made by a state agency  
5 pursuant to 20-7-422."

6

7 **Section 4.** Section 20-7-403, MCA, is amended to read:

8 **"20-7-403. Duties of superintendent of public instruction.** The superintendent of public instruction  
9 shall supervise and coordinate the conduct of special education in the state by:

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

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

13 (3) certifying special education teachers on the basis of the special qualifications for the teachers  
14 as prescribed by the board of public education;

15 (4) establishing procedures to be used by school district personnel in identifying children with  
16 disabilities;

17 (5) recommending to districts the type of special education class or program needed to serve the  
18 children with disabilities of the districts and preparing appropriate guides for developing individualized  
19 education programs;

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

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

25 (8) approving, as they are proposed and annually after approval, those special education classes  
26 or programs that comply with the laws of the state of Montana, policies of the board of public education,  
27 and the regulations of the superintendent of public instruction;

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

29 (10) conducting conferences, offering advice, and otherwise cooperating with parents and other  
30 interested persons;

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

5 (12) ensuring that the requirements of the Individuals With Disabilities Education Act are met and  
 6 that each educational program for children with disabilities administered within the state, including each  
 7 program administered by any other agency, is under the general supervision of the superintendent of public  
 8 instruction, meets the education standards of the board of public education, and meets the requirements  
 9 of the superintendent of public instruction, reserving to the other agencies and political subdivisions their  
 10 full responsibilities for other aspects of the care of children needing special education or for providing or  
 11 paying for some or all of the costs of a free appropriate public education to children with disabilities within  
 12 the state;

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

15 (14) except for those children who qualify for residential services under the Montana public mental  
 16 health program pursuant to Title 53, chapter 6, contracting with a public school district or a private  
 17 residential facility for the provision of a free appropriate public education for a child ~~when a state agency~~  
 18 ~~places a child with disabilities who is in need of special education in:~~

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

20 ~~(b) an out-of-state public school or private residential facility placed in an in-state residential facility~~  
 21 or children's psychiatric hospital."

22

23 **Section 5.** Section 20-7-420, MCA, is amended to read:

24 **"20-7-420. Residency requirements -- financial responsibility for special education.** (1) In  
 25 accordance with the provisions of 1-1-215, a child's district of residence for special education purposes  
 26 is the residence of the child's parents or of the child's guardian if the parents are deceased, unless  
 27 otherwise determined by the court. This applies to a child living at home, in an institution, or under foster  
 28 care. If the parent has left the state, the parent's last-known district of residence is the child's district of  
 29 residence.

30 (2) The county of residence is financially responsible for tuition and transportation as established

1 under 20-5-323 for a child with disabilities, as defined in 20-7-401, including a child who has been placed  
 2 by a state agency in a foster care or group home licensed by the state. The county of residence is not  
 3 financially responsible for tuition and transportation for a child ~~with disabilities~~ who is placed by a state  
 4 agency in an out-of-state public school or an out-of-state private residential facility.

5 (3) If an eligible child, as defined in 20-7-436, is receiving inpatient treatment in an in-state  
 6 residential treatment facility or children's psychiatric hospital, as defined in 20-7-436, and the educational  
 7 services are provided by a public school district under the provisions of 20-7-411 or 20-7-435, the  
 8 superintendent of public instruction shall reimburse the district providing the services for the negotiated  
 9 amount, as established pursuant to 20-7-435(5), that represents the district's costs of providing education  
 10 and related services. Payments must be made from funds appropriated for this purpose. If the negotiated  
 11 amount exceeds the daily membership rate under 20-7-435(3) and any per-ANB amount of direct state aid,  
 12 the superintendent of public instruction shall pay the remaining balance from available funds. However, the  
 13 amount spent from available funds for this purpose may not exceed \$500,000 during any biennium.

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

20 ~~(5)(4)~~ A state agency that makes a placement of a child with disabilities is responsible for the  
 21 financial costs of room and board and the treatment of the child ~~and~~. THE STATE AGENCY THAT MAKES  
 22 AN OUT-OF-STATE PLACEMENT OF A CHILD WITH DISABILITIES IS RESPONSIBLE FOR the education fees  
 23 required to provide a free appropriate public education that complies with the requirements of Title 20,  
 24 chapter 7, part 4."

25

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

27 **"20-7-422. Out-of-state placement of children with disabilities -- payment of costs.** (1) In  
 28 accordance with a placement made by persons determining an individualized education program for a child  
 29 with disabilities, the trustees of a district may arrange for the attendance of the child in a special education  
 30 program offered outside of the state of Montana.

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

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

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

12           ~~(b) the state agency that makes the placement for the portion of the placement costs that~~  
13 ~~represents the child's education program~~ pay the education costs resulting from the placement.

14           (4) ~~Payments for a child with disabilities as negotiated in subsection (3) must be paid by the~~  
15 ~~superintendent of public instruction from the state special education appropriation~~ The state agency shall  
16 place the child with disabilities in a facility that will provide the child with a free appropriate public  
17 education that complies with the requirements of Title 20, chapter 7, part 4."

18  
19           **NEW SECTION. SECTION 7. REPEALER. SECTION 20-5-316, MCA, IS REPEALED.**

20  
21           **NEW SECTION. Section 8. Effective date.** [This act] is effective July 1, 1997.

22           -END-

1 HOUSE BILL NO. 104

2 INTRODUCED BY HAGENER

3 BY REQUEST OF THE OFFICE OF PUBLIC INSTRUCTION

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT TRANSFERRING THE RESPONSIBILITY FOR PAYMENT OF  
6 EDUCATION COSTS FOR A STUDENT PLACED IN AN OUT-OF-STATE TREATMENT FACILITY TO THE  
7 STATE AGENCY RESPONSIBLE FOR THE PLACEMENT DECISION; AMENDING SECTIONS ~~20-5-316,~~  
8 20-5-321, 20-5-323, 20-5-324, 20-7-403, 20-7-420, AND 20-7-422, MCA; REPEALING SECTION  
9 20-5-316, MCA; AND PROVIDING AN EFFECTIVE DATE."  
10

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

**THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE  
REPRINTED. PLEASE REFER TO SECOND READING COPY  
(YELLOW) FOR COMPLETE TEXT.**

HOUSE BILL NO. 104

INTRODUCED BY HAGENER

BY REQUEST OF THE OFFICE OF PUBLIC INSTRUCTION

A BILL FOR AN ACT ENTITLED: "AN ACT TRANSFERRING THE RESPONSIBILITY FOR PAYMENT OF EDUCATION COSTS FOR A STUDENT PLACED IN AN OUT-OF-STATE TREATMENT FACILITY TO THE STATE AGENCY RESPONSIBLE FOR THE PLACEMENT DECISION; AMENDING SECTIONS ~~20-5-316~~, 20-5-321, 20-5-323, 20-5-324, 20-7-403, 20-7-420, AND 20-7-422, MCA; REPEALING SECTION 20-5-316, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

~~Section 1. Section 20-5-316, MCA, is amended to read:~~

~~"20-5-316. Out of state tuition — exemption. (1) The county superintendent of schools of the county of the district of residence shall make payments from the elementary county basic tax for elementary schools equalization fund for children who are placed in facilities outside the state of Montana pursuant to 20-5-321 but not under the provisions of Title 20, chapter 7, part 4.~~

~~(2) The county superintendent of schools of the county of residence shall make payments from the high school county basic special tax for high schools as provided in 20-9-334 equalization fund for children who are placed in facilities outside the state of Montana as a result of a court order or placement by a state agency. This provision does not apply to children with disabilities that are defined under the provisions of Title 20, chapter 7, part 4.~~

~~(3) The provisions of this section do not apply to out of state placements made by state agencies pursuant to 20-7-422."~~

Section 1. Section 20-5-321, MCA, is amended to read:

"20-5-321. Attendance with mandatory approval -- tuition and transportation. (1) An out-of-district attendance agreement that allows a child to enroll in and attend a school in a Montana school district that is outside of the child's district of residence or in a public school district of a state or province that is adjacent to the county of the child's residence is mandatory whenever:

1 (a) the child resides closer to the school that the child wishes to attend and more than 3 miles from  
2 the school the child would attend in the resident district and:

3 (i) the resident district does not provide transportation; or

4 (ii) the district of residence provides transportation and is not within the same county as the child's  
5 school district of choice;

6 (b) the child resides in a location where, due to road or geographic conditions, it is impractical to  
7 attend the school nearest the child's residence;

8 (c) the child is a member of a family that is required to send another child outside of the elementary  
9 district to attend high school and the child of elementary age may more conveniently attend an elementary  
10 school where the high school is located, provided that the child resides more than 3 miles from an  
11 elementary school in the resident district or that the parent is required to move to the elementary district  
12 where the high school is located to enroll another child in high school;

13 (d) the child is under the protective care of a state agency or has been adjudicated ~~by a court of~~  
14 ~~competent jurisdiction to be an abused or neglected child, as defined in 41-3-102, or to be a youth in need~~  
15 ~~of supervision or a delinquent youth, as defined in 41-5-103, and has been placed in a licensed youth care~~  
16 ~~facility that is approved by the department of public health and human services and, as a result of the~~  
17 ~~placement, is required to attend school outside of the child's district of residence; or~~

18 (e) the child is required to attend school outside of the district of residence as the result of a  
19 placement ~~by a state agency or parent in a group home licensed by the state or an order of a court of~~  
20 ~~competent jurisdiction in foster care or a group home licensed by the state.~~

21 (2) (a) Whenever a parent or guardian of a child, an agency of the state, or a court wishes to have  
22 a child attend a school under the provisions of this section, the parent or guardian, agency, or court shall  
23 complete an out-of-district attendance agreement in consultation with an appropriate official of the district  
24 the child will attend.

25 (b) The attendance agreement must set forth the financial obligations, if any, for costs incurred for  
26 tuition and transportation as provided in 20-5-323 and Title 20, chapter 10.

27 (c) The trustees of the district of choice may waive any or all of the tuition rate, but any waiver  
28 must be applied equally to all students.

29 (3) Except as provided in subsection (4), the trustees of the resident district and the trustees of  
30 the district of choice shall approve the out-of-district attendance agreement and notify the county

1 superintendent of schools of the county of the child's residence of the approval of the agreement within  
 2 10 days. The county superintendent shall approve the agreement for payment under 20-5-324(5).

3 (4) Unless the child is a child with disabilities who resides in the district, the trustees of the district  
 4 where the school to be attended is located may disapprove an out-of-district attendance agreement  
 5 whenever they find that, due to insufficient room and overcrowding, the accreditation of the school would  
 6 be adversely affected by the acceptance of the child."

7

8 **Section 2.** Section 20-5-323, MCA, is amended to read:

9 **"20-5-323. Tuition and transportation rates.** (1) Except as provided in subsections (3) ~~and (4)~~  
 10 through (5), whenever a child has approval to attend a school outside of the child's district of residence  
 11 under the provisions of 20-5-320 or 20-5-321, the basis of the rate of tuition is a flat rate for each of the  
 12 15 district-size groupings determined by rule by the superintendent of public instruction by March 15 of  
 13 each year, using statewide district expenditure and revenue data for the general fund, debt service fund,  
 14 and retirement fund to determine the average district contribution.

15 (2) The tuition for children with disabilities must be determined under rules adopted by the  
 16 superintendent of public instruction for the calculation of tuition for special education pupils.

17 (3) The tuition rate for out-of-district placement pursuant to 20-5-321(1)(d) and (1)(e) for a student  
 18 without disabilities who requires a program with costs that exceed the average district costs must be  
 19 determined as the actual individual costs of providing that program according to the following:

20 (a) the district of attendance and the district, person, or entity responsible for the tuition payments  
 21 shall approve an agreement with the district of attendance for the tuition cost; and

22 (b) for a Montana resident student, the average district per-ANB foundation payment amount  
 23 received in the year for which the tuition charges are calculated must be subtracted from the per-student  
 24 program costs for a Montana resident student.

25 (4) When a child attends a public school of another state or province ~~or has been placed by a state~~  
 26 ~~agency in an out-of-state residential program~~, the amount of daily tuition may not be greater than the  
 27 average annual cost per student in the child's district of residence. This calculation for tuition purposes is  
 28 determined by totaling all of the expenditures for all of the district budgeted funds for the preceding school  
 29 fiscal year and dividing that amount by the October 1 enrollment in the preceding school fiscal year. For  
 30 the purposes of this subsection, the following do not apply:



1 (a) placement of a child with disabilities pursuant to Title 20, chapter 7, part 4;

2 (b) placement made in a state or province with a reciprocal tuition agreement pursuant to  
3 20-5-314; ~~or~~

4 (c) an order issued under Title 40, chapter 4, part 2; OR

5 (D) OUT-OF-STATE PLACEMENT BY A STATE AGENCY.

6 (5) When a child is placed by a state agency in an out-of-state residential facility, the state agency  
7 making the placement is responsible for the education costs resulting from the placement.

8 ~~(5)(6)~~ The amount, if any, charged for transportation may not exceed the lesser of the average  
9 transportation cost per student in the child's district of residence or 21.25 cents per mile. The average  
10 expenditures for the district transportation fund for the preceding school fiscal year must be calculated by  
11 dividing the transportation fund expenditures by the October 1 enrollment for the preceding fiscal year."

12  
13 **Section 3.** Section 20-5-324, MCA, is amended to read:

14 **"20-5-324. Tuition report and payment provisions -- exemption.** (1) At the close of the school term  
15 of each school fiscal year and before July 15, the trustees of a district shall report to the county  
16 superintendent:

17 (a) the name and district of residence of each child who is attending a school of the district under  
18 an approved mandatory out-of-district attendance agreement;

19 (b) the number of days of enrollment for each child reported under the provisions of subsection  
20 (1)(a);

21 (c) the annual tuition rate for each child's tuition payment, as determined under the provisions of  
22 20-5-323, and the tuition cost for each reported child; and

23 (d) the names, districts of attendance, and amount of tuition to be paid by the district for resident  
24 students attending public schools out of state.

25 (2) The county superintendent shall send, as soon as practicable, the reported information to the  
26 county superintendent of the county in which a reported child resides.

27 (3) Before July 30, the county superintendent shall report the information in subsection (1)(d) to  
28 the superintendent of public instruction, who shall determine the total per-ANB entitlement for which the  
29 district would be eligible if the student were enrolled in the resident district. The reimbursement amount  
30 is the difference between the actual amount paid and the amount calculated in this subsection.

1 (4) Notwithstanding the requirements of subsection (5), tuition payment provisions for  
2 out-of-district placement of students with disabilities must be determined pursuant to Title 20, chapter 7,  
3 part 4.

4 (5) Except as provided in subsection (6), when a child has approval to attend a school outside the  
5 child's district of residence under the provisions of 20-5-320 or 20-5-321, the district of residence shall  
6 finance the tuition amount from the district tuition fund and any transportation amount from the  
7 transportation fund.

8 (6) When a child has mandatory approval under the provisions of 20-5-321, the tuition and  
9 transportation obligation for an elementary school child attending a school outside of the child's county of  
10 residence must be financed by the county basic tax for elementary districts, as provided in 20-9-331, for  
11 the child's county of residence or for a high school child attending a school outside the county of residence  
12 by the county basic tax for high school districts, as provided in 20-9-333, for the child's county of  
13 residence.

14 (7) By December 31 of the school fiscal year, the county superintendent or the trustees shall pay  
15 at least one-half of any tuition and transportation obligation established under this section out of the money  
16 realized to date from the appropriate basic county tax account provided for in 20-9-334 or from the district  
17 tuition or transportation fund. The remaining tuition and transportation obligation must be paid by June 15  
18 of the school fiscal year. The payments must be made to the county treasurer in each county with a school  
19 district that is entitled to tuition and transportation. Except as provided in subsection (9), the county  
20 treasurer shall credit tuition receipts to the general fund of a school district entitled to a tuition payment.  
21 The tuition receipts must be used in accordance with the provisions of 20-9-141. The county treasurer shall  
22 credit transportation receipts to the transportation fund of a school district entitled to a transportation  
23 payment.

24 (8) The superintendent of public instruction shall reimburse the district of residence for the per-ANB  
25 entitlement determined in subsection (3).

26 (9) (a) Any tuition receipts received under the provisions of Title 20, chapter 7, part 4, or  
27 20-5-323(3) for the current school fiscal year that exceed the tuition receipts of the prior year may be  
28 deposited in the district miscellaneous programs fund and must be used for that year in the manner  
29 provided for in 20-9-507 to support the costs of the program for which the tuition was received.

30 (b) Any other tuition receipts received for the current school fiscal year that exceed the tuition

1 receipts of the prior year may be deposited in the district miscellaneous programs fund and may be used  
2 for that year in the manner provided for in that fund. For the ensuing school fiscal year, the receipts must  
3 be credited to the district general fund budget.

4 (10) The provisions of this section do not apply to out-of-state placements made by a state agency  
5 pursuant to 20-7-422."

6  
7 **Section 4.** Section 20-7-403, MCA, is amended to read:

8 **"20-7-403. Duties of superintendent of public instruction.** The superintendent of public instruction  
9 shall supervise and coordinate the conduct of special education in the state by:

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

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

13 (3) certifying special education teachers on the basis of the special qualifications for the teachers  
14 as prescribed by the board of public education;

15 (4) establishing procedures to be used by school district personnel in identifying children with  
16 disabilities;

17 (5) recommending to districts the type of special education class or program needed to serve the  
18 children with disabilities of the districts and preparing appropriate guides for developing individualized  
19 education programs;

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

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

25 (8) approving, as they are proposed and annually after approval, those special education classes  
26 or programs that comply with the laws of the state of Montana, policies of the board of public education,  
27 and the regulations of the superintendent of public instruction;

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

29 (10) conducting conferences, offering advice, and otherwise cooperating with parents and other  
30 interested persons;

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

5 (12) ensuring that the requirements of the Individuals With Disabilities Education Act are met and  
 6 that each educational program for children with disabilities administered within the state, including each  
 7 program administered by any other agency, is under the general supervision of the superintendent of public  
 8 instruction, meets the education standards of the board of public education, and meets the requirements  
 9 of the superintendent of public instruction, reserving to the other agencies and political subdivisions their  
 10 full responsibilities for other aspects of the care of children needing special education or for providing or  
 11 paying for some or all of the costs of a free appropriate public education to children with disabilities within  
 12 the state;

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

15 (14) except for those children who qualify for residential services under the Montana public mental  
 16 health program pursuant to Title 53, chapter 6, contracting with a public school district or a private  
 17 residential facility for the provision of a free appropriate public education for a child ~~when a state agency~~  
 18 ~~places a child with disabilities who is in need of special education in:~~

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

20 ~~(b) an out-of-state public school or private residential facility~~ placed in an in-state residential facility  
 21 or children's psychiatric hospital."

22  
 23 **Section 5.** Section 20-7-420, MCA, is amended to read:

24 **"20-7-420. Residency requirements -- financial responsibility for special education.** (1) In  
 25 accordance with the provisions of 1-1-215, a child's district of residence for special education purposes  
 26 is the residence of the child's parents or of the child's guardian if the parents are deceased, unless  
 27 otherwise determined by the court. This applies to a child living at home, in an institution, or under foster  
 28 care. If the parent has left the state, the parent's last-known district of residence is the child's district of  
 29 residence.

30 (2) The county of residence is financially responsible for tuition and transportation as established

1 under 20-5-323 for a child with disabilities, as defined in 20-7-401, including a child who has been placed  
 2 by a state agency in a foster care or group home licensed by the state. The county of residence is not  
 3 financially responsible for tuition and transportation for a child ~~with disabilities~~ who is placed by a state  
 4 agency in an out-of-state public school or an out-of-state private residential facility.

5 (3) If an eligible child, as defined in 20-7-436, is receiving inpatient treatment in an in-state  
 6 residential treatment facility or children's psychiatric hospital, as defined in 20-7-436, and the educational  
 7 services are provided by a public school district under the provisions of 20-7-411 or 20-7-435, the  
 8 superintendent of public instruction shall reimburse the district providing the services for the negotiated  
 9 amount, as established pursuant to 20-7-435(5), that represents the district's costs of providing education  
 10 and related services. Payments must be made from funds appropriated for this purpose. If the negotiated  
 11 amount exceeds the daily membership rate under 20-7-435(3) and any per-ANB amount of direct state aid,  
 12 the superintendent of public instruction shall pay the remaining balance from available funds. However, the  
 13 amount spent from available funds for this purpose may not exceed \$500,000 during any biennium.

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

20 ~~(5)(4)~~ A state agency that makes a placement of a child with disabilities is responsible for the  
 21 financial costs of room and board and the treatment of the child ~~and~~. THE STATE AGENCY THAT MAKES  
 22 AN OUT-OF-STATE PLACEMENT OF A CHILD WITH DISABILITIES IS RESPONSIBLE FOR the education fees  
 23 required to provide a free appropriate public education that complies with the requirements of Title 20,  
 24 chapter 7, part 4."

25  
 26 **Section 6.** Section 20-7-422, MCA, is amended to read:

27 **"20-7-422. Out-of-state placement of children with disabilities -- payment of costs.** (1) In  
 28 accordance with a placement made by persons determining an individualized education program for a child  
 29 with disabilities, the trustees of a district may arrange for the attendance of the child in a special education  
 30 program offered outside of the state of Montana.

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

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

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

12 ~~(b) the state agency that makes the placement for the portion of the placement costs that~~  
 13 ~~represents the child's education program~~ pay the education costs resulting from the placement.

14 ~~(4) Payments for a child with disabilities as negotiated in subsection (3) must be paid by the~~  
 15 ~~superintendent of public instruction from the state special education appropriation~~ The state agency shall  
 16 place the child with disabilities in a facility that will provide the child with a free appropriate public  
 17 education that complies with the requirements of Title 20, chapter 7, part 4."

18  
 19 NEW SECTION. SECTION 7. REPEALER. SECTION 20-5-316, MCA, IS REPEALED.

20  
 21 NEW SECTION. SECTION 8. COORDINATION INSTRUCTION. IF HOUSE BILL NO. 2 DOES NOT  
 22 INCLUDE APPROPRIATIONS TO THE DEPARTMENT OF CORRECTIONS AND TO THE DEPARTMENT OF  
 23 PUBLIC HEALTH AND HUMAN SERVICES TO PAY FOR THE EDUCATION COSTS ASSOCIATED WITH  
 24 OUT-OF-STATE EDUCATION PLACEMENTS, THEN [THIS ACT] IS VOID.

25  
 26 NEW SECTION. Section 9. Effective date. [This act] is effective July 1, 1997.

27 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0104, reference bill

DESCRIPTION OF PROPOSED LEGISLATION: An act transferring the responsibility for payment of education costs for a student placed in an out-of-state treatment facility to the state agency responsible for the placement decision.

ASSUMPTIONS:

1. Under current law, education costs for students placed out-of-state by state agencies are paid from two revenue sources. If the student is a student with disabilities, payment is made by OPI from the state general fund appropriation for special education. The special education appropriation is the primary funding source for schools for special education. If the student is a student without disabilities (general education), tuition payments are deducted from the county equalization account prior to remittance of county equalization monies to the state. In both instances, the payment of education costs are funded from state sources.
2. HB 104 removes the obligation of the special education appropriation and the county equalization account to pay for education costs for students placed out of state by state agencies.
3. Special education costs for out-of-state placements since fiscal year 1992 are as shown below.

FY 92	\$600,000
FY 93	\$656,880
FY 94	\$417,639
FY 95	\$355,779
FY 96	\$933,759

4. For placements in FY95 county superintendents deducted a total of \$152,128 from the county equalization accounts for tuition to pay for education costs associated with out-of-state residential placements for students without disabilities. Based on a sample of counties these costs are anticipated to increase 80% in FY96 to \$273,830.
5. The state share of total expenses incurred is based on the ratio of current (FY97) placements of students with disabilities made by the Department of Corrections (53%) and the Department of Public Health and Human Services (47%).
6. The obligation for payment of education costs will shift to the "placing agency," i.e. the Department of Corrections and the Department of Public Health and Human Services. It is anticipated that the two departments together would incur additional expenses totaling \$1,095,000. The share of the total expenses to be incurred by the Department of Corrections is 53 percent or \$580,350; the Department of Public Health and Human Services is 47 percent or \$514,650.
7. To carry out the intent of this legislation, the appropriation in HB 2 for special education allowable costs will be reduced by \$812,057 in each year of the 1999 biennium.
8. Revenues collected by the state from the county equalization levies (22 and 33 mills) will increase by \$273,830 in FY98 and FY99 as county payments for out of state placement of students without disabilities are no longer deducted.

Dave Lewis 3-10-97  
DAVE LEWIS, BUDGET DIRECTOR DATE  
Office of Budget and Program Planning

A.R. Toni Hagener 3-11-97  
TONI HAGENER, PRIMARY SPONSOR DATE

Fiscal Note for HB0104, as introduced

Am HB104-#2

FISCAL IMPACT:

<u>Expenditures:</u>	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
Office of Public Instruction	(812,057)	(812,057)
Department of Corrections	580,350	580,350
Dept Public Health and Human Svs	<u>514,650</u>	<u>514,650</u>
Total Expenditures	273,830	273,830
 <u>Funding:</u>		
General Fund (01)	273,830	273,830
 <u>Revenues</u>		
General Fund - County Equalization	273,830	273,830
 <u>Net Impact on Fund Balance (revenue minus expenditure)</u>		
General Fund	0	0

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES: County expenditures for out-of-state placements (as reported on the county treasurers report to OPI) will decrease by the same amount that remittances to the state treasury on the monthly county collections report will increase. The net fiscal impact on counties is zero.

County superintendents will continue to account for, and deduct from the county equalization accounts, tuition payments for students who are attending public schools in other counties.

If these funds are able to be combined with the department's "Communities Intervening in Delinquency" proposal in the Executive Budget, counties would have greater resources at their disposal to meet the needs of their own juvenile population, which would include out-of-state placements and associated education costs.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION: Payments for education costs associated with out-of-state placements of students with disabilities will no longer be deducted from the special education distributions to school districts. Special education distributions to schools will be more stable as they will no longer be tied to the somewhat volatile cost of out-of-state placements.

TECHNICAL NOTES: To carry out the intent of this legislation, HB 2 will need to include appropriations to the Departments of Corrections and Public Health and Human Services to pay for the education costs associated with out-of state placements. OPI's appropriation for special education allowable costs would be reduced to reflect this shift in responsibilities.



## 1 HOUSE BILL NO. 104

2 INTRODUCED BY HAGENER

3 BY REQUEST OF THE OFFICE OF PUBLIC INSTRUCTION

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT TRANSFERRING THE RESPONSIBILITY FOR PAYMENT OF  
6 EDUCATION COSTS FOR A STUDENT PLACED IN AN OUT-OF-STATE TREATMENT FACILITY TO THE  
7 STATE AGENCY RESPONSIBLE FOR THE PLACEMENT DECISION; AMENDING SECTIONS ~~20-5-316,~~  
8 ~~20-5-321, 20-5-323, 20-5-324, 20-7-403, 20-7-420, AND 20-7-422, MCA; REPEALING SECTION~~  
9 ~~20-5-316, MCA;~~ AND PROVIDING AN EFFECTIVE DATE."

10  
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12  
13 ~~Section 1. Section 20-5-316, MCA, is amended to read:~~

14 ~~"20-5-316. Out-of-state tuition -- exemption. (1) The county superintendent of schools of the~~  
15 ~~county of the district of residence shall make payments from the elementary county basic tax for~~  
16 ~~elementary schools equalization fund for children who are placed in facilities outside the state of Montana~~  
17 ~~pursuant to 20-5-321 but not under the provisions of Title 20, chapter 7, part 4.~~

18 ~~(2) The county superintendent of schools of the county of residence shall make payments from the~~  
19 ~~high school county basic special tax for high schools as provided in 20-9-334 equalization fund for children~~  
20 ~~who are placed in facilities outside the state of Montana as a result of a court order or placement by a state~~  
21 ~~agency. This provision does not apply to children with disabilities that are defined under the provisions of~~  
22 ~~Title 20, chapter 7, part 4.~~

23 ~~(3) The provisions of this section do not apply to out of state placements made by state agencies~~  
24 ~~pursuant to 20-7-422."~~

25  
26 **Section 1.** Section 20-5-321, MCA, is amended to read:

27 **"20-5-321. Attendance with mandatory approval -- tuition and transportation.** (1) An out-of-district  
28 attendance agreement that allows a child to enroll in and attend a school in a Montana school district that  
29 is outside of the child's district of residence or in a public school district of a state or province that is  
30 adjacent to the county of the child's residence is mandatory whenever:

1 (a) the child resides closer to the school that the child wishes to attend and more than 3 miles from  
2 the school the child would attend in the resident district and:

3 (i) the resident district does not provide transportation; or

4 (ii) the district of residence provides transportation and is not within the same county as the child's  
5 school district of choice;

6 (b) the child resides in a location where, due to road or geographic conditions, it is impractical to  
7 attend the school nearest the child's residence;

8 (c) the child is a member of a family that is required to send another child outside of the elementary  
9 district to attend high school and the child of elementary age may more conveniently attend an elementary  
10 school where the high school is located, provided that the child resides more than 3 miles from an  
11 elementary school in the resident district or that the parent is required to move to the elementary district  
12 where the high school is located to enroll another child in high school;

13 (d) the child is under the protective care of a state agency or has been adjudicated by a court of  
14 ~~competent jurisdiction to be an abused or neglected child, as defined in 41-3-102, or to be a youth in need~~  
15 ~~of supervision or a delinquent youth, as defined in 41-5-103, and has been placed in a licensed youth care~~  
16 ~~facility that is approved by the department of public health and human services and, as a result of the~~  
17 ~~placement, is required to attend school outside of the child's district of residence; or~~

18 (e) the child is required to attend school outside of the district of residence as the result of a  
19 placement ~~by a state agency or parent in a group home licensed by the state or an order of a court of~~  
20 ~~competent jurisdiction~~ in foster care or a group home licensed by the state.

21 (2) (a) Whenever a parent or guardian of a child, an agency of the state, or a court wishes to have  
22 a child attend a school under the provisions of this section, the parent or guardian, agency, or court shall  
23 complete an out-of-district attendance agreement in consultation with an appropriate official of the district  
24 the child will attend.

25 (b) The attendance agreement must set forth the financial obligations, if any, for costs incurred for  
26 tuition and transportation as provided in 20-5-323 and Title 20, chapter 10.

27 (c) The trustees of the district of choice may waive any or all of the tuition rate, but any waiver  
28 must be applied equally to all students.

29 (3) Except as provided in subsection (4), the trustees of the resident district and the trustees of  
30 the district of choice shall approve the out-of-district attendance agreement and notify the county

1 superintendent of schools of the county of the child's residence of the approval of the agreement within  
2 10 days. The county superintendent shall approve the agreement for payment under 20-5-324(5).

3 (4) Unless the child is a child with disabilities who resides in the district, the trustees of the district  
4 where the school to be attended is located may disapprove an out-of-district attendance agreement  
5 whenever they find that, due to insufficient room and overcrowding, the accreditation of the school would  
6 be adversely affected by the acceptance of the child."

7

8 **Section 2.** Section 20-5-323, MCA, is amended to read:

9 "**20-5-323. Tuition and transportation rates.** (1) Except as provided in subsections (3) ~~and (4)~~  
10 through (5), whenever a child has approval to attend a school outside of the child's district of residence  
11 under the provisions of 20-5-320 or 20-5-321, the basis of the rate of tuition is a flat rate for each of the  
12 15 district-size groupings determined by rule by the superintendent of public instruction by March 15 of  
13 each year, using statewide district expenditure and revenue data for the general fund, debt service fund,  
14 and retirement fund to determine the average district contribution.

15 (2) The tuition for children with disabilities must be determined under rules adopted by the  
16 superintendent of public instruction for the calculation of tuition for special education pupils.

17 (3) The tuition rate for out-of-district placement pursuant to 20-5-321(1)(d) and (1)(e) for a student  
18 without disabilities who requires a program with costs that exceed the average district costs must be  
19 determined as the actual individual costs of providing that program according to the following:

20 (a) the district of attendance and the district, person, or entity responsible for the tuition payments  
21 shall approve an agreement with the district of attendance for the tuition cost; and

22 (b) for a Montana resident student, the average district per-ANB foundation payment amount  
23 received in the year for which the tuition charges are calculated must be subtracted from the per-student  
24 program costs for a Montana resident student.

25 (4) When a child attends a public school of another state or province ~~or has been placed by a state~~  
26 ~~agency in an out-of-state residential program~~, the amount of daily tuition may not be greater than the  
27 average annual cost per student in the child's district of residence. This calculation for tuition purposes is  
28 determined by totaling all of the expenditures for all of the district budgeted funds for the preceding school  
29 fiscal year and dividing that amount by the October 1 enrollment in the preceding school fiscal year. For  
30 the purposes of this subsection, the following do not apply:

1 (a) placement of a child with disabilities pursuant to Title 20, chapter 7, part 4;  
 2 (b) placement made in a state or province with a reciprocal tuition agreement pursuant to  
 3 20-5-314; or

4 (c) an order issued under Title 40, chapter 4, part 2; OR

5 (D) OUT-OF-STATE PLACEMENT BY A STATE AGENCY.

6 (5) When a child is placed by a state agency in an out-of-state residential facility, the state agency  
 7 making the placement is responsible for the education costs resulting from the placement.

8 ~~(5)(6)~~ (6) The amount, if any, charged for transportation may not exceed the lesser of the average  
 9 transportation cost per student in the child's district of residence or 21.25 cents per mile. The average  
 10 expenditures for the district transportation fund for the preceding school fiscal year must be calculated by  
 11 dividing the transportation fund expenditures by the October 1 enrollment for the preceding fiscal year."

12

13 **Section 3.** Section 20-5-324, MCA, is amended to read:

14 **"20-5-324. Tuition report and payment provisions -- exemption.** (1) At the close of the school term  
 15 of each school fiscal year and before July 15, the trustees of a district shall report to the county  
 16 superintendent:

17 (a) the name and district of residence of each child who is attending a school of the district under  
 18 an approved mandatory out-of-district attendance agreement;

19 (b) the number of days of enrollment for each child reported under the provisions of subsection  
 20 (1)(a);

21 (c) the annual tuition rate for each child's tuition payment, as determined under the provisions of  
 22 20-5-323, and the tuition cost for each reported child; and

23 (d) the names, districts of attendance, and amount of tuition to be paid by the district for resident  
 24 students attending public schools out of state.

25 (2) The county superintendent shall send, as soon as practicable, the reported information to the  
 26 county superintendent of the county in which a reported child resides.

27 (3) Before July 30, the county superintendent shall report the information in subsection (1)(d) to  
 28 the superintendent of public instruction, who shall determine the total per-ANB entitlement for which the  
 29 district would be eligible if the student were enrolled in the resident district. The reimbursement amount  
 30 is the difference between the actual amount paid and the amount calculated in this subsection.

1 (4) Notwithstanding the requirements of subsection (5), tuition payment provisions for  
2 out-of-district placement of students with disabilities must be determined pursuant to Title 20, chapter 7,  
3 part 4.

4 (5) Except as provided in subsection (6), when a child has approval to attend a school outside the  
5 child's district of residence under the provisions of 20-5-320 or 20-5-321, the district of residence shall  
6 finance the tuition amount from the district tuition fund and any transportation amount from the  
7 transportation fund.

8 (6) When a child has mandatory approval under the provisions of 20-5-321, the tuition and  
9 transportation obligation for an elementary school child attending a school outside of the child's county of  
10 residence must be financed by the county basic tax for elementary districts, as provided in 20-9-331, for  
11 the child's county of residence or for a high school child attending a school outside the county of residence  
12 by the county basic tax for high school districts, as provided in 20-9-333, for the child's county of  
13 residence.

14 (7) By December 31 of the school fiscal year, the county superintendent or the trustees shall pay  
15 at least one-half of any tuition and transportation obligation established under this section out of the money  
16 realized to date from the appropriate basic county tax account provided for in 20-9-334 or from the district  
17 tuition or transportation fund. The remaining tuition and transportation obligation must be paid by June 15  
18 of the school fiscal year. The payments must be made to the county treasurer in each county with a school  
19 district that is entitled to tuition and transportation. Except as provided in subsection (9), the county  
20 treasurer shall credit tuition receipts to the general fund of a school district entitled to a tuition payment.  
21 The tuition receipts must be used in accordance with the provisions of 20-9-141. The county treasurer shall  
22 credit transportation receipts to the transportation fund of a school district entitled to a transportation  
23 payment.

24 (8) The superintendent of public instruction shall reimburse the district of residence for the per-ANB  
25 entitlement determined in subsection (3).

26 (9) (a) Any tuition receipts received under the provisions of Title 20, chapter 7, part 4, or  
27 20-5-323(3) for the current school fiscal year that exceed the tuition receipts of the prior year may be  
28 deposited in the district miscellaneous programs fund and must be used for that year in the manner  
29 provided for in 20-9-507 to support the costs of the program for which the tuition was received.

30 (b) Any other tuition receipts received for the current school fiscal year that exceed the tuition

1 receipts of the prior year may be deposited in the district miscellaneous programs fund and may be used  
2 for that year in the manner provided for in that fund. For the ensuing school fiscal year, the receipts must  
3 be credited to the district general fund budget.

4 (10) The provisions of this section do not apply to out-of-state placements made by a state agency  
5 pursuant to 20-7-422."

6  
7 **Section 4.** Section 20-7-403, MCA, is amended to read:

8 **"20-7-403. Duties of superintendent of public instruction.** The superintendent of public instruction  
9 shall supervise and coordinate the conduct of special education in the state by:

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

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

13 (3) certifying special education teachers on the basis of the special qualifications for the teachers  
14 as prescribed by the board of public education;

15 (4) establishing procedures to be used by school district personnel in identifying children with  
16 disabilities;

17 (5) recommending to districts the type of special education class or program needed to serve the  
18 children with disabilities of the districts and preparing appropriate guides for developing individualized  
19 education programs;

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

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

25 (8) approving, as they are proposed and annually after approval, those special education classes  
26 or programs that comply with the laws of the state of Montana, policies of the board of public education,  
27 and the regulations of the superintendent of public instruction;

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

29 (10) conducting conferences, offering advice, and otherwise cooperating with parents and other  
30 interested persons;

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

5 (12) ensuring that the requirements of the Individuals With Disabilities Education Act are met and  
 6 that each educational program for children with disabilities administered within the state, including each  
 7 program administered by any other agency, is under the general supervision of the superintendent of public  
 8 instruction, meets the education standards of the board of public education, and meets the requirements  
 9 of the superintendent of public instruction, reserving to the other agencies and political subdivisions their  
 10 full responsibilities for other aspects of the care of children needing special education or for providing or  
 11 paying for some or all of the costs of a free appropriate public education to children with disabilities within  
 12 the state;

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

15 (14) except for those children who qualify for residential services under the Montana public mental  
 16 health program pursuant to Title 53, chapter 6, contracting with a public school district or a private  
 17 residential facility for the provision of a free appropriate public education for a child ~~when a state agency~~  
 18 ~~places a child with disabilities who is in need of special education in:~~

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

20 ~~(b) an out-of-state public school or private residential facility placed in an in-state residential facility~~  
 21 or children's psychiatric hospital."

22  
 23 **Section 5.** Section 20-7-420, MCA, is amended to read:

24 **"20-7-420. Residency requirements -- financial responsibility for special education.** (1) In  
 25 accordance with the provisions of 1-1-215, a child's district of residence for special education purposes  
 26 is the residence of the child's parents or of the child's guardian if the parents are deceased, unless  
 27 otherwise determined by the court. This applies to a child living at home, in an institution, or under foster  
 28 care. If the parent has left the state, the parent's last-known district of residence is the child's district of  
 29 residence.

30 (2) The county of residence is financially responsible for tuition and transportation as established

1 under 20-5-323 for a child with disabilities, as defined in 20-7-401, including a child who has been placed  
 2 by a state agency in a foster care or group home licensed by the state. The county of residence is not  
 3 financially responsible for tuition and transportation for a child ~~with disabilities~~ who is placed by a state  
 4 agency in an out-of-state public school or an out-of-state private residential facility.

5 (3) If an eligible child, as defined in 20-7-436, is receiving inpatient treatment in an in-state  
 6 residential treatment facility or children's psychiatric hospital, as defined in 20-7-436, and the educational  
 7 services are provided by a public school district under the provisions of 20-7-411 or 20-7-435, the  
 8 superintendent of public instruction shall reimburse the district providing the services for the negotiated  
 9 amount, as established pursuant to 20-7-435(5), that represents the district's costs of providing education  
 10 and related services. Payments must be made from funds appropriated for this purpose. If the negotiated  
 11 amount exceeds the daily membership rate under 20-7-435(3) and any per-ANB amount of direct state aid,  
 12 the superintendent of public instruction shall pay the remaining balance from available funds. However, the  
 13 amount spent from available funds for this purpose may not exceed \$500,000 during any biennium.

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

20 ~~(5)~~(4) A state agency that makes a placement of a child with disabilities is responsible for the  
 21 financial costs of room and board and the treatment of the child ~~and~~. THE STATE AGENCY THAT MAKES  
 22 AN OUT-OF-STATE PLACEMENT OF A CHILD WITH DISABILITIES IS RESPONSIBLE FOR the education fees  
 23 required to provide a free appropriate public education that complies with the requirements of Title 20,  
 24 chapter 7, part 4."

25  
 26 **Section 6.** Section 20-7-422, MCA, is amended to read:

27 **"20-7-422. Out-of-state placement of children with disabilities -- payment of costs.** (1) In  
 28 accordance with a placement made by persons determining an individualized education program for a child  
 29 with disabilities, the trustees of a district may arrange for the attendance of the child in a special education  
 30 program offered outside of the state of Montana.



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

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

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

12           ~~(b) the state agency that makes the placement for the portion of the placement costs that~~  
 13 ~~represents the child's education program~~ pay the education costs resulting from the placement.

14           (4) ~~Payments for a child with disabilities as negotiated in subsection (3) must be paid by the~~  
 15 ~~superintendent of public instruction from the state special education appropriation~~ The state agency shall  
 16 place the child with disabilities in a facility that will provide the child with a free appropriate public  
 17 education that complies with the requirements of Title 20, chapter 7, part 4."

18  
 19           NEW SECTION. SECTION 7. REPEALER. SECTION 20-5-316, MCA, IS REPEALED.

20  
 21           NEW SECTION. SECTION 8. COORDINATION INSTRUCTION. IF HOUSE BILL NO. 2 DOES NOT  
 22 INCLUDE APPROPRIATIONS TO THE DEPARTMENT OF CORRECTIONS AND TO THE DEPARTMENT OF  
 23 PUBLIC HEALTH AND HUMAN SERVICES TO PAY FOR THE EDUCATION COSTS ASSOCIATED WITH  
 24 OUT-OF-STATE EDUCATION PLACEMENTS, THEN [THIS ACT] IS VOID.

25  
 26           NEW SECTION. Section 9. Effective date. [This act] is effective July 1, 1997.

27           -END-