



MONTANA LEGISLATIVE BRANCH

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Director
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DATE: December 16, 2019

TO: Legislative Finance Committee (LFC) Education Subcommittee

FROM: Kris Wilkinson, Lead Fiscal Analyst

RE: Cooperative Agreements

As part of the LFC Education Subcommittee, staff was directed to examine the cooperative agreements between local school districts and the related cooperatives. Statute allows for:

- A multidistrict cooperative created by a multidistrict agreement is subject to the conditions of 20-3-363, MCA
- A multidistrict cooperative created by an interlocal cooperative agreement is subject to the conditions of 20-9-701 through 20-9-707, MCA.

The purpose of this memorandum is to provide the requested information on either type of agreement. The majority of the cooperative agreements are special education cooperatives.

STATUTE GOVERNING COOPERATIVE AGREEMENTS

20-7-451, MCA allows a school district to contract with one or more other school districts to establish a cooperative to perform any or all education administrative services, activities, and undertakings that the school districts that enter into the cooperative contract are authorized by law to perform. The contract must be authorized by the Boards of School Trustees of the school districts entering into the contract.

The statute further allows that the money allocated to a cooperative can be expended for:

- Recruitment of professional or employees for the cooperative
- Facility rental and supportive services, including but not limited to janitorial and communication services

20-7-452, MCA provides specific contents that the cooperative agreements must include, requiring the following contract elements:

- Duration of the contract, not less than 3 years for purposes of providing special education services
- The organization, composition, and nature of the cooperative
- The purpose of the cooperative
- The manner of financing the cooperative and establishing and maintaining a budget for the cooperative
- The permissible method to be employed in accomplishing the partial or complete termination of the cooperative agreement and for disposing of property upon partial or complete termination

- Provision for a management board that is responsible for administering the cooperative and that is comprised of trustees of the contracting districts or their authorized representatives
- The manner of acquiring, holding, and disposing of real and personal property used by the cooperative
- Any other necessary and proper manners

20-7-454, MCA requires that before the agreement is finalized it must be:

- Submitted to the Superintendent of Public Instruction, the final approval authority pursuant to the policies of the Board of Public Education
- Filed with the county Clerk and Recorder of the county or counties in which the school districts involved are located
- Filed with the Secretary of State

20-7-457, MCA outlines the funding provisions for special education cooperatives. Statute requires that the special education related services block grant plus the required school district match of 25% be paid to the cooperative. In addition, 5% of the state special education allowable cost payment is paid to the cooperatives for travel and administration. The cooperative is required to establish a retirement fund, a miscellaneous programs fund, and a transportation fund.

In addition, the statute requires:

- The Superintendent of Public Instruction is to define the boundaries of the cooperatives that incorporate the territory of all public school districts
- Restructuring of cooperating be limited to 23 districts statewide, include districts that are adjacent to each other and not overlapping another district's territory, and provides that all districts located within a cooperative's boundary may voluntarily become a cooperative member

COOPERATIVE AGREEMENT REVIEW BY THE OFFICE OF PUBLIC INSTRUCTION

The Office of Public Instruction reviews cooperative agreements using an established checklist. Items included in the review are:

- Date of the agreement
- List of participating school districts
- Purpose of the cooperative
- Power, duties, and responsibilities of the cooperative
- Cooperative organization
- Power and duties of the management board
- Financial administration
- Addition of a district to a cooperative
- Termination of membership in a cooperative
- Termination of a cooperative
- Teacher tenure

See Appendix A for a copy of the checklist document used by the Office of Public Instruction when examining cooperative agreements.

COMMON COMPONENTS INCLUDED IN COOPERATIVE AGREEMENTS

Examination of the cooperative agreements of 18 of the 21 cooperatives revealed additional common elements of the agreement beyond those in the OPI checklist including:

- Term of the agreement, 16 were made in perpetuity, 2 for a set duration of time
- Designation of prime agent, 5 designated a specific school district, 7 designate a specific county superintendent, 4 designated the cooperative, and 2 outlined the qualifications for the prime agent and required the management board of the cooperative to select either a county superintendent or school district to serve
- Transfers made from the miscellaneous federal programs fund must be approved by the Superintendent of Public Instruction

The cooperative agreements for the Bitterroot Valley Cooperative, Central Montana Learning Resource Center, and the East Yellowstone Special Services Cooperative were not available.

ADDITIONAL ELEMENTS INCLUDED IN A SINGLE COOPERATIVE AGREEMENT

The Bear Paw Cooperative and Park County Cooperative agreement requires that any state monies paid to the Bear Paw and Park County Cooperatives that are not obligated or utilized will be deposited in the cooperatives fund balance. The agreements do not specify the use of the monies in the cooperatives fund balance.

The Yellowstone/West Carbon Cooperative agreement requires that all funds received through interest from cooperative funds be transferred to the Yellowstone County Superintendent of Schools (Fund 20) at the end of the fiscal year.

APPENDIX A

COOPERATIVE INTERLOCAL AGREEMENT CHECKLIST

20-7-451 THROUGH 20-7-457, MCA

Cooperative Review _____ Name: _____ Date _____ of _____

Cite	Interlocal Agreement includes:	Page #	Meets requirements (Y/N)	Comments or Recommended changes
A. Introduction				
20-7-452 (1) Duration and 20-7-452 (8) Any other necessary and proper matters.	Date of agreement			
20-7-452 (2) Composition and nature of the organization	List of participating districts			
20-7-452 (3) Purpose of the Cooperative	Purpose: (a) The districts desire to offer full services to persons requiring special education (said persons defined in 20-7-401, MCA) and to all children within said districts.			
	(b) The districts desire to provide these special education services in compliance with all applicable State and Federal laws, regulations, and accreditation standards.			

Cite	Interlocal Agreement includes:	Page #	Meets requirements (Y/N)	Comments or Recommended changes
	(c) Establish a full service cooperative to perform all education administrative services, activities, and undertakings it is authorized to perform according to 20-7-451 through 20-7-456, MCA			

B. Powers, Duties, and Responsibilities

<p>20-7-452 (3) Purpose of the cooperative</p>	<p>A list of specific duties and responsibilities that address the purpose of the cooperative. These may include, but not limited to, requested services necessary to meet the provision of FAPE under IDEA and state special education regulations.</p>			
<p>20-7-452 (8) Any other necessary and proper matters. <i>[The adjacent column contains items suggested by legal counsel to be "other necessary and proper matters" to include and suggested language. The list is not all inclusive.]</i></p>	<p>Cooperative Powers: (a) Power to sue and be sued, complain and defend, in its cooperative name.</p>			
	<p>(b) Power to contract including detail of who has the power, for what amount and length of time the contract can run.</p>			
	<p>(c) Power to borrow and limitations.</p>			
	<p>(d) Power to conduct affairs and hold offices.</p>			
	<p>(e) Power to establish bylaws (includes detail on how bylaws are approved, adopted and revised).</p>			
	<p>(f) Power to expend funds (includes any authority given to director, including dollar limit).</p>			
<p>20-7-452 (7)</p>	<p>(g) Power to acquire, hold, exchange, and dispose of real and personal property.</p>			

C. Cooperative Organization				
20-7-452(8) Any other necessary and proper matters	Cooperative Name			
20-7-452 (1) It's duration, which may not be less than 3 years for purposes of providing special education services.	Duration of Cooperative's Existence			
20-7-452 (6) 10.16.3902 ...provision for a management board that is responsible for administering the cooperative and that is comprised of trustees of the contracting districts or their authorized representatives	Composition of Management Board			
	a. Comprised of district trustees and/or representatives.			
	b. How they are appointed.			
	c. Term length			
	d. Voting privileges			
	e. Number of meetings			
20-7-452 (6) Provision for administering the cooperative.	Power and Duties of the Management Board			
	Power to employ and terminate staff, including director			
20-7-452 (8) Any other necessary and proper matters	Expend funds			
	Set policy to be implemented by the director.			
	Review the performance of the cooperative at least annually.			

	Review the financial management of the cooperative at least annually.			
	Set and approve fiscal budget of the cooperative.			
	Power to make contracts for the cooperative (includes statement that provides director with limited power to enter into contracts on behalf of cooperative.			
D. Financial Administration				
20-9-701	Statement identifying "Prime Agency."			
20-7-457 (5), 20-9-703 20-9-201	Statement regarding the establishment of a retirement fund, miscellaneous programs fund, transportation fund, and a non-budgeted interlocal cooperative agreement fund if necessary			
20-7-452(4)	Statement defining the procedures for establishing and maintaining a budget for the cooperative.			
20-7-452(4)	Statement defining the process for assessing fees to member districts.			
20-9-321 (6)	Statement regarding a district's responsibility to provide, at a minimum, the matching dollars that are necessary for the related services block grant.			
10.16.3181 (2)(a)	Statement regarding the cooperative submitting the application for federal Part B and Preschool			

	funds on behalf of its member school districts.			
20-7-452 (8)	Statement defining the signature requirements for warrants.			
2-7-503 20-9-213 (8)	Statement that requires an annual audit of financial records by an independent auditor.			

E. Addition of a District to the Cooperative

20-7-457 10.16.3809 (d)	Defines requirements for a district's participation in the cooperative, including but not limited to: a. Statement regarding a district's three-year commitment b. Process for renewal of district's membership, whether automatic or must be initiated by district.			
10.16.3903	Identifies an annual process of notification to join to non-participating districts within the coop boundary.			

F. Termination of membership in a cooperative

20-7-452 (5)	Statement outlining the timeline for requesting termination of membership.			
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G. Termination of the cooperative

20-7-452 (5)	Statement outlining the process for requesting termination or dissolution of the cooperative.			
	Statement outlining the process for disposing of property at dissolution.			

H. Teacher Tenure

20-7-456 20-7-452 (8) 20-4-204 thru 20-4-207	Statement defining the acquirement of teacher tenure			
	Statement regarding the termination of tenure teacher service.			
	a. Statement includes identifying the entity that would hear the matter if termination is disputed.			

I. Review by the Superintendent of Public Instruction

20-7-454	Statement outlining the submission of the interlocal agreement to the Superintendent of Public Instruction for approval.			
	a. Statement includes submission county clerk and recorder and Secretary of State.			

OTHER COMMENTS:

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