

SCHOOL DISTRICT TERRITORY TRANSFERS IN OTHER STATES

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Prepared for the Education and Local Government Interim Committee
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INTRODUCTION

In many small communities in Montana, the school is the focal point for the community's identity. School activities become community activities. School events become community events. Parents who attended the school as students are often eager to have their own children attend the school as well. But sometimes, people who, for one reason or another, identify with a particular community find themselves residing within the boundaries of a school district with a different community center. Even though their residence may be closer to the community with the school they want their children to attend, they have to send their children to another community for their education.

Since the early 1970s, Montana has allowed the voters in one school district to petition to have territory in one school district transferred to another district. The decision to approve or disapprove a transfer is the responsibility of the county superintendent. However, in December of 2000, the Montana Supreme Court declared the territory transfer statutes unconstitutional because they gave too "broad [a] grant of discretion to a county superintendent of schools, unchecked by any standard, policy, or rule of decision . . ." As a result of this decision, the territory transfer statutes now must be rewritten to address the constitutional concerns of the court.

Montana is not the only state that allows for the transfer of territory between school districts. While a statute from another state cannot simply be picked up and dropped whole into the Montana Code Annotated, there may be some parts of another state statute that can be used to fashion a new Montana statute.

The purpose of this report is to review the territory transfer statutes in five states: Washington, Idaho, North Dakota, South Dakota, and Wyoming. Each state has its own unique way of handling territory transfers. By reviewing these different procedures, Montana may be able to glean some ideas for revising its statutes.

WASHINGTON

Washington has one of the most unique ways of addressing territory transfers. In addition to school districts, Washington has created educational service districts (ESDs) as regional agencies designed to provide services to local school districts. Every school district in the state is in an ESD. These ESDs are governed by a board of directors elected by the school district trustees within the ESD. In turn, this board of directors appoints a superintendent for the ESD.

A petition to transfer territory from one school district to another school district may be initiated

by a petition to the superintendent of the ESD in which the school districts are located. The petition must be signed by at least 10% of the registered voters residing in the territory proposed for transfer or signed by a majority of the members of the board of directors (trustees) of one of the districts affected by the proposed transfer. The petition must include the name of each district affected, the boundaries of the territory proposed for transfer, the reasons for proposing the transfer, and the number of school-age children, if any, residing in the territory.

Once the ESD superintendent has received the petition, one of two things will occur. If the proposed transfer involves 10% or more of the student population of the entire district from which the transfer is proposed, the ESD superintendent shall hold a special election of the voters of the entire transferring school district to approve or reject the proposed transfer. A simple majority shall determine the outcome.

If the transfer involves less than 10% of the student population, the ESD superintendent shall notify the affected school districts that they are required to enter into negotiations over the proposed transfer. The school districts have 90 days in which to agree to the proposed transfer. The school districts may request a 30-day extension from the ESD superintendent. At any time during the 90-day period, any district involved in negotiations may inform the ESD superintendent that agreement will not be possible.

If the negotiating school districts cannot come to an agreement, they may request the services of a mediator who then has 30 days to work with the school districts to see if an agreement can be reached. If the mediator is unable negotiate an agreement or if the school districts do not request a mediator, either district may file a request with the ESD superintendent for a hearing by the Regional Committee.

Every ESD has a Regional Committee whose members are elected by the school trustees within the ESD. The purpose of the Regional Committee is to act upon proposals for annexation, consolidation, dissolution, and territory transfers.

The Regional Committee must hold at least one hearing on the proposed transfer. Within 30 days after the final hearing, the Committee must render its decision to approve or disapprove the transfer. A decision of the Regional Committee may be appealed to the State Board of Education by either a voter petitioner or by a school district. The State Board may refer the matter back to the Regional Committee for a rehearing or may uphold the decision of the Regional Committee. Any school district or voter petitioner may seek a judicial review of a Regional Committee's decision.

During the negotiations between the affected school districts or during the deliberations of the Regional Committee, certain criteria or factors must be considered:

- ? a balance of local petition requests and the needs of the statewide community at large;
- ? logical service boundaries;
- ? educational opportunities for students;
- ? wiser use of public funds;
- ? safety and welfare of students;
- ? history and relationship of affected territory to the students and communities affected by the proposed transfer;
- ? geographic accessibility, including geographic and man-made barriers, modes of transportation, traffic patterns, climatic conditions, and transportation time; and

- ? financial issues, including funding sources, tax burden equalization, improvement in economies in the administration and operation of schools, and effects on transportation costs.

IDAHO

The state of Idaho also allows either school district trustees or registered voters to initiate a petition to transfer territory from one school district to another. A voter-initiated petition must come from voters residing in an area of not more than 50 square miles within which there is no school building. The receiving school district must be contiguous to the transferring school district. A petition must be presented to both affected school districts and must contain:

- ? the names and addresses of the petitioners;
- ? a legal description of the territory to be transferred;
- ? maps showing the current boundaries of the school districts and the proposed boundaries;
- ? the names of the affected school districts;
- ? a description of the reasons for presenting the petition; and
- ? an estimate of the number of children residing in the territory proposed for transfer.

Each school district must send the petition, with recommendations, to the State Board of Education. The State Board of Education shall approve the petition if the transfer is in the best interests of the children residing in the territory proposed for transfer and the transfer will not leave a school district with a bonded indebtedness in excess of the statutory limit.

If the State Board approves the transfer, it shall submit the transfer proposal to the school district voters residing in the area proposed for transfer. Two questions must appear on the ballot: the transfer itself and the assumption of the appropriate proportion of bonded indebtedness of the receiving school district. The transfer must be approved by a simple majority of voters voting in the election while the assumption of debt must be approved by two-thirds of the voters voting in the election.

NORTH DAKOTA

North Dakota is similar to Montana in that a territory transfer must be initiated by the voters. Two-thirds of the registered voters residing in the territory proposed for transfer may petition the county superintendent of schools for a transfer, provided the territory constitutes a single area that is contiguous to the receiving school district and does not constitute the entire school district. The petition must identify the property to be transferred, identify one child who resides in the territory and whose parents have agreed to send the child to school in the receiving district, and be signed in the presence of the petition carrier.

Upon receipt of the petition, the county superintendent shall schedule a hearing before the county committee (commission). If the affected school districts lie in more than one county, a joint hearing must be held, but each county committee shall vote separately on the petition. At the hearing, the county committee shall accept testimony on:

- ? value and amount of property of both school districts;
- ? outstanding bonded and other indebtedness of both school districts;

- ? levies for bonded indebtedness to which transferred property will be liable;
- ? taxable valuation of each district and taxable valuation after transfer;
- ? size, geographical features, and boundaries of each district;
- ? number of students in each district;
- ? general population of each district;
- ? name, location, condition, and grade levels offered for each school in the district and the distance that students living in the territory proposed for transfer would have to travel to attend school;
- ? location and condition of roads, highways, and natural barriers in each district;
- ? conditions affecting the welfare of students residing in the territory to be transferred;
- ? boundaries of other governmental entities;
- ? educational needs of communities in each affected district;
- ? potential savings in district transportation and administration;
- ? potential for reduction in per-student valuation disparity between the affected districts; and
- ? potential to equalize or increase the educational opportunities for students in each affected district.

Following the hearing and a review of the testimony, the county committee shall approve or deny the transfer. If the transfer is approved, all of the information regarding the hearing and the county committee's decision must be forwarded to the State Board of Public School Education for final approval. The State Board shall conduct a hearing and approve or deny the transfer. If no opposition to the transfer was presented to the county committee, the State Board may review the record and approve the transfer without holding its own hearing.

The decision of a county committee may be appealed to the State Board. The decision of the State Board may be appealed to the district court in which the property to be transferred is located.

North Dakota law also allows for an exchange of property between adjacent school districts. An individual may petition to have property in one district transferred to another district by an exchange of property. The petitioner must reside within the territory to be exchanged, shall obtain the written authorization for the exchange from the owner of the property to be exchanged in the adjacent district, and obtain the written approval of one qualified voter from each residence within the territory to be exchanged. The difference in taxable valuation of the property involved in the exchange may not exceed \$1,000. The exchange must be approved by the county committee or committees and by the State Board of Public School Education.

SOUTH DAKOTA

In South Dakota, school districts are the major instrument for initiating a territory transfer. A school board must pass a resolution of intent to make the transfer. The area proposed for transfer must be coterminous at some point with the common boundary of the two affected school districts. Land owned by the federal, state, or local governments and unoccupied land owned by a nonresident may be included in the transfer. The initiating board must send a copy of the resolution to all affected school districts. All of the affected districts must act upon the resolution at their next meeting. Within 30 days of the passage of the resolution, each school board shall hold a public hearing. Within 30 days of the public hearing, the school boards of

each affected district shall meet and take final action on the resolution. If all the districts approve the territory transfer, the resolution must be forwarded to the appropriate county commissions who will set the effective date for the changes. A decision by a school district may be appealed to the circuit court and from there to the Supreme Court.

Within 30 days of the final public hearing, five percent of the voters residing within a school district may petition the school board to refer the resolutions to an election. The district shall submit the question at the next annual election. If passed by the voters, the resolution must be sent to the county commissioners for implementation.

A minor boundary change may be requested by a petition signed by over 50% of the voters residing in the area to be transferred. A minor boundary change is defined as a change that does not affect more than two percent of the assessed valuation and not more than two percent of the tax-exempt acreage or other tax-exempt property to be determined at the discretion of the school district from which the area is to be taken. The petition must be presented to both of the affected school districts and to the board of county commissioners of the affected counties. Within 60 days of the receipt of the petition, each school district shall approve or disapprove the petition and notify the petitioners. If the request is approved, the school board shall notify the county commissioners of both districts who shall implement the change. A decision by a school district may be appealed to the Secretary of Education and Cultural Affairs. A decision by the Secretary may be appealed to the circuit court and from there to the Supreme Court.

A resolution of intent or a petition requesting a boundary change must contain:

- ? the names of the affected school districts and a description of the area proposed for transfer;
- ? a map of the area proposed for transfer, including a portion or all of the losing district and a portion or all of the receiving district; and
- ? a statement certified by the county auditor setting forth the amount of the assessed value of the area to be transferred, the total assessed value of the losing school district, and the amount of any bonded indebtedness or judgments against the school district.

There are no statutory criteria that school districts must use in making a decision to approve or disapprove a territory transfer.

WYOMING

Wyoming also has a distinctly unique way of handling territory transfers between school districts. In each county in Wyoming, there is a district boundary board composed of the county assessor, the county commissioners, and the county treasurer whose purpose is to establish school districts in the county. This includes changing boundaries, reorganizing districts, and combining districts. If in the judgment of the district boundary board it would benefit the educational needs of the students and only when each school district consents, the district boundary board may submit a proposal to the state committee, composed of the State Superintendent and the State Board of Education, to change the boundaries of any school district under its jurisdiction. However, any proposal by the district boundary board must conform to the following criteria:

- ? school districts must be organized as efficient administrative units considering primarily the education, convenience, and welfare of the children;

- ? the entire state must be divided into unified school districts, except for elementary districts that have chosen not to unify;
- ? all of the territory of each school district must be contiguous;
- ? all of the territory within a school district must be a single area from which trustees are elected at large or be divided into trustees' residence areas that must be contiguous;
- ? the district boundary board must consider a ratio of average daily membership to assessed valuation as nearly equalized as practicable among the districts in the various counties;
- ? each proposal must include provisions for educational opportunity and services as nearly equal as possible in all areas of each district; and
- ? all the territory embraced in any incorporated city or town must be kept in one school district.

Before the district boundary board submits a proposal to the state committee, the board must hold a public hearing or hearings. In addition to the general notice of the hearing, a separate notice must be sent to each school district trustee residing in the area involved in the hearing. Following the hearing, the district boundary board shall submit the proposal to the state committee. The proposal must include:

- ? a map showing the boundaries of the established school districts and the proposed boundaries;
- ? a description of the proposed boundaries;
- ? recommendations respecting the allocation of existing indebtedness and transportation requirements;
- ? a summary of the reasons for the proposal;
- ? a record of all hearings;
- ? a summary of anticipated improvement in education; and
- ? other reports, records, and materials as the district boundary board or the state committee considers appropriate.

Within 90 days after the receipt of a proposal from a district boundary board, the state committee shall approve or reject the proposal and notify the district boundary board of its decision. In making its decision, the state committee must consider if the proposal will provide an improved and more equalized educational opportunity for all of the pupils and provide a wiser and more efficient use of public funds for education and, making allowance for local conditions, special needs and problems, and educational cost differentials, achieve financial parity among school districts.

If the state committee rejects the proposal, it shall make recommendations for making the proposal acceptable. A district boundary board may resubmit a modified proposal as often as necessary or may appeal a rejection to the district court. A school district may also appeal a decision of the state committee to a district court.

CONCLUSION

There are almost as many ways to transfer territory between school districts as there are states. Each state has developed a procedure that best fits its situation. The same is true of Montana. While there may be some parts of other state laws that may be attractive, they will need to be adapted to Montana and will need to address the concerns outlined by the Supreme Court.