

STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON EDUCATION

March 14, 2001

8:03 a.m.

MEMBERS PRESENT

Representative Con Bunde, Chair
Representative Brian Porter
Representative Joe Green
Representative Peggy Wilson
Representative Gary Stevens
Representative Reggie Joule
Representative Gretchen Guess

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 71

"An Act relating to the education of children with disabilities and of gifted children; relating to the Governor's Council on Disabilities and Special Education; making conforming amendments; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 94

"An Act relating to initiatives for quality schools; relating to pupil competency testing and the issuance of secondary school diplomas; relating to certain reports regarding academic performance of schools; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS ACTION

BILL: HB 71

SHORT TITLE: EDUC. OF DISABLED OR GIFTED CHILDREN

SPONSOR(S): RLS BY REQUEST OF THE GOVERNOR

Jrn-Date	Jrn-Page		Action
01/17/01	0112	(H)	READ THE FIRST TIME - REFERRALS
01/17/01	0112	(H)	EDU, HES, FIN

01/17/01	0112	(H)	FN 1: ZERO(EED)
01/17/01	0112	(H)	GOVERNOR'S TRANSMITTAL LETTER
01/17/01	0112	(H)	REFERRED TO EDU
02/07/01		(H)	EDU AT 8:00 AM CAPITOL 106
02/07/01		(H)	Heard & Held
02/07/01		(H)	MINUTE(EDU)
03/14/01		(H)	EDU AT 8:00 AM CAPITOL 106

WITNESS REGISTER

BRUCE JOHNSON, Deputy Commission of Education
Office of the Commissioners
Department of Education & Early Development
801 West 10th Street
Juneau, Alaska 99501
POSITION STATEMENT: Testified on HB 71.

GREGORY MALONEY, State Director
of Special Education
Department of Education & Early Development
801 West 10th Street
Juneau, Alaska 99501
POSITION STATEMENT: Answered questions on HB 71.

PHILIP REEVES, Assistant Attorney General
Human Services Section
Civil Division (Juneau)
Department of Law
PO BOX 110300
Juneau, Alaska 99811
POSITION STATEMENT: Answered questions on HB 71.

ACTION NARRATIVE

TAPE 01-14, SIDE A
Number 0001

CHAIR CON BUNDE called the House Special Committee on Education meeting to order at 8:03 p.m. Members present at the call to order were Representatives Bunde, Porter, Wilson, Joule, and Guess. Representatives Green and Stevens arrived as the meeting was in progress.

HB 71-EDUC. OF DISABLED OR GIFTED CHILDREN

CHAIR BUNDE announced the committee would hear testimony on HOUSE BILL NO. 71, "An Act relating to the education of children

with disabilities and of gifted children; relating to the Governor's Council on Disabilities and Special Education; making conforming amendments; and providing for an effective date."

Number 0156

BRUCE JOHNSON, Deputy Commission of Education, Office of the Commissioners, Department of Education & Early Development (EED), came forth and stated that HB 71 will bring [the EED] into compliance with the federal government requirements for special education and will allow [the EED] to continue to receive the resources available at the federal level. He mentioned that [the EED] does not portray that its money is currently in jeopardy with the federal government; however, [the EED] is under corrective action. He remarked that last year there was \$11 million or \$12 million in federal dollars and now there is about \$19 million. He added that most of that money is passed on to the individual districts to offset their costs, particularly with students who have severe disabilities. He added that [the EED] has also attempted to differentiate between children with disabilities and children who are identified as gifted and talented.

MR. JOHNSON mentioned that [the EED] had felt there were no resources for it to do much with the exceptional child who is identified as gifted and talented. Therefore, it was decided that since the money was going to the districts through the block grant program, [the districts] should have full control with what happens with the services they elect to provide to gifted and talented children. He added that [the EED] had heard from a strong constituency that wanted the state oversight; therefore, there is a modest fiscal note attached to the bill to provide this and other services in the area of GT (gifted and talented).

Number 0445

CHAIR BUNDE asked if [the EED] would have a negative reaction if "30 calendar days" was changed to "30 school days" under IEPs (individual education programs).

GREGORY MALONEY, State Director of Special Education, Department of Education & Early Development, answered that in federal law it reads "30 days", which is calendar days. He added that "school days" could be restrictive.

CHAIR BUNDE asked if [it would have to be "30 days"] in order to be in federal compliance.

MR. MALONEY remarked that [the EED] cannot restrict the federal law.

CHAIR BUNDE stated that [the Anchorage School District] had concerns about due process, the one-tiered hearing process, and the additional costs.

Number 0535

MR. MALONEY replied that what is in place currently is a two-tiered hearing process. If a parent has a due process issue, he or she files the request with the district, which assigns a hearing officer. Currently, appeals come to [the EED]. [The EED] is proposing a one-tiered system, in which it would receive the requests for the due process hearings and assign the hearing officer through a hearing officer selection process. He stated that the cost concerns that the [Anchorage School District] has is in regard to whether the hearing officer lives outside of the Anchorage area. He noted that the majority of the hearing officers live within the Anchorage area; therefore, [the EED] does not believe that would be a strong consideration in terms of the cost. The legal fees that would be charged would be the same, presumably. Therefore, the additional costs would be for transportation if the [hearing officer] was not living in Anchorage.

MR. MALONEY stated that it is not easy for [the EED] to track the due process issues when the districts administrate the hearings. He clarified that [the proposed system] will make the process cleaner and allow [the EED] to track the issues in order to address them through trainings and professional development.

Number 0668

REPRESENTATIVE WILSON asked whether the schools could start the due process so that they don't have to wait for any action from [the EED].

MR. MALONEY answered that they do under the current system.

REPRESENTATIVE WILSON asked if [the EED] wants to change that.

MR. MALONEY replied that the district would no longer assign the hearing officer; [the EED] would. Therefore, the districts would not receive the initial requests from the parents.

REPRESENTATIVE WILSON asked if that occurs when [the parents] have gone through the due process and something hasn't worked out at the local level.

MR. MALONEY answered that under the current system that would be correct. He clarified that [the EED] would be involved if the district or the parent disagreed with the decision regarding the due process hearing. Under the proposed system, the [EED] would initially assign the hearing officer.

Number 0766

REPRESENTATIVE WILSON asked whether, under this new program, the parents will realize that they don't initially go to the local school level for [requests].

MR. MALONEY responded that if the districts receive [the requests], they will forward them to the [the EED]. He added that [the EED] will provide trainings for the parents and notification will be in the procedural safeguard notice, which parents receive.

REPRESENTATIVE WILSON stated that she is concerned with the limit of 30 days.

MR. MALONEY responded that the 30 days refers to the IEP plans. He clarified that the due process has a separate timeline.

REPRESENTATIVE WILSON asked if this is essentially taking away some local control and giving it to the [EED].

MR. MALONEY explained that in terms of the due process hearing, it would be the [EED] rather than the local district assigning the hearing officer. He noted that the first significant procedural safeguard is a process called mediation. He explained that anytime [parents and school districts] have disagreements over a student's educational program, a neutral, trained mediator is brought in and the issues are resolved through communication. He stated that the second procedural safeguard has to do with a complaint investigation. If there is a disagreement, an administrative complaint can be filed under [the EED] and a trained complaint investigator is assigned to

the case who collects the information. A report is then written that may contain corrective actions if necessary.

Number 0954

MR. MALONEY explained that there are three formal processes provided to parents. Due process is the most significant one in that it tends to be the most "legalistic" and most expensive. He added that [the EED] encourages mediation as well as for districts and parents to have communication prior to this point. He noted that through the IEP process there should be identification of issues that are not working well. He remarked that [the EED] would be concerned if the due process hearing is seen as the communication mechanism.

REPRESENTATIVE WILSON asked where in the process the school and the parents try to work things out first.

MR. MALONEY responded that the best-case scenario would be in the IEP meeting, where differences are being identified. He added that there are times when this doesn't happen, and that is where these three processes are provided under federal law - mediation, complaint investigation, and due process. He added that it is up to the parent to choose which one to pursue.

REPRESENTATIVE WILSON asked who would be picking up the bill if the [EED] has to be contacted for a due process [hearing].

MR. MALONEY replied that the districts would still be responsible for paying for the due process hearings. He reiterated that one of the reasons [for the new process] is for [the EED] to know which due process hearings are occurring and to track the issues regarding students with disabilities. He noted that this is also to encourage districts and parents to communicate prior to the point at which a due process hearing is being requested. He added that anytime a due process hearing is requested, the hearing officer, by law, has to notify the parent of the availability of mediation.

Number 1163

REPRESENTATIVE WILSON asked whether [the EED] could mandate the schools to inform the department every time a due process hearing occurs, since it seems the only concern is not finding out about them. She also asked if [the EED] is feeling that [the process] is not being done properly in some areas.

MR. MALONEY replied that there are some concerns with how the process is handled. He stated, in terms of the local control issue, that he thinks [the EED] is in line with what other states have done. It would be a more efficient process. He added that the costly part would come from [modifying the already implemented procedures].

Number 1238

REPRESENTATIVE GREEN asked if it is possible to get somebody outside the area of interest since the random selection [for the hearing officer] is from a statewide pool.

MR. MALONEY answered that the pool is primarily from the Anchorage area. He noted that [the EED] has tried to have regional representation. Under this system it would be a random process and each participant would have the opportunity to randomly "bump" one person.

REPRESENTATIVE GREEN remarked that he is concerned that there will be increased cost if a complaint occurs out of [a hearing officer's] district.

MR. MALONEY replied that there could potentially be additional costs. He noted that districts are currently paying for hearing officers. He explained that in the current system the district will frequently provide the names of three [hearing officers]. If any are disagreed upon, then the fourth name is the one assigned.

REPRESENTATIVE GREEN remarked that it seems [the EED] is working toward an inefficient central control.

Number 1464

REPRESENTATIVE JOULE asked where hearing officers for the rural areas are from.

MR. MALONEY answered that there is a pool of trained hearing officers who are primarily from the Anchorage area.

REPRESENTATIVE JOULE asked whether there would be a cost anyway for the rural districts.

MR. MALONEY replied that it depends on the nature of the hearing. He explained that hearings could be conducted in a number of ways for costs to be kept at a minimum. He stated

that the hearing officers will be from the same pool [as the current pool], and the only change would be the way in which they are assigned.

REPRESENTATIVE JOULE asked if there is a perception from the parents, under the current way, that there might be a bias [with the hearing officers].

MR. MALONEY answered that perceptions of parents could certainly be that. He explained that this is why parents have the opportunity to exclude certain hearing officers. He said he thinks this will actually be a cost savings because the [EED] would be bearing some of the administrative costs for assigning those hearing officers. He added that in creating this legislation [the EED] consulted with the "parent in training information center," the governor's council on special education and developmental disabilities, and the Disability Law Center [of Alaska], none of which expressed significant concern about this particular piece of legislation.

Number 1666

REPRESENTATIVE PORTER stated that the debate is over a dispute between parents and a school district, both of whom should be advancing toward resolution on equal levels. He remarked that if the parents, rather than the school district, [pick the hearing officers], the cost will virtually be the same.

REPRESENTATIVE GUESS asked, if there's one pool of hearing officers, whether the district or the state is going to choose it.

MR. MALONEY answered yes.

REPRESENTATIVE GUESS asked if there is somebody the district would choose that is not in the state's pool.

MR. MALONEY answered no, and said the state is currently responsible for qualifying the hearing officers.

REPRESENTATIVE GUESS asked if the state would conduct a random process instead of the process that occurs at the district level, which may or may not be random.

MR. MALONEY replied that districts would provide [three] names from a pool of names. The parents can choose to accept any of

the names; if not, then the fourth name would be the [hearing officer] selected.

Number 1779

REPRESENTATIVE GUESS asked how many hearings get appealed now.

MR. MALONEY answered that this information has not been tracked very well because [the EED] doesn't really know the amount of hearings that are occurring. This year, so far, there have not been any hearings that have been appealed. He stated that the option of the court is always available. He added that the court may direct a person to exhaust that appeal process, and due process can be settled prior to the resolution. This allows [the EED] to better handle that information.

Number 1866

CHAIR BUNDE remarked that it seems as if the argument [that the EED] wants this [legislation] for better tracking is a pretty thin argument. He stated that [the EED] could simply request that information through regulation. He said he would feel more comfortable with [requests] immediately going to the state if [the EED] required mediation first. He asked why this should go to the supreme court before the district court.

MR. MALONEY answered that the reason [mediation] is not required is because it is a voluntary process by design. Under the due process procedures it is required that parents are made aware of [the option of] mediation by the hearing officer.

CHAIR BUNDE asked if the courts might require mediation.

MR. MALONEY answered that the court could require [the parents] to enter into mediation, but [the EED] cannot.

Number 1971

REPRESENTATIVE PORTER remarked, "If I were a school district, I would be inclined to try to take care of all the local options I had at my avail before I took this step."

REPRESENTATIVE GREEN commented that there haven't been any requests to advance because they have been handled under the current system. He asked if this is the type of situation where "if the system ain't broke, fix it till it is."

MR. MALONEY answered that frequently because of the costs of due process hearings there have been settlements rather than completions of due process hearings; therefore, [the EED] does not necessarily get information on the issues that would have been brought up during those hearings. He clarified that [the EED] is aware of complaint investigations that come directly to the state. [The EED] assigns the complaint investigator and does the report. With mediation, [the EED] gets progress reports from the mediation system about what the outcomes were.

Number 2059

REPRESENTATIVE GUESS asked if some of the benefits for having this at the state level are to see trends in the state of where the law isn't being applied the way it should be, to see if there is a lack of training, or to see whether there is a problem in a district with implementing IDEA (Individuals with Disabilities Education Act).

MR. MALONEY answered that he would agree. The primary purpose of the due process hearings is to make sure that the individual student program is being implemented appropriately. [The EED] is required to report to the federal government any due process issues, complaint issues, and mediation issues that come up. He added that not only is it a compliance issue, but it is a training issue and a resource issue. He explained that [the EED] is going to use the resources available to address the implementation as to whether there are regional, district, or statewide trends. He mentioned that [the EED] monitors school districts by going into a district and looking at how special education requirements are implemented.

Number 2177

REPRESENTATIVE WILSON stated that she wants the whole process to flow, and if the option of due process is the ultimate process that takes place, [everyone] should know about it. She stated that she is concerned about the cost in the long run and asked if there are people trained in areas "out in the fringes," or if they would have to be flown in.

MR. MALONEY stated that the pool of hearing officers would be the same under either system and there wouldn't be a big difference in cost. [The EED] does ongoing recruiting in order to have as big and as qualified a pool as possible. He said the difference in costs would primarily be the administrative costs associated with the school district for doing the hearing, since

the staff time would be transferred to [the EED]. The district would be involved in the hearings solely as a participant rather than as a participant and an administrator.

Number 2304

CHAIR BUNDE asked how many due process [hearings] occurred last year.

MR. MALONEY responded that he is not aware of any that came in last year through the [EED] as an appeal process.

CHAIR BUNDE asked whether, as a result of the lack of reporting, Mr. Maloney was not aware of any that had gone through at the local level.

MR. MALONEY answered that [the EED] has a "spotted" record, at best in terms of what happens at the local level regarding due process. He stated that as of now, since the district pays for the hearing officer and assigns the hearing officer, it is difficult for [the EED] to track because there is no upfront information regarding whether or not the hearing has been filed for in the first place

TAPE 01-14, SIDE B
Number 2343

REPRESENTATIVE STEVENS asked for a rough overview of how much is spent and received on special education. He also asked how much the state and the local school districts are involved in the cost of special education or whether that is covered by federal programs.

MR. JOHNSON replied that the 20-percent block grant added to the foundation program is to cover extra costs associated with the children with disabilities and gifted and talented students; bilingual and vocational education are added to that. He clarified that those resources are earmarked for those students even though they can be spent in any area, since there isn't categorical funding. He noted that the federal dollars, which are anticipated for next year in excess of \$19 million, are to help with the extraordinary costs, particularly those associated with some of the processes that are mandated by the federal government as well as those associated with children with severe disabilities who may require full-time nurses.

MR. JOHNSON remarked that depending on the district, some feel the money has adequately met the needs of children with disabilities as well as those who are gifted and talented. He stated that he thinks other districts are experiencing "erosion" and that the costs continue to go up, particularly with what [the EED] terms as intensive students. He explained that in a formula, there is about \$20,000 for each of the identified intensive children beyond any other funding. He remarked that [the EED] is hearing that costs are escalating and more students are being identified, particularly in the intensive category; therefore, there are costs to the state and to the local school districts. He added that [the EED] often gets into challenges with families where a district attempts to narrow its costs and believes it has a program that meets the students' needs, but where the parents feel the district is just being a cheapskate and that students may need a program outside the local community or a very specific program.

MR. JOHNSON stated that at the due process level, a district is inclined to want to settle to ensure that the student is served as well as to protect the district's resources.

Number 2183

REPRESENTATIVE STEVENS said he is not sure that diverting to the parents is always the best case because a school district needs to be advised for all the kids. He remarked that he doesn't see anything in the bill concerning the districts wanting more oversight from the [EED], and that he is concerned with what the [EED] is doing in terms of gifted and talented programs, staffing, as well as dollars diverted to the [EED] and not the school districts.

MR. JOHNSON answered that [the EED] has heard from the GT (gifted and talented) constituency that they would like [the EED] to be involved in receiving the plan of service for gifted and talented children, which comes to [the EED] on an annual basis. He noted that right now [the EED] receives this but there is no staff to review it or to offer suggestions or technical assistance to be sure that it meets all the requirements of the current state statute. He said he thinks [the GET constituents] are asking that [the EED] get more involved in that process. He mentioned that [the GET constituents] would like [the EED] to visit districts and monitor the programs. He added that [the constituents] also want their rights for due process hearings and mediation to be available. He remarked that [the EED] does not have the dollars

to provide mediation from the state because [the EED] does not receive it from the federal government and there are no local dollars to support GT programs in the budget. He stated that [the EED] is able to use the due process training opportunity to train hearing officers for GT disputes as well. He remarked that the threat of being able to participate in the [GT due process hearing] makes a big difference in parents' capacity to advocate for the needs of their children.

Number 2040

CHAIR BUNDE, referring to the fiscal note, stated that \$103,000 is not relatively insignificant to the budget plans.

REPRESENTATIVE STEVENS asked what staffing would be necessary on the district level to [fiscally] provide the gifted and talented programs and the IEPs due process hearings.

MR. JOHNSON responded that [the EED] is looking at very modest staffing to provide that kind of service. In order to monitor and avoid excess costs and additional state employees, [the EED] would contract with a group of knowledgeable, trained people that would do the monitoring review.

REPRESENTATIVE WILSON asked if there is a way for a parent to go through a due process [procedure] if his or her child was not excessively gifted, or did not have any handicaps.

MR. JOHNSON answered that there is not a system set up for the [EED] to accomplish that. He remarked that [the EED] is often requested to settle local disputes of that nature, but if there is no direct authority, [the parents] are directed back to their local school districts.

REPRESENTATIVE WILSON asked whether there is a process for [those parents] where [the EED] is not involved.

MR. JOHNSON stated that he couldn't speak for every district. He remarked that every district that he has worked for has had a public complaint process in which [the parents] follow the chain of command with their complaint; if they are not satisfied, they can ultimately request something before the local school board.

Number 1892

REPRESENTATIVE WILSON asked if this process is in place already.

MR. JOHNSON answered yes.

REPRESENTATIVE WILSON asked if a [parent] of a "regular" student as well as a parent of a gifted student could go through several processes in order to be heard and satisfied without this bill in place.

MR. JOHNSON replied that last year, specific to GT, [the EED] suggested that there be processes at the local level. He stated that the feedback was that [the parents] felt it wasn't satisfactory, and they didn't want to lose the rights given to them over the last 30 years by being included in this area of exceptional children.

REPRESENTATIVE WILSON asked if something new is put on this bill whether there would be a huge jump in cost [because parents would want to take advantage of it].

MR. JOHNSON remarked that [parents] currently have this right under the law. Gifted and talented students and children with disabilities are lumped under a single law called "exceptional children." The only thing that [the EED] has done is split the "exceptional child" title into two divisions: one for children with disabilities, the other for children identified as gifted and talented. [The EED] has tried to maintain all the rights that those families currently have.

CHAIR BUNDE explained that the \$100,000 fiscal note would allow gifted and talented students and their parents to continue to do what they do right now.

REPRESENTATIVE WILSON asked why the bill is necessary.

REPRESENTATIVE GUESS responded that [it is necessary] because the federal government changed the law so that IDEA only refers to children with disabilities and no longer includes gifted and talented [children].

MR. JOHNSON stated that the federal government never provided any funds for GT. [The EED] tended to commingle the funds, but in an audit was told it could no longer do that. He remarked that the major reason for this law is to come into compliance with new federal requirements regarding children with disabilities.

CHAIR BUNDE summarized that he thinks Alaska, and probably other states, chose the category of exceptional children in order to

include special education and gifted and talented students. The federal government says that the money cannot be used for gifted and talented [programs] but only for the more traditional special education services. He remarked that this bill would allow the parents of gifted and talented children to still have the appeal process available to them as they had in the past.

REPRESENTATIVE WILSON asked if all children have [the appeal process available].

CHAIR BUNDE responded that [GET] has the same procedure that special education has, which is more than the average child has. He asked Mr. Johnson to give his views on the description of "least restrictive".

Number 1682

MR. JOHNSON stated that [the EED] believes the "least restrictive environment" clause in the proposed legislation doesn't minimize the opportunity for a district to serve those kids outside of their normal program. In a number of programs in the state, young people spend their entire day in a single center, where they don't necessarily interact with other children on a regular basis, but are served individually. He stated that [the EED] believes the IEP teams have determined, with parent involvement, that this is an appropriate educational environment; therefore, it is not overly restrictive.

CHAIR BUNDE stated that he has heard from parents of gifted and talented children that they are concerned that this legislation would preclude special classes for gifted students. He explained that this interpretation of "least restrictive" will still allow the current practice of having GET classes and programs.

MR. JOHNSON remarked that this is [the EED's] interpretation.

REPRESENTATIVE GUESS stated that the change right now would say that the determination of whether or not a child should be sent to an educational program or a residential school outside the child's community or school district would reside with the school district and not the department. She stated that she is concerned that some districts may not have the capacity in their administrations to make those decisions. She asked why this was changed.

Number 1555

MR. MALONEY explained that the change was made to reflect that the IEP team, rather than [the EED], makes that determination. Any placement decision that has to do with the child, whether the student would be in a regular classroom or in the most restrictive setting such as an out-of-state placement, would be an IEP team decision. He clarified, in terms of whether the [EED] is involved, that they have been working on a more global level with districts and other agencies involved, particularly with kids who are in state custody, to help districts to address those needs appropriately.

REPRESENTATIVE GUESS asked if that has the same appeal process as all the others.

MR. MALONEY replied certainly, that anything covered under IDEA 97 always has the same official complaint processes.

Number 1496

REPRESENTATIVE WILSON asked if [the EED, regarding this special due process procedure] wants the gifted to be pushed under the same "umbrella" as the special education students.

MR. MALONEY answered that the due process procedure under the existing law is the same for gifted and talented, kids with disabilities, and special education [students]. He stated that the change to special education in the double-tiered system would be made to the gifted procedures. Therefore, the gifted would also become a single-tiered procedure. He explained that the difference with gifted due-process-hearing procedures, as opposed to the special education due-process-hearing procedures, is that mediation is not offered because it is a federally funded IDEA 97 special education process. Instead of the requirement that mediation be offered during a gifted due process hearing, there is a pre-hearing conference at which the parties would get together to discuss their needs and determine whether or not a settlement could be reached or whether the hearing needs to go forward. He remarked that one of the purposes of the bill is to clarify that some pieces do not apply to GET that do to special education.

REPRESENTATIVE WILSON remarked that there are several classifications of children now: gifted, bilingual, vocational education, and special education. She stated that the gifted are being singled out. She asked what is being done for the bilingual and the vocational education.

MR. MALONEY responded that [the EED] is not [including them under the same "umbrella"].

REPRESENTATIVE WILSON asked if there is the possibility that one of these groups [bilingual or vocational education] would ask why some groups are singled out while these are not.

MR. JOHNSON responded that he thinks that one of things that distinguishes GET and children with disabilities from the other two block-funding categories is a 30-year history of including them under this category of exceptional children. He stated that [the EED] is trying to maintain that history. He remarked that there are no specific federal rights for bilingual and vocational education students to be included; that would be a local decision. He added that there could be a separate set of statutes, outside of those for exceptional children, for GET students, but the advocacy groups do not want this.

REPRESENTATIVE WILSON again asked, if nothing different is being done, why there needs to be legislation.

MR. JOHNSON responded that [the EED] is bringing its statutes into compliance with the new federal requirements for children with disabilities. In further response, he said [the EED is under corrective action.

CHAIR BUNDE asked if it is fair to say that [the EED] could be brought under compliance using all the current funding for the initial special education and by not putting GT in its category for appeals.

MR. JOHNSON answered that that would be correct.

Number 1159

REPRESENTATIVE WILSON said it seems that many things in the bill do not have to be done in order to comply with federal regulations.

MR. JOHNSON replied that right now there is a set of statutes that require essentially the same oversight and program development that are in this bill. He stated that this has been happening for 30 years and that constituencies would like [the EED] to continue to do that. He added that this body could deal with GT in a very different way since there is no federal requirement for GT.

REPRESENTATIVE WILSON asked if any funds would be lost.

MR. JOHNSON stated no, there is no GT federal funding.

REPRESENTATIVE WILSON asked if there would be a change in how everybody [in GT] is treated in the school systems.

MR. JOHNSON answered no.

CHAIR BUNDE remarked that this would perpetuate the status quo and that the legislature could chose to eliminate the special treatment of GET students.

Number 1047

REPRESENTATIVE STEVENS asked if there is going to be any impact from the [high school] exit exam on special education. He also asked how a student gets into special education [late in his or her school career].

MR. JOHNSON answered that under the current law regarding pupil competency, special education students, other than the most severely disabled children who will not be on a diploma route, would have to meet the requirements of the exit exam. Other than enhancing the capacity for learning, there is no advantage to being identified as a special education student. He stated that some of the current proposals would treat special education students differently in relationship to the exit exam and allow more IEP determination on what that particular student would need to qualify. He remarked that there has been the concern that there are increased advantages to being identified as a child with a disability and that there would be a surge in the direction of identified such students.

REPRESENTATIVE GUESS asked, on the federal level, whether ASD [Anchorage School District] had discussed tackling the issue of discipline for students with disabilities.

MR. MALONEY answered that the federal regulations regarding the special education IDEA 97 do have significant pieces on disciplinary actions addressing the needs of kids with disabilities. He stated that [the EED] has incorporated those regulations into its existing regulations. [The EED's] strategy is to identify the federal statute guiding this bill, indicate that [the EED] is going to implement the procedures contained in

the federal regulations, and address that through regulation and training.

Number 0812

CHAIR BUNDE remarked that there were a number of questions brought up at the previous meeting from committee members and those who testified. He stated that [the EED], in response, felt the bill had been crafted with the client groups in mind and chose not to make any changes. He said there are two issues before [the committee]. One is whether the committee should try to solve the problem or stall awhile since there is not much pressure and there is no money loss. The other issue is whether the committee would like to make adjustments in the form of a CS (committee substitute).

Number 0724

REPRESENTATIVE PORTER made a motion to adopt a conceptual amendment that would strike the word "fully" on page 12, line 23, because he stated that parents will never be fully informed.

REPRESENTATIVE GUESS asked if there could be some language to put some onus on the school district to make an attempt to inform the parents.

REPRESENTATIVE PORTER stated that he would accept "reasonable attempt to inform."

REPRESENTATIVE JOULE asked if notification by letter would be a reasonable attempt to inform.

REPRESENTATIVE STEVENS remarked that this has to do with the due process hearing; therefore, it would be in a face-to-face setting.

MR. MALONEY stated that this is for any action for which the parent is signing consent. He explained that the language is there to make sure that the parent has [given] full, informed consent. He clarified that there is reasonableness in the standard in trying to do that.

CHAIR BUNDE stated that there will need to be some clarity as to whether this is federal language or not. He announced that the proposed amendment was [tabled].

Number 0492

REPRESENTATIVE PORTER asked what the language "creative talent" means on page 17, line 16, when defining gifted children.

MR. JOHNSON responded that the fine arts and creative talents are in existing law and so that's been carried forward. He added that there are districts that are providing services to identified students with those particular talents, not just academic talents. He clarified that it would be the extraordinary talents that the districts would be looking toward.

CHAIR BUNDE asked if this would be a local option to define "creative".

MR. JOHNSON answered that it would.

REPRESENTATIVE GUESS remarked that she is confused about what is [federally required] and what is not in the bill. She asked if it would be possible to have that determination.

MR. JOHNSON responded that [the EED] has prepared a side-by-side analysis to highlight what is a federal [requirement] and what is flexible at the state level. He added that all of GT is under local state control.

CHAIR BUNDE clarified that if a section of the bill refers to gifted and talented, it is a local option, and if it refers to special education, it is a federal requirement.

Number 0179

REPRESENTATIVE PORTER stated that he assumes "informed consent" applies to children with disabilities as well as to gifted and talented. He asked: If it is federal language, which would be interpreted to be a reasonable standard, why can't it say ["reasonable"] instead of leaving the ambiguous, easily litigated "fully"?

MR. JOHNSON responded that the definition under the federal law states: The parent has been fully informed of all information relevant to the activity to which consent is sought in his or her native language or other mode of communication.

REPRESENTATIVE PORTER asked whether, if the committee changes one word - "reasonable" - [the bill] would be in violation.

MR. JOHNSON answered that he thinks there is some discretion along the same notion of reasonableness.

Number 0074

PHILIP REEVES, Assistant Attorney General, Human Services Section, Civil Division (Juneau), Department of Law, stated that everything that is in federal statutes and regulations is still going to apply to whatever is put in the state statute and regulations. For example, parents have a concern with how the Anchorage School District is providing education to his or her child, or what type of consent they've been given, they can cite to the state law or the federal law, and the court will grant whatever gives the person the greatest protection. He stated that there doesn't need to be identical language; in this case, he said, there isn't the risk of inconsistent provisions because it would default to the federal provision, which clearly provides the term "fully" within it and has a "reasonableness" component. He commented that one of the suggestions is that this should be done in all cases not cited to the federal law; however, he said, his concern is that if there is not identical language sooner or later there will be inconsistent provisions.

REPRESENTATIVE PORTER asked if a dispute in this area that ends up in state court would be a dispute over the state law.

TAPE 01-15, SIDE A

MR. REEVES answered that IDEA gives the option to the parent to bring an action in either state or federal court. The federal law would be applied in the state court, and the federal law would be looked to for interpretation to the state law.

REPRESENTATIVE PORTER asked why the committee is passing a state law, then.

MR. REEVES stated that the federal government has mandated states to implement a state program. Rather than trying to restate this, the law is just citing to it. There are some areas where there are flexibilities to the state, where the state has provided more protections than the federal law, or where there's flexibility in some areas to have different procedures. He remarked that most areas in the state law deal with those type of things where the state has some option as to how it wants to run a program. In the areas where the state doesn't have an option, it has been "compacted" in this bill to cite to the federal law.

Number 0243

CHAIR BUNDE asked if it would be accurate to say that this is being done only to maintain some advantage for the gifted and talented.

MR. REEVES replied that there are two sections: a section for children with disabilities and a section for gifted children. He stated that almost all of the proposed changes in the children-with-disabilities section are tweaking the current laws to get into compliance with the new language of IDEA 97. In the gifted section, the intent has been to carry over the current program. Under the current law there isn't a gifted and disabilities section; it's just for exceptional children. He stated that some of the problems exist because as the federal law provides more protections or more complex procedures, the current law applies those all to the gifted children. He stated that even parents of gifted children don't consider that to be reasonable. For example, they don't care for least restrictive environment, which is a fundamental principle of federal law for children with disabilities. He explained that that is part of the reason for separating these out, to continue to comply with the federal requirements for children with disabilities but to not have to necessarily apply requirements that are not very reasonable to the gifted program.

REPRESENTATIVE PORTER stated that he doesn't understand why [the committee] is doing anything if a case in state court would still defer to the federal language.

Number 0468

Chair BUNDE remarked that [without the legislation], the GET wouldn't be continued. He asked if there are court precedents that cover reasonableness under "fully informed."

MR. REEVES answered that much of the case law is scattered across the country; some is in state court, some is in federal court, and some is under the due process proceedings. All of those types of cases are brought forward in a due process hearing or in court to be suggested as precedent that should be followed. He remarked that he is not aware that there is a Ninth Circuit [Court of Appeals] case that deals with that.

REPRESENTATIVE GREEN asked if [the committee] is creating a problem by having [informed consent] reiterated in statute within Alaska.

MR. REEVES responded yes. He remarked that removing "fully" from the definition will not cause a great problem, but he doesn't believe it is going to change how it is interpreted. If federal law were to change, then the state wouldn't be tied to language in that way.

REPRESENTATIVE GUESS asked what the timeline is to comfortably deal with the issues [the committee] may have.

MR. JOHNSON stated that he thinks it is a year-by-year call as to whether or not [the EED] is in jeopardy of not receiving the funds.

Number 0619

CHAIR BUNDE remarked that there isn't a sense of urgency at this point that would require [the committee] to do something that it is not entirely comfortable with.

REPRESENTATIVE WILSON stated that she doesn't know what school districts, across the state, think about all of this.

REPRESENTATIVE PORTER remarked that he has a bias about the gifted and talented program in general because it seems there's a lot of things preferential to a group that seems to need the least amount of individual help.

REPRESENTATIVE GUESS shared that her neighbor who is nine or ten years old was in the elementary school in her district, Anchorage. He had a 130 IQ and sat in second grade bored with teachers who said they weren't trained to teach him; therefore, he turned off at school and stopped doing work. She stated that his parents were distraught and couldn't get a response from the school district. She remarked that [the state] does have an obligation to these children.

[HB 71 was held over.]

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Education meeting was adjourned at 9:56 a.m.

