

SENATE BILL NO. 40

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/17/01

Referred: Health, Education and Social Services, Finance

A BILL

FOR AN ACT ENTITLED

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

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * **Section 1.** AS 14.16.050(a)(4) is amended to read:

6 (4) requirements relating to students and educational programs:

7 (A) AS 14.30.180 - 14.30.350 (relating to educational services
8 for [EXCEPTIONAL] children **with disabilities**;

9 (B) **AS 14.30.351 - 14.30.359 (relating to educational**
10 **services for gifted children)**;

11 (C) AS 14.30.360 - 14.30.370 (establishing health education
12 program standards);

13 (D) [(C)] AS 14.30.400 - 14.30.410 (relating to bilingual and
14 bicultural education).

1 * **Sec. 2.** AS 14.30.180 is amended to read:

2 **Sec. 14.30.180. Purpose.** It is the purpose of AS 14.30.180 - 14.30.350 to

3 (1) provide an appropriate public education for **each child with a**
4 **disability** [EXCEPTIONAL CHILDREN] in the state who **is** [ARE] at least three
5 years of age but less than 22 years of age;

6 (2) allow procedures and actions necessary to comply with the
7 requirements of federal law, including **20 U.S.C. 1400 - 1487** [20 U.S.C. 1400 - 1485]
8 (Individuals with Disabilities Education Act), **as amended**.

9 * **Sec. 3.** AS 14.30.186(a) is amended to read:

10 (a) **Special education and related services shall be provided**

11 **(1) by a borough or city school district, for a child with a disability**
12 **residing within the district;**

13 **(2) by the board of a regional educational attendance area operating**
14 **a school in the area, for a child with a disability residing in the area served by the**
15 **school;**

16 **(3) by the borough, city school district, or regional educational**
17 **attendance area in which a treatment facility, or a correctional or youth detention**
18 **facility is located, for a child with a disability placed at the facility;**

19 **(4) by a state boarding school established under AS 14.16, for a child**
20 **with a disability enrolled at the state boarding school; or**

21 **(5) by a school district that provides a statewide correspondence**
22 **study program, for a child with a disability who is enrolled in the program** [A
23 BOROUGH OR CITY SCHOOL DISTRICT SHALL PROVIDE SPECIAL
24 EDUCATION AND RELATED SERVICES FOR EXCEPTIONAL CHILDREN
25 RESIDING IN THE DISTRICT].

26 * **Sec. 4.** AS 14.30.186(e) is amended to read:

27 (e) **A child with a disability** [EXCEPTIONAL CHILDREN BEING
28 EDUCATED AS PROVIDED UNDER AS 14.30.010(b) MAY RECEIVE SPECIAL
29 EDUCATION AND RELATED SERVICES AS PROVIDED UNDER
30 AS 14.30.180 - 14.30.350. THE EXCEPTIONAL CHILD] of a parent who elects to
31 educate the child as allowed under AS 14.30.010(b) may not be compelled to receive

1 the special education and related services provided under AS 14.30.180 - 14.30.350.

2 * **Sec. 5.** AS 14.30.186 is amended by adding a new subsection to read:

3 (f) The department shall establish standards in regulations for the allocation of
4 financial responsibilities and the coordination of the provision of special education and
5 related services among the educational agencies listed in (a) of this section when more
6 than one educational agency is responsible to provide those services.

7 * **Sec. 6.** AS 14.30.191(a) is amended to read:

8 (a) A school district shall obtain the **written informed** consent of the child's
9 parent before an initial evaluation or placement **of a child with a disability** in a
10 program of special education and related services.

11 * **Sec. 7.** AS 14.30.191(b) is amended to read:

12 (b) After initial placement in a program of special education and related
13 services and not less than once every three years for as long as the child is assigned to
14 the program, **a** [AN EXCEPTIONAL] child **with a disability** shall receive an
15 educational evaluation [FOR THE IDENTIFICATION AND CLASSIFICATION OF
16 EXCEPTIONAL CHILDREN].

17 * **Sec. 8.** AS 14.30.191(c) is amended to read:

18 (c) Before a school district initiates or refuses a change in **the** [A CHILD'S]
19 placement or **educational** program **of a child with a disability**, the district shall
20 notify the child's parent.

21 * **Sec. 9.** AS 14.30.191(d) is amended to read:

22 (d) Upon completion of **an** [THE] evaluation **or reevaluation under this**
23 **section** [AND BEFORE PLACEMENT], the school district shall provide to the parent
24 of each [EXCEPTIONAL] child **evaluated under this section** an opportunity **to**
25 **participate in the determination of the child's eligibility for special education and**
26 **related services,** [FOR CONSULTATION ABOUT THE EVALUATION. A
27 CONSULTATION MUST BE AVAILABLE AFTER EACH REEVALUATION OF
28 THE CONDITION] and **to participate in the determination of the educational**
29 placement of the [EXCEPTIONAL] child **if the child is determined to be eligible for**
30 **special education and related services.**

31 * **Sec. 10.** AS 14.30.191 is amended by adding new subsections to read:

1 (h) A school district shall provide written notice of its decision under this
 2 section to the parent of the child. The notice shall include a description of the
 3 procedural safeguards available to that parent and child under federal law.

4 (i) In this section, "hearing" means a due process hearing under AS 14.30.193.

5 * **Sec. 11.** AS 14.30.193 is repealed and reenacted to read:

6 **Sec. 14.30.193. Due process hearing.** (a) A school district or a parent of a
 7 child with a disability may request a due process hearing on any issue related to
 8 identification, evaluation, or educational placement of the child, or the provision of a
 9 free, appropriate, public education to the child. A request is made by providing written
 10 notice to the other party to the hearing. A request by a parent for a due process hearing
 11 under this section must be made not later than 12 months after the date that the school
 12 district provides the parent with written notice of the decision with which the parent
 13 disagrees. A school district shall make its request for a due process hearing in
 14 accordance with the time limit established in regulations of the department.

15 (b) If a due process hearing is requested by either a school district or a parent, the
 16 school district shall contact the department to request appointment of an available hearing
 17 officer. The department shall select a hearing officer through a random selection process,
 18 from a list maintained by the department under (g) of this section. Within five working
 19 days after receipt of the request, the department shall provide to the district and the parent
 20 a notice of appointment, including the name, and a statement of qualifications, of the
 21 hearing officer that the department determines is available to conduct the hearing.

22 (c) The school district and the parent each have the right to reject, without
 23 statement of cause, one hearing officer appointed under this section. The rejecting party
 24 shall notify the department of that rejection in writing within five days after receipt of the
 25 department's notice of appointment. If a hearing officer is rejected under this subsection,
 26 the department shall, within five working days after receipt of the written rejection,
 27 provide a notice of appointment, including the name and a statement of qualifications, of
 28 another hearing officer that the department determines is available to conduct the
 29 hearing. Each appointment is subject to a right of rejection under this subsection by a
 30 party who has not previously rejected an appointment.

31 (d) After a hearing officer is appointed and the time for rejection under (c) of

1 this section has expired, the hearing officer shall immediately inform the parent and
 2 the school district of the availability of the mediation process provided under
 3 AS 14.30.194 and encourage use of that process to attempt to resolve the disagreement
 4 between the parent and the school district. If the mediation process does not result in
 5 settlement of all of the issues, the hearing officer shall conduct a hearing in
 6 conformance with the requirements of federal law, including 34 CFR 300.507 - 509,
 7 as amended. After the hearing is completed, the hearing officer shall issue a written
 8 decision that

9 (1) upholds the school district's decision; or

10 (2) overturns the school district's decision with specific instructions for
 11 modification of the identification, evaluation, educational placement, or provision of the
 12 education program by the district.

13 (e) A hearing officer's decision under this section is final and binding on the
 14 school district and parent, unless appealed under (f) of this section. Notwithstanding a
 15 decision by the hearing officer, a child may not be evaluated, placed, transferred, or
 16 compelled to receive special education or related services from the school district until
 17 the period for filing an appeal under (f) of this section has expired or, if an appeal is
 18 filed, until the appellate review process has been completed.

19 (f) A hearing officer's decision under this section is a final administrative
 20 order, subject to appeal to the superior court for review in the manner provided under
 21 AS 44.62.560.

22 (g) The department shall maintain a list of qualified hearing officers. The
 23 department shall provide for qualification of hearing officers through a training
 24 program that is open to all individuals who meet the criteria set by the department by
 25 regulation. The list of qualified hearing officers shall be maintained as a public
 26 record.

27 (h) For purposes of this section, a student with a disability aged 18 - 21 has the
 28 same rights and obligations under this section as a parent of a child with a disability.

29 * **Sec. 12.** AS 14.30 is amended by adding a new section to read:

30 **Sec. 14.30.194. Mediation.** (a) The department shall, by regulation,
 31 establish and implement a voluntary mediation process in conformance with the

1 requirements of federal law, including 34 CFR 300.506, as amended. The department
 2 shall encourage the use of mediation for settlement of disputes under AS 14.30.180 -
 3 14.30.350.

4 (b) The department shall maintain a list of individuals who are qualified
 5 mediators knowledgeable in the federal and state statutes and regulations relating to
 6 the provision of special education and related services. The department shall provide
 7 for qualification of mediators through a training program that is open to all individuals
 8 who meet the criteria set by the department by regulation.

9 * **Sec. 13.** AS 14.30.231 is amended to read:

10 **Sec. 14.30.231. Advisory panel [COMMITTEE].** The Governor's Council
 11 on Disabilities and Special Education established under AS 47.80 shall serve as **the**
 12 **state** [AN] advisory **panel** [COMMITTEE], the function of which is to provide
 13 information and guidance for the development of appropriate programs of special
 14 education and related services for [EXCEPTIONAL] children **with disabilities**.

15 * **Sec. 14.** AS 14.30.250 is amended to read:

16 **Sec. 14.30.250. Teacher qualifications.** A person may not be employed as a
 17 teacher of [EXCEPTIONAL] children **with disabilities** unless that person possesses a
 18 valid teacher certificate and, in addition, such training as the department may require
 19 by regulation.

20 * **Sec. 15.** AS 14.30.270 is amended to read:

21 **Sec. 14.30.270. Substitutes.** AS 14.30.250 does not prohibit the employment
 22 of a person, otherwise qualified to serve as a substitute teacher, to serve as a substitute
 23 teacher of [EXCEPTIONAL] children **with disabilities**.

24 * **Sec. 16.** AS 14.30.272 is amended to read:

25 **Sec. 14.30.272. Procedural safeguards.** (a) A school district shall inform
 26 the parent of **a** [AN EXCEPTIONAL] child **with a disability** of the right to review the
 27 child's educational record, to review evaluation tests and procedures, to refuse to
 28 permit evaluation or a change in the child's educational placement, to be informed of
 29 the results of evaluation, to obtain an independent evaluation by choosing a person
 30 from a list provided by the district or by choosing a person by agreement between the
 31 parent and school district, to request **a due process** [AN IMPARTIAL] hearing, to

1 appeal a hearing officer's decision, and to give consent or deny access to others to the
2 child's educational record.

3 (b) The department shall establish, by regulation, impartial procedures for a
4 school district to follow for **due process** hearings [UNDER AS 14.30.193] to comply
5 with requirements necessary to participate in federal grant-in-aid programs, including
6 **20 U.S.C. 1400 - 1487** [20 U.S.C. 1400 - 1485] (Individuals with Disabilities
7 Education Act) **, as amended.**

8 * **Sec. 17.** AS 14.30.274 is amended to read:

9 **Sec. 14.30.274. Identification of [EXCEPTIONAL] children with**
10 **disabilities.** Each school district shall establish and implement written procedures to
11 ensure that all [EXCEPTIONAL] children **with disabilities** under the age of 22 **for**
12 **whom the agency is responsible under AS 14.30.186 to provide special education**
13 **and related services** [WHO RESIDE IN THE DISTRICT] are identified and located
14 for the purpose of establishing their need for special education and related services.

15 * **Sec. 18.** AS 14.30.276 is amended to read:

16 **Sec. 14.30.276. Least restrictive environment.** Each school district shall
17 ensure that to the maximum extent appropriate, [EXCEPTIONAL] children **with**
18 **disabilities,** including children in public or private institutions or other care facilities,
19 are educated with children who are not **children with disabilities** [EXCEPTIONAL]
20 and that special classes, separate schooling, or other removal of [EXCEPTIONAL]
21 children **with disabilities** from the regular educational environment occurs only when
22 the nature or severity of the child's **disability** [EXCEPTIONALITY] is such that
23 education in regular classes with the use of supplementary aids and services cannot be
24 achieved satisfactorily.

25 * **Sec. 19.** AS 14.30.278 is amended to read:

26 **Sec. 14.30.278. Individualized education program. A school district shall**
27 **develop an individualized education program for special education and related**
28 **services for each eligible child with a disability. The plan must be completed no**
29 **later than 30 days after the determination of the child's eligibility. Each**
30 **individualized education program shall be developed and periodically reviewed**
31 **and revised as necessary in conformance with federal requirements, including 34**

1 **CFR 300.340 - 350, as amended** [(a) THE INDIVIDUALIZED EDUCATION
2 PROGRAM FOR EACH EXCEPTIONAL CHILD MUST INCLUDE

3 (1) A STATEMENT OF THE CHILD'S PRESENT LEVELS OF
4 EDUCATIONAL PERFORMANCE;

5 (2) A STATEMENT OF ANNUAL GOALS, INCLUDING SHORT
6 TERM INSTRUCTIONAL OBJECTIVES;

7 (3) A STATEMENT OF THE SPECIFIC SPECIAL EDUCATION
8 AND RELATED SERVICES TO BE PROVIDED TO THE CHILD, AND THE
9 EXTENT TO WHICH THE CHILD WILL BE ABLE TO PARTICIPATE IN
10 REGULAR EDUCATIONAL PROGRAMS;

11 (4) THE PROJECTED DATES FOR INITIATION OF SERVICES
12 AND THE ANTICIPATED DURATION OF THE SERVICES;

13 (5) APPROPRIATE OBJECTIVE CRITERIA AND EVALUATION
14 PROCEDURES AND SCHEDULES FOR DETERMINING, ON AT LEAST AN
15 ANNUAL BASIS, WHETHER THE SHORT TERM INSTRUCTIONAL
16 OBJECTIVES ARE BEING ACHIEVED.

17 (b) EACH MEETING CONCERNING AN EXCEPTIONAL CHILD MUST
18 INCLUDE

19 (1) A REPRESENTATIVE OF THE SCHOOL DISTRICT, OTHER
20 THAN THE CHILD'S TEACHER, WHO IS QUALIFIED TO PROVIDE OR
21 SUPERVISE THE PROVISION OF SPECIAL EDUCATION;

22 (2) THE CHILD'S TEACHER;

23 (3) AT LEAST ONE OF THE CHILD'S PARENTS;

24 (4) THE CHILD, WHEN APPROPRIATE;

25 (5) OTHER INDIVIDUALS SELECTED BY THE PARENT OR
26 SCHOOL DISTRICT.

27 (c) EACH SCHOOL DISTRICT SHALL DEVELOP AN INDIVIDUALIZED
28 EDUCATION PROGRAM FOR EVERY EXCEPTIONAL CHILD WHO
29 RECEIVES SERVICES OR WHOSE PARENT REQUESTS SERVICES UNDER
30 AS 14.30.180 - 14.30.350].

31 * **Sec. 20.** AS 14.30.285(a) is amended to read:

1 (a) The department shall institute a statewide program for the education of
 2 [EXCEPTIONAL] children with disabilities, to ensure that whenever possible
 3 children are educated in the state at locations in or near their resident school district.

4 * **Sec. 21.** AS 14.30.285(b) is amended to read:

5 (b) An identified [EXCEPTIONAL] child with a disability may be sent to an
 6 educational program or residential school outside the child's community or school
 7 district if the child resides in a community or school district where an appropriate
 8 educational program cannot reasonably be made available and if the school district
 9 [DEPARTMENT] determines that provision of special education and related services
 10 in another educational program or residential school is appropriate. If the school
 11 district approves [AND THE DEPARTMENT APPROVE] the enrollment of a [THE
 12 EXCEPTIONAL] child with a disability in another educational program or
 13 residential school outside the child's community or school district and the child is
 14 enrolled, the child's education expenses shall be paid as follows:

15 (1) except as otherwise provided by (2) of this subsection, the sending
 16 district shall pay all costs associated with the transfer;

17 (2) the department may provide financial assistance to the school
 18 district for a child's education provided for in (1) of this subsection under regulations
 19 adopted by the department.

20 * **Sec. 22.** AS 14.30.285(e) is amended to read:

21 (e) The educational assessment of a [AN EXCEPTIONAL] child with a
 22 disability that indicates that the educational program that is locally available is
 23 inappropriate for the needs of the child must conform to the standards set out in
 24 AS 14.30.191.

25 * **Sec. 23.** AS 14.30.285(f) is amended to read:

26 (f) A school district shall obtain informed [THE] consent of the child's parent
 27 before a child may be transferred to a school outside the district in which the child
 28 resides.

29 * **Sec. 24.** AS 14.30.285(g) is amended to read:

30 (g) The withholding of informed consent by a parent [OR
 31 DEPARTMENTAL APPROVAL] for the transfer of a [AN EXCEPTIONAL] child

1 **with a disability** under this section does not relieve a school district of the obligation
 2 to provide special education and related services to **the** [AN EXCEPTIONAL] child
 3 [UNDER AS 14.30.186].

4 * **Sec. 25.** AS 14.30.325(a) is amended to read:

5 (a) The department **shall** [MAY] by regulation provide for the appointment of
 6 surrogate parents to represent **a child with a disability** [EXCEPTIONAL
 7 CHILDREN] in matters relating to the provision of an appropriate public education.

8 * **Sec. 26.** AS 14.30.335 is amended to read:

9 **Sec. 14.30.335. Eligibility for federal funds.** Notwithstanding any other
 10 provision of AS 14.30.180 - 14.30.350, the department may do all things necessary to
 11 qualify for federal funds that are available to the state for the education of
 12 [EXCEPTIONAL] children **with disabilities**.

13 * **Sec. 27.** AS 14.30.340 is amended to read:

14 (a) If a parent of **a** [AN EXCEPTIONAL] child **with a disability** enrolls the
 15 child in a private school, **including a religious school**, at the parent's expense or
 16 teaches the child at home, the school district in which the child **resides** [IS
 17 LOCATED] shall make special education and related services available in
 18 conformance with **federal requirements, including 34 CFR 300.450 - 462, as**
 19 **amended. Parents teaching their children at home may refuse special education**
 20 **and related services for their children** [AN INDIVIDUALIZED EDUCATION
 21 PROGRAM UNDER AS 14.30.278].

22 (b) If a physician certifies in writing, and if the child's individualized
 23 education program **under AS 14.30.278 then provides** [TEAM THEN
 24 DETERMINES] that a child's bodily, mental, or emotional condition does not permit
 25 attendance at a school and the child's parents do not elect to teach the child at home as
 26 permitted under AS 14.30.010(b), the school district in which the child is located shall
 27 enroll the child in public school and provide the child with special education and
 28 related services in conformance with **the child's** [AN] individualized education
 29 program [UNDER AS 14.30.278] at the child's home or at a medical treatment facility.

30 * **Sec. 28.** AS 14.30.347 is amended to read:

31 **Sec. 14.30.347. Transportation of [EXCEPTIONAL] children with**

1 (A) child's natural or adoptive parent;

2 (B) child's guardian, but not the state if the child is in the legal
3 custody of the state;

4 (C) person who is acting in the place of a child's natural or
5 adoptive parent, such as a grandparent or stepparent with whom the child lives,
6 or a person who is legally responsible for the child's welfare; and

7 (D) child's surrogate parent who has been appointed under
8 AS 14.30.325;

9 * **Sec. 31.** AS 14.30.350(9) is repealed and reenacted to read:

10 (9) "related services" means services that are considered as "related
11 services" in 34 CFR 300.24, as amended;

12 * **Sec. 32.** AS 14.30.350(10) is repealed and reenacted to read:

13 (10) "school district" means a borough school district, a city school
14 district, a regional educational attendance area, a state boarding school, and the state
15 centralized correspondence study program;

16 * **Sec. 33.** AS 14.30.350(11) is repealed and reenacted to read:

17 (11) "special education" means an educational program that is
18 considered as "special education" in 34 CFR 300.26, as amended;

19 * **Sec. 34.** AS 14.30.350 is amended by adding new paragraphs to read:

20 (12) "due process hearing" means a hearing conducted under
21 AS 14.30.193;

22 (13) "informed consent" means that

23 (A) a child's parent has been fully informed, in the parent's
24 native language or other mode of communication, of all information relevant to
25 the activity for which consent is sought;

26 (B) the parent understands and agrees in writing to the carrying
27 out of the activity for which the parent's consent is sought;

28 (C) the consent describes that activity and lists any records that
29 will be released and to whom; and

30 (D) the parent understands that the granting of consent is
31 voluntary on the part of the parent and may be revoked at any time.

1 * **Sec. 35.** AS 14.30 is amended by adding new sections to read:

2 **Article 3A. Education for Gifted Children.**

3 **Sec. 14.30.351. Purpose.** It is the purpose of AS 14.30.351 - 14.30.359 to
4 provide an appropriate education for each gifted child who enrolls in a public school
5 in the state.

6 **Sec. 14.30.352. Coverage.** Each school district shall establish a program for
7 identification of and provision of educational services to gifted children who enroll in the
8 schools of the district.

9 **Sec. 14.30.353. Identification, evaluation, and placement of gifted children.**

10 (a) Each school district shall establish and implement written procedures to ensure
11 that all gifted children who enroll in public school in the district are identified and
12 located for the purpose of establishing their need for a gifted education program.

13 (b) A school district shall obtain the written informed consent of the child's
14 parent before an initial evaluation or placement in a gifted education program.

15 (c) After initial placement in a gifted education program and not less than
16 once every three years for as long as the child is assigned to the program, a gifted
17 child shall receive an educational evaluation for the identification of gifted children.

18 (d) Before a school district initiates or refuses a change in a child's placement
19 or program, the school district shall notify the child's parent.

20 (e) Upon completion of the evaluation and before placement, the school
21 district shall provide to the parent of each gifted child an opportunity for consultation
22 about the evaluation. A consultation must be available after each reevaluation of the
23 condition and placement of the gifted child.

24 (f) A parent may obtain an independent educational evaluation by choosing a
25 person from a list provided by the school district or by choosing a person by
26 agreement between the parent and the school district, at the expense of the school
27 district, if the parent disagrees with an evaluation obtained by the school district. The
28 school district may initiate a due process hearing under AS 14.30.357 to show that its
29 evaluation is appropriate. If the hearing officer determines that the evaluation is
30 appropriate, the school district is not be required to pay for the independent
31 educational evaluation.

1 (g) If the parent obtains an independent educational evaluation at private
2 expense, the results of the evaluation

3 (1) must be considered by the school district in a decision made with
4 respect to the provision of an appropriate gifted education program to the child; and

5 (2) may be presented as evidence at a due process hearing regarding
6 the child.

7 (h) If a hearing officer requests an independent educational evaluation as part
8 of a due process hearing, the school district shall pay for the evaluation.

9 (i) A school district shall provide written notice of its decisions under this
10 section to the parent of the child. The notice shall include a description of the
11 procedural safeguards available under AS 14.30.356.

12 **Sec. 14.30.354. Individualized gifted education program.** (a) Each school
13 district shall provide for the development of an individualized gifted education
14 program for each gifted child that includes

15 (1) a statement of the child's present levels of educational
16 performance;

17 (2) a statement of annual goals, including short-term instructional
18 objectives;

19 (3) a statement of the specific gifted education services to be provided
20 to the child and the extent to which the child will be able to participate in regular
21 educational programs;

22 (4) the projected dates for initiation of services and the anticipated
23 duration of the services; and

24 (5) appropriate objective criteria and evaluation procedures and
25 schedules for determining, on at least an annual basis, whether the short-term
26 instructional objectives are being achieved.

27 (b) The persons invited to participate in each meeting to develop the program
28 under (a) of this section must include

29 (1) a representative of the school district, other than the child's teacher,
30 who is qualified to provide or supervise the provision of gifted education;

31 (2) the child's teacher;

- 1 (3) at least one of the child's parents;
- 2 (4) the child, if appropriate; and
- 3 (5) other individuals selected by the parent or school district.

4 **Sec. 14.30.355. Least restrictive environment.** Each school district shall
 5 ensure that to the maximum extent appropriate, gifted children are educated with
 6 children who are not gifted and that special classes, separate schooling, or other
 7 removal of gifted children from the regular educational environment occurs only when
 8 education in regular classes with the use of supplementary aids and services cannot be
 9 achieved satisfactorily.

10 **Sec. 14.30.356. Procedural safeguards.** A school district shall inform the
 11 parent of gifted child of the following procedural safeguard rights:

- 12 (1) to review the child's educational record;
- 13 (2) to review evaluation tests and procedures;
- 14 (3) to refuse to permit evaluation or a change in the child's educational
 15 placement;
- 16 (4) to be informed of the results of evaluation;
- 17 (5) to obtain an independent evaluation by choosing a person from a
 18 list provided by the school district or by choosing a person by agreement between the
 19 parent and school district;
- 20 (6) to request an impartial hearing;
- 21 (7) to appeal a hearing officer's decision; and
- 22 (8) to give consent or deny access to others to the child's educational
 23 record.

24 **Sec. 14.30.357. Due process hearing.** (a) A school district or a parent of a
 25 gifted child may request a due process hearing on any issue related to identification,
 26 evaluation, or educational placement of the child, or the provision of a free, appropriate,
 27 public education to the child. A request is made by providing written notice to the other
 28 party to the hearing. A request for a due process hearing under this section must be made
 29 not later than 12 months after the date that the school district provides the parent with
 30 written notice of the decision with which the parent disagrees.

31 (b) If a due process hearing is requested by either a school district or a parent, the

1 school district shall contact the department to request appointment of an available hearing
 2 officer. The department shall select a hearing officer through a random selection process,
 3 from a list maintained by the department. Within five working days after receipt of the
 4 request, the department shall provide to the district and the parent a notice of
 5 appointment, including the name, and a statement of qualifications, of the hearing officer
 6 that the department determines is available to conduct the hearing.

7 (c) The school district and the parent each have the right to reject, without
 8 statement of cause, one hearing officer appointed under this section. The rejecting party
 9 shall notify the department of that rejection in writing within five days after receipt of the
 10 department's notice of appointment. If a hearing officer is rejected under this subsection,
 11 the department shall, within five working days after receipt of the written rejection,
 12 provide a notice of appointment, including the name and a statement of qualifications, of
 13 another hearing officer that the department determines is available to conduct the
 14 hearing. Each appointment is subject to a right of rejection under this subsection by a
 15 party who has not previously rejected an appointment.

16 (d) After a hearing officer is appointed and the time for rejection under (c) of
 17 this section has expired, the hearing officer shall conduct an informal prehearing
 18 settlement conference and attempt to resolve the disagreement between the parent and
 19 the school district. If the conference does not result in settlement of all of the issues
 20 and a hearing is conducted, the hearing officer shall issue a written decision after the
 21 hearing is completed that

22 (1) upholds the school district's decision; or

23 (2) overturns the school district's decision with specific instructions for
 24 modification of the identification, evaluation, educational placement, or provision of the
 25 education program by the district.

26 (e) A hearing officer's decision under this section is a final administrative
 27 order, subject to appeal to the superior court for review in the manner provided under
 28 AS 44.62.560.

29 **Sec. 14.30.358. Teacher qualifications; substitutes.** A person may not be
 30 employed as a teacher of gifted children unless that person possesses a valid teacher
 31 certificate and, in addition, any training the department requires by regulation. This

1 section does not prohibit the employment of a person, otherwise qualified to serve as a
 2 substitute teacher, to serve as a substitute teacher of gifted children.

3 **Sec. 14.30.359. Definitions.** Unless the context otherwise requires, in
 4 AS 14.30.351 - 14.30.359,

5 (1) "appropriate education" means personalized instruction with
 6 sufficient support services to permit a child to benefit educationally from the
 7 instruction;

8 (2) "due process hearing" means a hearing under AS 14.30.357;

9 (3) "educational records" means those files, documents, records, and
 10 other material that contain information directly related to a student and are maintained
 11 by a school district or a person acting for a school district; "educational records" does
 12 not include the personnel records of the school district that are maintained in the
 13 normal course of business, that relate exclusively to a person's capacity as an
 14 employee, or other records as designated by the department in regulation;

15 (4) "gifted children" means children who exhibit outstanding intellect,
 16 ability, or creative talent as determined under regulations adopted by the department;

17 (5) "gifted education" means specially designed instruction, at no cost
 18 to the parent, to meet the unique needs of gifted children; in this paragraph "at no cost"
 19 means that all specially designed instruction is provided without charge but does not
 20 preclude incidental fees that are normally charged to students who are not gifted
 21 children or their parents as a part of the regular education program;

22 (6) "informed consent" means that

23 (A) a child's parent has been fully informed, in the parent's
 24 native language or other mode of communication, of all information relevant to
 25 the activity for which consent is sought;

26 (B) the parent understands and agrees in writing to the carrying
 27 out of the activity for which the parent's consent is sought;

28 (C) the consent describes that activity and lists any records that
 29 will be released and to whom; and

30 (D) the parent understands that the granting of consent is
 31 voluntary on the part of the parent and may be revoked at any time;

1 (7) "school district" means a borough school district, a city school
 2 district, a regional educational attendance area, a state boarding school, and the state
 3 centralized correspondence study program.

4 * **Sec. 36.** AS 14.30.640 is amended to read:

5 **Sec. 14.30.640. Eligibility for service.** The services of the agency shall be
 6 available to school districts that serve children whose special education needs occur
 7 infrequently, who require specialized services not normally available in the school
 8 district, and who cannot be easily served by local school district personnel because of
 9 the low number of students in the district in need of the particular service. The agency
 10 may provide services to [EXCEPTIONAL] children **with disabilities**, as that term is
 11 defined in AS 14.30.350.

12 * **Sec. 37.** AS 29.60.599(7) is amended to read:

13 (7) "school district" **means a borough school district, a city school**
 14 **district, or a regional educational attendance area under AS 14** [HAS THE
 15 MEANING GIVEN IN AS 14.30.350];

16 * **Sec. 38.** AS 47.80.090(9) is amended to read:

17 (9) provide information and guidance for the development of
 18 appropriate special educational programs and services for [EXCEPTIONAL] children
 19 **with disabilities** as defined in AS 14.30.350 **and gifted children as defined in**
 20 **AS 14.30.359**;

21 * **Sec. 39.** AS 47.80.900(6) is amended to read:

22 (6) "person with a handicap" means a person with a developmental
 23 disability as defined in (7) of this section or a person who is hard of hearing, deaf,
 24 speech impaired, visually handicapped, seriously emotionally disturbed,
 25 orthopedically or otherwise health impaired, or who has a specific learning disability;
 26 the term includes **children with disabilities** [BUT IS NOT LIMITED TO
 27 "EXCEPTIONAL CHILDREN"] as defined in AS 14.30.350;

28 * **Sec. 40.** AS 14.30.186(b), 14.30.193(b), 14.30.195, 14.30.315(b), 14.30.350(3),
 29 14.30.350(5), 14.30.350(6), and 14.30.350(7) are repealed.

30 * **Sec. 41.** The uncodified law of the State of Alaska is amended by adding a new section to
 31 read:

1 REVISOR'S INSTRUCTIONS. The revisor of statutes is requested to change the
2 following:

3 (1) the heading of Article 3 of AS 14.30 from "Education For Exceptional
4 Children" to "Education For Children With Disabilities;"

5 (2) the heading of AS 14.30.193 from "School district hearings" to "Due
6 process hearings";

7 (3) the heading of AS 14.30.285 from "Transfers of exceptional children" to
8 "Transfers of children with disabilities".

9 * **Sec. 42.** The uncodified law of the State of Alaska is amended by adding a new section to
10 read:

11 TRANSITION: REGULATIONS. (a) Notwithstanding sec. 44 of this Act, the state
12 Board of Education and Early Development may immediately proceed to adopt regulations
13 necessary to implement the changes made by this Act. The regulations take effect under
14 AS 44.62 (Administrative Procedure Act), but not before the effective date of the statutory
15 change.

16 (b) To the extent they are not inconsistent with the statutory changes made by this
17 Act, regulations adopted by the state Board of Education and Early Development and in effect
18 on July 1, 2001 continue in effect until amended or repealed by the board, and may be
19 enforced and implemented.

20 * **Sec. 43.** Section 42(a) of this Act takes effect immediately under AS 01.10.070(c).

21 * **Sec. 44.** Except as provided in sec. 43 of this Act, this Act takes effect July 1, 2001.