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Referred: Finance

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1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

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SENATE CS FOR CS FOR HOUSE BILL NO. 194 (HESS)

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IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to the education of exceptional
children; and providing for an effective date."

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

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* Section 1. AS 14.30.180 is amended to read:

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Sec. 14.30.180. PURPOSE. It is the purpose of AS 14.30.180 -

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14.30.350 to provide an appropriate public [COMPETENT] education [SER-

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VICES] for [THE] exceptional children in the state who are at least

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three years of age but less than 22 years of age [AND FOR WHOM THE

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REGULAR SCHOOL FACILITIES ARE INADEQUATE OR NOT AVAILABLE].

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* Sec. 2. AS 14.30.186(a) is amended to read:

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(a) A borough or city school district shall provide [FOR] spe-

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cial education and related services for exceptional children [REPRE-

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SENTED BY NOT LESS THAN FIVE CHILDREN] residing in the district.

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

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(b) The board of a regional educational attendance area shall

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provide [FOR] special education and related services in a school in

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the area for exceptional children [REPRESENTED BY NOT LESS THAN FIVE

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CHILDREN] residing in the area served by the school.

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* Sec. 4. AS 14.30.191 is repealed and reenacted to read:

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Sec. 14.30.191. EDUCATIONAL EVALUATION AND PLACEMENT. (a) A

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school district shall obtain the consent of the child's parent or

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guardian before an initial evaluation or placement in a program of

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special education and related services.

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(b) After initial placement in a program of special education

1 and related services and not less than once every three years for as
2 long as the child is assigned to the program, an exceptional child
3 shall receive an educational evaluation for the identification and
4 classification of exceptional children.

5 (c) Before a school district initiates or refuses a change in a
6 child's placement or program, the district shall notify the child's
7 parent or guardian.

8 (d) Upon completion of the evaluation and before placement, the
9 school district shall provide to the parent or guardian of each excep-
10 tional child an opportunity for consultation about the evaluation. A
11 consultation must be available after each reevaluation of the condi-
12 tion and placement of the exceptional child.

13 (e) A parent may obtain an independent educational evaluation at
14 the expense of the school district if the parent disagrees with an
15 evaluation obtained by the school district. The school district may
16 initiate a hearing to show that its evaluation is appropriate. If the
17 hearing officer determines that the evaluation is appropriate, the
18 school district may not be required to pay for the independent educa-
19 tional evaluation.

20 (f) If the parent or guardian obtains an independent educational
21 evaluation at private expense, the results of the evaluation

22 (1) must be considered by the school district in a decision
23 made with respect to the provision of an appropriate public education
24 to the child;

25 (2) may be presented as evidence at a hearing regarding the
26 child.

27 (g) If a hearing officer requests an independent educational
28 evaluation as part of a hearing, the school district shall pay for the
29 evaluation.

1 * Sec. 5. AS 14.30 is amended by adding a new section to read:
2 Sec. 14.30.195. HEARINGS. (a) The department shall by regula-
3 tion provide for administrative hearings to be conducted under AS 14.-
4 30.180 - 14.30.350. A hearing may be initiated by a parent, guardian,
5 or a school district whenever the parent, guardian, or school district
6 (1) proposes to initiate or change the identification,
7 evaluation or educational placement of the child or the provision of a
8 free appropriate public education to the child; or
9 (2) refuses to initiate, change or consent to the
10 identification, evaluation or educational placement of the child or
11 the provision of a free appropriate public education.
12 (b) The agency conducting a hearing under this section may issue
13 subpoenas under AS 44.62.430 and may petition the superior court for
14 adjudications of contempt under AS 44.62.590.
15 * Sec. 6. AS 14.30.231 is amended to read:
16 Sec. 14.30.231. ADVISORY COMMITTEE. The Governor's Council for
17 the Handicapped and Gifted established under AS 47.80 shall serve as
18 [THE COMMISSIONER OF EDUCATION AND THE COMMISSIONER OF HEALTH AND SO-
19 CIAL SERVICES SHALL ESTABLISH] an advisory committee, the function of
20 which is to provide information and guidance for the development of
21 appropriate [SPECIAL EDUCATION] programs of special education and re-
22 lated services for exceptional children. [MEMBERSHIP OF THE ADVISORY
23 COMMITTEE SHALL INCLUDE, BUT IS NOT LIMITED TO, PERSONS REPRESENTING
24 LOCAL EDUCATION AGENCIES, STATE AGENCIES, PARENT GROUPS AND ORGANIZA-
25 TIONS CONCERNED WITH PROGRAMS AND SERVICES FOR EXCEPTIONAL CHILDREN.]
26 * Sec. 7. AS 14.30.250 is amended to read:
27 Sec. 14.30.250. TEACHER QUALIFICATIONS. A [NO] person may not
28 [SHALL] be employed as a teacher of [TO TEACH A CLASS FOR] exceptional
29 children unless that person possesses a valid teacher certificate [.,]

1 and, in addition, such training as the department may require by regu-
2 lation.

3 * Sec. 8. AS 14.30 is amended by adding a new section to read:

4 Sec. 14.30.255. ADMINISTRATOR QUALIFICATIONS. A person may not
5 be employed as an administrator of a program of special education and
6 related services unless that person possesses a valid administrative
7 certificate and, in addition, such training as the department may re-
8 quire by regulation.

9 * Sec. 9. AS 14.30.270 is amended to read:

10 Sec. 14.30.270. SUBSTITUTES. AS 14.30.250 does not prohibit the
11 employment of a person, otherwise qualified to serve as a substitute
12 teacher, to serve as a substitute teacher of [A CLASS FOR] exceptional
13 children.

14 * Sec. 10. AS 14.30 is amended by adding new sections to read:

15 Sec. 14.30.272. PROCEDURAL SAFEGUARDS. A school district shall
16 inform the parent or guardian of an exceptional child of the right to
17 review the child's educational record, to review evaluation tests and
18 procedures, to refuse to permit evaluation or a change in the child's
19 educational placement, to be informed of the results of evaluation, to
20 obtain an independent evaluation, to request an impartial hearing, and
21 to give consent or deny access to others to the child's educational
22 record.

23 Sec. 14.30.274. IDENTIFICATION OF EXCEPTIONAL CHILDREN. Each
24 school district shall establish and implement written procedures to
25 ensure that all exceptional children under the age of 22 who reside in
26 the district are identified and located for the purpose of estab-
27 lishing their need for special education and related services.

28 Sec. 14.30.276. LEAST RESTRICTIVE ENVIRONMENT. Each school
29 district shall ensure that to the maximum extent appropriate,

1 exceptional children, including children in public or private
2 institutions or other care facilities, are educated with children who
3 are not exceptional and that special classes, separate schooling or
4 other removal of exceptional children from the regular educational en-
5 vironment occurs only when the nature or severity of the child's
6 exceptionality is such that education in regular classes with the use
7 of supplementary aids and services cannot be achieved satisfactorily.

8 Sec. 14.30.278. INDIVIDUALIZED EDUCATION PROGRAM. (a) The
9 individualized education program for each exceptional child shall
10 include

11 (1) a statement of the child's present levels of education-
12 al performance;

13 (2) a statement of annual goals, including short term
14 instructional objectives;

15 (3) a statement of the specific special education and
16 related services to be provided to the child, and the extent to which
17 the child will be able to participate in regular educational programs;

18 (4) the projected dates for initiation of services and the
19 anticipated duration of the services;

20 (5) appropriate objective criteria and evaluation proce-
21 dures and schedules for determining, on at least an annual basis,
22 whether the short term instructional objectives are being achieved.

23 (b) Each meeting concerning an exceptional child shall include

24 (1) a representative of the school district, other than the
25 child's teacher, who is qualified to provide or supervise the pro-
26 vision of special education;

27 (2) the child's teacher;

28 (3) at least one of the child's parents or guardians;

29 (4) the child, when appropriate;

1 (5) other individuals selected by the parent, guardian, or
2 school district.

3 * Sec. 11. AS 14.30.285(b) is repealed and reenacted to read:

4 (b) An identified exceptional child may be sent to an educa-
5 tional program or residential school outside the child's school dis-
6 trict if the child resides in a school district where an appropriate
7 educational program cannot reasonably be made available and if the
8 department determines that provision of special education and related
9 services in another educational program or residential school is
10 appropriate. If the school district and the department approve the
11 enrollment of the exceptional child in another educational program or
12 residential school outside the child's school district and the child
13 is enrolled, the child's education expenses shall be paid as follows:

14 (1) the sending school district shall pay the receiving
15 district, program, or school an amount of money equal to the sending
16 district's local cost-per-pupil rate;

17 (2) the department shall pay the remainder of the annual
18 cost of the child's education above that provided for in (1) of this
19 subsection.

20 * Sec. 12. AS 14.30.285(d) is amended to read:

21 (d) For the purposes of this section a child's education ex-
22 penses are limited to the actual cost of necessary care, transporta-
23 tion, and special education and related services [INSTRUCTION], in-
24 cluding room and board [, WHILE ATTENDING THE DESIGNATED INSTITUTION].

25 * Sec. 13. AS 14.30.285 is amended by adding a new subsection to read:

26 (g) The withholding of consent by a parent or guardian or de-
27 partmental approval for the transfer of an exceptional child under
28 this section does not relieve a school district of the obligation to
29 provide special education and related services to an exceptional child

1 under AS 14.30.186.

2 * Sec. 14. AS 14.30.305 is amended to read:

3 Sec. 14.30.305. STATE SUPPORT OF PROGRAMS FOR CHILDREN HOSPI-
4 TALIZED OR CONFINED TO THEIR HOMES. [SPECIAL INSTRUCTIONAL SERVICES
5 FOR EXCEPTIONAL CHILDREN WHO ARE HOSPITALIZED OR CONFINED TO THEIR
6 HOMES MAY BE PROVIDED BY A SCHOOL DISTRICT.] A child who is hospi-
7 talized or confined to home and who receives at least 10 hours of spe-
8 cial education and related services [INSTRUCTION] per week may be
9 counted as a pupil in average daily membership when computing state
10 support under the public school foundation program.

11 * Sec. 15. AS 14.30 is amended by adding new sections to read:

12 Sec. 14.30.315. STATE SUPPORT OF PROGRAMS FOR GIFTED CHILDREN.
13 (a) To be eligible for state support under the public school founda-
14 tion program, special education and related services for gifted chil-
15 dren must be provided in a program which has been approved in advance
16 by the department.

17 (b) Nothing in this section prohibits the department from re-
18 quiring approval of programs of special education and related services
19 for other categories of exceptional children.

20 Sec. 14.30.325. SURROGATE PARENTS. (a) The department may by
21 regulation provide for the appointment of surrogate parents to repre-
22 sent exceptional children in matters relating to the provision of an
23 appropriate public education.

24 (b) A surrogate parent is not liable for civil damages as a re-
25 sult of an act or omission committed in the surrogate parent's offi-
26 cial capacity, except that a surrogate parent may be liable for civil
27 damages as a result of gross negligence or intentional misconduct.

28 * Sec. 16. AS 14.30 is amended by adding a new section to read:

29 Sec. 14.30.335. ELIGIBILITY FOR FEDERAL FUNDS. Notwithstanding

1 any other provision of AS 14.30.180 - 14.30.350, the department may do
2 all things necessary to qualify for federal funds that are available
3 to the state for the education of exceptional children.

4 * Sec. 17. AS 14.30.347 is amended to read:

5 Sec. 14.30.347. TRANSPORTATION OF EXCEPTIONAL CHILDREN. When
6 transportation is required to be provided as related [PART OF SPECIAL]
7 services, exceptional children shall be carried with other children,
8 except when the nature of their physical or mental handicaps is such
9 that it is in the best interest of the exceptional children, as de-
10 termined by the school district, that they be transported separately.
11 State reimbursement for transportation of exceptional children shall
12 be as provided for transportation of all other pupils except that eli-
13 gibility for reimbursement shall not be subject to restriction based
14 on the minimum distance between the school and the residence of the
15 exceptional child.

16 * Sec. 18. AS 14.30.350 is repealed and reenacted to read:

17 Sec. 14.30.350. DEFINITIONS. In AS 14.30.180 - 14.30.350,

18 (1) "appropriate education" means personalized instruction
19 with sufficient support services to permit a child to benefit educa-
20 tionally from the instruction;

21 (2) "consent" is only obtained if the parent or guardian
22 has been fully informed of all information relevant to the object of
23 the consent;

24 (3) "department" means the Department of Education;

25 (4) "exceptional children" means children who differ marked-
26 ly from their peers to the degree that special facilities, equipment,
27 or methods are required to make their educational program effective;
28 these children may be identified in the following categories:

29 (A) "deaf" children exhibit a hearing impairment

1 that hinders the children's ability to process linguistic infor-
2 mation through hearing, with or without amplification, and that
3 adversely affects educational performance;

4 (B) "deaf-blind" children exhibit concomitant hear-
5 ing and visual impairments, the combination of which causes such
6 severe communication and other developmental and educational
7 problems that they cannot be accommodated in a special education
8 program solely for deaf or blind children;

9 (C) "gifted" children exhibit outstanding intellect,
10 ability, or creative talent as determined in accordance with reg-
11 ulations of the department;

12 (D) "hard-of-hearing" children exhibit a hearing im-
13 pairment, whether permanent or fluctuating, that adversely af-
14 fects educational performance but that is not within the meaning
15 of (A) of this paragraph;

16 (E) "learning disabled" children exhibit a disorder
17 in one or more of the basic psychological processes involved in
18 understanding or in using language, spoken or written, that may
19 manifest itself in an imperfect ability to listen, think, speak,
20 read, write, spell, or do mathematical calculations; the term in-
21 cludes such conditions as perceptual handicaps, brain injury,
22 minimal brain disfunction, dyslexia, and developmental aphasia;
23 this category does not include children who have learning prob-
24 lems that are primarily the result of visual, hearing, or motor
25 handicaps, of mental retardation, of emotional disturbance, or of
26 environmental, cultural, or economic disadvantage;

27 (F) "mentally retarded" children score two or more
28 standard deviations below the national norm on an individual
29 standardized test of intelligence and exhibit deficits in

1 adaptive behavior manifested during the developmental period,
2 that adversely affect the children's educational performance;

3 (G) "multihandicapped" children exhibit two or more
4 of the conditions described in (A), (B), (D) - (F) and (H) - (L)
5 of this paragraph, the combination of which causes such severe
6 educational problems that they cannot be accommodated in a spe-
7 cial education program for any one of the conditions;

8 (H) "orthopedically impaired" children exhibit a se-
9 vere orthopedic impairment, including impairments caused by con-
10 genital anomaly, disease, or other causes, that adversely affects
11 educational performance;

12 (I) "other health-impaired" children exhibit an au-
13 tistic condition that is manifested by severe communication and
14 other developmental and educational problems or exhibit limited
15 strength, vitality, or alertness due to chronic or acute health
16 problems such as heart condition, tuberculosis, rheumatic fever,
17 nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead
18 poisoning, leukemia, or diabetes, that adversely affects educa-
19 tional performance;

20 (J) "seriously emotionally disturbed" children ex-
21 hibit one or more of the following characteristics over a long
22 period of time and to a marked degree, that adversely affects
23 educational performance: (i) an inability to learn that cannot
24 be explained by intellectual, sensory, or health factors; (ii) an
25 inability to build or maintain satisfactory interpersonal rela-
26 tionships with peers and teachers; (iii) inappropriate types of
27 behavior or feelings under normal circumstances; (iv) a general
28 pervasive mood of unhappiness or depression; or (v) a tendency to
29 develop physical symptoms or fears associated with personal or

1 school problems; the term includes children who are schizophrenic
2 but does not include children who are only socially maladjusted;

3 (K) "speech-impaired" children exhibit a communica-
4 tion disorder, such as stuttering, impaired articulation, a lan-
5 guage impairment, or a voice impairment, that adversely affects
6 educational performance;

7 (L) "visually handicapped" children exhibit a visual
8 impairment that, even with correction, adversely affects educa-
9 tional performance;

10 (5) "related services" means transportation and develop-
11 mental, corrective, and other supportive services required to assist a
12 handicapped or gifted child to benefit from special education and
13 includes but is not limited to speech pathology and audiology, psycho-
14 logical services, physical and occupational therapy, recreation,
15 counseling services, and medical services for diagnostic or evaluation
16 purposes; the term also includes school health services, school social
17 work services, and parent counseling and training;

18 (6) "special education" means specially designed instruc-
19 tion, at no cost to the parent, to meet the unique needs of a handi-
20 capped child, including classroom instruction, instruction in physical
21 education, home instruction, and instruction in hospitals and insti-
22 tutions;

23 (A) the term includes speech pathology, or any other
24 related service, if the service consists of specially designed
25 instruction, at no cost to the parents, to meet the unique needs
26 of a handicapped child, and is considered "special education"
27 rather than a "related service" under state standards;

28 (B) the term also includes vocational education if it
29 consists of specially designed instruction, at no cost to the

1 parents, to meet the unique needs of a handicapped child;

2 (C) in this paragraph

3 (i) "at no cost" means that all specially de-
4 signed instruction is provided without charge but does not
5 preclude incidental fees that are normally charged to non-
6 handicapped students or their parents as a part of the
7 regular education program;

8 (ii) "physical education" means the development of
9 physical and motor fitness, fundamental motor skills and
10 patterns, skills in aquatics, dance, and individual and
11 group games, and sports (including intramural and lifetime
12 sports); the term includes special physical education,
13 adapted physical education, movement education, and motor
14 development;

15 (iii) "vocational education" means organized educa-
16 tional programs that are directly related to the preparation
17 of individuals for paid or unpaid employment, or for addi-
18 tional preparation for a career requiring other than a
19 baccalaureate or advanced degree;

20 (7) "school district" means a borough school district, a
21 city school district, or a regional educational attendance area.

22 * Sec. 19. AS 14.30.186(c) and (d), 14.30.260, 14.30.280, 14.30.285(c),
23 14.30.330 and 14.30.340 are repealed.

24 * Sec. 20. This Act takes effect July 1, 1984.