

HOUSE BILL NO. 419

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/27/92

Referred: Health, Education & Social Services, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to educational programs for children with disabilities and other
2 exceptional children; and providing for an effective date."

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

4 * Section 1. AS 14.30.180 is amended by adding a new subsection to read:

5 (b) AS 14.30.180 - 14.30.350 are intended to allow procedures and actions necessary to
6 comply with the requirements of federal law, including 20 U.S.C. 1400 - 1485 (Individuals with
7 Disabilities Education Act).

8 * Sec. 2. AS 14.30.191(a) is amended to read:

9 (a) A school district shall obtain the consent of the child's parent [OR GUARDIAN]
10 before an initial evaluation or placement in a program of special education and related services.

11 * Sec. 3. AS 14.03.191(b) is amended to read:

12 (b) After initial placement in a program of special education and related services and not
13 less than once every three years for as long as the child is assigned to the program, a [AN
14 EXCEPTIONAL] child with disabilities shall receive an educational evaluation for the

1 identification and classification of [EXCEPTIONAL] children with disabilities.

2 * Sec. 4. AS 14.30.191(c) is amended to read:

3 (c) Before a school district initiates or refuses a change in a child's placement or
4 program, the district shall notify the child's parent [OR GUARDIAN].

5 * Sec. 5. AS 14.30.191(d) is amended to read:

6 (d) Upon completion of the evaluation and before placement, the school district shall
7 provide to the parent [OR GUARDIAN] of each exceptional child an opportunity for consultation
8 about the evaluation. A consultation must be available after each reevaluation of the condition
9 and placement of the exceptional child.

10 * Sec. 6. AS 14.30.191(e) is amended to read:

11 (e) A parent may obtain an independent educational evaluation at the expense of the
12 school district if the parent disagrees with an evaluation obtained by the school district. [THE
13 SCHOOL DISTRICT MAY INITIATE A HEARING TO SHOW THAT ITS EVALUATION IS
14 APPROPRIATE.] If, as a result of a hearing under AS 14.30.193(c), the hearing officer
15 determines that the school district's evaluation is appropriate, the school district may not be
16 required to pay for the independent educational evaluation.

17 * Sec. 7. AS 14.30.191(f) is amended to read:

18 (f) If the parent [OR GUARDIAN] obtains an independent educational evaluation at
19 private expense, the results of the evaluation

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

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

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

24 Sec. 14.30.193. SCHOOL DISTRICT HEARINGS. (a) If a parent refuses to consent,
25 or does not respond promptly to the school district's request for consent, under AS 14.30.191(a)
26 or 14.30.285(f), the school district may appoint an impartial hearing officer to conduct a hearing
27 to determine whether the school district may initiate the evaluation or placement of the child, or
28 transfer the child.

29 (b) If a parent disagrees with the school district's intended action under AS 14.30.191(c),
30 the parent may request a hearing. If a hearing is requested under this subsection, the school
31 district shall appoint an impartial hearing officer to conduct the hearing.

1 (c) If a parent wishes to obtain an independent educational evaluation at the expense of
2 the school district under AS 14.30.191(e), the school district may appoint an impartial hearing
3 officer to conduct a hearing to determine whether the school district's evaluation is appropriate.

4 (d) If, after a hearing under (a) or (b) of this section, the hearing officer determines that
5 the school district's intended action is in accordance with law and is in the child's best interest,
6 the hearing officer shall approve that action.

7 (e) A hearing officer's decision under this section is final and binding on the school
8 district and the parent, unless appealed under (f) of this section.

9 (f) A parent or a school district may appeal a hearing officer's decision under this section
10 to the department by requesting an appeal hearing under AS 14.30.195. The appeal hearing
11 request must be in writing and must be received by the department within 30 days after receipt
12 of the relevant hearing officer's decision.

13 * Sec. 9. AS 14.30.195(a) is amended to read:

14 Sec. 14.30.195. APPEAL HEARINGS. (a) The department shall, by regulation, provide
15 for administrative appeal hearings, based on the record, of impartial hearing officers'
16 decisions under AS 14.30.193. An administrative appeal hearing shall comply with all
17 requirements necessary for participation in federal grant-in-aid programs, including 20
18 U.S.C. 1400 - 1485 (Individuals with Disabilities Education Act) [TO BE CONDUCTED
19 UNDER AS 14.30.180 - 14.30.350].

20 * Sec. 10. AS 14.30.195 is amended by adding new subsections to read:

21 (c) After an appeal hearing under this section, the department shall render its decision
22 affirming, reversing, modifying, or remanding the hearing officer's decision under AS 14.30.193.

23 (d) A parent or the school district may appeal to the appropriate court for review of the
24 department's decision on appeal under (c) of this section.

25 * Sec. 11. AS 14.30.272 is amended to read:

26 Sec. 14.30.272. PROCEDURAL SAFEGUARDS. (a) A school district shall inform the
27 parent [OR GUARDIAN] of an exceptional child of the right to review the child's educational
28 record, to review evaluation tests and procedures, to refuse to permit evaluation or a change in
29 the child's educational placement, to be informed of the results of evaluation, to obtain an
30 independent evaluation, to request an impartial hearing, to appeal a hearing officer's decision,
31 and to give consent or deny access to others to the child's educational record.

1 **(b) The department shall establish, by regulation, impartial procedures for a school**
2 **district to follow for hearings under AS 14.30.193 to comply with requirements necessary**
3 **to participate in federal grant-in-aid programs, including 20 U.S.C. 1400 - 1485 (Individuals**
4 **with Disabilities Education Act).**

5 * Sec. 12. AS 14.30.278(b) is amended to read:

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

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

9 (2) the child's teacher;

10 (3) at least one of the child's parents [OR GUARDIANS];

11 (4) the child, when appropriate;

12 (5) other individuals selected by the parent [, GUARDIAN,] or school district.

13 * Sec. 13. AS 14.30.285(f) is amended to read:

14 (f) A school district shall obtain the consent of the child's parent before a child may
15 [NOT] be transferred to a school outside the district in which the child resides [WITHOUT THE
16 CONSENT OF THE PARENT OR GUARDIAN].

17 * Sec. 14. AS 14.30.285(g) is amended to read:

18 (g) The withholding of consent by a parent [OR GUARDIAN] or departmental approval
19 for the transfer of an exceptional child under this section does not relieve a school district of the
20 obligation to provide special education and related services to an exceptional child under
21 AS 14.30.186.

22 * Sec. 15. AS 14.30.340 is repealed and reenacted to read:

23 Sec. 14.30.340. PROVISION OF SPECIAL EDUCATION IN A PRIVATE SCHOOL,
24 HOME, OR HOSPITAL SETTING. (a) If a parent of a child with disabilities enrolls the child
25 in a private school at the parent's expense or teaches the child at home, the school district in
26 which the child is located shall make special education and related services available in
27 conformance with an individualized education program under AS 14.30.278.

28 (b) If a physician certifies in writing that, and if the child's individualized education
29 program team then determines that a child's bodily, mental, or emotional condition does not
30 permit attendance at a school, the school district in which the child is located shall enroll the
31 child in public school and provide the child with special education and related services in

1 conformance with an individualized education program under AS 14.30.278 at the child's home
2 or at a medical treatment facility.

3 * Sec. 16. AS 14.30.347 is amended to read:

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

12 * Sec. 17. AS 14.30.350(2) is amended to read:

13 (2) "consent" means [IS ONLY OBTAINED IF] the parent [OR GUARDIAN]
14 has been fully informed of all information relevant to the [OBJECT OF THE] activity or the
15 release of records for which consent is sought and the parent understands and agrees to the
16 activity or release of records; consent by parent given under AS 14.30.180 - 14.30.347 is
17 voluntary and may be revoked;

18 * Sec. 18. AS 14.30.350(4) is repealed and reenacted to read:

19 (4) "exceptional children" means children with disabilities, and gifted children,
20 who differ markedly from their peers to the degree that special facilities, equipment, or methods
21 are required to make their educational program effective;

22 * Sec. 19. AS 14.30.350(5) is amended to read:

23 (5) "related services" means transportation and developmental, corrective, and
24 other supportive services required to assist children with disabilities [A HANDICAPPED] or
25 gifted children [CHILD] to benefit from special education and includes but is not limited to
26 speech pathology and audiology, psychological services, physical and occupational therapy,
27 recreation, counseling services including rehabilitation counseling, and medical services for
28 diagnostic or evaluation purposes; the term also includes school health services, [SCHOOL]
29 social work services, and parent counseling and training;

30 * Sec. 20. AS 14.30.350(6) is amended to read:

31 (6) "special education" means specially designed instruction, at no cost to the

1 parent, to meet the unique needs of exceptional children [A HANDICAPPED CHILD], including
2 classroom instruction, instruction in physical education, home instruction, and instruction in
3 hospitals and institutions; the term includes speech pathology, or any other related service, if the
4 service consists of specially designed instruction, at no cost to the parents, to meet the unique
5 needs of exceptional children [A HANDICAPPED CHILD], and is considered special education
6 rather than a related service under state standards; the term also includes vocational education
7 if it consists of specially designed instruction, at no cost to the parents, to meet the unique needs
8 of exceptional children [A HANDICAPPED CHILD]; in this paragraph

9 (A) "at no cost" means that all specially designed instruction is provided
10 without charge but does not preclude incidental fees that are normally charged to
11 nonexceptional [NONHANDICAPPED] students or their parents as a part of the regular
12 education program;

13 (B) "physical education" means the development of physical and motor
14 fitness, fundamental motor skills and patterns, skills in aquatics, dance, and individual and
15 group games, and sports (including intramural and lifetime sports); the term includes
16 special physical education, adapted physical education, movement education, and motor
17 development;

18 (C) "vocational education" means organized educational programs that are
19 directly related to the preparation of individuals for paid or unpaid employment, or for
20 additional preparation for a career requiring other than a baccalaureate or advanced
21 degree;

22 * Sec. 21. AS 14.30.350 is amended by adding new paragraphs to read:

23 (8) "children with disabilities" means children with mental retardation; hearing
24 impairments, including deafness; speech or language impairments; visual impairments, including
25 blindness; serious emotional disturbance; orthopedic impairments; autism; traumatic brain injury;
26 other health impairments; specific learning disabilities; or preschool developmental delays;

27 (9) "educational records" means those files, documents, records, and other material
28 that contain information directly related to a student and are maintained by a school district or
29 a person acting for a school district; the term "educational records" does not include the
30 personnel records of the school district, maintained in the normal course of business, that relate
31 exclusively to a person's capacity as an employee, or other records as designated by the

1 department in regulation;

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

4 (11) "individualized education program team" means a group of people that
5 translates child assessment information regarding a child into a practical plan for specially
6 designed instruction and delivery of services for the child, and includes the following:

7 (A) a representative of the school district, other than the child's teacher,
8 who is qualified to provide or supervise the provision of special education;

9 (B) the child's teacher;

10 (C) the child's parent;

11 (D) the child, if appropriate;

12 (E) other individuals, at the discretion of the child's parent or the school
13 district;

14 (12) "parent" includes a guardian, a person acting as a parent of a child, and a
15 surrogate parent appointed under AS 14.30.325.

16 * Sec. 22. This Act takes effect June 30, 1992.