

HOUSE BILL NO. 235

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES BUNDE, Grussendorf

Introduced: 3/17/93

Referred: Health, Education & Social Services, Finance

A BILL

FOR AN ACT ENTITLED

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

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

5 * Section 1. AS 14.30.180 is amended to read:

6 Sec. 14.30.180. PURPOSE. It is the purpose of AS 14.30.180 - 14.30.350 to

7 (1) provide an appropriate public education for exceptional
8 children in the state who are at least three years of age but less than 22 years of age;

9 (2) allow procedures and actions necessary to comply with the
10 requirements of federal law, including 20 U.S.C. 1400 - 1485 (Individuals with
11 Disabilities Education Act).

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

13 (a) A school district shall obtain the consent of the child's parent [OR
14 GUARDIAN] before an initial evaluation or placement in a program of special

1 education and related services.

2 * Sec. 3. AS 14.30.191(b) is amended to read:

3 (b) After initial placement in a program of special education and related
4 services and not less than once every three years for as long as the child is assigned
5 to the program, a [AN EXCEPTIONAL] child with disabilities shall receive an
6 educational evaluation for the identification and classification of [EXCEPTIONAL]
7 children with disabilities.

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

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

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

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

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

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

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

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

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

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

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

31 Sec. 14.30.193. SCHOOL DISTRICT HEARINGS. (a) If a parent refuses to

1 consent, or does not respond promptly to the school district's request for consent,
2 under AS 14.30.191(a) or 14.30.285(f), the school district may appoint an impartial
3 hearing officer to conduct a hearing to determine whether the school district may
4 initiate the evaluation or placement of the child, or transfer the child.

5 (b) If a parent disagrees with the school district's intended placement of a
6 child or program for a child, the parent may request a hearing. If a hearing is
7 requested under this subsection, the school district shall appoint an impartial hearing
8 officer to conduct the hearing.

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

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

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

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

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

23 (a) The department shall, by regulation, provide for administrative appeal
24 hearings, based on the record, of impartial hearing officers' decisions under
25 AS 14.30.193. An administrative appeal hearing shall comply with all
26 requirements necessary for participation in federal grant-in-aid programs,
27 including 20 U.S.C. 1400 - 1485 (Individuals with Disabilities Education Act) [TO
28 BE CONDUCTED UNDER AS 14.30.180 - 14.30.350].

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

30 (c) After an appeal hearing under this section, the department shall render its
31 decision affirming, reversing, modifying, or remanding the hearing officer's decision

1 under AS 14.30.193.

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

4 * Sec. 11. AS 14.30 is amended by adding a new section to read:

5 Sec. 14.30.235. **WITHDRAWAL OF CONSENT.** If under a provision of this
6 chapter the consent of the parent is required, the parent may withdraw the parent's
7 consent.

8 * Sec. 12. AS 14.30.272 is amended to read:

9 Sec. 14.30.272. **PROCEDURAL SAFEGUARDS.** A school district shall
10 inform the parent [OR GUARDIAN] of an exceptional child of the right to review the
11 child's educational record, to review evaluation tests and procedures, to refuse to
12 permit evaluation or a change in the child's educational placement, to be informed of
13 the results of evaluation, to obtain an independent evaluation, to request an impartial
14 hearing, to appeal a hearing officer's decision, and to give consent or deny access
15 to others to the child's educational record.

16 * Sec. 13. AS 14.40.272 is amended by adding a new subsection to read:

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

21 * Sec. 14. AS 14.30.278(b) is amended to read:

22 (b) Each meeting concerning an exceptional child must include

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

25 (2) the child's teacher;

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

27 (4) the child, when appropriate;

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

30 * Sec. 15. AS 14.30.285(f) is amended to read:

31 (f) A school district shall obtain the consent of the child's parent before

1 a child may [NOT] be transferred to a school outside the district in which the child
2 resides [WITHOUT THE CONSENT OF THE PARENT OR GUARDIAN].

3 * Sec. 16. AS 14.30.285(g) is amended to read:

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

8 * Sec. 17. AS 14.30.340 is repealed and reenacted to read:

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

15 (b) If a physician certifies in writing that, and if the child's individualized
16 education program team then determines that, a child's bodily, mental, or emotional
17 condition does not permit attendance at a school, the school district in which the child
18 is located shall enroll the child in public school and provide the child with special
19 education and related services in conformance with an individualized education
20 program under AS 14.30.278 at the child's home or at a medical treatment facility.

21 * Sec. 18. AS 14.30.347 is amended to read:

22 Sec. 14.30.347. TRANSPORTATION OF EXCEPTIONAL CHILDREN.
23 When transportation is required to be provided as related services, exceptional children
24 shall be carried with other children, except when the nature of their physical or mental
25 disabilities [HANDICAPS] is such that it is in the best interest of the exceptional
26 children, as determined by the school district, that they be transported separately. State
27 reimbursement for transportation of exceptional children shall be as provided for
28 transportation of all other pupils except that eligibility for reimbursement is not subject
29 to restriction based on the minimum distance between the school and the residence of
30 the exceptional child.

31 * Sec. 19. AS 14.30.350(2) is amended to read:

1 (2) "consent" means [IS ONLY OBTAINED IF] the parent [OR
2 GUARDIAN] has been fully informed of all information relevant to the activity or the
3 release of records for which [OBJECT OF THE] consent is sought and the parent
4 understands and voluntarily agrees to the activity or release of records;

5 * Sec. 20. AS 14.30.350(3) is repealed and reenacted to read:

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

9 * Sec. 21. AS 14.30.350(4) is amended to read:

10 (4) "related services" means transportation and developmental,
11 corrective, and other supportive services required to assist children with disabilities
12 [A HANDICAPPED] or gifted children [CHILD] to benefit from special education
13 and includes but is not limited to speech pathology and audiology, psychological
14 services, physical and occupational therapy, recreation, counseling services including
15 rehabilitation counseling, and medical services for diagnostic or evaluation purposes;
16 the term also includes school health services, school social work services, and parent
17 counseling and training;

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

19 (5) "special education" means specially designed instruction, at no cost
20 to the parent, to meet the unique needs of exceptional children [A HANDICAPPED
21 CHILD], including classroom instruction, instruction in physical education, home
22 instruction, and instruction in hospitals and institutions; the term includes speech
23 pathology, or any other related service, if the service consists of specially designed
24 instruction, at no cost to the parents, to meet the unique needs of exceptional children
25 [A HANDICAPPED CHILD], and is [considered special education rather than a related
26 service under state standards; the term also includes vocational education if it consists
27 of specially designed instruction, at no cost to the parents, to meet the unique needs
28 of exceptional children [A HANDICAPPED CHILD]; in this paragraph

29 (A) "at no cost" means that all specially designed instruction is
30 provided without charge but does not preclude incidental fees that are normally
31 charged to nonexceptional [NONHANDICAPPED] students or their parents

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as a part of the regular education program;

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

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

* Sec. 23. AS 14.30.350 is amended by adding new paragraphs to read:

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

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

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

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

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

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- (B) the child's teacher;
- (C) the child's parent;
- (D) the child, if appropriate;
- (E) other individuals, at the discretion of the child's parent or the school district;

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

* Sec. 24. This Act takes effect June 30, 1993.