

SENATE CS FOR CS FOR HOUSE BILL NO. 235(STA)**IN THE LEGISLATURE OF THE STATE OF ALASKA****EIGHTEENTH LEGISLATURE - FIRST SESSION****BY THE SENATE STATE AFFAIRS COMMITTEE****Offered: 4/20/93****Referred: HES, FIN****Sponsor(s): REPRESENTATIVES BUNDE, Grussendorf****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 14.30.186 is amended by adding a new subsection to read:

13 (e) Exceptional children being educated as provided under AS 14.30.010(b)
14 have the right to special education and related services as provided under

1 AS 14.30.180 - 14.30.350. The exceptional child of a parent who elects to educate the
2 child as allowed under AS 14.30.010(b) may not be compelled to receive the special
3 education and related services provided under AS 14.30.180 - 14.30.350.

4 * Sec. 3. AS 14.30.191(a) is amended to read:

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

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 by a person
18 of the parent's choosing or by a person selected by agreement between the parent
19 and the school district. at the expense of the school district, if the parent disagrees
20 with an evaluation obtained by the school district. The school district may initiate a
21 hearing to show that its evaluation is appropriate. If the hearing officer determines
22 that the evaluation is appropriate, the school district may not be required to pay for the
23 independent 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 within 30 days 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) A hearing officer may not be appointed under this section unless approved
10 in writing by the parent; however, parent approval of a hearing officer is not required
11 if the parent has been offered and has rejected three different hearing officers. After
12 a hearing officer is appointed under this section, the hearing officer shall conduct an
13 informal prehearing settlement conference and attempt to resolve the disagreement
14 between the parent and the school district. If, after a hearing under this section, the
15 hearing officer determines that the school district's intended action is in accordance
16 with law and is in the child's best interest, the hearing officer shall approve that action.

17 (d) If a parent participates in the hearing but refuses to comply with the
18 decision of the hearing officer, the district shall document in the hearing record the
19 district's attempt to evaluate, place, or transfer the child.

20 (e) If a parent does not participate in the hearing, the district shall document
21 in the hearing record the district's attempt to evaluate, place, or transfer the child and
22 the parent's lack of consent to evaluation, placement, or transfer.

23 (f) A hearing officer's decision under this section is final and binding on the
24 school district and parent, unless appealed under (g) of this section. Notwithstanding
25 a decision by the hearing officer, a child may not be evaluated, placed, transferred, or
26 compelled to receive special education or related services from the school district until
27 the period for filing an appeal under (g) of this section has expired or, if an appeal is
28 filed, until the department and court appellate review process has been completed.

29 (g) A parent or a school district may appeal a hearing officer's decision under
30 this section to the department by requesting an appeal hearing under AS 14.30.195.
31 The appeal hearing request must be in writing and must be received by the department

1 within 30 days after receipt of the hearing officer's decision.

2 (h) The department shall maintain a list of qualified hearing officers. The
3 department shall qualify hearing officers through a training program that shall be open
4 to all residents of the state. A hearing officer may be qualified for a period not to
5 exceed five years. The list of qualified hearing officers shall be maintained as a public
6 record.

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

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

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

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

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

20 (e) A parent who appeals to the court and who is determined by the court to
21 be an indigent person may be provided with a court appointed attorney at public
22 expense. In this subsection, "indigent person" has the meaning given in AS 18.85.170.

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

24 Sec. 14.30.235. WITHDRAWAL OF CONSENT. If under a provision of this
25 chapter the consent of the parent is required, the parent may withdraw the parent's
26 consent.

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

28 Sec. 14.30.272. PROCEDURAL SAFEGUARDS. A school district shall
29 inform the parent [OR GUARDIAN] of an exceptional child of the right to review the
30 child's educational record, to review evaluation tests and procedures, to refuse to
31 permit evaluation or a change in the child's educational placement, to be informed of

1 the results of evaluation, to obtain an independent evaluation by a person of the
2 parent's choosing or by a person selected by agreement between the parent and
3 school district, to request an impartial hearing, to appeal a hearing officer's
4 decision, and to give consent or deny access to others to the child's educational record.

5 * Sec. 13. AS 14.30.272 is amended by adding a new subsection to read:

6 (b) The department shall establish, by regulation, impartial procedures for a
7 school district to follow for hearings under AS 14.30.193 to comply with requirements
8 necessary to participate in federal grant-in-aid programs, including 20 U.S.C. 1400 -
9 1485 (Individuals with Disabilities Education Act).

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

11 (b) Each meeting concerning an exceptional child must include
12 (1) a representative of the school district, other than the child's teacher,
13 who is qualified to provide or supervise the provision of special education;
14 (2) the child's teacher;
15 (3) at least one of the child's parents [OR GUARDIANS];
16 (4) the child, when appropriate;
17 (5) other individuals selected by the parent [, GUARDIAN,] or school
18 district.

19 * Sec. 15. AS 14.30.278 is amended by adding a new subsection to read:

20 (c) Each school district shall develop an individualized education program for
21 every exceptional child who receives services or whose parent requests services under
22 AS 14.30.180 - 14.30.350.

23 * Sec. 16. AS 14.30.285(f) is amended to read:

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

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

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

1 * **Sec. 18.** AS 14.30.340 is repealed and reenacted to read:

2 **Sec. 14.30.340. PROVISION OF SPECIAL EDUCATION IN A PRIVATE**
3 **SCHOOL, HOME, OR HOSPITAL SETTING.** (a) If a parent of an exceptional child
4 enrolls the child in a private school at the parent's expense or teaches the child at
5 home, the school district in which the child is located shall make special education and
6 related services available in conformance with an individualized education program
7 under AS 14.30.278.

8 (b) If a physician certifies in writing, and if the child's individualized
9 education program team then determines that a child's bodily, mental, or emotional
10 condition does not permit attendance at a school and the child's parents do not elect
11 to teach the child at home as permitted under AS 14.30.010(b), the school district in
12 which the child is located shall enroll the child in public school and provide the child
13 with special education and related services in conformance with an individualized
14 education program under AS 14.30.278 at the child's home or at a medical treatment
15 facility.

16 * **Sec. 19.** AS 14.30.347 is amended to read:

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

26 * **Sec. 20.** AS 14.30.350(2) is amended to read:

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

31 * **Sec. 21.** AS 14.30.350(3) is repealed and reenacted to read:

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

4 * Sec. 22. AS 14.30.350(4) is amended to read:

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

13 * Sec. 23. AS 14.30.350(5) is amended to read:

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

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

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

1 education, movement education, and motor development;

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

6 * Sec. 24. AS 14.30.350 is amended by adding new paragraphs to read:

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

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

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

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

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

27 (B) the child's teacher;

28 (C) the child's parent;

29 (D) the child, if appropriate;

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

- 1 (11) "parent" includes a guardian, a person acting as a parent of a child,
- 2 and a surrogate parent appointed under AS 14.30.325.
- 3 * Sec. 25. This Act takes effect June 30, 1993.