HB

419

Law Offices of Marc Grober
Box 467
Nenana, Alaska 99760
(907) 832-5227

April 23, 1992

House HESS Committee Members
Via FAX

Re: House Bill 419

Dear Chair and Members of the Committee:

By way of introduction, I am an attorney and have practiced in this state since 1977. I have been concerned with the quality of state-funded services to youth and the handicapped. I have served on a number of Boards involved in health issues and was a founding director of our local regional health care agency. I have been active in the areas of early childhood services and special education for some time and have clients involved in special education litigation. I believe I know of what I am about to tell you.

I would like to address my initial comments to possible allegations that you might hear from DOE in support of this Bill.

* * *

1. *You may be told that the Bill has the support of the Governor's Council.* **This is false.** In fact the Council, which is by law the advisory committee on special education, was not asked for a formal endorsement of the Bill. The Council's schedule and the timing of the Department's push on this Bill preclude such a review.

2. *You may be told that parents of gifted children support the Bill.* **This is false.** The Bill includes language almost identical to that appearing in SB278, introduced by Sen. Kerttula in the last legislature. According to one of the Senator's aides, SB278 was offered because the bill was allegedly drafted and supported by parents of gifted children. Investigation indicated that it was drafted by DOE and then circulated by "educators" of the gifted who apparently didn't want to be troubled with the cost and "bother" of assuring that IEP's for gifted children continued to be appropriate as the child developed. When parents found out about the bill there was an outcry it SB278 was abandoned to die in this committee.

Federal law requires regular evaluations for an exceptional child in order to gauge the child's progress and assure that his IEP continues to be appropriate as he develops. Evaluations must be conducted at least every three

years or whenever a parent demands one as a guarantee of minimal service (though DOE has regularly viewed this floor as a ceiling!) This is not a bothersome hurdle, but a vital component, assuring that expert specialists will continue to monitor and evaluate a child. Failure to maintain such protections will inevitably result in an inability to guarantee that the child's program is meeting the child's needs. Since federal law does not apply to gifted students, DOE wants to drop these services to these children.

3. *You may be told that the state will be absolutely barred from receiving millions of dollars of federal funds.* **This is false.** You must first understand that Alaska has never been found to be in compliance with federal special education law. In, fact, the State's last federal audit was a disastrous failure. Nevertheless, it has been the policy of this federal administration to continue funding special education in states which are in violation of IDEA. Alaska has continued to receive funding though it has been found to be in gross violation of federal law for years and continues to violate the mandated protections on an almost universal level.

4. *You may be told that the federal Education Department (USED) has required the specific changes sought in the Bill.* **This is false.** Pursuant to an Alaska Public Records Act request directed to DOE I sought, obtained and reviewed all documents in DOE's possession which pertain to the proposed legislation. Not one of those documents evidences a requirement that these specific changes be made to Alaska statutes. I have also made a FOIA request to USED for all correspondence and documents exchanged between DOE and USED. These documents have now arrived and are available to you on request.

5. *You may be told that the amendments benefit parents and children.* **This is false.** In fact, the amendments drastically reduce parents' authority and responsibility. If the bill passes, it is entirely probable that a "problem child" who is not otherwise eligible for services could be identified by the district, evaluated and certified as "emotionally impaired" (district jargon for children that don't meet the strict clinical criteria for seriously emotionally disturbed but are children that a district wants to target for removal from the classroom), removed from his classroom, transported to a remote school without his parents, placed in foster care, and subjected to psychiatric treatment, all without the consent of the child's parents.

This Bill is a green flag for the wholesale shipping of Native children from the bush to urban centers without any regard for their families. If you don't think this can happen, think again. This Bill would only legitimize a practice that for all intents and purposes is going on right now right under your eyes.

School psychologists have testified that they are not familiar with the clinical nature of SED eligibility and that children are often certified as EI in

order to put them in a program that they might not otherwise qualify for. Foster care is typical for severely involved children from rural districts. Psychiatric care is well within the range of services that can be offered as "special education" (including but not limited to the administration of mind-altering drugs.) Parents not satisfied with non-compliance are told to take their children elsewhere. The prospects are all too real.

6. *You may be told that this Bill simply ensures that all parties are guaranteed due process.* **This is false.** The IDEA is remedial; it was adopted to force districts to serve exceptional children. This is accomplished with a carrot and stick: the additional federal funding is the carrot and the granting of substantial rights to parents to assure that their children are served is the stick. The parents, not the districts, are empowered to protect their children. This Bill affords districts the right to initiate hearings, with the parents' absolute right to refuse to consent to evaluation, initial placement and relocation the obvious target.

USED has required that DOE comply with federal law that requires that the state provide the districts with procedures for overriding parental refusals. Such a procedure exists in that if the state or district really believes that a parent is withholding consent to programming, treatment or services that are absolutely necessary to the child's welfare the state or district may proceed under the CINA statutes without further administrative reduction of parental rights. The CINA statutes are carefully designed to balance the state's and parents' interests in a child's welfare. If the problem does not rise to such serious dimensions as would warrant such action it should not be subject to the radical "remedy" proposed by DOE. The comments to the federal regulations directly address this issue in this specific light.

You must also understand that a parent's rights, though guaranteed under the law, are extremely precarious and uncertain. The right to a hearing means a hearing before a hearing officer selected solely by the district from a list of available persons selected, screened and "trained" by the Department (DOE refuses to "accept" certain persons from qualifying to act as hearing officers.) Districts pay the hearing officer's fees. Hearing officers that don't please the district are not selected again.

Parents usually can't afford the due process hearings, and the hearing process inevitably results in the filing of a further lawsuit (even where a parent prevails he will undoubtedly be forced to file suit to enforce the decision). It is not unusual to find such cases still being litigated long after the child is no longer of school age. Some districts have expended more on attorney fees opposing parents in due process matters than would have been expended if the district had simply provided the services the parents requested!

Resources for parental advocacy are extremely limited and most of the funding for parental advocacy is controlled by DOE, which has refused to fund programs for parents that provide experience and practice with educational professionals in model situations, substantive instruction in parental rights, etc. so that a parent can really be prepared for the dynamics of the process they are faced with. Agencies that do receive state funding must always be concerned about the continuation of that funding.

And then there are the districts. Recently a parent came to me in tears. Having run the gamut of "service" agencies she had told the district superintendent that she was going to retain an attorney. The superintendent told her that if she retained counsel she would be doing her child potentially irreversible damage. Educators are so compassionate...

7. *You may be told that this Bill has no effect on independent evaluations.* **This is false.** At present a parent is entitled to an independent evaluation at any time. The district must pay for that evaluation unless the district demands a hearing for the purpose of determining whether the district's evaluation is more "appropriate" than the evaluation obtained by the parents. The Bill would essentially enable the district to pre-empt this process by allowing the district to convene a hearing before a so-called impartial hearing officer prior to the time the independent evaluation can be performed! This would essentially bring the law into conformance with present day unlawful practices (where districts advise parents that they have a right to independent evaluations where appropriate) and largely remove the threat of a truly valuable independent evaluation.

Independent evaluation is critical in Alaska where many evaluations are performed by persons inadequately trained or unqualified in the area in which they are evaluating. Credentials are inadequate to guarantee competence and professional who create technical difficulties for a district are not likely to obtain or keep their job.

8. *You may be told that the Bill is necessary to protect privacy.* **This is false.** Pertinent federal statutes are designed to protect the privacy of the parent and child. DOE is again turning the tables and is attempting to protect the districts from the inquiring minds of their consumers. There is absolute, on-going and effective resistance by districts to the idea that parents should have access to the specific credentials of special educators and any records of the special educators performance. Federal law does not go as far as the proposed amendments and the language is clearly not designed to benefit the child.

9. *You may be told that the Bill is necessary to clarify existing nomenclature.* **This is laughable.** This Bill makes the pertinent terminology

even more confusing. The amendments are poorly crafted and do not suit this purpose.

* * *

Can all this really be true? Can DOE be really so adverse to the interests of the very people it is supposed to serve? YOU SHOULD UNDERSTAND THAT IN THIS BILL DOE IS IN FACT ATTEMPTING TO MANIPULATE EVEN YOU. DOE HAS ALREADY ASSURED USED THAT THE BILL WILL BE PASSED (SO MUCH FOR YOUR ROLE AND THE ENTIRE LEGISLATIVE PROCESS). DOE has in fact hatched a very clever scheme it believes will force your hand.

DOE was required by USED to prepare a plan that assures compliance with federal law (largely as a result of the disastrous federal audit) and was funded based upon these assurances. In order to be able to effect the changes that DOE sought and has been unable to effect, DOE put these changes in the plan, even though USED did not specifically require them. Since USED has funded DOE based upon these assurances, DOE received a letter from USED, one that you have or will be receiving from DOE, that states that funding is contingent upon compliance with "the plan", a plan that now includes the proposed statutory changes! USED personnel have expressed serious concerns about this subterfuge and will likely be investigating this issue as part of a pending review of current Alaska non-compliance problems. I have pointed out above that there is no likelihood that funding will be terminated, and the "assurances" have apparently just this week been published for public comment. None of this is cast in stone and "the plan" will conform to what you have to say, not to what DOE has been hatching in the dark. I bring these machinations to your attention so that you can fully understand that Governor/Treasury Secretary John Connelly's comments that the biggest obstacle to progress in education is educators themselves rings very, very true in this state. This state should certainly be in compliance with federal law, but I think it inappropriate to rely on the Alaska Department of Education for advice on compliance; DOE hasn't been able to effect compliance with existing laws, let alone be expected to give qualified advice on how to correct the problems.

Children aren't being served, parents aren't being advised of their rights, funds are being squandered on publication of dozens of different forms while few, if any, of the IEPs in this state would meet federal muster. If you doubt my contentions, then take no action on this bill this session and wait until the 1992-1993 school year when this state will be the subject of another federal audit. The audit will provide ample evidence of who is trying to pull the wool over whose eyes. Require that the Governor's Council on the Gifted and Handicapped hold extensive public hearings and debates on the issues of why

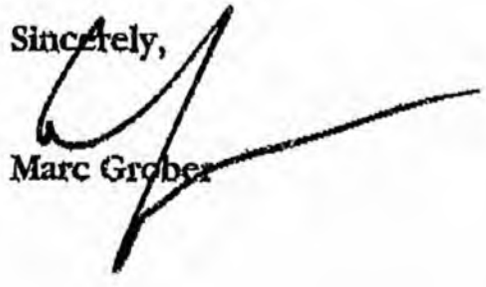
Alaska is not in compliance, what is required, etc. That is, after all, their federally mandated role!

I could tell you hours of horror stories and provide you with reams of documents evidencing the points I have discussed. Clearly we don't have the time to explore all this material at this juncture. Moreover, there is an existing infrastructure that is supposed to generate and distill this kind of testimony (and obviously hasn't!) Is it surprising that this infrastructure is largely run by the same Departmental people who have been unable to comply with the laws in the first place?

DOE is trying to rush this Bill through the legislature in two weeks. It has already threatened that the state will lose funds if the Bill isn't passed and has repeatedly claimed that the USED has demanded the specific statutory changes reflected in the Bill. DOE is trying to stampede you, and it has been my experience that whenever someone tries to give you the rush, its likely because their position can't stand up to careful scrutiny. If this matter was as critical as DOE claims, it certainly could have asked for hearings in January. DOE has known since October that its proposals would not receive a warm welcome from the public. Yet here it is April 13th, 1992 and you are being asked to push this Bill through. Take your time. Listen to the parents that will be sending in their comments in the next few days. If you want to find out about compliance, talk to the head of the federal team that will audit Alaska, talk to attorneys and advocates representing parents and children in special education matters. If you want to talk about improrvements in the laws, I'd be happy to present you with a whole series of proposals designed to empower parents, protect children, afford accountability and hold special education up to the scrutiny it deserves. I am at your disposal.

Thank you for your attention and consideration.

Sincerely,



Marc Grober

HB 419 "An Act relaing to educational programs for children with disabilities and other exceptional children; and providing for an effective date."

Zero fiscal note, Department of Education (blue)

1. Commissioner Covey letter, 2/28/92
2. Attorney Marc Grober letter, 4/21/92
3. Governor's Council/Grober letter, 4/24/92
4. James Rich/Rep. Carney letter, 4/16/92
5. Brief Analysis of Recent Proposals to Amend Title 14, Chapter 30 (1992)
6. AS 14.30.
7. U.S. Department of Education materials

FISCAL NOTE

No. 1

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Bill Version: HB 419
(H) Publish Date: 1/27/92

Revision Date: _____ Department Affected: Education

Title: Educational programs for children with disabilities. BRU: Educational Program Support

Component: Office of Special and Supplemental Services

Sponsor: _____

Requestor: Governor COMPONENT SERIAL NO. 1 6 6

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-					
CAPITAL	-0-					
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-					
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	-0-					

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact.

Prepared By: Jim Reid Phone: 465-2970

Division: Educational Program Support Date: 1/13/92

Approved by Commissioner: Karen K. Crane for Jerry Covey

Agency: _____ Date: 1/13/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

Rev 10/7/91 COMMITTEE COPY

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

GOLDBELT PLACE
801 WEST 10TH STREET, SUITE 200
JUNEAU, ALASKA 99801-1894

DEPARTMENT OF EDUCATION

OFFICE OF THE COMMISSIONER

February 28, 1992

The Honorable Ben Grussendorf
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Grussendorf:

In response to your request for information on the fiscal impact of HB 419, failure to pass HB 419 could result in the loss of $5,454,981 in federal grant funds under programs for children with disabilities. At present Alaska's State Plan for fiscal years (FY) 1992-94 under Part B of the Individuals with Disabilities Education Act has conditional approval by the United States Department of Education and is contingent upon federal acceptance of changes to Alaska statutes and regulations making them consistent with Part B requirements. (See attached letter.)

The following sections of HB 419 address changes required by the U.S. Department of Education:

Section 8. Alaska statute presently prevents a school district from initiating a due process hearing except to prove that its evaluation of a child is correct. Federal statute permits a school district and a parent to initiate hearings on all hearable topics. This proposed change will allow school districts to initiate hearings for the same reasons a parent initiates hearings.

Section 17. The U.S. Department of Education has specified that the definition of consent must contain the required federal components as presented here.

Section 19. The reauthorization of P.L. 94-142, as amended by P.L. 101-476, now named Individuals with Disabilities Education Act (IDEA), includes rehabilitation counseling as a related service.

Section 21. IDEA adds two new categories of children with disabilities; autism and traumatic brain injury. Alaska Statute does not have a definition of educational records which is required by the U.S. Department of Education. Federal language is mirrored.

In addition, throughout HB 419 the term "handicapped" is changed to "children with disabilities" which is the new and less degrading term used in IDEA.

The change proposed in Section 3 was initiated by the Alaska Department of Education in order to relieve school districts of the requirement to re-evaluate identified gifted students every three years. This change will free school psychologists and other assessment personnel from needless hours of testing students whose scores are unlikely to vary substantially over time.

The remaining proposed amendments were initiated by the Alaska Department of Law in order to clarify the intent of the statutes.

Sincerely,

Jerry Covey
Commissioner

Enclosure

UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND
REHABILITATIVE SERVICES

SED 3

Honorable Steve Hole
Acting Commissioner of Education
State Department of Education
Pouch F
801 West Tenth Street
Juneau, Alaska 99811

Dear Commissioner Hole:

I am pleased to inform you that Alaska's State Plan for fiscal years (FY) 1992-94 under Part B of the Individuals with Disabilities Education Act (Part B) has been conditionally approved. Therefore, it is my pleasure to enclose your State's Part B grant award for FY 1992.

Our conditional approval of your State Plan is based on our review and acceptance of the following documents submitted by the Alaska State Department of Education (AKSDE) to the Office of Special Education Programs (OSEP):

(1) The Part B State Plan for FY 1992-94, including documentation that the State has in effect a policy which assures the availability of a free appropriate public education for all children with disabilities, aged 3 through 5;

(2) Additional letters and attachments (dated July 5, July 31, August 12, August 13, August 15 and August 22, 1991) that respond to OSEP's June 25, 1991 list of required changes in the Plan.

In the August 22, 1991 letter, AKSDE assured that it will take steps to ensure that, throughout the period of this FY 1992 grant award, all public agencies in the State that provide special education and related services to children with disabilities will operate their programs in a manner fully consistent with Part B, including those areas in which the current State statutes and regulations do not conform to the Part B requirements. AKSDE further assured that it had sent a memorandum to those agencies informing them that they must operate their programs in a manner fully consistent with Part B, and submitted a copy of that memorandum to OSEP.

(3) Your signed assurance statement regarding implementation of the new Part B State Plan requirements that were added by P.L. 101-476.

The documents identified in the preceding paragraph, together with this conditional approval letter, collectively constitute Alaska's conditionally approved Part B State Plan for FY 1992-94. Therefore, all of the documents listed in subparagraphs 2 and 3, above, the assurance statement regarding P.L. 101-476, and this conditional approval letter must be appended to your copies of the FY 1992-94 State Plan. AKSDE must indicate in the beginning of the Plan that these documents have been placed in an appendix.

As part of its FY 1992-94 Part B State Plan, your agency has made assurances required by 34 CFR §76.101, including the following: (1) "the State agency has the authority under State law to perform the functions of the State under the [Part B] program;" and (2) "the Plan is the basis for State operation and administration of the program" (see 34 CFR §§76.104(a)(2) and 76.104(a)(8)). The enclosed Part B grant award for FY 1992 is made with the understanding that the assurances made by your agency pursuant to 34 CFR §76.104 mean that your agency has, and will exercise, the authority to ensure that all public agencies in the State comply with all provisions of the plan; and that those agencies have been informed that they must comply with any additional requirements that your agency has established in the plan that are not also set forth in State statute or regulation.

I would like to remind you of the post-approval notification provision in 34 CFR §300.284, which requires your agency to "give notice in newspapers or other media, or both, that the plan is approved. The notice must name places throughout the State where the plan is available for access by any interested persons." Once the notice has been published, a copy should be submitted to OSEP.

The following paragraphs describe the actions that your agency must take to enable the State Plan to move from conditional to full approval:

As soon as your agency has prepared drafts of the revised State Plan documents, copies of those documents (e.g., proposed regulations and legislative bills) should be submitted to OSEP for review to ensure that they meet all of the conditions necessary for full approval.

Where your agency has assured OSEP that it will amend its regulations and statute, the State Plan also must be amended so that it is consistent with the regulations and statute.

In addition, your agency must revise its monitoring system to ensure compliance with the amendments.

Where amendments to the plan are necessary because of regulatory or statutory changes, your agency may either insert each of the amendments in the appropriate section of the plan, or append the amendments to the plan. If your agency chooses to append some or all of the amendments, it must indicate in the beginning of the plan that such amendments have been placed in an appendix.

As soon as possible, but no later than July 1, 1992, your agency must provide OSEP with copies of all amended State Plan documents, including the revised regulations that have been adopted by the State Board of Education, the revised statute that has been enacted by the State Legislature, and the required amendments to the monitoring system.

Once a determination has been made that your State Plan meets all of the conditions necessary for full approval, we will send you a formal notice of our approval. Your agency then must (1) formally notify public agencies and other interested parties throughout the State that the amended documents have been approved, and (2) make the entire plan, as amended, available to parents and other members of the general public.

Your State's Part B grant award for FY 1993 (i.e., the grant period beginning July 1, 1992) will be issued as funds become available for obligation at the Federal level, and if, in addition to meeting the conditions noted above, the following criteria are met:

(1) The State meets the conditions of eligibility required under section 612 of the Act, including having in effect an approved Part B State Plan for the period of the FY 1993 award;

(2) Your agency submits amendments to the Part B State Plan to conform to the changes required by P.L. 101-476, and those amendments are approved by OSEP; and

(3) Your agency provides OSEP with copies of (a) all required certifications, including ED Form 80-0013, and (b) all required reports, including the Annual Data Report and Annual Performance Report.

The enclosed grant award for FY 1992 is made with the continued understanding that this Office may, from time to time, require clarification of information within your State Plan. These

inquiries are necessary to allow us to appropriately carry out our responsibilities related to Part B.

We appreciate your ongoing commitment to the provision of quality educational services to children and youth with disabilities.

Sincerely,

Robert R. Davila
Assistant Secretary

Enclosure

cc: Jim Rich

U.S. DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20202

OFFICE OF SPECIAL EDUCATION
AND
REHABILITATIVE SERVICES

GRANT AWARD NOTIFICATION

1 RECIPIENT NAME

AK STATE DEPARTMENT OF EDUCATION

STATE OFFICE BUILDING - POUCH F
JUNEAU, AK 99811

2 PROJECT TITLE

Grants to States for the Education of Children with Disabilities - State Grants

3 EDUCATION STAFF

Please direct program inquiries to
William Tyrrell (202)732-1025
U.S. Department of Education
MES Building, Room 3625
400 Maryland Avenue, SW
Washington, DC. 20202

Please direct financial inquiries to
Jeanette Johnson (202)401-0112
U.S. Department of Education
FOB-6, Room 3083
400 Maryland Avenue, SW
Washington, DC. 20202

4 AWARD INFORMATION

PR/AWARD NUMBER	H027A10016
ACTION NUMBER	01
ACTION TYPE	NEW
AWARD TYPE	FORMULA

5 AWARD PERIODS

BUDGET PERIOD	07/01/91 - 09/30/93
PROJECT PERIOD	07/01/91 - 09/30/93

6 AUTHORIZED FUNDING

CURRENT AWARD AMOUNT	4,552,208
CUMULATIVE AMOUNT	4,552,208
RECIPIENT COST SHARE	0%

7 ADMINISTRATIVE INFORMATION

PAYMENT METHOD	ED PMS
ENTITY NUMBER	1-926001185-A5
STATE APPL ID #	
ATTACHMENTS	LETTER

8 LEGISLATIVE & FISCAL DATA

AUTHORITY: Individuals with Disabilities Education Act
PROGRAM TITLE: State Grants CFDA 84.027A

APPROPRIATION	FY	CAN	OBJECT CLASS	AMOUNT
91 1/20300	91	E002570	4110	4,552,208

9 TERMS AND CONDITIONS OF AWARD

When issuing statments, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with Federal money, all grantees receiving Federal funds, including but not limited to State and local governments, shall clearly state (1) the percentage of the total costs of the program or project which will be financed with Federal money, (2) the dollar amount of Federal funds for the project or program and (3) percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

Dr. Robert Davila
AUTHORIZED OFFICIAL

9/5/91
DATE

Ver. 1

U.S. DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20202

OFFICE OF SPECIAL EDUCATION
AND
REHABILITATIVE SERVICES

GRANT AWARD NOTIFICATION

1 RECIPIENT NAME

AK STATE DEPARTMENT OF EDUCATION

STATE OFFICE BUILDING - POUCH F
JUNEAU, AK 99811

2 PROJECT TITLE

Preschool Grant

3 EDUCATION STAFF

Please direct program inquiries to
Nancy Safer (202)732-1109
U.S. Department of Education
MES Building, Room 4630
400 Maryland Avenue, SW
Washington, DC. 20202

Please direct financial inquiries to
Jeanette Johnson (202)401-0112
U.S. Department of Education
FOB-6, Room 3083
400 Maryland Avenue, SW
Washington, DC. 20202

4 AWARD INFORMATION

PR/AWARD NUMBER	H173A10019
ACTION NUMBER	01
ACTION TYPE	NEW
AWARD TYPE	FORMULA

5 AWARD PERIODS

BUDGET PERIOD	07/01/91 - 09/30/93
PROJECT PERIOD	07/01/91 - 09/30/93

6 AUTHORIZED FUNDING

CURRENT AWARD AMOUNT	902,773
CUMULATIVE AMOUNT	902,773
RECIPIENT COST SHARE	0%

7 ADMINISTRATIVE INFORMATION

PAYMENT METHOD	ED PMS
ENTITY NUMBER	1-926001185-A5
STATE APPL ID #	
ATTACHMENTS	LETTER

8 LEGISLATIVE & FISCAL DATA

AUTHORITY: Individuals with Disabilities Education Act
PROGRAM TITLE: Preschool Grants CFDA 84.173A

APPROPRIATION	FY	CAN	OBJECT CLASS	AMOUNT
91 1/20300	91	E002571	4110	902,773

9 TERMS AND CONDITIONS OF AWARD

When issuing statments, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with Federal money, all grantees receiving Federal funds, including but not limited to State and local governments, shall clearly state (1) the percentage of the total costs of the program or project which will be financed with Federal money, (2) the dollar amount of Federal funds for the project or program and (3) percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

Dr. Robert Davila
AUTHORIZED OFFICIAL

9/3/91
DATE

Ver. 1

Law Offices of Marc Grober

Box 467
Nenana, Alaska 99760
(907) 832-5227

April 21, 1992

David Maltman
Governor's Council for the Handicapped and Gifted
Via Fax to 272-1134

Dear David,

Thanks for you fax note regarding the requirement that the results of due process hearings be tendered to the Council. As part of our efforts to document compliance (or lack thereof) with the IDEA it is important for us to detrmine whether DOE has been forwarding decisions to the Council or whether DOE has been monitoring the districts for compliance (I think the truth of the matter lies elsewhere but that is another story altogether, isn't it?)

In our telephone discussion I also asked if the Council had formally considered or adopted a position regarding HB 419 or SB 371. I clearly understood you to state that a) the Council was aware of the bills but had not formally considered or adopted a position on them; b) the Department of Education had not requested the Council formally consider them; c) per the existing schedule for the Council, the Council would not be considering the Bills before the legislature adjourned, and; d) if I wished you could ask one of the Council's committees to consider them (and at the time I made no such request.) Could you please confirm these details in writing on your letterhead so that I can assure myself that I am appropriately informed on the matter. I will forward miscellaneous materials (and requests) on receipt of your letter.

Thanks again.

Marc Grober

WALTER J. HICKEL / GOVERNOR
State of Alaska
GOVERNOR'S COUNCIL FOR THE HANDICAPPED AND GIFTED
2330 Nichols Street • Anchorage, Alaska 99508 • Phone: 907-272-2500 • Fax: 907-272-1134

April 24, 1992

Marc Grober
Box 467
Nenana, Alaska 99760

Dear Marc:

Thank you for your letter asking about the Council's position on HB 419 and SB 371. Typically, Council members discuss bills introduced in the legislature without taking a position on them. Very rarely are we asked to adopt a position on a bill.

The Council has responsibilities for a broad spectrum of people with disabilities and special education students. Actions by the Council are intended to empower people to participate in the public process in matters that affect their lives.

In response to your questions:

(a). The Education Committee did not make a recommendation to the Council for action on the bill. There is no record that the Council considered or adopted any position on SB 371 or HB 419.

First discussion of the proposed legislation occurred on January 17, 1992, during a teleconference of the Gifted/Education Subcommittee. As I recall the discussion, there was a provision in the bill that allowed districts to use the hearing process to disagree with a parent on issues of procedural rights such as a decision not to enroll a child in special education.

It seemed to the members of the Subcommittee that this provision was consistent with current law under educational neglect. For this reason, it is my opinion that the members expressed a general approval for introducing the legislation.

By March 12, 1992, the legislation had a bill number. The Chair of the Subcommittee reported to the Education Committee on April 3, 1992. The minutes of that meeting indicate that SB 371 had been introduced. There was little discussion about the bill.

(b). The Department of Education has made no formal request for the Council to consider either bill.

(c). There is a Gifted/ Education Subcommittee meeting scheduled for May 4, 1992 at 9:30 a.m. An update on the progress of SB 371 is on the agenda. However, the next Education Committee meeting when HB 419 or SB 371 could be discussed and brought to the full Council for action is during the Council's meeting on May 21, 1992. This meeting occurs after the legislative session is over.

(d). I understand that you do not request to discuss this matter with the Council or the Council's committees.

However, consider sending me any information which you feel would enlighten the committee members and, in turn the full Council, about your concrens. I would be glad to distribute your comments.

I believe my remarks here reasonably outline our telephone discussion. Copies of our minutes are attached. Should you have any further questions, just give me a call at 272 2500.

Sincerely,

David Maltman
Executive Director

cc: Gifted/Education Subcommittee
Education Committee

STATE OF ALASKA

DEPARTMENT OF EDUCATION

EDUCATIONAL PROGRAM SUPPORT

WALTER J. HICKEL, GOVERNOR

GOLDBELT PLACE
801 WEST 10TH STREET
P.O. BOX F
JUNEAU, ALASKA 99811-0500

April 16, 1992

The Honorable Patrick Carney
Alaska State Legislature
PO Box V
Juneau, AK 99811

Dear Representative Carney:

The following is in response to your April 14, letter requesting information regarding HB 419.

Enclosed are the following documents that you requested:

1. A copy of Alaska State Plan for FY92-94 under Part B of the Individuals with Disabilities Education Act
2. Copies of the letters dated July 5, July 31, August 12, August 13, August 15 and August 22
3. Copy of December 4, 1991 letter documenting publication of the State Plan

HB 419 has been shared with the Governor's Council for the Handicapped and Gifted and with Advocacy Services of Alaska. Both organizations are supportive of this piece of legislation.

Hopefully I have provided you with the information necessary to enable you to support HB 419. I would be happy to meet with you personally to answer any additional questions you might have.

Sincerely,

Jim Rich

Jim Rich, Administrator
Office of Special and
Supplemental Services

05-E13LH

A Brief Analysis of Recent Proposals to Amend Title 14 Chapter 30 of the Alaska Statutes Concerning Special Education and Services for Exceptional Children

A comparison of the existing statutes with the October 1991 draft of proposed legislation circulated by Ak. DOE and HB 419 (now pending before the House HESS Committee) with commentary by the author, Ms. Tess Nott.

Changes Proposed in HB 419:	Existing Alaska Statutes Provide:
Sec. 1 would add subsection (b) stating statutes are intended to comply with requirements of federal law including IDEA.	Sec. 180 states the purpose of AS 14.30.180-350, appropriate education for exceptional children.
Sec. 2 would remove "or guardian".	Sec. 191(a) "A school district must obtain consent of the child's parent or guardian before an initial evaluation or placement in a program of special education and related services.
Sec. 3 Children with disabilities would be reevaluated at least once every 3 years, but districts would not be required to conduct reevaluations of gifted children.	Sec. 191(b) All exceptional children must be provided with education re-evaluation at least once every 3 years following initial placement.
Sec. 4 would remove the phrase "or guardian".	Sec. 191(c) "Before a school district initiates or refuses a change in a child's placement or program, the district shall notify the child's parent or guardian."
Sec. 5 would remove the phrase "or guardian".	Sec. 191(d) The district must provide the parent or guardian with consulation about evaluation before placement.
Sec. 6 would remove wording stating a district may request a hearing.	Sec.191(e) provides a parent who disagrees with district evaluation the right to obtain an independent evaluation. The district must pay for the evaluation unless the district requests a hearing and the hearing officer finds the district evaluation appropriate. In either case, the results of the independent evaluation must be considered for educational programming and may be considered in hearing under paragraph (f).
Sec. 7 removes "or guardian".	

Changes Proposed in DOE Draft:	Comments:
Not included.	
Not included.	"Or guardian" is removed throughout HB 419 because the definition of "parent" in HB 419 Sec. 21 (12) includes a guardian, a person acting as a parent of a child, and a surrogate parent appointed under AS 14.30.325.
Was included.	IDEA doesn't include gifted, thus this change is not to comply with federal law. Intent appears financial, not educational. Gifted must still receive individualized program of special ed. Can one evaluate & write IEPs without these evaluations? See HB419 Sec.21 8&10 definition change
Not included.	See HB419 Sec. 8(a) which proposes district right to circumvent non-consent through administrative hearings.
Not included.	
Similar change proposed.	Although no apparent significant changes are proposed here, see related changes under HB419 Sec. 8, (c-f) regarding independent evaluations.

Changes Proposed in HB 419:	Existing Alaska Statutes Provide:
Sec. 8, would add a new section (14.30.193, providing by subpart:	AS 14.30.180-350 does not include a section titled, "School District Hearings", although districts are accorded rights to hearings throughout sections.
(a) "If a parent refuses to consent, or does not respond promptly to the school district's request, under AS 14.30.191(a) or 14.30.285(f), the school district may appoint an impartial hearing officer to conduct a hearing to determine whether the school district may initiate the evaluation or placement of the child, or transfer the child."	
(b) would give parents the right to request a hearing with an officer selected by the district regarding the district's intended action.	
(c) "If a parent wishes to obtain an independent evaluation at the expense of the school district under 191(e) the school district may appoint a hearing officer to conduct a hearing to determine whether the school district's evaluation is appropriate."	See discussion under Section 6 of the Bill, above.

Changes Proposed in DOE Draft:	Comments:
	This change would have significant impact on families because it would take parental decision making away and give it to districts. Hearing officers are trained by DOE and selected by the district. Parents do not have the right to select or approve of hearing officers. DOE claims this is needed to comply with PL 99-142 (states must ensure the interests of the child are protected in spec. ed. statutes unless other state laws provide for child protection.) Ak. already has provisions to protect children generally (as a Child in Need of Aid) and specifically (4AAC52.200(c) and AS 14.30.340). In claiming to act to benefit children (e.g., amending AS 13.40.340) DOE is in fact ignoring CINA and a parent's rights.
Not included.	Sec 8(c) implies that parents must request an independent evaluation from the district. The district would be able to hold a hearing before the evaluation was obtained, thereby preempting this right. It is likely that this provision would effectively result in barring any further independent evaluations. Hearing officers would only allow independent evals. where the parents could show the district's eval. to be inappropriate, and the parents could not do that without the ind. eval!
Additional Comments: A number of major districts in state advise parents that they "have a right to an independent evaluation where appropriate." This is an absolute misrepresentation. Parents have the right to an ind. eval. at any and all times. The amend. attempts to legalize current practice by pre-empting the independent evaluation.	Additional Comments: Amendments to federal regulations proposed in the fall of 1991 would allow for the type of hearing process sought by DOE with respect to additional areas of consent not included in the federal law (such as a subsequent placement. As it is DOE's position that current statutes and regs. don't allow for such consent, the Bill obviously does not address this issue!

Changes Proposed in HB 419:	Existing Alaska Statutes Provide:
Sec. 8, (d-f) & Sec. 10(c-d) would give the hearing officer authority to decide in favor of the district and against the parent (on eval, placement, services, & transfer). The hearing officer's decision would be final and binding unless appealed to the Dept. of Education, then if needed, the courts.	14.30.195 provides for administrative hearings.
Sec. 9 is also part of the formalization of the hearing process. The statutes will now reflect the right to "district" hearings before a hearing officer selected by the district, and a subsequent right to appeal the decision of the hearing officer to the department.	
Sec. 10 further clarifies the administrative appeals process. As noted above, the Bill essentially adds a new distinct process for appeals to the department.	Under the present set of statutes the same baisc administrative process is applied to both district hearings and appeals to the department. The Bill essentially creates a new appeals process, though substantively it is very much the same as before.
Sec. 11 is also part of the rewrite of the hearing process. Most importantly it authorizes the department to adopt regulations that provide for impartial hearing procedures.	

Changes Proposed in DOE Draft:	Comments:
	Parents already have the right to appeal to DOE then the courts. Parents might be in the court system for years at their own expense. In the meantime the district would act according to the hearing officer's decision unless prohibited by court order. Although districts and criminals have a right to a lawyer paid for by the government, parents do not.
	The Bill neglects some major problems with the hearing process, including but not limited to burden of proof, inability to afford counsel, whether the department hearing officer enters a decision for the Commissioner or makes recommendations only, the role of the Department of Law in the process, etc.
	Compare the right to be advised of the right to refuse a change in placement and DOE's present claim that a parent's consent is only required as to intital placement. Compare both to present regulations that appear to require parental consent for any change in placement. Doe strongly opposes the notion that a parent can withhold consent to placement changes and has claimed that a district can write an IEP outside a CST meeting and impose the IEP over the parents' objections. One must remeber that DOE has never been in compliance with federal law and it is not likely that this will change in the future.

Changes Proposed in HB 419:	Existing Alaska Statutes Provide:
Sec. 12 would remove "or guardians".	14.30.278(b) provides for who must attend a Child Study Team meeting (rep. of district, teacher, parents or guardians, child when appropriate, others selected by district or parents/ guardians.)
Sec. 13(f), "A school district shall obtain the consent of the child's parent before a child may be transferred to a school outside the district in which the child resides."	14.30.285(f) provides, "A child may not be transferred to a school outside the district in which the child resides without the consent of the parent or guardian."
Sec. 14 would remove the phrase "or guardian".	14.30.285 (g) provides, "the withholding of consent by a parent or guardian or departmental approval for the transfer of an exceptional child under this section does not relieve a district of the obligation to provide spec. ed. and related services to an exceptional child..."
Sec. 15 would repeal 14.30.340 and reenact it to provide (a) a district would still be required to provide special education to children with disabilities enrolled in private school or home school. (b) If a doctor certifies a child cannot attend school, the district would provide spec. ed. & related services at home or medical treatment center.	AS 14.30.340 provides a handicapped child may not be required to enroll in a spec. ed. program if the parent certifies to school board satisfaction the child's educational needs are being provided for. A child may be excused from compulsory education is a doctor certified the child's bodily, mental, or emotional condition does not permit attendance at school.
In Sec. 16 the word, "handicaps" would be changed to "disabilities".	14.30.347 provides districts must provide special transportation to exceptional children if the nature of their handicaps makes special transportation necessary, as determined by the district.

Changes Proposed in DOE Draft:	Comments:
Not included.	No apparent significant impact.
The DOE draft included repeal of AS 14.30.285(f) which provides the parent or guardian must consent before a child could be transferred to a school outside the district in which the child resides.	This section represents a "softening" of DOE's position, but the language of Sec. 13 when read with Sec. 8 makes it clear that this section is designed to address the district's anticipated override of parental refusal.
Not included.	This reinforces district provision of spec. ed. and related svs. during hearings or court appeals, even when parents object, but this already is in effect.
Not included.	Recent court decisions have required districts to provide spec. ed. to students in private & home school and medical treatement facilities. This change may be required to comply with fed. law. But parents may need protections built in to enable them to continue private or home school enrollment. School districts often want students at public school and may not believe they are required to provide services off campus unless specifically required to do so.
Not included.	No apparent significant impact. Parents should note that under current a proposed stats a district decides if transportation is a needed related service, not a doctor or parent.

Changes Proposed in HB 419:	Existing Alaska Statutes Provide:
Sec. 17 would amend Alaska Statute 14.30.350(2) to read, "Consent means the parent has been fully informed of all information relevant to the activity or the release of records for which consent is sought and the parent understands and agrees to the activity or release of records; consent by parent *** .is voluntary and may be revoked."	14.30350(2) states that "consent is only obtained if the parent orguardian has been fully informed of all information relevant to the object of the consent."
Sec. 18 would repeal and reenact to read, "exceptional children means children with disabilities, and gifted children, who differ markedly from their peers to the degree that special facilities, equipment, or methods are required to make their educational program effective."	350(4) defines "exceptional children as "children who differ markedly from their peers to the degree that special facilities, equipment, or methods are required to make their educational program effective"
Sec. 19 would change "handicapped" to "children with disabilities" and, rehabilitation counseling would be added to the list of related services.	AS 14.30.350(5) defines related services.
Sec. 20 corrects inconsistencies in the use of terms in the Chapter, employing the term exceptional throughout in place of the term handicapped.	

Changes Proposed in DOE Draft:	Comments:
Not included.	The provision simply begs the question. What does "fully informed" mean? How do we determine if "the parent understands and agrees"? Why doesn't the statute also explain how the state is going to assure that a consent is "voluntary"? More importantly, if a parent has the right to revoke consent at any time isn't the parent placed in an all or nothing situation where the parent must totally endirse the district's placement or revoke consent? See also comments under Sec. 11.
Not included.	Now, AK defines gifted and handicapped as exceptional. Provisions provide for both groups. HB 419 would distinquish between the two groups and provide less services for gifted. All that needed to be done is to substitute the word "exceptional" for "handicapped".
Not included.	Having defined exceptional children why isn't that term used in this context (as opposed to independently referencing "children with disabilities" and "gifted children"? Also, see discussion of Sec. 18, above. Is the term "children with disabilities" more or less stigmatizing than "exceptional" or "handicapped"? Indeed, don't the statutes specifically identify eligible children as children who require additional services because they are handicapped by virtue of a disability or "gift"?
	The terms used throughout the chapter are inconsistent and often belie their meaning in common usage. Terminology should be rethought to be more understandable and consistent.

Changes Proposed in HB 419:	Existing Alaska Statutes Provide:
Sec. 21 would add, "`children with disabilities' means children with mental retardation; hearing impairments, including deafness; speech or language impairments, visual impairments, including blindness; serious emotional disturbance; orthopedica impairments; autism; traumatic brain injury; other health impairments; specific learning disability; or preschool developmental delays."	AS 14.30.350 does not include a definition of "children with disabilities" but does define "exceptional children" and further itemizes those conditions that render a child exceptional..
Sec. 21 also defines educational records as documents, records & other material directly related to a student maintained by the district. It specifically excludes all personnel or other records designated by DOE	AS 14.30.350 does not include a definition of "educational records".

Changes Proposed in DOE Draft:	Comments:
Not included. We should note that maintenance of the distinction between disabled and gifted children apparently survives (as do other portions of the Bill) from the doomed SB 278 of the prior session that apparently died when the sponsors found out that the SB 278 was drafted not be the parents of gifted children but by the department as a means of disenfranchising gifted children.	The Bill eliminates the current lengthy description of exceptional children at AS 14.30.350(4) (see Sec. 18) and replaces it with an abreviated list of undefined terms. It also maintains artificial distinctions between children with disabilities and gifted children (which, as noted above, are used to deny gifted children regular evaluations.) The Bill does list certain new categories but, again, without explanation or definition.
Not included.	The federal regulations establish certain minimal privacy protections for parents and students (34 CFR 99.3). The proposed state law is more restrictive and designed to prohibit school boards from concluding that records of a special education teacher's performance are pertinent to an I.E.P. and to bar parents from demanding access to these records. The purpose of FERPA is to protect the privacy of parents & students, not to protect potentially incompetent or abusive instructional personnel from review and criticism. This amendment will also be used by districts to argue that a parent cannot demand that services under an IEP be provided by persons with specific credentials or qualifications (beyond any state-required certification or endorsement.) When one considers that most of the teachers obtaining special education credentials in this state today have no knowledge or understanding of the IDEA the result is alarming.

Changes Proposed in HB 419:	Existing Alaska Statutes Provide:
Sec. 21 also moves the definition of gifted children.	AS 14.30.350(c) defines gifted children as children who "exhibit outstanding intellect, ability, or creative talent as determined in accordance with regulations of the department" The regulations provide for the local district to determine eligibility standards.
Sec. 21 would add a definition of an "individulaized education program team." Members of the team would be the same as described under AS 14.30.278 in existing statutes.	AS 14.30.350 does not define "individualized education program team". Sec. 278 does define what an individualized education program is and who will develop it.
Lastly, Sec. 21 provides that the term parent "includes a guardian, a person acting as a parent of a child, and a surrogate parent appointed under AS 14.30.325."	AS 14.30.350 does not define "parent". The current statutes DO NOT use "parent" and "parent or guardian" interchangeably (some rights and duties are reserved to parents alone) and recognize only the status of the legal parent or lawfully appointed guardian (with the exception of the provision for "surrogate" parents.
Sec. 22 states, "This Act takes effect June 30, 1992."	

Changes Proposed in DOE Draft:	Comments:
Not included.	State regulations provide that the district must develop criteria for determining whether a child is eligible for services as gifted. This conflict between statutes and regulations would not be resolved by HB419. The definition as offered is consistent with the current definition as it appears in Alaska Statute 114.30.350(4)(C), but fails to acknowledge that gifted children often fail to exhibit the described characteristics (though they should be) and continues to aggrandize authority in the department.
Not included.	The rational for this addition is not readily apparent since the "team" is already defined under Sec. 278. The term "child study team" (or CST) has been widely used to date and use of a new term will add confusion.
Not included.	This provision raises a number of serious questions regarding the intent of DOE vis-a-vis the rights of parents. First and foremost, the Bill would allow the district to rely on the acts of a "person acting as a parent..." Who, excatly, is such a person, and who makes that determination? The Bill also continues the right of DOE to replace the parents with another person (so-called "surrogate parent") without any limit on its authority or requirement to proceed as a CINA matter. We should also note here that the existing statutes repeatedly refer to "the child's parent", ignoring the effect on the family where a child has two parents. District's regularly use this language to get consent where one parent refuses.

THE FOLLOWING DOCUMENT MAY NOT FILM
LEGIBLY BECAUSE OF THE POOR QUALITY OF THE
ORIGINAL

Sec. 14.30.075. [Renumbered as AS 14.30.127.]

Secs. 14.30.080 — 14.30.110. Exclusion from attendance; vaccinations; supervision and expenditures for physical examinations; exemptions from examinations or vaccinations. [Repealed, § 59 ch 98 SLA 1966.]

Sec. 14.30.120. Certificate of physical examination. The school board, when physical examinations are made, shall deliver to the parent, guardian, or other person having the responsibility for or control of the child a report signed by the physician or nurse making the examination, specifying the findings with respect to the health and physical well-being of the child. (§ 37-7-19 ACLA 1949; am § 12 ch 118 SLA 1949; am § 44 ch 98 SLA 1966)

Sec. 14.30.125. Immunization. If in the judgment of the commissioner of health and social services it is necessary for the welfare of the children or the general public in an area, the governing body of the school district shall require the children attending school in that area to be immunized against the diseases the commissioner of health and social services may specify. (§ 45 ch 98 SLA 1966; am § 2 ch 131 SLA 1967; am § 6 ch 104 SLA 1971)

Sec. 14.30.127. Vision and hearing screening examinations. (a) A vision and hearing screening examination shall be given to each child attending school in the state. The examination shall be made when the child enters school or as soon thereafter as is practicable, and at regular intervals specified by regulation by the governing body of the district.

(b) The Department of Health and Social Services shall

(1) set standards for the performance of vision and hearing screening;

(2) train and certify public health nurses and school district employees to conduct hearing and vision screening tests;

(3) assist with referral and follow-up of children needing professional examination or treatment; and

(4) assist with maintenance and repair of screening equipment. (§ 6 ch 136 SLA 1982)

Revisor's notes. — Enacted as AS 14.30.075. Renumbered in 1982.

Secs. 14.30.130 — 14.30.170. Readmission of child excluded on account of communicable disease; examination and treatment by municipal health officers; scope of article; construction; penalty for false certificates. [Repealed, § 59 ch 98 SLA 1966.]

Article 3. Education for Exceptional Children.

Collateral references. — 68 Am. Jur. 2d Schools, §§ 283-289.

79 C.J.S. Schools and School Districts, §§ 484-492.

Sec. 14.30.180. Purpose. It is the purpose of AS 14.30.180 — 14.30.350 to provide an appropriate public education for exceptional children in the state who are at least three years of age but less than 22 years of age. (§ 1 ch 120 SLA 1959; am § 1 ch 144 SLA 1970; am § 1 ch 79 SLA 1974; am § 1 ch 147 SLA 1984)

Effect of amendments. — The 1984 amendment substituted "an appropriate public education" for "competent education services" and "but less than 22 years of age" for "and for whom the regular school facilities are inadequate or not available" and deleted "the" preceding "exceptional children."

NOTES TO DECISIONS

Damage claims. — Nothing in the so-called Education for Exceptional Children Act (AS 14.30.180-14.30.350) either expressly or impliedly authorizes a damage claim based on a school district's alleged negligent classification, placement or teaching of a student. D.S.W. v. Fairbanks N. Star Borough School Dist., Sup. Ct. Op. No. 2352 (File Nos. 4938, 4969), 628 P.2d 554 (1981).

Sec. 14.30.185. Programs shall be established. [Repealed, § 59 ch 98 SLA 1966.]

Sec. 14.30.186. Coverage. (a) A borough or city school district shall provide special education and related services for exceptional children residing in the district.

(b) The board of a regional educational attendance area shall provide special education and related services in a school in the area for exceptional children residing in the area served by the school.

(c) *[Repealed, § 19 ch 147 SLA 1984.]*

(d) *[Repealed, § 19 ch 147 SLA 1984.]* (§ 3 ch 81 SLA 1965; am § 1 ch 46 SLA 1966; am § 60 ch 98 SLA 1966; am § 22 ch 46 SLA 1970; am §§ 2, 3 ch 144 SLA 1970; am §§ 23, 24 ch 124 SLA 1975; am §§ 2, 3, 19 ch 147 SLA 1984)

Effect of amendments. — The 1984 amendment substituted "special education and related services" for "for special services" and deleted "represented by not less than five children" following "exceptional children" in subsections (a) and (b) and repealed subsections (c) and (d).

Sec. 14.30.190. Establishment of standards by Department of Health and Social Services. [Repealed, § 4 ch 144 SLA 1970.]

Sec. 14.30.191. Educational evaluation and placement. (a) A school district shall obtain the consent of the child's parent or guardian before an initial evaluation or placement in a program of special education and related services.

(b) After initial placement in a program of special education and related services and not less than once every three years for as long as the child is assigned to the program, an exceptional child shall receive an educational evaluation for the identification and classification of exceptional children.

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

(d) Upon completion of the evaluation and before placement, the school district shall provide to the parent or guardian of each exceptional child an opportunity for consultation about the evaluation. A consultation must be available after each reevaluation of the condition and placement of the exceptional child.

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

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

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

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

(g) If a hearing officer requests an independent educational evaluation as part of a hearing, the school district shall pay for the evaluation. (§ 5 ch 144 SLA 1970; am § 6 ch 104 SLA 1971; am § 2 ch 79 SLA 1974; am § 4 ch 147 SLA 1984)

Effect of amendments. — The 1984 amendment rewrote this section.

NOTES TO DECISIONS

Quoted in D.S.W. v. Fairbanks N. Star Borough School Dist., Sup. Ct. Op. No. 2353 (File Nos. 4936, 4960), 628 P.2d 554 (1981).

Sec. 14.30.195. Hearings. (a) The department shall by regulation provide for administrative hearings to be conducted under AS 14.30.180 — 14.30.350.

(b) The agency conducting a hearing under this section may issue subpoenas under AS 44.62.430 and may petition the superior court for adjudications of contempt under AS 44.62.590. (§ 5 ch 147 SLA 1984)

Secs. 14.30.200 — 14.30.220. Eligibility; budget; forfeiture of right to reimbursement. [Repealed, § 5 ch 70 SLA 1963.]

Sec. 14.30.230. Special education. [Repealed, § 6 ch 144 SLA 1970.]

Sec. 14.30.231. Advisory committee. The Governor's Council for the Handicapped and Gifted established under AS 47.80 shall serve as an advisory committee, the function of which is to provide information and guidance for the development of appropriate programs of special education and related services for exceptional children. (§ 7 ch 144 SLA 1970; am § 6 ch 104 SLA 1971; am § 6ch 147 SLA 1984)

Effect of amendments. — The 1984 amendment substituted the language beginning "The Governor's Council for the Handicapped and Gifted" for "The commissioner of education and the commissioner of health and social services shall establish" and "programs of special education and related services" for "special education programs and services" and deleted the former' second sentence, which read "Membership of the advisory committee shall include, but is not limited to, persons representing local education agencies, state agencies, parent groups and organizations concerned with programs and services for exceptional children."

Sec. 14.30.240. Supervisor. [Repealed, § 5 ch 70 SLA 1963.]

Sec. 14.30.250. Teacher qualifications. A person may not be employed as a teacher of exceptional children unless that person possesses a valid teacher certificate and, in addition, such training as the department may require by regulation. (§ 9 ch 120 SLA 1959; am § 47 ch 98 SLA 1966; am § 7 ch 147 SLA 1984)

Effect of amendments. — The 1984 amendment substituted "A person may not be employed as a teacher of" for "No person shall be employed to teach a class for."

Sec. 14.30.255. Administrator qualifications. A person may not be employed as an administrator of a program of special education and related services unless that person possesses a valid administrative certificate and, in addition, such training as the department may require by regulation. (§ 8 ch 147 SLA 1984)

Sec. 14.30.260. Exception to qualifications. [Repealed, § 19 ch 147 SLA 1984.]

Sec. 14.30.270. Substitutes. AS 14.30.250 does not prohibit the employment of a person, otherwise qualified to serve as a substitute teacher, to serve as a substitute teacher of exceptional children. (§ 12 ch 120 SLA 1959; am § 49 ch 98 SLA 1966; am § 9 ch 147 SLA 1984)

Effect of amendments. — The 1984 amendment substituted "substitute teacher of" for "teacher of a class for."

Sec. 14.30.272. Procedural safeguards. A school district shall inform the parent or guardian of an exceptional child of the right to review the child's educational record, to review evaluation tests and procedures, to refuse to permit evaluation or a change in the child's educational placement, to be informed of the results of evaluation, to obtain an independent evaluation, to request an impartial hearing, and to give consent or deny access to others to the child's educational record. (§ 10 ch 144 SLA 1984)

Sec. 14.30.274. Identification of exceptional children. Each school district shall establish and implement written procedures to ensure that all exceptional children under the age of 22 who reside in the district are identified and located for the purpose of establishing their need for special education and related services. (§ 10 ch 147 SLA 1984)

Sec. 14.30.276. Least restrictive environment. Each school district shall ensure that to the maximum extent appropriate, exceptional children, including children in public or private institutions or other care facilities, are educated with children who are not exceptional and that special classes, separate schooling or other removal of exceptional children from the regular educational environment occurs only when the nature or severity of the child's exceptionality is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (§ 10 ch 147 SLA 1984)

Sec. 14.30.278. Individualized education program. (a) The individualized education program for each exceptional child shall include

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

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

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

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

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

(b) Each meeting concerning an exceptional child shall include

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

(2) the child's teacher;

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

(4) the child, when appropriate;

(5) other individuals selected by the parent, guardian, or school district. (§ 10 ch 147 SLA 1984)

Sec. 14.30.280. Psychologist qualifications. [Repealed, § 19 ch 147 SLA 1984.]

Sec. 14.30.285. Transfers of exceptional children. (a) The department shall institute a statewide program for the education of exceptional children, to ensure that whenever possible children are educated in the state at locations in or near their resident school district.

(b) An identified exceptional child may be sent to an educational program or residential school outside the child's community or school district if the child resides in a community or school district where an

appropriate educational program cannot reasonably be made available and if the department determines that provision of special education and related services in another educational program or residential school is appropriate. If the school district and the department approve the enrollment of the exceptional child in another educational program or residential school outside the child's community or school district and the child is enrolled, the child's education expenses shall be paid as follows:

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

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

(c) *[Repealed, § 19 ch 147 SLA 1984.]*

(d) For the purposes of this section a child's education expenses are limited to the actual cost of necessary care, transportation, and special education and related services, including room and board.

(e) The educational assessment of an exceptional child which indicates that the educational program which is locally available is inappropriate for the needs of the child shall conform to the standards set out in AS 14.30.191.

(f) A child may not be transferred to a school outside the district in which the child resides without the consent of the parent or guardian.

(g) The withholding of consent by a parent or guardian or departmental approval for the transfer of an exceptional child under this section does not relieve a school district of the obligation to provide special education and related services to an exceptional child under AS 14.30.186. (§ 2 ch 46 SLA 1966; am §§ 8, 9 ch 144 SLA 1970; am § 6 ch 71 SLA 1972; am § 3 ch 79 SLA 1974; am §§ 11 — 13, 19 ch 147 SLA 1984; am § 1 ch 75 SLA 1986)

Effect of amendments. — The 1984 amendment rewrote subsection (b), repealed subsection (c), substituted "special education and related services" for "instruction" in subsection (d), deleted "while attending the designated institution" from the end of subsection (d), and added subsection (g).

The 1986 amendment in subsection (b) inserted "community or" in two places in the first sentence and in one place in the introductory language of the second sentence and rewrote paragraphs (1) and (2).

Sec. 14.30.290. Purposes of appropriations. [Repealed, § 5 ch 70 SLA 1963.]

Sec. 14.30.295. Special education outside state. [Repealed, § 4 ch 79 SLA 1974.]

Sec. 14.30.300. Nonresident apportionment. [Repealed, § 5 ch 70 SLA 1963.]

Sec. 14.30.305. State support of programs for children hospitalized or confined to their homes. A child who is hospitalized or confined to home and who receives at least 10 hours of special education and related services per week may be counted as a pupil in average daily membership when computing state support under the public school foundation program. (§ 2 ch 46 SLA 1966; am § 14 ch 147 SLA 1984)

Effect of amendments. — The 1984 amendment deleted the former first sentence, which read "Special instructional services for exceptional children who are hospitalized or confined to their homes may be provided by a school district"; inserted "is hospitalized or confined to home and who"; and substituted "special education and related services" for "instruction."

Sec. 14.30.310. Hospitalized and homebound children. [Repealed, § 5 ch 70 SLA 1963.]

Sec. 14.30.315. State support of programs for gifted children. (a) To be eligible for state support under the public school foundation program, special education and related services for gifted children must be provided in a program which has been approved in advance by the department.

(b) Nothing in this section prohibits the department from requiring approval of programs of special education and related services for other categories of exceptional children. (§ 15 ch 147 SLA 1984)

Sec. 14.30.320. Reimbursement for hospitalized or homebound children. [Repealed, § 5 ch 70 SLA 1963.]

Sec. 14.30.325. Surrogate parents. (a) The department may by regulation provide for the appointment of surrogate parents to represent exceptional children in matters relating to the provision of an appropriate public education.

(b) A surrogate parent is not liable for civil damages as a result of an act or omission committed in the surrogate parent's official capacity, except that a surrogate parent may be liable for civil damages as a result of gross negligence or intentional misconduct. (§ 15 ch 147 SLA 1984)

Sec. 14.30.330. Application for enrollment. [Repealed, § 19 ch 147 SLA 1984.]

Sec. 14.30.335. Eligibility for federal funds. Notwithstanding any other provision of AS 14.30.180 — 14.30.350, the department may do all things necessary to qualify for federal funds that are available to the state for the education of exceptional children. (§ 16 ch 147 SLA 1984)

Sec. 14.30.340. When not required to enroll. A handicapped child may not be required to enroll in a special education program if the parent or guardian of the child certifies to the satisfaction of the school board of the public school system where the child resides that the child is receiving adequate educational advantages. A child shall be excused from the compulsory education requirements if a physician certifies in writing that the child's bodily, mental or emotional condition does not permit attendance at school. (§ 18 ch 120 SLA 1959; am § 6 ch 125 SLA 1961)

Sec. 14.30.345. Regulations. [Repealed, § 59 ch 98 SLA 1966.]

Sec. 14.30.347. Transportation of exceptional children. When transportation is required to be provided as related services, exceptional children shall be carried with other children, except when the nature of their physical or mental handicaps is such that it is in the best interest of the exceptional children, as determined by the school district, that they be transported separately. State reimbursement for transportation of exceptional children shall be as provided for transportation of all other pupils except that eligibility for reimbursement is not subject to restriction based on the minimum distance between the school and the residence of the exceptional child. (§ 1 ch 105 SLA 1966; am § 1 ch 52 SLA 1976; am § 17 ch 147 SLA 1984)

Effect of amendments. — The 1984 amendment substituted "related services" for "part of special services" near the beginning of the section.

Sec. 14.30.350. Definitions. In AS 14.30.180 — 14.30.350,

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

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

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

(4) "exceptional children" means children who differ markedly from their peers to the degree that special facilities, equipment, or methods

are required to make their educational program effective; these children may be identified in the following categories:

(A) "deaf" children exhibit a hearing impairment that hinders the children's ability to process linguistic information through hearing, with or without amplification, and that adversely affects educational performance;

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

(C) "gifted" children exhibit outstanding intellect, ability, or creative talent as determined in accordance with regulations of the department;

(D) "hard-of-hearing" children exhibit a hearing impairment, whether permanent or fluctuating, that adversely affects educational performance but that is not within the meaning of (A) of this paragraph;

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

(F) "mentally retarded" children score two or more standard deviations below the national norm on an individual standardized test of intelligence and exhibit deficits in adaptive behavior manifested during the developmental period, that adversely affect the children's educational performance;

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

(H) "orthopedically impaired" children exhibit a severe orthopedic impairment, including impairments caused by congenital anomaly, disease, or other causes, that adversely affects educational performance;

(I) "other health-impaired" children exhibit an autistic condition that is manifested by severe communication and other developmental and educational problems or exhibit limited strength, vitality, or alertness due to chronic or acute health problems such as heart condi-

tion, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes, that adversely affects educational performance;

(J) "seriously emotionally disturbed" children exhibit one or more of the following characteristics over a long period of time and to a marked degree, that adversely affects educational performance: (i) an inability to learn that cannot be explained by intellectual, sensory, or health factors; (ii) an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; (iii) inappropriate types of behavior or feelings under normal circumstances; (iv) a general pervasive mood of unhappiness or depression; or (v) a tendency to develop physical symptoms or fears associated with personal or school problems; the term includes children who are schizophrenic but does not include children who are only socially maladjusted;

(K) "speech-impaired" children exhibit a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects educational performance;

(L) "visually handicapped" children exhibit a visual impairment that, even with correction, adversely affects educational performance;

(5) "related services" means transportation and developmental, corrective, and other supportive services required to assist a handicapped or gifted child to benefit from special education and includes but is not limited to speech pathology and audiology, psychological services, physical and occupational therapy, recreation, counseling services, and medical services for diagnostic or evaluation purposes; the term also includes school health services, school social work services, and parent counseling and training;

(6) "special education" means specially designed instruction, at no cost to the parent, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions; the term includes speech pathology, or any other related service, if the service consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a handicapped child, and is considered special education rather than a related service under state standards; the term also includes vocational education if it consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a handicapped child; in this paragraph

(A) "at no cost" means that all specially designed instruction is provided without charge but does not preclude incidental fees that are normally charged to nonhandicapped students or their parents 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;

(7) "school district" means a borough school district, a city school district, or a regional educational attendance area. (§ 2 ch 120 SLA 1959; am §§ 5, 6 ch 81 SLA 1965; am §§ 13, 14 ch 144 SLA 1970; am § 2 ch 119 SLA 1981; am § 18 ch 147 SLA 1984)

Effect of amendments. — The 1984 amendment rewrote this section.

Article 4. Health and Safety Education.

Section
360. Curriculum
370. Evaluation

Collateral references. — 68 Am. Jur. 2d Schools, §§ 283-289.

79 C.J.S. Schools and School Districts, §§ 484-492.

Tort liability of public schools and institutions of higher learning for accidents occurring in physical education classes. 36 ALR3d 361.

Validity of sex education programs in public schools. 82 ALR3d 379.

Sec. 14.30.360. Curriculum. (a) Each district in the state public school system shall be encouraged to initiate and conduct a program in health education for kindergarten through grade 12. The program should include instruction in physical health and personal safety including alcohol and drug abuse education, cardiopulmonary resuscitation (CPR), early cancer prevention and detection, dental health, family health, environmental health, the identification and prevention of child abuse, child abduction, neglect, sexual abuse and domestic violence, and appropriate use of health services.

(b) The state board shall establish guidelines for a health and personal safety education program. Personal safety guidelines shall be developed in consultation with the Council on Domestic Violence and Sexual Assault. Upon request, the Department of Education, the Department of Health and Social Services, and the Council on Domestic Violence and Sexual Assault shall provide technical assistance to school districts in the development of personal safety curricula. A school health education specialist position shall be established and funded in the department to coordinate the program statewide. Adequate funds to enable curriculum and resource development, adequate consultation to school districts, and a program of teacher training in

the fiscal year for which such local educational agency seeks such payments.

(Pub. L. 91-230, title VI, Sec. 614, Apr. 13, 1970, 84 Stat. 181; Pub. L. 94-142, Sec. 5(a), Nov. 29, 1975, 89 Stat. 784; Pub. L. 98-199, Sec. 3(b), Dec. 2, 1983, 97 Stat. 1358; Pub. L. 100-630, title I, Sec. 102(d), Nov. 7, 1988, 102 Stat. 3293; Pub. L. 101-476, title IX, Sec. 901(b)(59)-(70), Oct. 30, 1990, 104 Stat. 1144; Pub. L. 102-119, Secs. 6, 25(b), Oct. 7, 1991, 105 Stat. 591, 607.)

Sec. 1415. Procedural safeguards

(a) Establishment and maintenance

Any State educational agency, any local educational agency, and any intermediate educational unit which receives assistance under this subchapter shall establish and maintain procedures in accordance with subsection (b) through subsection (e) of this section to assure that children with disabilities and their parents or guardians are guaranteed procedural safeguards with respect to the provision of free appropriate public education by such agencies and units.

(b) Required procedures; hearing

(1) The procedures required by this section shall include, but shall not be limited to—

(A) an opportunity for the parents or guardian of a child with a disability to examine all relevant records with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child;

(B) procedures to protect the rights of the child whenever the parents or guardian of the child are not known, unavailable, or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State educational agency, local educational agency, or intermediate educational unit involved in the education or care of the child) to act as a surrogate for the parents or guardian;

(C) written prior notice to the parents or guardian of the child whenever such agency or unit—

(i) proposes to initiate or change, or

(ii) refuses to initiate or change,

the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child;

(D) procedures designed to assure that the notice required by clause (C) fully informs the parents or guardian, in the parents' or guardian's native language, unless it clearly is not feasible to do so, of all procedures available pursuant to this section; and

(E) an opportunity to present complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.

(2) Whenever a complaint has been received under paragraph (1) of this subsection, the parents or guardian shall have an opportunity for an impartial due process hearing which shall be conducted by the State educational agency or by the local educational agency or intermediate educational unit, as determined by State law or by the State educational agency. No hearing conducted pursuant to the requirements of this paragraph shall be conducted by an employee of such agency or unit involved in the education or care of the child.

(c) Review of local decision by State educational agency

If the hearing required in paragraph (2) of subsection (b) of this section is conducted by a local educational agency or an intermediate educational unit, any party aggrieved by the findings and decision rendered in such a hearing may appeal to the State educational agency which shall conduct an impartial review of such hearing. The officer conducting such review shall make an independent decision upon completion of such review.

(d) Enumeration of rights accorded parties to hearings

Any party to any hearing conducted pursuant to subsections (b) and (c) of this section shall be accorded—

(1) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities,

(2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses,

(3) the right to a written or electronic verbatim record of such hearing, and

(4) the right to written findings of fact and decisions (which findings and decisions shall be made available to the public consistent with the requirements of section 1417(c) of this title and shall also be transmitted to the advisory panel established pursuant to section 1414(a)(12) of this title.

(e) Civil action; jurisdiction

(1) A decision made in a hearing conducted pursuant to paragraph (2) of subsection (b) of this section shall be final, except that any party involved in such hearing may appeal such decision under the provisions of subsection (c) and paragraph (2) of this subsection. A decision made under subsection (c) of this section shall be final, except that any party may bring an action under paragraph (2) of this subsection.

(2) Any party aggrieved by the findings and decision made under subsection (b) of this section who does not have the right to an appeal under subsection (c) of this section, and any party aggrieved by the findings and decision under subsection (c) of this section, shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

(3) During the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents or guardian otherwise agree, the child shall remain in the then current educational placement of such child, or, if applying for initial admission to a public school, shall, with the consent of the parents or guardian, be placed in the public school program until all such proceedings have been completed.

(4)(A) The district courts of the United States shall have jurisdiction of actions brought under this subsection without regard to the amount in controversy.

(B) In any action or proceeding brought under this subsection, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents or guardian of a child or youth with a disability who is the prevailing party.

(C) For the purpose of this subsection, fees awarded under this subsection shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.

(D) No award of attorneys' fees and related costs may be made in any action or proceeding under this subsection for services performed subsequent to the time of a written offer of settlement to a parent or guardian, if—

(i) the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than ten days before the proceeding begins;

(ii) the offer is not accepted within ten days; and

(iii) the court or administrative officer finds that the relief finally obtained by the parents or guardian is not more favorable to the parents or guardian than the offer of settlement.

(E) Notwithstanding the provisions of subparagraph (D), an award of attorneys' fees and related costs may be made to a parent or guardian

who is the prevailing party and who was substantially justified in rejecting the settlement offer.

(F) Whenever the court finds that—

(i) the parent or guardian, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

(ii) the amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, experience, and reputation; or

(iii) the time spent and legal services furnished were excessive considering the nature of the action or proceeding,

the court shall reduce, accordingly, the amount of the attorneys' fees awarded under this subsection.

(G) The provisions of subparagraph (F) shall not apply in any action or proceeding if the court finds that the State or local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of this section.

(f) Effect on other laws

Nothing in this chapter shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, title V of the Rehabilitation Act of 1973 [29 U.S.C. 790 et seq.], or other Federal statutes protecting the rights of children and youth with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this subchapter, the procedures under subsections (b)(2) and (c) of this section shall be exhausted to the same extent as would be required had the action been brought under this subchapter.

(Pub. L. 91-230, title VI, Sec. 615, as added Pub. L. 94-142, Sec. 5(a), Nov. 29, 1975, 89 Stat. 788 and amended Pub. L. 99-372, Sec. 2, 3, Aug. 5, 1986, 100 Stat. 796, 797; Pub. L. 100-630, title I, Sec. 102(a), Nov. 7, 1988, 102 Stat. 3294; Pub. L. 101-476, title IX, Sec. 901(b)(71)-(75), Oct. 30, 1990, 104 Stat. 1145; Pub. L. 102-119, Sec. 25(b), Oct. 7, 1991, 105 Stat. 607.)

Sec. 1416. Withholding of payments

(a) Failure to comply with this subchapter; limitations; public notice

Whenever the Secretary, after reasonable notice and opportunity for hearing to the State educational agency involved (and to any local educational agency or intermediate educational unit affected by any failure described in clause (2)), finds—

(1) that there has been a failure to comply substantially with any provision of section 1412 or section 1413 of this title, or

(2) that in the administration of the State plan there is a failure to comply with any provision of this subchapter or with any requirements set forth in the application of a local educational agency or intermediate educational unit approved by the State educational agency pursuant to the State plan, the Secretary—

(A) shall, after notifying the State educational agency, withhold any further payments to the State under this subchapter, and

(B) may, after notifying the State educational agency, withhold further payments to the State under the Federal programs specified in section 1413(a)(2) of this title within the Secretary's jurisdiction, to the extent that funds under such programs are available for the provision of assistance for the education of children with disabilities.

If the Secretary withholds further payments under clause (A) or clause (B) the Secretary may determine that such withholding will be limited to programs or projects under the State plan, or portions thereof, affected by the failure, or that the State educational agency shall not make further payments under this part to specified local educational agencies or intermediate educational units affected by the failure. Until the Secretary is satisfied that there is no longer any failure to comply with the provisions of this subchapter, as specified in clause (1) or clause (2), no further payments shall be made to the State under this subchapter or under the Federal programs specified in section 1413(a)(2) of this title within the Secretary's jurisdiction to the extent that funds under such programs are available for the provision of assistance for the education of children with disabilities, or payments by the State educational agency under this subchapter shall be limited to local educational agencies and intermediate educational units whose actions did not cause or were not involved in the failure, as the case may be. Any State educational agency, local educational agency, or intermediate educational unit in receipt of a notice pursuant to the first sentence of this subsection shall, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the jurisdiction of such agency or unit.

(b) Judicial review

(1) If any State is dissatisfied with the Secretary's final action with respect to its State plan submitted under section 1413 of this title, such State may, within sixty days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings upon which the Secretary's action was based, as provided in section 2112 of title 28.

(2) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify the Secretary's previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(3) Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(Pub. L. 91-230, title VI, Sec. 616, as added Pub. L. 94-142, Sec. 5(a), Nov. 29, 1975, 89 Stat. 789, and amended Pub. L. 98-199, Sec. 3(b), Dec. 2, 1983, 97 Stat. 1358; Pub. L. 100-630, title I, Sec. 102(f), Nov. 7, 1988, 102 Stat. 3294; Pub. L. 101-476, title IX, Sec. 901(b)(76), Oct. 30, 1990, 104 Stat. 1145; Pub. L. 102-119, Sec. 25(b), Oct. 7, 1991, 105 Stat. 607.)

Sec. 1417. Administration

(a) Duties of Secretary

(1) In carrying out the Secretary's duties under this subchapter, the Secretary shall—

(A) cooperate with, and furnish all technical assistance necessary, directly or by grant or contract, to the States in matters relating to the education of children with disabilities and the execution of the provisions of this subchapter;

(B) provide such short-term training programs and institutes as are necessary;

(C) disseminate information, and otherwise promote the education of all handicapped children within the States; and

(D) assure that each State shall, within one year after November 29, 1975 and every year thereafter, provide certification of the actual number of children with disabilities receiving special education and related services in such State.

(2) As soon as practicable after November 29, 1975, the Secretary shall, by regulation, prescribe a uniform financial report to be utilized by State educational agencies in submitting State plans under this subchapter in order to assure equity among the States.

(b) Rules and regulations

In carrying out the provisions of this subchapter, the Secretary shall issue, not later than January 1, 1977, amend, and revoke such rules and regulations as may be necessary. No other less formal method of implementing such provisions is authorized.

(c) Protection of rights and privacy of parents and students

as part of a hearing, the cost of the evaluation must be at public expense.

(c) *Agency criteria.* Whenever an independent evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the public agency uses when it initiates an evaluation.

(20 U.S.C. 1415(b)(1)(A))

Reg. 300.504 Prior notice; parent consent.

(a) *Notice.* Written notice which meets the requirements under Reg. 300.505 must be given to the parents of a handicapped child a reasonable time before the public agency:

(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child, or

(2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.

(b) *Consent.* (1) Parental consent must be obtained before: (i) Conducting a preplacement evaluation; and

(ii) Initial placement of a handicapped child in a program providing special education and related services.

(2) Except for preplacement evaluation and initial placement, consent may not be required as a condition of any benefit to the parent or child.

(c) *Procedures where parent refuses consent.* (1) Where State law requires parental consent before a handicapped child is evaluated or initially provided special education and related services, State procedures govern the public agency in overriding a parent's refusal to consent.

(2)(i) Where there is no State law requiring consent before a handicapped child is evaluated or initially provided special education and related services, the public agency may use the hearing procedures in Regs. 300.506-300.508 to determine if the child may be evaluated or initially provided special education and related services without parental consent.

(ii) If the hearing officer upholds the agency, the agency may evaluate or initially provide special education and related services to the child without the parent's consent, subject to the parent's rights under Regs. 300.510-300.513.

(20 U.S.C. 1415(b)(1)(C), (D))

Comment. 1. Any changes in a child's special education program, after the initial placement, are not subject to parental consent under Part B, but are subject to the prior notice requirement in paragraph (a) and the individualized education program requirements in Subpart C.

2. Paragraph (c) means that where State law requires parental consent before evaluation or before special education and related services are initially provided, and the parent refuses (or otherwise withholds) consent, State procedures, such as obtaining a court order authorizing the public agency to conduct the evaluation or provide the education and related services, must be followed.

If, however, there is no legal requirement for consent outside of these regulations, the public agency may use the due process procedures under this subpart to obtain a decision to allow the evaluation or services without parental consent. The agency must notify the parent of its actions, and the parent has appeal rights as well as rights at the hearing itself.

Reg. 300.505 Content of notice.

(a) The notice under Reg. 300.504 must include:

(1) A full explanation of all of the procedural safeguards available to the parents under Subpart E;

(2) A description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered and the reasons why those options were rejected;

(3) A description of each evaluation procedure, test, record, or report the agency uses as a basis for the proposal or refusal; and

(4) A description of any other factors which are relevant to the agency's proposal or refusal.

(b) The notice must be:

(1) Written in language understandable to the general public, and

(2) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(c) If the native language or other mode of communication of the parent is not a written language, the State or local educational agency shall take steps to insure:

(1) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

(2) That the parent understands the content of the notice, and

(3) That there is written evidence that the requirements in paragraph (c)(1) and (2) of this section have been met.

(20 U.S.C. 1415(b)(1)(D))

Reg. 300.506 Impartial due process hearing.

(a) A parent or a public educational agency may initiate a hearing on any of the matters described in Reg. 300.504(a)(1) and (2).

(b) The hearing must be conducted by the State educational agency or the public agency directly responsible for the education of the child, as determined under State statute, State regulation, or a written policy of the State educational agency.

(c) The public agency shall inform the parent of any free or low-cost legal and other relevant services available in the area if:

(1) The parent requests the information; or

(2) The parent or the agency initiates a hearing under this section.

(20 U.S.C. 1415(b)(2))

Comment. Many States have pointed to the success of using mediation as an intervening step prior to conducting a formal due process hearing. Although the process of mediation is not required by the statute or these regulations, an agency may wish to suggest mediation as disputes concerning the identification, evaluation, and educational placement of handicapped children, and the provision of a free appropriate public education to those children. Mediations have been conducted by members of State educational agencies or local educational agency personnel who were not previously involved in

(2) Procedures for acquiring and disseminating to teachers, administrators, and related services personnel significant knowledge derived from education research and other sources; and

(3) Procedures for adopting, if appropriate, promising practices, materials, and technology, proven effective through research and demonstration.

(b) As used in paragraph (a)(1) of this section, "regular education personnel" includes only regular education personnel who are necessary to carry out the purposes of this part, by providing education or services to children with disabilities.

(Authority: 20 U.S.C. 1413(a)(3)(B))

22. Section 300.383 is revised to read as follows:

§ 300.383 Data system on personnel and personnel development.

(a) *General.* The procedures and activities required in §§ 300.381 and 300.382 must include the development and maintenance of a system for determining, on an annual basis, the data required in paragraphs (b) and (c) of this section.

(b) *Data on qualified personnel.* (1) The system required by paragraph (a) of this section must enable each State to determine, on an annual basis—

(i) The number and type of personnel, including leadership personnel, employed in the provision of special education and related services, by profession or discipline;

(ii) The number and type of personnel who are employed with emergency, provisional, or temporary certification in each profession or discipline who do not hold appropriate State certification, licensure, or other credentials comparable to certification or licensure for that profession or discipline; and

(iii) The number and type of personnel, including leadership personnel, in each profession or discipline needed, and a projection of the numbers of those personnel that will be needed in five years, based on projections of individuals to be served, retirement and other departures of personnel from the field, and other relevant factors.

(2) The data on special education and related services personnel required in paragraph (b)(1) of this section must include audiologists, counselors, diagnostic and evaluation personnel, home-hospital teachers, interpreters for students with hearing impairments including deafness, occupational therapists, physical education teachers, physical therapists, psychologists, rehabilitation counselors, social workers, speech-language pathologists, teacher aides, recreation and therapeutic recreation specialists, vocational education teachers, work study coordinators, and other instructional and noninstructional staff.

(3) The data on leadership personnel required by paragraph (b)(1) of this section must include administrators and supervisors of State or local agencies who are involved in the provision or supervision of services or activities necessary to carry out the purposes of this part.

(c) *Data on personnel development.* The system required in paragraph (a) of this section must enable each State to determine, on an annual basis, the institutions of higher education within the State that are preparing special education and related services personnel, including leadership personnel, by area of specialization, including—

(1) The numbers of students enrolled in programs for the preparation of special education and related services personnel administered by these institutions of higher education; and

(2) The numbers of students who graduated during the past year with certification or licensure, or with credentials to qualify for certification or licensure, from programs for the preparation of special education and related services personnel administered by institutions of higher education.

(Authority: 20 U.S.C. 1413(a)(3)(A))

§§ 300.384, 300.385, 300.387 [Removed and Reserved]

23. Sections 300.384, 300.385, and 300.387 are removed and reserved.

24. Section 300.504 is amended by adding a new paragraph (d); revising the authority citation; adding "*Comment*" before "2." in the Comment following the section; and adding a new Comment 3 to read as follows:

§ 300.504 Prior notice; parent consent.

* * * * *

(d) *Additional State consent requirements.*

(1) In addition to the parental consent requirements in paragraph (b)(1) of this section, States may establish parental consent requirements for other services and activities provided under this part, only if—

(i) The requirement in paragraph (b)(2) of this section is met;

(ii) Each public agency in the State has procedures for dealing with a parental withholding of consent to any additional State parental consent requirement; and

(iii) The procedures required by paragraph (d)(1)(ii) of this section are implemented in all instances in which the public agency believes that the service or activity to which the parent has withheld consent must be provided in order to ensure the continued provision of a free appropriate public education to a child with a disability.

(2) Procedures for dealing with a parental withholding of consent to an additional State parental consent requirement must include—

(i) Informal procedures for resolving the disagreement between the parent and the public agency; and

(ii) Formal procedures for overriding a parental withholding of consent.

(3) States may designate the due process procedures in §§ 300.506–300.513 as the formal procedures required by paragraph (d)(2)(ii) of this section.

(Authority: 20 U.S.C. 1415(b)(1)(C), (D); 1412(2), (8))

* * * * *

Comment 3. If a State establishes an additional consent requirement, and the parent withholds consent because of a disagreement with the public agency over one or more components of a child's special education program—for example, the provision of physical therapy services—the public agency is not relieved of its obligation to implement the other components of the child's program that are in agreement, notwithstanding the parental withholding of consent. This is because consent may not be made a precondition to any benefit to a parent or child under this part, except for preplacement evaluation and initial placement.

Although public agencies must have formal procedures for dealing with parental withholding of consent to an additional State parental consent requirement, they need not implement those procedures in every situation. Public agencies should use their established informal procedures, as appropriate, provided those informal procedures do not operate to deny or delay access to their established formal procedures. However, if, as a result of its informal process, a public agency determines that it is appropriate to reconsider or revise its proposed action, based upon a review of information provided by the parents or other new information, indicating that the child's current evaluation, individualized education program, or placement is appropriate, the public agency would not be required to initiate formal procedures. However, if the disagreement has not been resolved through informal procedures, then the public agency must initiate formal procedures designated for overriding a parental withholding of consent.

25. Section 300.508 is amended by revising paragraph (a)(5) to read as follows:

The Secretary particularly invites public comment on whether these proposed regulations will ensure effective implementation of the revised statutory requirements on CSPD, or whether additional regulatory guidance or other changes are needed.

II. Other Proposed Regulatory Changes

A. Data Collection and Reporting Requirements

Because State plans are now submitted triennially, rather than annually, States no longer submit annual data with State plans for part B grant awards. Rather, the Secretary requires State educational agencies to report data on an annual basis in accordance with section 618 of the Act. Therefore, these proposed regulations do not retain the data collection and reporting provisions contained in § 300.124 and portions of §§ 300.125–300.127 of the current regulations.

B. Child Find for Infants and Toddlers

Under § 300.128 of the current regulations, States are required to identify, locate, and evaluate all children who have disabilities or who are suspected of having disabilities and who are in need of special education and related services. This requirement is known as "child find" and is applicable to children from birth through 21 years of age. Part H of the Act (Early Intervention Programs for Infants and Toddlers with Disabilities) also contains a child find requirement for infants and toddlers (incorporated in the regulations at 34 CFR 303.321). To facilitate coordination of child find activities for infants and toddlers conducted under parts B and H of the Act, proposed Comment 2 to § 300.128 has been added to specify that if the State educational agency is not the State's lead agency for the part H program, the State educational agency may designate the State's part H lead agency as the agency responsible for child find for infants and toddlers if there is agreement by both agencies. However, since the State educational agency remains responsible for ensuring that all part B child find requirements are met, the part B State plan must reflect the nature and extent of the participation of the State's part H lead agency in accordance with § 300.128(b)(2) of the current regulations.

C. Procedural Safeguards

1. Additional State Consent Requirements

In an effort to expand opportunities for parent participation in decisions regarding their children's special education programs, the Department has issued policy guidance in recent years permitting States to establish State consent requirements for services and activities provided under this part, outside of the consent requirements in this part for preplacement evaluation and initial placement. The Secretary now proposes to incorporate this policy into the regulations for this program by adding a new paragraph (d) to § 300.504 on prior notice and parent consent.

Proposed paragraph (d) clarifies that States may establish additional State consent requirements for services and activities provided to children with disabilities under this part, such as reevaluations of a child with a disability or continued placement or change of placement of a child with a disability, only if these additional State parental consent requirements are implemented in accordance with § 300.504(b)(2) of the current regulations and in a manner consistent with a public agency's responsibility to ensure the continued provision of a free appropriate public education to a child with a disability. Paragraph (b)(2) of § 300.504 specifies that any parental consent requirement, other than the consent requirements for preplacement evaluation and initial placement, may not operate as a condition of a benefit or service to a parent or child.

Proposed paragraph (d) also provides that States establishing additional State consent requirements must ensure that public agencies have informal procedures and formal procedures for dealing with a parental withholding of consent to those requirements. These procedures must be implemented in all instances in which the parent withholds consent to an additional State consent requirement and the public agency believes that the activity to which the parent has withheld consent is essential in order for the child to receive a free appropriate public education. The Secretary believes that this proposed regulation balances the important principle of parent participation in their children's special education programs with the obligation of each public agency to ensure the continued provision of appropriate special education and related services to all eligible children with disabilities. A new Comment 3 has also been added to clarify this new requirement.

2. Availability of Hearing Decisions to the Public

The Handicapped Programs Technical Amendments Act of 1988 amended section 615(d) of the Act by adding a new requirement that findings of fact and hearing decisions, with the deletion of personally identifiable information, be made available to the public. The current regulations, at § 300.508(a)(5), provide that a party to the hearing has the right to obtain written findings and a hearing decision, and that written findings and hearing decisions, with the deletion of personally identifiable information, must be transmitted to the State advisory panel established under subpart F. Therefore, the Secretary proposes to amend paragraph (a)(5) of § 300.508 by adding the new statutory requirement.

The Secretary invites public comment on whether additional regulatory guidance is needed to implement this statutory change.

3. Officials Conducting State-level Reviews

Since the regulations for this program were published in 1977, a number of courts have construed the requirements for impartiality of State-level review officials. Relying on the legislative history of Public Law 94–142, courts have concluded that the Congress intended to prohibit members of State boards of education, chief State school officers, and other State employees involved in the education or care of the child from serving as review officials if initial due process hearing decisions are appealed to the State educational agency. See *e.g., Helms* v. *McDaniel*, 657 F.2d 800 (5th Cir.) 1981. However, even with this prohibition, the legislative history of Public Law 94–142 emphasizes that the State educational agency remains responsible for ensuring that decisions in State-level reviews satisfy all applicable part B requirements. Therefore, the Secretary proposes to add a new paragraph (c) to § 300.510 and has revised Comment 1 following the section to clarify which officials may not conduct State-level reviews under this program.

D. State Complaint Procedures

On August 18, 1988, the Secretary published a Notice of Proposed Rulemaking at 53 FR 31580 proposing to transfer the State complaint procedures from 34 CFR 76.780–76.782, with minor modifications, to the program-specific regulations to which they relate. Because States receive an especially high volume of Education Department General Administrative Regulations (EDGAR) complaints alleging violations of requirements of part B of the Act and this part, the Secretary proposes to incorporate State complaint procedures in proposed §§ 300.660–300.662. Based on the Department's administration of this program the Secretary believes that

MEMORANDUM

UNITED STATES DEPARTMENT OF EDUCATION

WASHINGTON, D.C. 20202-_____

TO: Mr Jim Rich
Administrator
Alaska State Department of Education
P.O. Box F
Juneau, Alaska 99811-0500

JUN 25 1991

FROM: Barbara A. Route BR
Division of Assistance to States

SUBJECT: Review of Alaska's FY 1992-1994 State Plan

Attached please find a list of State Plan changes which are required as a result of the review of your Plan conducted by this Office. These items require changes or additions which must be made to the body of your State Plan document, and in some cases, to the Alaska State Department of Education's regulations and standards for special education programs.

This Office appreciates your cooperation in the State Plan review process, and will make every effort to ensure a timely release of your Part B funds for the coming fiscal year.

OSEP REVIEW OF ALASKA STATE PLAN FOR FISCAL YEARS 1992-94

FEDERAL REQUIREMENT	CHECKLIST PAGE	PLAN	STATUTE OR REGULATION	ISSUE OR QUESTION	ACTION REQUIRED BY OSEP
300.121(c)(1) and (3)	11	Absent	Absent	Absent from both plan and regulations.	Requirements of §300.121 must be added to the plan.
300.128(a)(2), (b)(5)(i),(ii) and (6)	15, 16, and 17	Absent	Absent	Absent from both plan and regulations.	Requirements of §300.128 must be added to the plan.
300.560 (Definitions)	18-19	Absent	Absent	Absent from both plan and regulations.	Requirements of §300.560 must be added to the plan.
300.561 (a)(4)	20	Page 48 (1)(g) of the plan states: "The Department shall provide notice to parents about the requirements related to the identification, location, and evaluation of children with disabilities which includes a description of all the rights of parents and children regarding the information gathered."	NA	The plan does not indicate that the description of the rights of both parents and children regarding the information included the rights under §438 of the GEPA of 1974 and implementing regulations.	The plan must be amended to include the wording "under §438 of the GEPA and Part 99 of this title."
300.561(b)	20	Page 48 (2) of the plan states: "The Department shall, before any major identification, location or evaluation activity, provide a notice (as per 1 above) through public media."	NA	The plan does not indicate that the notice must be published or announced with circulation adequate to notify parents throughout the State of the activity.	The plan must be amended to include "with circulation adequate to notify parents throughout the State of the activity."
300.562 (b)(2)	22	Absent	Absent	Absent from both plan and regulations.	Requirements of §300.562 (b)(2) must be added to the plan.
300.562 (b)(3)	22	Page 51 (4) of the plan states: "a district shall permit a parent to inspect and review and record relating to his child which is collected, maintained or used by the district, and shall permit a representative of the parent to inspect and review a record.	Same as the plan.	Both the plan and the regulation specify that the district shall permit a representative of the parent to inspect and review a record. However, Federal regulation requires that the right to inspect and review education records includes the right to have a representative of the parent inspect and review records.	Both the plan and 4 AAC 52.510 must be amended to add the requirement that the right to inspect and review education records includes the right to have a representative of the parent inspect and review records.

FEDERAL REQUIREMENT	CHECKLIST PAGE	PLAN	STATUTE OR REGULATION	ISSUE OR QUESTION	ACTION REQUIRED BY OSEP
300.562(c)	22	Page 51 of the plan states: "a district may presume that a parent has authority to inspect and review a record relating to his child unless the district has been provided reasonable grounds to believe that the parent does not have authority to do so.	4 AAC 52.510 states: " A district may presume that a parent has authority to inspect and review a record relating to his child unless the district has been provided reasonable grounds to believe that the parent does not have authority to do so under state or federal law."	It is unclear as to what "reasonable grounds" includes.	Both the plan and 4 AAC 52.510 (c) must be amended to add the requirement that a district may presume that a parent has authority to inspect and review a record relating to his child unless the district has been provided reasonable grounds to believe that the parent does not have authority to do so under state law governing such matters as guardianship, separation or divorce.
300.563	22	Page 49 II(6) of the plan states: "a district shall designate one employee to present the confidentiality of special education child records. That person shall assume responsibility for ensuring the confidentiality of any personally identifiable information, and shall keep a record of parties obtaining access to education records (except access by parent and authorized employees of the district), including the name of the party, agency affiliation, the date access took place and the purpose of the authorized use."	52.220(f) states: "Each district shall maintain a record of persons other than parents and persons listed under (e) of this section who are provided access to records which are subject to this section, including the name of the person, agency affiliation, date of access, and the purpose for which access is provided.	The plan and the regulation do not include the language "collected, maintained, or used under this part."	The plan and 52.220 must be amended to include the language "collected, maintained, or used under this part."
300.566(b) .	23	Page 49(4) of the plan states: "The Department and local school districts may charge a fee for copies of records if the fee does not effectively prevent the parents from exercising their rights to inspect and review the records, but may not charge a fee for the retrieval of such information or records." In addition, page 52 states: "A fee may not be charged to search for or return information."	Absent	The plan does not state that a participating agency may not charge a fee to "search for" information. In addition, page 52 of the plan (under the title, Fees, second paragraph) states that a fee may not be charged to search for or "return" information.	Page 49, number 4 (top of page) must be amended to add the word "search." Page 52, under the title, Fees, second paragraph must be amended to change the word "return" to "retrieve."
300.567(a)	24	Page 52 of the plan states: "A parent who believes that in formation collected, maintained, or used by a district in a record relating to his or her child is inaccurate, misleading, or in violation of rights of the child may request that the district amend the records.	Same as the plan.	Neither the plan nor the statute includes the words "the privacy."	The plan and 52.520(a) must be amended to include the words "the privacy."

FEDERAL REQUIREMENT	CHECKLIST PAGE	PLAN	STATUTE OR REGULATION	ISSUE OR QUESTION	ACTION REQUIRED BY OSEP
300.568	24	Page 52 of the plan states: "A parent who believes that information collected, maintained, or used by a district in a record relating to his or her child is inaccurate, misleading, or in violation of rights of the child may request that the district amend the records. The district shall, within a reasonable period of time, not to exceed 45 days of receipt of the request, decide whether to amend the record. If the district refuses to amend the record, it shall inform the parent of the refusal and advise the parent of his or her right to a hearing. If a parent requests a hearing and the hearing officer decises that the information is inaccurate, misleading, or in violation of the rights of the child, the district shall amend the record and inform the parent in writing."	Same as the plan.	Neither the plan nor the regulation include the "privacy rights" of the child.	Both the plan and the regulation must be amended to include the "privacy rights" of the child.
300.569(a)	25	Page 52 of the plan states: "If a parent requests a hearing and the hearing officer decides that the information is inaccurate, misleading, or in violation of the rights of the child, the district shall amend the record and inform the parent in writing.	Same as the plan.	See comment directly above.	See comment directly above.
300.569(b)	25	Page 52 of the plan states: "If a parent requests a hearing and the hearing officer decides that the information is not inaccurate, misleading, or in violation of rights of the child, the district shall inform the parent that he or she may place with the record a statement commenting on the information, which must be accompanied by a copy of the decisions of the hearing officer.	Same as the plan.	The plan and the regulation do not include the "privacy rights" of the child. In addition, neither include language which states that the public agency will inform the parent of the right to place in the records it maintains on the child a statement setting forth any reasons for disagreeing with the decision of the agency.	The plan and 52.520 (d) must be amended to include the "privacy rights" of the child. In addition, language must be added which states that the public agency will inform the parent of the right to place in the records it maintains on the child a statement setting forth any reasons for disagreeing with the decision of the agency.

FEDERAL REQUIREMENT	CHECKLIST PAGE	PLAN	STATUTE OR REGULATION	ISSUE OR QUESTION	ACTION REQUIRED BY OSEP
300.569(c)(1)	25	Page 52 of the plan states: "Any statement placed with a record must accompany the record as long as the record is maintained by the district.	Same as the plan.	The plan and the regulation do not include language which states that any explanation placed in the records of the child be maintained by the agency as part of the record as long as the record or "contested portion" is maintained by the agency.	The plan and 52.520(e) must be amended to add the words "or contested portion" after "as long as the record."
300.569(c)(2)	26	Page 52 of the plan states: "If the record is disclosed by the district to any person, the statement must also be disclosed.	Same as the plan.	The plan and the regulation do not include language which states that if the records of the child "or the contested portion" is disclosed by the agency to any party, the explanation must be disclosed to the party.	The plan and 52.520(e) must be amended to add the words "or contested portion" after "if the record."
300.571(a)(2)	26	Absent	Absent	Absent from both plan and regulations.	Requirements of §300.571(a)(2) must be added to the plan.
300.573(a)	28	Page 51 of the plan states: "If personally identifiable information is no longer needed by the district, that information should be destroyed. The district shall make reasonable efforts to notify the parent and offer the parent a copy of the record.	Absent	The plan does not include language which states that the public agency shall inform parents when personally identifiable information collected, maintained, or used under Part B is no longer needed to provide educational services to the child.	Page 51 of the plan must be amended to add the words "collected, maintained or used."
300.574	28	Absent	Absent	Absent from both plan and regulations.	Requirements of §300.574 must be added to the plans.
300.575	29	Absent	Absent	Absent from both plan and regulations.	Requirements of §300.575 must be added to the plan.
300.340	34	Absent	Absent	Absent from both plan and regulations.	The definition of individualized education program must be included in the plan.

FEDERAL REQUIREMENT	CHECKLIST PAGE	PLAN	STATUTE OR REGULATION	ISSUE OR QUESTION	ACTION REQUIRED BY OSEP
300.345(a)(1)	38	Page 60 of the plan states: "The district in which the child resides is responsible for the development of the IEP and scheduling the IEP meetings. If a child resides in a different district than the parents, the following procedures could be followed: (1) Invite the parent to the meeting...."	Absent	Some of the language used in this section does not comply with Federal requirements. Whether or not the child resides in a different district than the parents, the Federal requirement specifies that the parent must be invited to the IEP meeting.	The language on page 60 must be revised to meet the Federal requirement at §300.345(a)(1).
300.345(c)	39	Page 66 of the plan states: "The invitation to an IEP meeting should not be confused with the requirements for providing written notice to parents. The following procedure is recommended for providing notice in relationship to IEP meetings: (3) If parents attend the IEP meeting and agree with the district on the IEP - written notice is not required.	Absent	Written notice is not required if parents attend the IEP meeting and agree with the district on the IEP.	The language on page 66 must be revised to indicate that written notice is provided to parents even when parents attend the IEP meeting and agree with the district on the IEP.
	67 of the Plan	Interim IEP	Absent	The plan indicates that one of the conditions under which an interim IEP is allowable is that an IEP meeting must be conducted at the end of the interim period to complete the IEP.	AKSDE must clarify how it is assured that all applicable IEP content requirements are met and that there is no lapse in services between the interim IEP and the final IEP.
300.347(a)(1)	42	Page 59 of the plan states: "In addition the State Department of Education requires that IEPs are developed for each child in or referred to a private school or facility by a public agency.	Absent	The plan does not include language which states that prior to private school placement, the public agency will initiate and conduct a meeting to develop an IEP before referring a child to or placing a child in a private school or facility.	The plan must be amended to add the words "initiate and conduct a meeting" referring a child to or placing a child in a private school or facility.
300.347(b)(c)	42-43	Absent	Absent	Absent from both plan and regulations.	Requirements of §300.347(b) and (c) must be added to the plan.

FEDERAL REQUIREMENT	CHECKLIST PAGE	PLAN	STATUTE OR REGULATION	ISSUE OR QUESTION	ACTION REQUIRED BY OSEP
	85 of the plan	Page 85 of the plan, Section H states: "When an appropriate educational program cannot reasonably be made available for a handicapped child within the child's community or school district, the district may, with approval from the Department, send the child to an educational program or residential school outside the child's community or school district for appropriate special education services."	Absent	As this statement is written, it appears that the IEP team's placement decision is not final if the placement will not be made in the child's community or school district.	AKSDE must clarify this statement because as it is written, it appears that once the IEP team makes the placement decision, it must be approved by the Department if that placement is not in the child's community or school district.
	86 of the plan	Page 86 of the plan states: "If the Department approves the transfer, the district shall, prior to referral or placement of the child in an out-of-district program, initiate and conduct an IEP meeting.	Absent	As this statement is written, it appears that placement is taking place prior to the development of the IEP.	AKSDE must amend this procedure so that the IEP is developed before the placement decision is made.
300.348(a)	44	Page 59 of the plan, Section I states: "In addition the State Department of Education requires that IEPs are developed for each child in or referred to a private school or facility by a public agency.	Absent	The plan does not include language which states that if a child with disabilities is enrolled in a private school or parochial school and receives special education and related services from a public agency, the agency shall initiate and conduct meetings to develop, review and revise an IEP for the child.	The plan must be amended to include language which states that the public agency will initiate and conduct meetings to develop, review, and revise an IEP for children enrolled in a private school or facility.
300.500(c)	46	Absent	Absent	Absent from both plan and regulations.	The definition of "evaluation" must be included in the plan.
300.500(c)	47	Absent	Absent	Absent from both plan and regulations.	The definition of "personally identifiable information" must be included in the plan.
300.503(a)(3)(ii)	49	Absent	Absent	Absent from both plan and regulations.	The definition of "public expense" must be included in the plan.

FEDERAL REQUIREMENT	CHECKLIST PAGE	PLAN	STATUTE OR REGULATION	ISSUE OR QUESTION	ACTION REQUIRED BY OSEP
	102 of the plan	The plan states: "A district may initiate a hearing by sending to the parent, within 30 days, written notice of the district's intent to appoint a hearing officer to conduct a hearing to challenge: district payment for an independent educational evaluation and to show that its own evaluation is appropriate."	Absent	It is unclear as to what this statement means.	AKSDE must clarify this statement.
300.504(b)(3)	52	Page 125(b) of the plan states: " Except as set out in (a) of this section, parental consent may not be required as a condition of any benefit to a child."	Absent	The statement is incomplete in that it does not include "any benefit to the parent."	The requirements of §300.504(b)(3) must be included in the plan.
	100 of the plan	Page 100, number 3 of the plan states: "disclosing personally identifiable information to unauthorized persons."	Absent	The statement is incomplete in that it does not include the requirements of §300.571.	The requirements of §300.571 must be included in this section of the plan.
300.506(a)	54	Page 101 of the plan states: "A parent may initiate a hearing (or a child may initiate a hearing, if the child is the age of 18 and has not been declared incompetent by a state court), by filing with the district, within 30 days, a written request for a hearing to challenge: . . ."	Same as the plan	Although page 101 of the plan states that the parent may initiate a hearing, the statement is incomplete in that it does not include language which indicates that the parent or public agency may initiate a hearing on matters covered in §300.504(a)(1) and (2). In addition, the State Department of Education has set a 30 day timeline for parents filing with a district, a request for a hearing. Page 102 of the plan only discusses a hearing with regard to who is responsible for the payment of an independent educational evaluation. As written, it appears that a school district is restricted as to when it can initiate a hearing.	The plan and regulation must be amended to be consistent with the requirements set forth at §300.506(a). The language regarding the 30 day timeline to file with a district, a request for a hearing must be deleted from both the plan and regulation.
300.506(b)	55	Absent	Absent	Absent from both plan and regulations.	The requirements of §300.506(b) must be included in the plan.

FEDERAL REQUIREMENT	CHECKLIST PAGE	PLAN	STATUTE OR REGULATION	ISSUE OR QUESTION	ACTION REQUIRED BY OSEP
300.506(c)(1)	55	Absent	52.550(e) on page 128) of the plan states: "In the notice provided under (d) of this section, the district shall inform the parent of any free or low-cost legal and other relevant services available in its area.	The regulation does not indicate that the public agency will inform parents of free or low-cost legal services and other relevant services available in the area if the parents request the information.	52.550 must be amended to include language to be consistent with the requirements set forth at §300.506(c)(1). The requirements set forth at §300.506(c)(1) must be added to the plan.
300.507(c)	56	Absent	Absent	Absent from both plan and regulations.	The requirements of §300.507(c) must be included in the plan.
300.508(a)(1)	56	Absent	52.550(f)(1) states: "The hearing must be recorded and must be conducted according to the following rules: (1) each party may be represented by counsel and or by a person of his choice."	The regulation does not include language which states that any party to a hearing has a right to be accompanied by individuals with special knowledge or training with respect to the problems of children with disabilities.	The requirements of §300.508(a)(1) must be included in the plan. In addition, 52.550(f)(1) must be amended to include all of the requirements set forth at §300.508(a)(1).
300.508(a)(2)	56	Page 105 (3) of the plan states: "Each party may call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on matters relevant to the issues even though those matters were not covered in the direct examination, impeach a witness regardless of which party first called the witness to testify, and rebut the evidence against him."	Same as the plan	The plan and the regulation do not include that any party to a hearing has a right to compel attendance of witnesses.	The requirements of §300.508(a)(2) must be included in both the plan and regulation.
300.508(a)(3)	56	Page 106(5) of the plan states: "Each party shall disclose any evidence to be offered at a hearing for other than rebuttal purposes at least 5 days before the hearing."	Same as the plan	The plan and the regulation do not include that any party to a hearing has a right to prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five days before the hearing.	The requirements of §300.508(a)(3) must be included in both the plan and regulation.

FEDERAL REQUIREMENT	CHECKLIST PAGE	PLAN	STATUTE OR REGULATION	ISSUE OR QUESTION	ACTION REQUIRED BY OSEP
300.508(a)4)	57	Page 129(8) of the plan states: "The district shall mail a copy of the decision of the hearing officer, within a reasonable period of time and after deleting any personally identifiable information, to the advisory panel established under 4 AAC 52.030. The district shall provide a written or electronic verbatim record of the hearing to a parent upon request."	Same as the plan	The plan and the regulation do not include that any party to a hearing has the right to obtain written or electronic verbatim record of the hearing. Both the plan and the regulation stipulate that only the parent has this right.	The requirement of §300.508(a)(4) must be included in both the plan and regulation.
300.508(a)(5)	57	Page 129(8) of the plan states: "The district shall mail a copy of the decision of the hearing officer, within a reasonable period of time and after deleting any personally identifiable information, to the advisory panel established under 4 AAC 52.030."	Same as the plan	The plan and the regulation do not indicate that AKSDE makes written findings of fact and decisions available to the public.	The requirement of §300.508(a)(5) must be included in both the plan and regulation.
	107 of the plan	Page 107 of the plan states: "Upon receipt of a notice of appeal the Department will: appoint a staff member to conduct the hearing...."	Absent	It cannot be determined whether or not if the staff member who is appointed to conduct the review meets the criteria set forth in OSEP bulletin #107 revised.	If AKSDE is to appoint a staff member to conduct a review, the staff member must meet the requirements of OSEP bulletin #107 revised.
	106 of the plan	Page 106(9) of the plan states: "The hearing officer shall render a final decision and mail a copy to each party not later than 45 days after receipt of a parent's request for a hearing, or 45 days after a district sends a written notice, unless an extension of time is agreed to by all parties and granted by the hearing officer."	Same as the plan	The plan and the regulation do not meet the requirements set forth at §300.512(c) which specifies that a hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party.	Both the plan and the regulation must be amended to meet the requirements set forth at §300.512(c).
300.511	59	Page 107 of the plan states: "The decision of the Department is final, unless a party to the appeal appeals to the superior court in accordance with rule 602 of the Rules of Appellate Procedure."	Absent	The plan does not meet the requirement set forth at §300.511 which specifies that "... any party aggrieved by the decision of a reviewing officer under §300.510 has the right to bring a civil action under §615(e)(2) of the Act."	The plan must be amended to include the requirements set forth at §300.511.

FEDERAL REQUIREMENT	CHECKLIST PAGE	PLAN	STATUTE OR REGULATION	ISSUE OR QUESTION	ACTION REQUIRED BY OSEP
1415(e)(4)	59	Page 107 of the plan states: "The court, at its discretion, may award reasonable attorney's fees as part of the costs to the parents or guardians of a handicapped child who is the prevailing party in a due process hearing."	Absent	The language used in the plan regarding the award of attorney fees is confusing.	The plan must be amended by using the language as set forth on page 59 of the checklist.
300.512(d)	60	Page 103 of the states: "A hearing must be conducted by a hearing officer appointed by the district from a list developed by the Department. The time and location will be determined by the district and must be reasonably convenient to the parent."	Absent	The plan does not include that each hearing must be conducted at a time and place which is reasonably convenient to the parents and child involved. In addition, the plan does not state that each review involving oral arguments must be conducted at a time and place which is reasonably convenient to the parents and the child involved.	The plan must be amended to include the requirements set forth at §300.512(d).
300.513(b)	61	Absent	52.580(a) states that: " (a) During the pendency of an administrative or judicial proceeding concerning the identification, evaluation, or educational placement of a child, unless the parties agree otherwise, the child shall remain in the educational placement which preceded the administrative or judicial proceeding; (b) Notwithstanding (a) of this section, if the proceedings concern an application for admission to school, the child must, with the consent of a parent, be admitted to school."	52.580(a) does not include that if the complaint involves an application for initial admission to public school, the child, with the consent of the parent, must be placed in the public school program until the completion of all the proceedings.	52.580(a) must be amended to include the requirements set forth at §300.513(b). In addition, the requirements set forth at §300.513(b) must be included in the plan.
300.514(a)(2)	61	Page 111 of the plan states that: "A child is entitled to a surrogate parent if the child is between 3 and 18 years old and has been adjudicated incompetent by a court."	Absent	The language used in the plan is too restrictive with regard to 18-22 year old disabled students who have been adjudicated incompetent by a court.	The first sentence under the section entitled "Appointment" on page 111 of the plan must be revised to read: A child is entitled to a surrogate parent..."

FEDERAL REQUIREMENT	CHECKLIST PAGE	PLAN	STATUTE OR REGULATION	ISSUE OR QUESTION	ACTION REQUIRED BY OSEP
	116 of the plan	Page 116 of the plan states that: "An extension of the time limit will be allowed only if exceptional circumstances exit and are documented by the Department. The person making the complaint has the right to request the Secretary of the U.S. Department of Education to review the final decision of the state."	Absent	The plan is too restrictive in that it does not allow the public agency to request the Secretary of the U.S. Department of Education to review the final decision of the State.	The plan must be amended to include language which states that any party has the right to request the Secretary of the U.S. Department of Education to review the final decision of the State.
300.553	67	Page 138 (11) of the plan states: "Handicapped children shall participate with other children in non-academic and extracurricular services and activities to the maximum extent appropriate to the needs of each handicapped child."	Absent	The plan does not indicate that in providing or arranging for nonacademic and extracurricular services and activities set forth in §300.306, each public agency ensures that each child with a disability participates with children who do not have disabilities to the maximum extent appropriate to the needs of that child.	The plan must be amended to include the requirements set forth in §300.553.
	141-142 of the plan	See examples of justification statements on pages 141-142 of the plan.	Absent		The examples of the justification statements on pages 141-142 of the plan need to be deleted.
300.554	68	Page 144, Section 7 of the plan states: "The district shall ensure that all children enrolled in private schools of facilities will receive services in accordance with the least restrictive environment requirements outlined in this Part."	Absent	The plan discusses arrangements made with private institutions only.	The plan must be amended to meet the requirements set forth in §300.554.
300.555(a)	68	Absent	NA	Absent from the plan.	The plan must be amended to meet the requirements set forth in §300.555(a).
300.555(b)	68	Absent	NA	Absent from the plan.	The plan must be amended to meet the requirements set forth in §300.555(b).
300.556(a)	68	Absent	NA	Absent from the plan.	The plan must be amended to meet the requirements set forth in §300.556(a).
300.556(b)(1) and (2)	69	Absent	NA	Absent from the plan.	The plan must be amended to meet the requirements set forth in §300.556(b)(1)(2).

FEDERAL REQUIREMENT	CHECKLIST PAGE	PLAN	STATUTE OR REGULATION	ISSUE OR QUESTION	ACTION REQUIRED BY OSEP
300.530(b)	70	Page 153 (5) of the plan states: "Evaluation materials and procedures must be selected and administered so as not to be biased in terms of: race gender, culture or socioeconomic status."	Absent	The plan does not include testing and evaluation materials and procedures for placement of children with disabilities which must be selected and administered so as not to be racially or culturally discriminatory.	The plan must be amended to meet the requirements set forth in §300.530(b).
300.532(b)	71	Absent	Absent	Absent from both plan and regulations.	The plan must be amended to include the requirements set forth in §300.532(b).
300.532(c)	72	Page 153 (6) of the plan states: "Evaluation materials and procedures must be selected to insure that, when administered to a child with impaired sensory, physical or speaking skills, the evaluation materials and procedures measure, rather than reflect, the child's impaired sensory, physical or speaking skills."	Absent	The wording in the plan is not consistent with the requirements set forth in §300.532(c).	The plan must be amended to meet the requirements set forth in §300.532(c).
300.533(a)(2)	73	Absent	Absent	Absent from both plan and regulations.	The plan must be amended to include the requirements set forth in §300.533(a)(2).
300.533(a)(5)	73	Absent	Absent	Absent from both plan and regulations.	The plan must be amended to include the requirements set forth in §300.533(a)(5).
300.533(b)	74	Absent	Absent	Absent from both plan and regulations.	The plan must be amended to include the requirements set forth in §300.533(b).
300.534	74	Absent	Absent	Absent from both plan and regulations.	The plan must be amended to include the requirements set forth in §300.534.
300.541(b)(1) and (4)	77	Page 156 (1) of the plan states that: "Learning disability does not included children who have learning problems that are primarily the result of: a visual handicap; a hearing handicap; mental retardation; emotional disturbance and environmental disadvantage."	Absent	The plan does not include "motor disability" and "cultural or economic disadvantage."	The plan must be amended to include the requirements set forth in §300.541(b)(1) and (4).

FEDERAL REQUIREMENT	CHECKLIST PAGE	PLAN	STATUTE OR REGULATION	ISSUE OR QUESTION	ACTION REQUIRED BY OSEP
300.401(a)(1)	84	Page 186, Part II of the plan states that: "It is the policy of the Department of Education that if handicapped children are placed in or referred to private schools or facilities by the state or local education agency as a means of meeting the educational needs specified in the IEP, the referring agency will be required to assure that..."	Absent	The plan does not include that the IEP "meets the requirements under §§300.340-300.349."	The plan must be amended to included the requirements set forth in §300.401(a)(1).
300.402(a)	85	Absent	Absent	Absent from both plan and regulations.	The plan must be amended to include the requirements set forth in §300.402(a).
300.403(a)	86	Page 187 (8) of the plan states that: "If a parent opts for a private education rather than a free, appropriate public education, then the parent shall assume financial responsibility for private schooling."	Absent	Although the plan states that if the parents opts for a private education rather than a free appropriate public education, the plan does not indicate that the public agency shall make services available to the child as provided under §§300.450-300.460.	The plan must be amended to include the requirements set forth in §300.403(a).
300.403(b)	86	Absent	Absent	Absent from both plan and regulations.	The plan must be amended to include the requirements set forth in §300.403(b).
300.450	86	Absent	Absent	Absent from both plan and regulations.	The plan must be amended to include the requirements set forth in §300.450.
76.654(b)(1) and (2)	91	Page 183 (2) of the plan states that: "If the school district uses funds under a program for public school students in a particular attendance area, or grade or age level, the district shall ensure equal opportunities for participation by students enrolled in private schools who: (a) have the same needs as public school students to be served; or (b) are in that group attendance area, or age or grade level."	Absent	Federal requirements set forth in §76.654(b) states that the subgrantee shall ensure equitable opportunities for participation by students enrolled in private schools who: (1) have the same needs as the public school students to be served; and (2) are in that group, attendance area, or age or grade level.	The word "or" must be changed to the word "and" in the plan.

FEDERAL REQUIREMENT	CHECKLIST PAGE	PLAN	STATUTE OR REGULATION	ISSUE OR QUESTION	ACTION REQUIRED BY OSEP
300.141	99	Page 190 of the plan states that: "It is the policy of the Department of Education to monitor school district programs to ensure compliance with all state and federal laws and regulations. One fifth of the schools in the state are monitored annually for compliance with special education rules and regulations. If after an entitlement review the Department determines that an overpayment has occurred due to misclassification of children it will require repayment or withhold all or part of one or more future payments. This decision is subject to administrative review."	Absent	The plan does not include policies and procedures which ensure that AKSDE seeks to recover any funds made available under Part B for services to any child determined to be erroneously classified as eligible to be counted.	The plan must be amended to include the requirements set forth in §300.141.
300.146	101	Page 203 of the plan states: "It is the policy of the Department of Education to conduct on-site visitations of each school district on a five year cycle for the purpose of monitoring school district programs to ensure compliance with state and federal requirements and with assurances given upon application for state and federal financial aid. School districts are required to evaluate the effectiveness of their programs including the evaluation of IEPs on an annual basis. The results of these evaluations are required to be included in each district's application for Title VI-B or PL 89-313 funds. These evaluations are reviewed by the Department and verified through on-site visits. Technical assistance is provided to districts upon request."	Although there are regulations under the section of the plan entitled, Annual Evaluation, (specifically 52.770 and 52.780D), based on a review of these regulations, it has been determined that the regulations do not address the procedures to be used for evaluation at least annually of the effectiveness of programs in meeting the educational needs of children with disabilities, including the evaluation of IEPs.	Neither the plan nor the regulations include the procedures to be used for evaluation at least annually of the effectiveness of programs in meeting the educational needs of children with disabilities, including the evaluation of IEPs.	The plan and the regulations must be amended to include the requirements set forth in §300.146.
	209 of the plan	Page 209, Section V of the plan states: "Alaska has 54 school districts. Fifteen districts (or 27%) will receive allocations and 18 districts (or 33%) will receive allocations under a consolidated application. Alaska has two consolidated applications: one consists of 16 LEAs and the other consists of two LEAs."	Absent	Although Alaska has 54 school districts, only 33 of the districts have been discussed. What will the remaining 21 school districts receive in terms of Title VI-B allocations?	The plan must be amended to include information regarding the Title VI-B allocations the remaining 21 school districts will receive.

FEDERAL REQUIREMENT	CHECKLIST PAGE	PLAN	STATUTE OR REGULATION	ISSUE OR QUESTION	ACTION REQUIRED BY OSEP
300.152	113	Page 212 of the plan discusses the interagency agreement the Alaska Department of Education currently has with the Department of Health and Social Services.	NA	Are there other agencies in Alaska currently serving children with disabilities? If so, does AKSDE currently have interagency agreements with these State agencies?	AKSDE must provide OSEP with information regarding interagency agreements with other State agencies.
300.153(a)(1)	115	Absent	Absent	Absent from both plan and regulations.	The plan must be amended to include the requirements set forth in §300.153(a)(1).
300.153(a)(3)	116	Absent	Absent	Absent from both plan and regulations.	The plan must be amended to include the requirements set forth in §300.153(a)(3).
300.153(a)(4)	117	Absent	Absent	Absent from both plan and regulations.	The plan must be amended to include the requirements set forth in §300.153(a)(4).

FEDERAL REQUIREMENT	CHECKLIST PAGE	PLAN	STATUTE OR REGULATION	ISSUE OR QUESTION	ACTION REQUIRED BY OSEP
300.153(c)	118	Absent	12.065 states that: "At the request of a school district seeking to employ a person in a position for which a Type A or Type C certificate is required, the commissioner may issue an emergency Type A or Type C certificate, valid for a period not to exceed the end of the school year in which it is issued, to a person not otherwise qualified if the district demonstrates to the satisfaction of the commissioner that, despite diligent efforts, including advertising in one or more newspapers of general circulation, it has been unable to fill the position with a qualified person holding the required certificate. The holder of an emergency certificate issued under this section is a "certificated employee" under AS 14.20.550-14.20.555. (Eff.7/1/90, Register 114)	The regulation states how a school district may employ an individual who possesses an emergency certificate valid for a period not to exceed the end of the school year in which it is issued. However, the regulation does not discuss the procedures to be used to bring the employee up to full certification.	The regulation must be amended to include the procedures AKSDE will use to bring an employee who possesses an emergency certificate up to full certification. This information must also be included in the plan.
300.153(d)	118	Absent	Absent	Absent from both plan and regulations.	The plan must be amended to include the requirements set forth in §300.153(d).
300.153(d)(2)	119	Absent	Absent	Absent from both plan and regulations.	The plan must be amended to include the requirements set forth in §300.153(d)(2).