

HIB

235

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred: March 24, 1993

FURTHER REFERRALS:

Date of Committee Action: 3/29

The FINANCE Committee considered:

HB 235

HOUSE BILL NO. 235

SPECIAL EDUCATION & RELATED SERVICES

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

RECOMMENDATIONS:

be replaced with

CS HB 235 (Fin)

the same title

a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal impact _____

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) DOE 3/24/93

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>ED Maclean</i> ^{MACLEAN}		<i>Mark Hanley</i> Hanley		X	
<i>Donald J. Larson</i> Larson	X	<i>Terry Martin</i> Martin		X	
		<i>Scott Powell</i> Powell		X	
		<i>John Gussard</i> Gussard		X	
		<i>Mike Hanson</i> Hanson		✓	
		<i>Richard Foster</i> Foster		?	

Donald J. Larson *ED Maclean*
CHAIRMAN'S SIGNATURE

FISCAL NOTE

No. 1
 Bill Version: CSHB 235 (HES)
 (H) Publish Date: 3/24/93

STATE OF ALASKA
 1993 LEGISLATIVE SESSION

Revision Date: _____
 Title: An Act relating to educational programs and services
 for children with disabilities and other exceptional children
 Sponsor: Representative Con Bunde
 Requestor: Representative Con Bunde

Department Affected: Education
 BRU: Educational Program Support
 Component: Special and Supplemental Services

COMPONENT SERIAL NO. _____ 166

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE FUND SOURCE:						
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FUNDING:

(Thousands of Dollars)

FUNDING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0	0	0	0	0	0

POSITIONS:

POSITIONS	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: \$ _____

ANALYSIS: (Attach a separate page if necessary.) At present, Alaska's State Plan for fiscal years FY 92-94 under Part B of the Individuals with Disabilities Education Act has conditional approval by the U.S. Department of Education and is contingent upon federal acceptance of changes to Alaska statutes and regulations making them consistent with Part B requirements. HB 235 provides for federal acceptance. If HB 235 fails to become law, the state may lose \$8,344,517 in federal funds. See attached sheets for additional information

Prepared by: Mike Maher
 Division: Commissioner's Office

Phone: 465-2803
 Date: 3/19/93

Approved by Commissioner: 
 Agency: Education

Jerry Covey
 Date: 3-19-93

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COMMITTEE COPY

House Bill 235 provides for compliance with federal statutes under Part B of the Individuals with Disabilities Education Act by amending Alaska statutes to make them consistent with Part B requirements. Failure to pass HB 235 could result in the loss of both dollars and services provided by the department and the school districts to educate children with disabilities.

If Alaska does not meet the terms of the conditional approval of its State Plan, the Federal Office of Special Education Programs could withhold our Part B funds and PL 89-313 funds in the amount of 8.3 million dollars. This would result in the loss of 3.8 FTE special education program managers at the department which now has 4.0 FTE. It also would result in the loss of 1.0 FTE Clerk Typist III and 1.3 FTE Grant Managers in special education which now has 1.0 FTE Clerk Typist III and 2.0 FTE Grant Managers.

In addition, there would be no money to pay for department-sponsored special education state-wide professional training opportunities, technical assistance to school districts, and special projects such as preparation and printing of the Alaska Special Education Handbook and booklets regarding parent rights.

Failure to pass HB 235 could result in the loss of 6.9 million dollars, of the 8.3 million dollars Alaska receives, in direct grants to school districts based on submitted child counts of children with disabilities. The following three pages show how the federal dollars would be allocated for FY 94 based on the December 1992 child count and the FY 93 per pupil amount.

Title VI-B					
5,148,324			Total Allocation From USDOE		
1,235,598			Administrative funds for DOE and discretionary projects		
3,912,726			Total Allocation to LEAs based on formula (child count)		
280.582735			Per Pupil Amount		
			Dec . 92 : <i>Projected</i>		
			Child	FY 94	
			Count	Allocation	
056	Aleutian East	62	17,396		
005	Anchorage	6,021	1,689,389		
012	Cordova	72	20,202		
000	Denali	10	2,806		
015	Dillingham	75	21,044		
016	Fairbanks	1,713	480,638		
022	Juneau	78	219,135		
024	Kenai	1,490	418,068		
025	Ketchikan	318	89,225		
028	Kodiak	401	112,514		
030	Lake & Pen	43	12,065		
033	Matsu	1,426	400,111		
035	Nome	100	28,058		
036	North Slope	163	45,735		
037	NW Arctic	289	81,088		
039	Petersburg	106	29,742		
042	Sitka	219	61,448		
048	Valdez	95	26,655		
049	Wrangell	81	22,727		
	Subtotal	13,465	3,778,047		
017	Galena	20	5,612		
034	Nenana	34	9,540		
053	Tanana	20	5,612		
	Subtotal	74	20,763		
008	Bristol Bay	41	11,504		
013	Craig	55	15,432		
018	Haines	45	12,626		
019	Hoonah	55	15,432		
020	Hydaburg	15	4,209		
023	ake	45	12,626		
027	Klawock	42	11,784		
038	Pelican	13	3,648		
046	St. Marys	24	6,734		
043	Skagway	11	3,086		
047	Unalaska	32	8,979		
050	Yakutat	28	7,856		
	155 SERRC	406	113,917		
	Total	13,945	3,912,726		

Pre School		
1,043,491: Total Allocation from USDOE		
208,698: Administrative funds for DOE and discretionary projects		
834,793: Total Allocation to LEAs based on formula (child count)		
560.2636 Per pupil allocation		
	Dec-92	Projected
	Child	FY94
	Count	Allocation
005 Anchorage	623	349,044
016 Fairbanks	205	114,854
022 Juneau	104	58,267
024 Kenai	131	73,395
025 Ketchikan	49	27,453
028 Kodiak	40	22,411
030 Lake & Pen	14	7,844
033 Mat Su	140	78,437
000 Nenana	2	1,121
036 North Slope	14	7,844
037 NW Arctic	18	10,085
038 Pelican		0
042 Sitka	35	19,609
Subtotal	1,375	770,362
039 Petersburg	7	3,922
048 Valdez	15	8,404
Subtotal	22	12,326
056 Aleutian East	5	2,801
008 Bristol Bay	0	0
012 Cordova	12	6,723
013 Craig	8	4,482
015 Dillingham	13	7,283
017 Galena	1	560
018 Haines	6	3,362
019 Hoonah	10	5,603
020 Hydaburg	0	0
023 Kake	7	3,922
027 Klawock	4	2,241
035 Nome	1	560
046 St. Marys	2	1,121
043 Skagway	1	560
053 Tanana	3	1,681
047 Unalaska	2	1,121
049 Wrangell	10	5,603
050 Yakutat	8	4,482
155 SEPRC	93	52,105
Total	1,490	834,793

P.L. 89-313 DISTRICT		
PROJECT APPLICATION'S		
FY 94 ESTIMATE	\$2,152,702	State total
	\$629.08	per child
	Count 12/92	FY 94 Allocation Estimate
REAA		
Adak	801	\$50,326
Alaska gateway	781	\$49,068
Aleutian	71	\$4,404
Anchorage OnBase	2451	\$154,124
Annette Island	771	\$48,439
Bering St.	2681	\$168,593
Chatham	621	\$39,003
Chugach	131	\$8,178
Copper River	761	\$47,810
Delta	1521	\$95,620
Fairbanks OnBase	2551	\$160,415
Hess	5581	\$351,025
Iditarod	701	\$44,035
Kashunamuit	301	\$18,872
Kusokuk	931	\$58,504
Lake & Pen	01	\$0
Lower Kuskokwim	4291	\$269,874
Lower Yukon	2541	\$159,786
Pribilof	341	\$21,389
Reibel	01	\$0
Southeast Is	661	\$41,519
Southwest Region	821	\$51,584
Yukon Flats	501	\$31,454
Yukon Koyukuk	1181	\$74,231
Yupit	791	\$49,697
Mt Edgecumbe	51	\$3,145
total	3181	\$2,001,094
LEA		
Aleutian East	21	\$1,258
Denali	321	\$20,130
Fairbanks, LEA	881	\$55,359
Haines	71	\$4,404
Lake & Peninsula	421	\$26,421
Met-Su	481	\$30,196
Nome	211	\$13,211
NW Arctic	01	\$0
Petersburg	01	\$0
Wrangell	11	\$629
total	2411	\$151,608
GRAND TOTAL	3422	\$2,152,702
NOTE: Based on FY 93 Allocation and FY 94 Child Count		

Back-up



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

DRAFT

Ms. Myra Howe
Director
Office of Special and Supplemental
Services
Office of Special Education
Alaska Department of education
801 West 10th Street, Suite 200
Juneau, Alaska 99801-1894

Dear Ms. Howe:

This is in response to your conversation with Chuck Laster during the week of February 14, 1993, at which time you posed questions regarding the Alaska Department of Education's (AKDE) conditional approval of its 1992-1994 State Plan. It is the understanding of the Office of Special Education Programs (OSEP) that AKDE has continued to have difficulty in completing the statutory and regulatory changes that were required as a condition of OSEP's approval of AKDE's 1992 State Plan.

In a letter from former AKDE State Director of the Office and Special and Supplemental Services, Jim Rich, to former OSEP Director, Judy Schrag, on June 1, 1992, Alaska House Bill 419 and Senate Bill 371 were tabled by the legislature. Mr. Rich assured OSEP that the legislation would be resubmitted when the legislature resumed in January of 1993. According to the information you shared with Mr. Laster in February, you are concerned that these Bills may again be tabled.

Although OSEP commends AKDE for its efforts to ensure that the required statutory and regulatory requirements be amended and included in its State Plan, OSEP must advise you that AKDE's upcoming 1994 grant award cannot be released until the required revisions to its 1992 State Plan have been completed. (See OSEP Memo 93-13, page 2, item B., dated March 12, 1993, copy attached.)

Please note the following excerpt from OSEP's letter of September 11, 1992 to Commissioner Gerald Covey:

As soon as possible, but not later than July 1, 1993, 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 documents to the monitoring system.

Page 2 - Ms. Myra Howe

In addition, OSEP advised AKDE that:

Your State's Part B grant award for 1994 (i.e., the grant period beginning July 1, 1993) 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 1994 award;
- (2) Your agency submits amendments to the Part B State Plan to conform to the changes required by P.L. 101-476 and P.L. 102-119 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.

I hope that this letter is responsive to your request for information regarding your 1994 grant award. Thank you for your continuing efforts to ensure the provision of quality educational services to children and youth with disabilities.

Sincerely,

Patricia J. Guard
Acting Director
Office of Special Education
Programs

cc. Honorable Gerald Covey

House Bill 235
Sectional Analysis

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

- Sec. 1. Indicates that AS 14.30.180 - 14.30.350 are intended to allow procedures and actions necessary to comply with the requirements of federal law, Individuals with Disabilities Education Act (IDEA).
- Sec. 2. Deletes the term "guardian" as this word is included in the definition of a parent, AS 14.30.350 (11).
- Sec. 3. Replaces the term "an exceptional child" with the phrase "a child with disabilities". As the definition of a "child with disabilities" does not include a gifted child, this change will mean that a gifted student in a specialized educational program will not need to be re-evaluated every three years.
- Sec. 4. Deletes the term "guardian" as this word is included in the definition of a parent, AS 14.30.350 (11).
- Sec. 5. Deletes the term "guardian" as this word is included in the definition of a parent, AS 14.30.350 (11).
- Sec. 6. Allows a parent to obtain an independent educational evaluation at the expense of the school district if the parent disagrees with an evaluation obtained by the school district. If it is determined that the school district's evaluation is appropriate, the school district may not be required to pay for the independent educational evaluation.
- Sec. 7. Deletes the term "guardian" as this word is included in the definition of a parent, AS 14.30.350 (11).
- Sec. 8. Clarifies two separate hearing processes -- a due process hearing involving a parent and a school district and an appeal hearing to the department.

A school district may appoint an impartial hearing officer to conduct a hearing to determine whether a child should receive special education services if a parent refuses to consent or does not respond promptly to the consent request. Also, if a parent disagrees with the district's placement or program for a child, a the parent may request a hearing.

A parent or a school district may appeal a hearing officer's decision under this section to the Department of Education.

- Sec. 9. Clarifies that appeal hearings shall be based on the record of the impartial hearing officer's decisions and that the hearings shall comply with all requirements necessary for participation in federal grant-in-aid programs. AS.
- Sec. 10. After the department renders its decision, a parent or the school district may appeal the decision to the superior court.
- Sec. 11. Clarifies that consent granted by a parent may be withdrawn.
- Sec. 12. Clarifies the school district's responsibility to inform the parent of the right to appeal a hearing officer's decision.
- Sec. 13. Grants the department the authority to establish, by regulations, impartial procedures for a school district to follow for hearings under AS 14.30.193.
- Sec. 14. Deletes the term "guardian" as this word is included in the definition of a parent, AS 14.30.350 (11).
- Sec. 15. States clearly that the district must obtain consent from the child's parent before a child may be transferred to a school outside the district in which the child resides.
- Sec. 16. Deletes the term "guardian" as this word is included in the definition of a parent, AS 14.30.350 (11).
- Sec. 17. Requires the school district to provide special education and related services even if the child is taught at home, at a private school, or in a hospital. This section reflects current practice.
- Sec. 18. Replaces the phrase "handicaps" with "disabilities" to match federal terminology.
- Sec. 19. Conforms the definition of "consent" to the required federal components. Consent means the parent has been fully informed and voluntarily agrees.
- Sec. 20. Simplifies the definition of "exceptional children".
- Sec. 21. Includes "rehabilitation counseling" as a related service provided under special education as mandated by the federal re-authorization of PL 94-142.
- Sec. 22. Replaces the term "handicapped child" with the defined term "exceptional children".

Sec. 23. Defines "children with disabilities", "educational records", "gifted children", "individualized education program team" and "parent".

Two new disability categories are included - autism and traumatic brain injury. The definition of "educational records" is required by the U.S. Department of Education. Actual current practice is mirrored in the phrase "individualized education program team".

Sec. 24. Establishes June 30, 1993, as the effective date of the legislation.

MEMORANDUM

State of Alaska

Department of Law

TO: Sheila Peterson
Legislative Liaison
Department of Education

DATE: March 22, 1993

FILE NO:

TEL. NO: 465-3603

SUBJECT: HB 235

FROM:

Jan Gregg Levy
Jan Gregg Levy
Assistant Attorney General
Human Services-Juneau

You have asked us whether we read 34 C.F.R. §§ 300.504 - 506 to require the state to provide for a district-initiated hearing procedure when a parent refuses to consent to evaluation of a child for special education. HB 235 would provide such a procedure in section 8. It is our opinion that a procedure must be provided.

The regulations deal with two types of states: those that require consent before a handicapped child is evaluated and those that do not require consent. Alaska law requires that a district "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." AS 14.30.191. Thus, we deal with the portions of the regulations addressing our type of state.

34 C.F.R. § 300.506 states "[a] parent or a public educational agency may initiate a hearing on any of the matters described in § 300.504(a)(1) and (2)." (Emphasis added.) The matters described therein include initiation of evaluation and educational placement. Thus, the law clearly permits the state to initiate a hearing on the issue of whether an evaluation should take place. An administrative law judge (ALJ) came to the same conclusion in an Iowa case involving parental refusal to consent to a district's request to evaluate a student. The ALJ held that "[t]he authority to grant to educational agencies through hearings, over the objection of parents, permission to conduct individual education evaluations is established clearly by federal regulations." 16 EHLR 1166 (1990).

Section 300.504(c) addresses what procedures are to be used for the hearings. Where, as in Alaska, parental consent is required before evaluation, the regulation establishes that "[s]tate procedures govern the public agency in overriding a parent's refusal to consent." (Where parental consent is not required and a state agency wishes to initiate a hearing, the hearing procedures set out in the regulations govern.)

Sheila Peterson
Department of Education

March 22, 1993
Page 2

The problem, of course, is that currently there are no state procedures for a district-initiated hearing, although there is a procedure for a parent-initiated hearing. It is our view that the regulations as a whole clearly contemplate that states provide such a procedure. Without the procedure, § 300.506, permitting a public educational agency to initiate a hearing, would be meaningless.

HB 235, section 8, operates to fill the void that currently exists. It is not the only procedure that would satisfy the regulations, but it is a procedure that is consistent with the procedures for other administrative hearings in the state, and appears to provide safeguards to all parties involved, including a right of appeal.

I am attaching a copy of the July 1, 1991, regulations, as the copy you faxed us was from an earlier edition. The comment to § 300.506 mentions that a number of states have found mediation a successful step to have available prior to a formal hearing. Formal hearings tend to set up adversarial relationships that make it difficult for parties to work with each other in the future. To the extent that such tension can be avoided, it probably serves the educational interests of the child. I bring it to your attention as a possible compromise in the event that the differing views on this section necessitate a reworking of the bill as proposed.

Please feel free to call if we can be of further assistance.

JGL:jal:bap

Attachment

(2) May be presented as evidence at a hearing under this subpart regarding that child.

(d) *Requests for evaluations by hearing officers.* If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

(e) *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.

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

§ 300.504 Prior notice; parent consent.

(a) *Notice.* Written notice that meets the requirements of § 300.505 must be given to the parents of a child with a disability 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 FAPE to the child; or

(2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

(b) *Consent; procedures if a parent refuses consent.* (1) Parental consent must be obtained before—

(i) Conducting a preplacement evaluation; and

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

(2) If State law requires parental consent before a child with a disability is evaluated or initially provided special education and related services, State procedures govern the public agency in overriding a parent's refusal to consent.

(3) If there is no State law requiring consent before a child with a disability is evaluated or initially provided special education and related services, the public agency may use the hearing procedures in §§ 300.506–300.508 to determine if the child may be evaluated or initially provided special education and related services without parental consent. If it does so and 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 §§ 300.510–300.513.

(c) *Additional State consent requirements.* In addition to the parental consent requirements described in paragraph (b) of this section, a State may require parental consent for other

services and activities under this part if it ensures that each public agency in the State establishes and implements effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the child with FAPE.

(d) *Limitation.* A public agency may not require parental consent as a condition of any benefit to the parent or the child except for the service or activity for which consent is required under paragraphs (b) or (c) of this section.

(Authority: 20 U.S.C. 1415(b)(1)(C), (D); 1412(2), (6))

Note 1: Any changes in a child's special education program after the initial placement are not subject to the parental consent requirements in paragraph (b)(1) of this section, but are subject to the prior notice requirement in paragraph (a) of this section and the IEP requirements of §§ 300.340–300.350.

Note 2: Paragraph (b)(2) of this section means that if 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 of §§ 300.506–300.508 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.

Note 3: If a State adopts a consent requirement in addition to those described in paragraph (b) of this section and consent is refused, paragraph (d) of this section requires that the public agency must nevertheless provide the services and activities that are not in dispute. For example, if a State requires parental consent to the provision of all services identified in an IEP and the parent refuses to consent to physical therapy services included in the IEP, the agency is not relieved of its obligation to implement those portions of the IEP to which the parent consents.

If the parent refuses to consent and the public agency determines that the service or activity in dispute is necessary to provide FAPE to the child, paragraph (c) of this section requires that the agency must implement its procedures to override the refusal. This section does not preclude the agency from reconsidering its proposal if it believes that circumstances warrant.

§ 300.505 Content of notice.

(a) The notice under § 300.504 must include—

(1) A full explanation of all of the procedural safeguards available to the

parents under § 300.500, §§ 300.502–300.515, and §§ 300.562–300.569;

(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 that 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 SEA or LEA shall take steps to ensure—

(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 paragraphs (c)(1) and (2) of this section have been met.

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

§ 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 § 300.504(a)(1) and (2).

(b) The hearing must be conducted by the SEA 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 SEA.

(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.

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

Note: 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 in disputes concerning the identification, evaluation, and educational placement of children with disabilities, and

the provision of FAPE to those children. Mediations have been conducted by members of SEAs or LEA personnel who were not previously involved in the particular case. In many cases, mediation leads to resolution of differences between parents and agencies without the development of an adversarial relationship and with minimal emotional stress. However, mediation may not be used to deny or delay a parent's rights under §§ 300.500-300.515.

§ 300.507 Impartial hearing officer.

(a) A hearing may not be conducted—

(1) By a person who is an employee of a public agency that is involved in the education or care of the child; or

(2) By any person having a personal or professional interest that would conflict with his or her objectivity in the hearing.

(b) A person who otherwise qualifies to conduct a hearing under paragraph (a) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.

(c) Each public agency shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

(Authority: 20 U.S.C. 1414(b)(2))

§ 300.508 Hearing rights.

(a) Any party to a hearing has the right to:

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

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses.

(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five days before the hearing.

(4) Obtain a written or electronic verbatim record of the hearing.

(5) Obtain written findings of fact and decisions. The public agency, after deleting any personally identifiable information, shall—

(i) Transmit those findings and decisions to the State advisory panel established under § 300.650; and

(ii) Make those findings and decisions available to the public.

(b) Parents involved in hearings must be given the right to—

(1) Have the child who is the subject of the hearing present; and

(2) Open the hearing to the public.

(Authority: 20 U.S.C. 1415(d))

§ 300.509 Hearing decision; appeal.

A decision made in a hearing conducted under § 300.508 is final,

unless a party to the hearing appeals the decision under § 300.510 or § 300.511.

(Authority: 20 U.S.C. 1415(c))

§ 300.510 Administrative appeal; impartial review.

(a) If the hearing is conducted by a public agency other than the SEA, any party aggrieved by the findings and decision in the hearing may appeal to the SEA.

(b) If there is an appeal, the SEA shall conduct an impartial review of the hearing. The official conducting the review shall:

(1) Examine the entire hearing record.

(2) Ensure that the procedures at the hearing were consistent with the requirements of due process.

(3) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in 300.508 apply.

(4) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official.

(5) Make an independent decision on completion of the review.

(6) Give a copy of written findings and the decision to the parties.

(c) The SEA, after deleting any personally identifiable information, shall—

(1) Transmit the findings and decisions referred to in paragraph (b)(6) of this section to the State advisory panel established under § 300.650; and

(2) Make those findings and decisions available to the public.

(d) The decision made by the reviewing official is final unless a party brings a civil action under § 300.511.

(Authority: 20 U.S.C. 1415(c), (d); H. R. Rep. No. 94-684, at p. 49 (1975))

Note 1: The SEA may conduct its review either directly or through another State agency acting on its behalf. However, the SEA remains responsible for the final decision on review.

Note 2: All parties have the right to continue to be represented by counsel at the State administrative review level, whether or not the reviewing official determines that a further hearing is necessary. If the reviewing official decides to hold a hearing to receive additional evidence, the other rights in § 300.508 relating to hearings also apply.

§ 300.511 Civil action.

Any party aggrieved by the findings and decision made in a hearing who does not have the right to appeal under § 300.510, and any party aggrieved by the decision of a reviewing officer under § 300.510, has the right to bring a civil action under section 615(e)(2) of the Act. (Authority: 20 U.S.C. 1415)

§ 300.512 Timelines and convenience of hearings and reviews.

(a) The public agency shall ensure that not later than 45 days after the receipt of a request for a hearing—

(1) A final decision is reached in the hearing; and

(2) A copy of the decision is mailed to each of the parties.

(b) The SEA shall ensure that not later than 30 days after the receipt of a request for a review—

(1) A final decision is reached in the review; and

(2) A copy of the decision is mailed to each of the parties.

(c) 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.

(d) Each hearing and each review involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.

(Authority: 20 U.S.C. 1415)

§ 300.513 Child's status during proceedings.

(a) During the pendency of any administrative or judicial proceeding regarding a complaint, unless the public agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her present educational placement.

(b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school program until the completion of all the proceedings.

(Authority: 20 U.S.C. 1415(e)(3))

Note: Section 300.513 does not permit a child's placement to be changed during a complaint proceeding, unless the parents and agency agree otherwise. While the placement may not be changed, this does not preclude the agency from using its normal procedures for dealing with children who are endangering themselves or others.

§ 300.514 Surrogate parents.

(a) *General.* Each public agency shall ensure that the rights of a child are protected when—

(1) No parent (as defined in § 300.13) can be identified;

(2) The public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or

(3) The child is a ward of the State under the laws of that State.

(b) *Duty of public agency.* The duty of a public agency under paragraph (a) of this section includes the assignment of an individual to act as a surrogate for

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF EDUCATION

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

OFFICE OF THE COMMISSIONER

March 24, 1993

The Honorable Ron Larson
House Finance Committee Co-Chair
State Capitol, Room 502
Juneau, AK 99801

Dear Representative Larson:

I respectfully request a hearing before the House Finance Committee to consider HB 235, "An Act relating to education programs and services for children with disabilities and other exceptional children."

This legislation amends existing statutes relating to the education programs for exceptional children. As you know, educational programs for children with disabilities receive substantial money from the federal government. Receipt of federal money is contingent upon compliance with the federal requirements. Five statutory changes in this bill are necessary to keep Alaska in compliance with the recent changes to the federal requirements.

The following sections of HB 235 address the changes required by the U.S. Department of Education:

Section 8. Alaska statutes presently allow a school district to initiate a due process hearing only to prove that its evaluation of a child is correct. Federal statutes permit a school district or a parent to initiate a hearing on all hearable topics. This section will allow a school district to initiate a hearing for the same reasons a parent initiates a hearing.

Section 11 and Section 19. The U.S. Department of Education has specified that the definition of consent must contain the required federal components as presented in these sections.

Section 21. The re-authorization of P.L. 94-142, now named Individuals with Disabilities Education Act (IDEA), includes rehabilitation counseling as a related service.

Letter, Representative Larson
March 24, 1993
Page 2

Section 23. Two new categories of children with disabilities were mandated by *IDEA*, autism and traumatic brain injury. The definition of "educational records" listed in this section is also required by the U.S. Department of Education.

At present, Alaska's State Plan for FY 1992-94 under Part B of *IDEA* has conditional approval by the U.S. Department of Education and is contingent upon federal acceptance of changes to Alaska statutes. If Alaska does not meet the terms of the conditional approval, the Federal Office of Special Education has indicated that it is highly probable that Part B and PL 89-313 funds in the amount of \$8,344,517 for FY 94 will be withheld. This would result in the loss of \$1,444,296 in administrative and discretionary funds, and \$6,900,221 in direct grants to school districts.

Loss of the administrative and discretionary funds will eliminate the Department of Education's ability to provide statewide leadership to and supervision of programs for children with disabilities throughout the state. It also will eliminate funds for program development activities, technical assistance to districts and training and support for parents.

Loss of direct grants to the school districts will seriously limit a district's ability to provide a variety of special education and related services such as speech therapy, occupational and physical therapy to children, diagnostic services, staff development and parent training and support.

Passage of HB 235 will address the compliance issue raised by the Federal Office of Special Education and will ensure additional resources to meet the needs of Alaska's children with disabilities. Thank you very much for your support on this matter.

Sincerely,



Jerry Covey
Commissioner

cc: Representative Con Bunde
Representative Ben Grussendorf

Committee Substitute for House Bill 235 (HES)
Sectional Analysis

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

- Sec. 1. Indicates that AS 14.30.180 - 14.30.350 are intended to allow procedures and actions necessary to comply with the requirements of federal law, Individuals with Disabilities Education Act (IDEA).
- Sec. 2. Deletes the term "guardian" as this word is included in the definition of a parent, AS 14.30.350 (11).
- Sec. 3. Replaces the term "an exceptional child" with the phrase "a child with disabilities". As the definition of a "child with disabilities" does not include a gifted child, this change will mean that a gifted student in a specialized educational program will not need to be re-evaluated every three years.
- Sec. 4. Deletes the term "guardian" as this word is included in the definition of a parent, AS 14.30.350 (11).
- Sec. 5. Deletes the term "guardian" as this word is included in the definition of a parent, AS 14.30.350 (11).
- Sec. 6. Allows a parent to obtain an independent educational evaluation at the expense of the school district if the parent disagrees with an evaluation obtained by the school district. If it is determined that the school district's evaluation is appropriate, the school district may not be required to pay for the independent educational evaluation.
- Sec. 7. Deletes the term "guardian" as this word is included in the definition of a parent, AS 14.30.350 (11).
- Sec. 8. Clarifies two separate hearing processes -- a due process hearing involving a parent and a school district and an appeal hearing to the department.

A school district may appoint an impartial hearing officer to conduct a hearing to determine whether a child should receive special education services if a parent refuses to consent or does not respond promptly to the consent request. Also, if a parent disagrees with the district's placement or program for a child, a the parent may request a hearing.

A parent or a school district may appeal a hearing officer's decision under this section to the Department of Education.

- Sec. 9. Clarifies that appeal hearings shall be based on the record of the impartial hearing officer's decisions and that the hearings shall comply with all requirements necessary for participation in federal grant-in-aid programs.
- Sec. 10. After the department renders its decision, a parent or the school district may appeal the decision to the superior court.
- Sec. 11. Clarifies that consent granted by a parent may be withdrawn.
- Sec. 12. Clarifies the school district's responsibility to inform the parent of the right to appeal a hearing officer's decision.
- Sec. 13. Grants the department the authority to establish, by regulations, impartial procedures for a school district to follow for hearings under AS 14.30.193.
- Sec. 14. Deletes the term "guardian" as this word is included in the definition of a parent, AS 14.30.350 (11).
- Sec. 15. States clearly that the district must obtain consent from the child's parent before a child may be transferred to a school outside the district in which the child resides.
- Sec. 16. Deletes the term "guardian" as this word is included in the definition of a parent, AS 14.30.350 (11).
- Sec. 17. Requires the school district to provide special education and related services to an exceptional child even if the child is taught at home, at a private school, or in a hospital. This section reflects current practice.
- Sec. 18. Replaces the phrase "handicaps" with "disabilities" to match federal terminology.
- Sec. 19. Conforms the definition of "consent" to the required federal components. Consent means the parent has been fully informed and voluntarily agrees.
- Sec. 20. Simplifies the definition of "exceptional children".
- Sec. 21. Includes "rehabilitation counseling" as a related service provided under special education as mandated by the federal re-authorization of PL 94-142.
- Sec. 22. Replaces the term "handicapped child" with the defined term "exceptional children".

Sec. 23. Defines "children with disabilities", "educational records", "gifted children", "individualized education program team" and "parent".

Two new disability categories are included - autism and traumatic brain injury. The definition of "educational records" is required by the U.S. Department of Education. Actual current practice is mirrored in the phrase "individualized education program team".

Sec. 24. Establishes June 30, 1993, as the effective date of the legislation.

SITKA SCHOOL DISTRICT

ACCREDITED BY THE NORTHWEST ASSOCIATION OF SECONDARY SCHOOLS & COLLEGES



P.O. BOX 179
SITKA, ALASKA 99835

PH. 907-747-8622
FAX 907-747-5330

19 March 1993

Rep. Con Bunde
House of Representatives
Juneau, Alaska 99835

Dear Representative Bunde:

The Sitka School District urges your support of House Bill No. 235. This bill is intended for an act relating to educational programs and services for children with disabilities and other exceptional children and to persons with a handicap.

The successful passage of this bill is critical for the provision of 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. It will allow procedures and actions necessary to comply with the requirements of federal law (Individuals with Disabilities Education Act).

Thank you for your consideration of this critical matter.

Sincerely,

Orriene First Denslow, Ed.D
Assistant Superintendent

Letters of Support



FAIRBANKS NORTH STAR BOROUGH SCHOOL DISTRICT

P.O. Box 71250 Fairbanks, Alaska 99707-1250 (907) 452-2000

March 19, 1993

Representative Con Bunde
State Legislature
Juneau, Alaska 99811

Dear Representative Bunde:

This letter is to express the Fairbanks North Star Borough School District's support for House Bill No. 235. We feel that passage of this Bill is imperative for Alaska Statutes to comply with the requirements of federal law, including 20 U.S.C. 1400-1485 (Individuals with Disabilities Education Act).

Thank you for your time and consideration of this important matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Cynthia K. Terres".

Dr. Cynthia K. Terres
Special Services Director

CKT:DO:t

xc: Gene Therrieault
Al Vexey
Tom Brice



KENAI PENINSULA BOROUGH SCHOOL DISTRICT

148 North Binkley Street • Soldotna, AK 99669 • Phone 907/262-5846 • Fax 907/262-9645

March 22, 1993

Members
Health, Education and Social Services Committee
House of Representatives
Room 104
Juneau, Alaska 99801

Dear Committee Members:

I am writing in support of HB 235 "An act relating to educational programs and services for children with disabilities and other exceptional children and to persons with a handicap." This bill provides the necessary changes to bring Alaska into compliance with new federal legislation. Failure to pass these changes could result in a loss of 8.1 million dollars in federal funds which support programs for children experiencing disabilities in Alaska's schools.

Thank you for your consideration. Please call if you need further information.

Sincerely,

Mary Rubadeau
Assistant Superintendent
Instruction



KETCHIKAN GATEWAY BOROUGH
SCHOOL DISTRICT

March 22, 1993

Rep. Con Bunde
Co-Chair HESS
State Office Bldg.
Juneau, Ak

Dear Rep. Bunde:

This letter is in support of HB235. The act, as drafted, not only brings Alaska into compliance with existing federal requirements but it provides a significant number of "housekeeping" modifications which are needed.

Sincerely,

A handwritten signature in cursive script that reads "Bud Martin".

BUD MARTIN
Director, Special Services



ANCHORAGE SCHOOL DISTRICT

4800 DeBarr Avenue

P.O. Box 196614

Anchorage, Alaska 99519-6614

AREA CODE [907] 333-3661

March 19, 1993

SCHOOL BOARD

Danyl Jordan
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Sharon Richards
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Ann Babin

Peggy Robleson-Wilson

SUPERINTENDENT (Acting)

Bob Christal

Representative Con Bunde
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Bunde:

The Anchorage School District supports the passage of HB-235, An Act Relating to Educational Programs and Services for children with Disabilities and Other exceptional children and to persons with a Handicap.

The passage of this bill will allow procedures and actions necessary to comply with the requirements of federal law. It also, among other things, cleans up language in the regulations; and, it does away with the necessity of having to re-evaluate gifted students every three years, thus allowing for more efficient use of our psychologists' time.

Failure to pass this bill, on the other hand, will place Title VI and PL 89-313 education funds in jeopardy. This may result in the potential loss of \$8,300,000 in special education funding to the State, of which \$1,192,557 is earmarked for the Anchorage School District.

Thank you for your support of this bill.

Sincerely,

BOB CHRISTAL
SUPERINTENDENT (ACTING)

cc Jerry Covey, Commissioner of Education

SENT BY FAX TELETYPE 7020 1
30740330711W 2

MATANUSKA-SUSITNA BOROUGH SCHOOL
DISTRICT
125 West Evergreen
Palmer, Alaska 99645

MEMORANDUM

TO: The Honorable Con Bunde
Alaska State Legislature
State Capitol, Room 112
Juneau, Alaska 99801

FROM: Michael Melear
Assistant Director of Special Services

SUBJECT: House Bill No. 235

DATE: March 22, 1993

Thank you very much for sponsoring HB 235, "An Act relating to education programs and services for children with disabilities and other exceptional children".

The Matanuska-Susitna Borough School District supports this legislation which amends existing statutes relating to the education programs for exceptional children. Educational programs for children with disabilities receive substantial funding through Federal entitlement programs. Receipt of Federal dollars is contingent upon compliance with the United States Office of Special Education Programs requirements. The five statutory changes in this bill are necessary for the State of Alaska to maintain compliance with recent changes in Federal mandates.

At present, Alaska's State Plan for FY 1992-94 under Part B of IDEA has conditional approval by the U.S. Department of Education and is contingent upon Federal acceptance of changes to Alaska statutes. If Alaska does not meet the terms of the conditional approval, the Federal Office of Special Education will withhold up to \$6,900,221 in direct grants to school districts.

Passage of HB 235 will address the compliance issue raised by the Federal Office of Special Education and will ensure additional resources to meet the needs of Alaska's children with disabilities.

Thank you very much for your support in this matter.