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HOUSE COMMITTEE REPORT

(9)

Date Referred: March 17, 1993

FURTHER REFERRALS:

Finance

Date of Committee Action: 3-22-93

The HEALTH, EDUCATION AND SOCIAL SERVICES 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: CS HB 235 (HESS) the same title
 be replaced with _____ 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 DOE

zero fiscal note(s) _____

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<u>Car Bunde</u>	<input checked="" type="checkbox"/>	<u>Pete Frost</u>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
		<u>[Signature]</u>		<input checked="" type="checkbox"/>	
		<u>[Signature]</u>		<input checked="" type="checkbox"/>	
		<u>[Signature]</u>		<input checked="" type="checkbox"/>	
		<u>Betty Davis</u>		<input checked="" type="checkbox"/>	
		<u>Tom Rice</u>		<input checked="" type="checkbox"/>	
		<u>Harvey Olberg</u>		<input checked="" type="checkbox"/>	

[Signature]

CHAIRMAN'S SIGNATURE



Alaska State Legislature
House of Representatives
COMMITTEE ON HEALTH, EDUCATION
AND SOCIAL SERVICES

DATE: MARCH 22, 1993

PLACE: Capitol Room 106

SUBJECT OF MEETING:

- *HJR 30: QUARANTINE SERVICES AT PORTS OF ENTRY
 - *HB 235: SPECIAL EDUCATION AND RELATED SERVICES
 - *HB 210: HIRING OF SCHOOL CHIEF ADMINISTRATORS
 - *HB 174: CONSOLIDATION OF SCHOOL DISTRICTS
- BILLS HELD OVER FROM PREVIOUS CALENDARS MAY BE HEARD

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
STEVE McPHERES ✓ 1122 1st Ketchikan		326 4th #404 Juneau	99821		586-9702	Y	N	HB 235 HB 210
Myra Howe ✓	Dept of ED	201 W. 11th St. Sitka	99761		465-2971	Y	N	HB 235
ROGER STEPHAN/DIANE GUILLEY	DEPT. OF ED	Rollins 10th St., Suite 200	99801		465-8682	Y	N	210 174
						Y	N	
Hal Wainwright	SE Island SID	P.O. Box 8370, Kotzebue				Y	N	HB 210 174
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	

TCN: 30410

DATE & TIME: 03/22/93 15:00 TO 17:00

STATUS: 6 ADJOURNED

***** ORDER SUMMARY *****

SPONSOR: HHS HOUSE HEALTH, EDUCATION AND SOCIAL SERVI CHAIRS: TOOHEY
 PURPOSE: PUB PUBLIC HEARING BUNDE
 CONTACT: LYNNE SMITH TEL#: (907)465-6825
 CHAIRING SITE: JUNEAU CAPITOL CAP106

SPONSOR REMARKS(PUB): TESTIMONY: Y ALLOWED 5 MINUTE LIMIT
 TCN REQUESTED ON 03/22/93 AND HAS 9 UPDATES

***** AGENDA *****

- 1 HB 235 SPECIAL EDUCATION & RELATED SERVICES
- 2 HB 210 HIRING OF CHIEF SCHOOL ADMINISTRATOR
- 3 HB 174 CONSOLIDATION OF SCHOOL DISTRICTS

***** PARTICIPATING LIDS *****

ANC ANCHORAGE	3111 C STREET	LOCATION STAFF
BAR BARROW	COURTHOUSE #305	LOCATION STAFF
DLG DILLINGHAM	KANGIQUATAQ BLDG	LOCATION STAFF
* JNU JUNEAU	CAPITOL CAP106	LOCATION STAFF
MAT MATSU	165 E PARKS HWY.	LOCATION STAFF
TOK TOK LIO	MP 1314 AK. HWY	LOCATION STAFF
VAL VALDEZ	STATE BLDG. #13	LOCATION STAFF

***** VOLUNTEER & OFFNET SITES *****

DLG NAK NAKNEK	BRISTOL BAY BORO	NORMAN ANDERSON	(907)246-4423
FBX NEN NENANA	LIBRARY	KAREN HARVEY	(907)852-5544
SIT CRA CRAIG	CITY HALL	HELEN GRAY	(907)826-3277
SIT KLA KLAWOCK	CITY HALL	KAREN MOORE	(907)755-2261
ZZZ OF1 OFFNET 1	TANANA	RON DELAY	(907)366-7207
ZZZ OF2 OFFNET 2	FAIRBANKS	REP. NICHOLIA	(907)888-8888

PARTICIPANTS IN: ANCHORAGE

ANC

1	LARRY WIGET	ANCH SCHOOL DIST TSPY. HB 235
	4600 DEBARR RD	ANCHORAGE AK 99519 (907)269-2253
2	BELINDA CONNALLY	ADVOCACY SVCS OBSV. HB 235
	615 E 83ND NO 101	ANCHORAGE AK 99518 (907)344-1002

PARTICIPANTS IN: BARROW

BAR

1	FRANK GARRITY	NSB SCHOOL DIST. TSPY. HB 235
	BOX 69	BARROW AK 99723 (907)852-5311

PARTICIPANTS IN: DILLINGHAM

DLG

1	MR. DON RENFROE	OBSV. ALL ITEMS
	BOX 170	DILLINGHAM AK 99576 (907)842-5223
2	MR. RICH DAHLBERG	OBSV. ALL ITEMS
		AK (907)000-0000

PARTICIPANTS IN: JUNEAU

JNU

1	REP. CON BUNDE	TSPY. HB 235
		AK (907)000-0000
2	REP. CYNTHIA TOOHEY	TSPY. HB 235
		AK (907)000-0000
3	REP. PETE KOTT	TSPY. HB 235
		AK (907)000-0000

LTN1100-R01
03/22/93

LEGISLATIVE TELECONFERENCE NETWORK

PAGE 02
17:32:19

TCN: 30410

DATE & TIME: 03/22/93 15:00 TO 17:00

STATUS: 6 ADJOURNED

PARTICIPANTS IN: JUNEAU

JNU

4 REP.	AL	VEZEY		TSFY. HB 235 AK (907)000-0000
5 REP.	GARY	DAVIS		TSFY. HB 235 AK (907)000-0000
6 REP.	HARLEY	OLBERG		TSFY. HB 235 AK (907)000-0000
7 REP.	BETTE	DAVIS		TSFY. HB 235 AK (907)000-0000
8 REP.	TOM	BRICE		TSFY. HB 235 AK (907)000-0000
9 REP.	IRENE	NICHOLIA		TSFY. HB 235 AK (907)000-0000

PARTICIPANTS IN: MATSU

MAT

1 MR.	DENNIS G	WETHERE II		TSFY. HB 235
	BOX 876862		WASILLA	AK 99687 (907)745-2007

PARTICIPANTS IN: SITKA

SIT

1 MR.	JOHN	HOLST	SUPERINTENDANT	TSFY. HB 174
			CRAIG	AK 99921 (907)826-3274

PARTICIPANTS IN: KLAUOCK

SIT KLA

1 MR.	MORRIS	VERVERS	SUPERINTENDANT	TSFY. HB 174
	BOX 109		KLAUOCK	AK 99925 (907)755-2917
2 MR.	BOB	ANDERSON	SCH. BRD. PRES.	OBSV. HB 174
	BOX 135		KLAUOCK	AK 99925 (907)000-0000

PARTICIPANTS IN: TOK LIO

TOK

1 MS.	CATHERINE	WILSON	AGSD	OBSV. HB 235
	P.O. BOX 226		TOK	AK 99790 (907)883-5151

PARTICIPANTS IN: VALDEZ

VAL

1 MR.	GREG	WILLIAMS	KCHU	OBSV. ALL ITEMS
	P.O. BOX 467		VALDEZ	AK 99686 (907)835-4665

Paul and Merrily Verhagen
P.O. Box 563
Nenana, AK 99760
Phone 907-832-5238

RE: HB 235

19 March 1993

House HESS

My wife and I are professionals with many responsibilities. We consider the most important of our responsibilities to be raising our children and seeing to it that they receive an appropriate education. We do not need, nor do we seek additional responsibilities, and we do not appreciate it when we are forced to throw something else into our already busy schedules because someone in the DOE (whether is was purposely or otherwise) has failed to allow us, as parents, adequate time to be advised of, and respond to, proposed changes in education legislation.

This is the second year in a row that we have been forced to respond, on short notice (in this case 2 hours) to something which parents should not be forced to "react" to but rather should be able to carefully evaluate before expressing their opinions.

We agree that there is need for changes to the current legislation. However, we do not feel that it is appropriate to make those changes hurriedly, and without proper input from parents, under the guise of necessity in order assure continued federal funding.

We do not believe that the proposed changes are necessary for continued federal funding and do believe that if these changes are adopted that the real changes which need to be made will not likely be made as the issue will be considered already dealt with.

For this reason we feel that the current legislation is better left as is while DOE's proposals for change are made widely known to all who have interest. Sufficient time should then be allowed for response and recommendations. These recommendations should then be incorporated into a new proposal for HESS to review and approve.

It is our understanding that at least one separate proposal has been made and is currently on the desk of Senator Miller. We urge you not to adopt DOE's proposal under the pretext that it must be adopted in order to guarantee continued federal funding. Instead please provide the means for those of us who are concerned to be made aware of proposed legislation or changes to legislation with adequate time to properly review and comment before it is acted upon.

Thank you for your consideration.

Sincerely,


Paul and Merrily Verhagen



Alaska State Legislature

House of Representatives

COMMITTEE ON HEALTH, EDUCATION
AND SOCIAL SERVICES

DATE: MARCH 22, 1993

PLACE: Capitol Room 106

SUBJECT OF MEETING:
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 *HB 174: CONSOLIDATION OF SCHOOL DISTRICTS
 BILLS HELD OVER FROM PREVIOUS CALENDARS MAY BE HEARD

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
Vol Woodson	SE Island SA	PO Box 8340, Anchorage				<input checked="" type="checkbox"/> Y	<input type="checkbox"/> N	HB 210 174
						<input type="checkbox"/> Y	<input type="checkbox"/> N	
						<input type="checkbox"/> Y	<input type="checkbox"/> N	
						<input type="checkbox"/> Y	<input type="checkbox"/> N	
						<input type="checkbox"/> Y	<input type="checkbox"/> N	
						<input type="checkbox"/> Y	<input type="checkbox"/> N	
						<input type="checkbox"/> Y	<input type="checkbox"/> N	
						<input type="checkbox"/> Y	<input type="checkbox"/> N	
						<input type="checkbox"/> Y	<input type="checkbox"/> N	
						<input type="checkbox"/> Y	<input type="checkbox"/> N	



Alaska State Legislature

House of Representatives

COMMITTEE ON HEALTH, EDUCATION
AND SOCIAL SERVICES

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NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
Robert M. Helges ✓		326 4 th #404 Juneau	99821		586 9702	Y	N	HB 235 HB 210
Myra Howe ✓	Dept of Ed	801 W. 10 th St Ste 200	99801		465-2971	Y	N	H.B. 235
ROGER STEPHAN/JUANE GUILLEY	DEPT. OF ED	801 W. 10 th ST, SUITE 200	99801		465-8682	Y	N	210 174
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	



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

4600 DeBarr Avenue

P.O. Box 198614

Anchorage, Alaska 99519-8614

AREA CODE [907] 333-9661

March 19, 1993

SCHOOL BOARD

Daryl Jordan
President

Orson Richards
Vice President

Debbie Conlander
Clerk

Theresa Hangle Obermeyer
Treasurer

Jim Antrim

Ann Bellow

Peggy Robinson-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 OR TELETYPE 020 1 0014000011W 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.

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF EDUCATION

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

EDUCATION PROGRAM SUPPORT

March 22, 1993

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

Dear Representative Bunde:

This letter is in response to your request for information regarding the points raised by Mr. Marc Grober in his letter dated March 19 on HB 235, "An Act relating to educational programs and services for children with disabilities and other exceptional children and to persons with a handicap."

In response to Mr. Grober's comments, I submit the following:

Section 1: This amendment was advised by the Department of Law in order for the State to be able to comply with the provisions of IDEA. The intent of the law does not change.

Section 2: No change has been proposed to existing law except deleting the word "guardian" which is included in the definition of parent. The Department of Law advised us that including "guardian" in the text was unnecessary.

Section 3: It is the view of the department that requiring three-year re-evaluations of gifted students is unnecessary. The purpose of this evaluation is to re-establish eligibility for services as a gifted student. In most cases gifted students continue to qualify for services once identified. Many hours of psychological assessment time devoted to gifted student three-year re-evaluations could be more productively used for working with children with disabilities. The requirement for annual evaluation and review of the IEP remains in place. There is no federal requirement for three-year re-evaluations for gifted students.

Section 4: Same as 2.

Section 5: Same as 2.

Section 6: A parent continues to be able to obtain an independent evaluation. The school district always has had the right to initiate a hearing to show that its evaluation is appropriate. The hearing officer determines who pays for the independent evaluation by determining whether the school district's evaluation is appropriate. No procedural change is proposed.

Section 8: The U.S. Department of Education requested that language be added to Alaska statute to allow districts to take parents to hearing on the same issues for which a parent may initiate a hearing.

Section 13: The due process procedures in Alaska regulation have been approved by the U.S. Department of Education.

Section 14: Same as 2.

Section 15: This section was re-worded by the Department of Law. The intent does not change.

Section 16: Same as 2.

Section 17: If the Committee would like to substitute "exceptional child" for "child with disabilities," the department has no problem with it.

Section 18: Gifted students should not have a need to be transported separately. A student who is both gifted and experiencing a disability will receive appropriate transportation based upon the disability.

Section 19: This wording was provided by the U.S. Department of Education.

Section 20: The Department of Law advised that regulation rather than statute should contain definitions of each disability.

Section 21: This language simply maintains the original form. If the Committee would like to substitute "exceptional children" for "children with disabilities or gifted children," the department has no problem with it.

Section 22: During review of this section by the Department of Law, it was discovered that gifted children had been omitted in the original wording. This amendment includes them.

Section 23:

(7) There is no requirement or intent to track IDEA language. This section simply adds the two new disability categories of autism and traumatic brain injury.

(8) NEA had no part in writing this section. Personnel records always have been confidential.

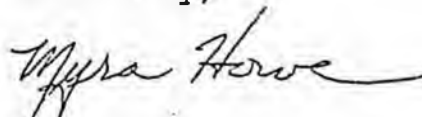
(9) This is the original language. Specifics are in regulation.

(10) Annual evaluations have not been eliminated.

(11) It is not the intent of the department to side-step but rather to eliminate redundancy on the advice of the Department of Law.

If I can be of further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Myra Howe". The signature is written in dark ink and is positioned above the typed name and title.

Myra Howe
Director
Special Education

MEMORANDUM

State of Alaska

Department of Law

TO: Sheila Peterson
Legislative Liaison
Department of Education

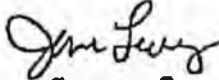
DATE: March 22, 1993

FILE NO:

TEL. NO: 465-3603

SUBJECT: HB 235

FROM:


Jan Gregg Levy
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 § 300.850; 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 § 300.850; 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. 94-664, 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 Timeliness 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



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

MAR-12-1993 FRI 10:22 R. DANLON 2010520710 7:01

Law Offices of Marc Grober

Box 467

Nenana, Alaska 99760

(907) 832-5227

March 19, 1993

House HESS (for committee distribution)

Via Fax to 465-2137

Dear Representatives:

It has come to my attention that DOE is trying to sell the legislature a pig in a poke once again. I am referring to HB 235, which is nothing more than a minimal rewrite of HB 419 of the last legislature and SB 278 of the legislature before that. This bill is not required by federal law and federal funding will not be terminated if this bill is not passed!

In your committee library should be an extensive set of materials explaining the details of why this bill is a fraud upon the Alaska public. Though last session's Senate HESS Chair Sturgeluski is no longer in the Senate, Rep. Carney was involved in hearings on the bill and I am sure his staff would be able to provide insight into why neither the Republican chaired Senate HESS nor the Democrat chaired House HESS committees allowed this bill out of committee.

In as much as there have been some suggestions that the bill has been rewritten to correct prior deficiencies I will attempt here to make some brief comment on the short notice allowed me. I would point out, by way of introduction, that though the bill is designed to allegedly bring Alaska within compliance with federal laws, part of those laws requires the Governor's Council to "provide information and guidance for the development of appropriate programs of special education and related services for exceptional children." AS 14.30.231. Yet DOE did not bother to present HB 235 to the Governor's Council Education Committee two weeks ago, nor did anyone inform the Governor's Council offices of HB 235 as of 4:00p.m. March 19th, just a few hours before this committee is

Letter from Marc Grober

scheduled to hear the Bill! In fact, only two sites were scheduled for the hearing (Anchorage and Juneau.)

It is incumbent on this legislature to afford the Governor's Council an opportunity to provide the information and guidance it is obligated to provide, and hurried hearings that cannot but make already paranoid parents suspicious. The Council will be hearing from DOE and other concerned individuals on DOE's proposals as well as on proposals drafted by parent advocates reflecting a thorough revision of our existing special education laws. I believe that this committee should allow the Council to do its job, and that this committee can only benefit from the process.

AS to the Bill itself:

Section 1. This is totally unnecessary and indeed inappropriate. The Alaska public demands a statute that mandates nothing less than the protections afforded by federal law. This language will be used by DOE to demonstrate that the legislature desires only minimal compliance as opposed to effective implementation of appropriate programs as exist in numerous other states.

Section 2. Alaska Statutes and Rules have adequate existing laws for the purpose of establishing responsibility for a child, and the United State Education Department (USED) must recognize and accept these procedures. Instead, DOE has been actively and repeatedly trying to create a lesser standard for interference with parental rights and this section reflects that interference. AS14.30.191(a) does need to be amended to protect children and their parents, but the DOE proposal totally neglects the real problem.

Section 3. This section attempts to discriminate between gifted and other exceptional children. The purpose of the three year evaluation is not just a way to exit or verify continuing eligibility but a mandate that a district continue to evaluate the student (the three year provision is a floor, not a ceiling) to make sure that the student's program meets the student's needs. In as much as the individualized educational program (IEP) must address the needs of the child and the needs of the child are identified in the evaluation, it is critical to require regular re-evaluation so as to assure that the

IEP conforms to the child's changing needs. Proponents of this amendment unfortunately do not understand that giftedness is not synonymous with high achievement and the purpose of evaluation is not to simply provide a one-time ticket to enrichment.

Giftedness, as an exceptionality, is a condition in which a district's existing curriculum does not meet the child's daily educational needs. Such children are as at much risk, if not more, than the LD or other "disabled" child. The fact that districts, with DOE's connivance, have failed to understand or implement appropriate gifted programs is no basis for the Governor's current attack on this exceptionality or the Bill's attack on the condition as not susceptible to change.

Section 4. See Section 2 above.

Section 5. See Section 2 above.

Section 6. This section is tied to Section 8 of the bill which is a complete disenfranchisement of parents, is contrary to the provisions of the state's own statutes and is subject to tremendous abuse. Specifically, many districts have advised parents that they may not obtain an independent evaluation unless the district schedules a hearing first (which is untrue and contrary to law) and the Bill seeks to legitimize this practice. This section will in fact preclude such hearings, as parents are not likely to seek such an evaluation if they are told before hand that the district will not pay for it. The present law is that parents ARE entitled to obtain an independent evaluation no matter what anyone says. Further, the district must pay for that evaluation unless a hearing officer finds that in looking at the two evaluations, the district's is more appropriate. If you do not believe in the potential abuse, let me share with you that even under the existing law (and you must remember that only districts are entitled to appoint hearing officers and parents have no enforceable challenge) one hearing officer suggested that an independent evaluation obtained by a parent was not "independent" because the parent chose the evaluator, who was therefor not "independent! This kind of blatant misapplication of the law is already the practice, imagine what would happen if one were to give districts the green light to tell parents that they

cannot have an independent evaluation unless approved by a hearing officer hired by the district!

Section 7. See Section 2.

Section 8. See Section 6. DOE continues to state that this is required by USED. In point of fact, Alaska's CINA statutes more than adequately meet the federal statutory requirements, but according to Barbara Route of the USED (the USED staffing this state's plan), Mr. Jim Rich (head of DOE special programs until he left the Department shortly after being lectured by the Chair of Senate HESS about not being prepared for committee hearings) and his staff (present special programs director Myra Howe and alleged drafter of HB419, Richard Smiley) never informed USED that there were statutes that provided the relief mandated by federal law. It is clear that DOE has continually refused to identify this possible solution or even respond to this the issue as raised in previous years because its purpose is to obtain power to override parents' right of control over their children without meeting what the legislature has already found to be appropriate protections afforded the family. And the "due process" argument is frivolous in as much as the hearing officers are retained by the districts to do the districts business, are trained by DOE, who is conspirator in this matter and recourse to the courts would cost parents thousands of dollars, which only the districts can easily spend (one district spent in excess of \$120,000.00 refusing to provide a special education aide for two exceptional children.)

Section 9. Amendment of the existing law is required only because our present law fails to mandate impartial review! However, the proposed amendment fails to safeguard such rights and is simply a pro forma tug of the forelock, not any effort to guarantee the protections mandated under the IDEA.

Section 10. This section fails to address the appropriate period for filing suit in federal court and fails to address the question of enforcement versus appeal.

Section 11. This section is intentionally misleading unless it in fact means that a parent can unilaterally terminate program and

placement. In fact, DOE has continued to argue that AS 14.30.191(a) means that a district must obtain consent only before initial evaluation or INITIAL placement (though regulations appear to suggest to the contrary.) Does the parent have the right to say that no change in placement will take place without the parent's further consent? These provisions are poorly worded and have already given rise to much litigation. If there is to be an amendment of Title 14, it should address the question of what are the parents' rights in a practical sense, not give rise to beliefs that are totally unenforceable..

Section 12. This is better but still inadequate.

Section 13. DOE has evidenced a total inability to provide such procedures (this has been within the Department's scope of authority at all times.) The districts should be regulated by statute, or referred to the appropriate portions of the Administrative Procedure Act for hearing procedures.

Section 14. See section 2. We must also point out that appropriate regulations of states that take special education seriously are very extensive, as compared with the shambles the executive branch offers in this state. We have drafted proposed legislation proactively addressing the special education needs of the state which is awaiting our Senator's (Sen. Miller) review.

Section 15. One can only suggest that the restating of this proposition is clearly not designed to increase a parent's rights to have his child educated in his community school. An extensive discussion on the districts' practices is covered in the comments offered in response to HB419 of the last legislature.

Section 16. See section 2. We must also note that this section has been used by a district to authorize the unilateral writing and implementation of an IEP outside the child study team meeting when parents would not approve of the school's plan. This is an abomination.

Section 17. This section appears to disenfranchise gifted students. Notice the use of the term "child with disabilities" instead of the term exceptional.

Section 18. The proposed amendment fails to address the nature of giftedness, affording services not when the nature of the exceptionality requires it but only when the nature of the DISABILITY requires it. Also note that this is left up to the district instead of being required to be included in the IEP, where we would argue it must appear.

Section 19. Better but fails to establish standards. This provision will be as abused as the existing law, which by the way was one of the areas of this state's most serious violations in the last federal audit.

Section 20. There is nothing wrong with the existing provision. This language simply confuses what could otherwise be a very simple set of definitions. The existing provision sets out what children qualify as exceptional. This bill would move some, but not all definitions to their own paragraphs.

Section 21. All the bill needs to do is substitute exceptional for both handicapped and gifted children. The fact that DOE continues to refuse to implement such a simple solution and has repeatedly attempted to gut gifted services leads one to be suspicious of what is going on here as well.

Section 22. Hooray! This is acceptable as an appropriate correction long overdue. It is curious, however, that this is the only place where this appropriate use of our existing definition of exceptional has been implemented.

Section 23. Paragraph (7) does not track the language of the IDEA. Para. (8) fails to afford parents access to the records of personnel supposed to be providing services to their children. This is just plain foolishness sponsored by the NEA. Many so called special educators have no real background or training in the areas in which they are teaching and Alaska's special education certification program includes no classes in special education law. Indeed, when

a UAA student criticized the program for being inadequate, the Dean suggested the student go somewhere else instead of attempting to correct these deficiencies. Para. (9) fails to address the real nature of giftedness and puts the fox in the hen house. Para. (10) It would seem that this provision would virtually mandate regular assessments (as the team must translate assessment into a practical plan...) Yet DOE is proposing to do away with the regular assessments of gifted students!!!! Para. (11) Again, totally sidesteps the existing process for governmental intrusion into a parent's authority. This shadow process deprives parents of their rights without adequate due process. By the way, all participants in CINA actions are guaranteed counsel; not so for so called "due process" hearings.

We have prepared proposed legislation, as noted above, which has been widely circulated for peer review and comment. The present DOE offering has not even been presented to the Governor's Council, has been endorsed by no one other than DOE. It is based upon misrepresentation and misunderstanding, it is "patchwork" alteration of statutes that require major revision, and is neither going to assure funding or result in loss funding if not adopted. Alaska has not been in compliance with federal law since at least 1987, and has not lost a dime of funding. Further, as Mr. Rich admitted last year to the Senate IIESS committee, it is unlikely that USED would take any action while the legislature is addressing the questions and the proposal offered by DOE is not the ONLY WAY to comply with federal law. **YOU DO NOT HAVE TO ADOPT THIS STATUTE OR FACE A LOSS OF FUNDING!**

This is in truth the Bill that wouldn't die, foisted upon the legislature year after year by this government, not by the people this government serves. If the committee is interested in what legislation that would serve the exceptional child would look like one need look no further than the legislation we offered to the Governor's Council. I think its high time that the people who are allegedly being served had as much access to the process as the people who have never been documented to be in compliance with the statutes and regulations they are apparently so concerned with, DOE and the state's school districts.

I apologize for the strident tenor of my comments, but as a parent of a gifted child and a developmentally delayed child neither of which have ever received appropriate services in this state, as an attorney handling special education matters in this state and as a University Instructor and substitute teacher, I am very tired of having to spend personal resources to yearly fight for what is already mandated for exceptional children, and fight this government to boot.

Thank you for your consideration.

Marc Grober

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.
- 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.

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 19, 1993

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

Dear Representative Bunde:

Thank you very much for sponsoring 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 Bunde
March 19, 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 Ben Grussendorf

SITKA SCHOOL DISTRICT

ACCREDITED BY THE NORTHWEST ASSOCIATION OF SECONDARY SCHOOLS & COLLEGES



P.O. BOX 179
SITKA, ALASKA 99835

PH. 907-747-3622
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,

Dr. Cynthia K. Terres
Special Services Director

CKT:DO:t

xc: Gene Therrieault
Al Vexey
Tom Brice

FISCAL NOTE

STATE OF ALASKA

BILL NO. HB 235

1993 LEGISLATIVE SESSION

Revision Date: _____

Department Affected: Education

Title: An Act relating to educational programs and services for children with disabilities and other exceptional children.

BRU: Educational Program Support

Sponsor: Representative Con Bunde

Component: Special and Supplemental Services

Requestor: Representative Con Bunde

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						
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REVENUE FUND SOURCE:						
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FUNDING:

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0	0	0	0	0	0

POSITIONS:

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

Phone: 465-2803

Division: Commissioner's Office

Date: 3/19/93

Approved by Commissioner: *Mike Maher*

Jerry Covey

Agency: Education

Date: 3-19-93

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⊙ Fiscal Note - Education

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	Projected
	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 Kake	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 SERRC	93	52,105
Total	1,490	834,793

P.L. 89-313 DISTRICT		
PROJECT APPLICATIONS		
FY 94 ESTIMATE	\$2,152,702	State total
	\$629.08	per child
		FY 94 Allocation
	Count 12/92	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
Benng 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
Kuspuk	931	\$58,504
Lake & Pen	01	\$0
Lower Kuskokwim	4291	\$269,874
Lower Yukon	2541	\$159,786
Pnbiot	341	\$21,389
Railbet	01	\$0
Southeast Is	681	\$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	31811	\$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
Mat-Su	481	\$30,198
Nome	211	\$13,211
NW Arctic	01	\$0
Petersburg	01	\$0
Wrangell	11	\$829
total	2411	\$151,608
GRAND TOTAL	34221	\$2,152,702
NOTE: Based on FY 93 Allocation and FY 94 Child Count		