

HB

235

MEMORANDUM

State of Alaska

Department of Law

TO: Sheila Peterson
Legislative Liaison
Department of Education

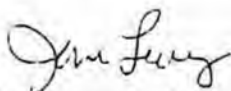
DATE March 22, 1993

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, these regulations encourage the SEA 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. 94-884, 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

MEMORANDUM

State of Alaska

Department of Law

TO: Sheila Peterson
Legislative Liaison
Department of Education

DATE: March 23, 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 whether the children in need of aid statute, AS 47.10.010, provides a procedure for a district initiated hearing as authorized by 34 C.F.R. § 300.506(a). As I understand the question, a member of the public has advanced the view that the existence of the statute obviates the need for section 8 of HB 235. In our opinion, AS 47.10.010 does not provide the procedure required by the federal regulations.

34 C.F.R. § 300.506(a) provides that "[a] parent or a public educational agency may initiate a hearing on any of the matters described in § 300.504(a)(1) and (2)." Those sections include proposals and refusals to initiate an evaluation of a child. The law thus grants the right to a hearing. Section 8 of HB 235 sets out a procedure for such a hearing.

AS 47.10.010 is simply not a functional substitute for a hearing. It would be extremely unlikely that failure to consent to an evaluation would ever be enough to invoke the statute. Thus, the statute does not permit a district to exercise its right to a hearing as provided by federal regulation. The statute provides for a state court proceeding relating to minors who are found to be in need of aid. Examples of situations that qualify children being in need of the state's aid are those where the children have violated criminal laws, are absent from the home or physically abandoned, have suffered substantial physical harm, and have or are in danger of being sexually abused. AS 47.10.010(a)(2)(B) is the only paragraph that could even arguably be broad enough to bring failure to consent to a special education evaluation within its language. It applies where the child is in need of aid as a result of

the child being in need of medical treatment to cure, alleviate, or prevent substantial physical harm, or in need of treatment for mental harm as evidenced by failure to thrive, severe anxiety, depression, withdrawal, or untoward aggressive behavior or hostility toward others, and the

Sheila Peterson
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child's parent, guardian, or custodian has knowingly failed to provide the treatment[.]

Id. Even this language, however, requires a finding that the parents are withholding certain treatment. Failure to consent to an evaluation is not failure to provide treatment. Thus, this statute cannot be invoked to remedy failure to consent to a special education evaluation.

Even if the statute could be construed to cover such a case, it still would not operate to provide the hearing authorized by federal regulation. Federal regulation states that the "hearing must be conducted by the State educational agency or the public agency directly responsible for the education of the child." 34 C.F.R. § 300.506(b). Any hearing under AS 47.10.010 will be in state court, and not conducted by a public educational agency.

Finally, the usual remedy under the children in need of aid statute is additional evidence that this statute should not be invoked when parents refuse to consent to evaluation: the most common remedy is assumption of custody by the court -- removal of the child from the home. It is highly unlikely that such a result would be desired by any of the parties, and underscores why this state court proceeding is not a suitable vehicle for providing the hearing authorized by 34 C.F.R. § 300.506(a).

Thus, we are unpersuaded that the children in need of aid statute provides a hearing procedure that satisfies 34 C.F.R. § 300.506.

JGL/bap

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To	Sheila Peterson	From	Jan Levy
Co.		Dist.	
Dept.	DOE	Phone #	
Fax #	4156	Fax #	

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

RE: HB 235

19 March 1993

House HESS
Fax 465-2137

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.

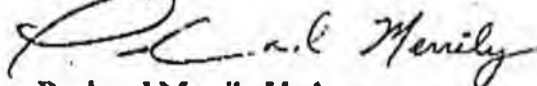
We do not believe that the proposed changes are necessary for continued federal funding and do believe that if these changes are adopted that the real changes which need to be made will not likely be made as the issue will be considered already dealt with.

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



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

March 12, 1993

Contact Person:
Thomas B. Irvin
Telephone: (202) 205-8825

OSEP 93-13

OSEP MEMORANDUM

TO : State Directors of Special Education

FROM : Patricia J. Guard,
Acting Director *Patricia J. Guard*
Office of Special Education Programs

SUBJECT: Reminder About Grant Requirements Under IDEA-Part B and
the Preschool Grants Program for FY 1994 (i.e., the
Grant Period Beginning July 1, 1993)

This memorandum is a brief follow-up to OSEP Memo 93-3, dated November 9, 1992 -- which set out the requirements your State must meet to receive grant awards for Fiscal Year (FY) 1994 under Part B of the Individuals with Disabilities Education Act (Act; Part B), and the Preschool Grants Program under section 619 of the Act. The purposes of the memorandum are (1) to remind you about the requirements in OSEP 93-3, and (2) to ask that you inform us, as appropriate, of the dates(s) on which you will be submitting the various State Plan documents to the Office of Special Education Programs (OSEP).

A. New State Plan Requirements -- APPLICABLE TO ALL STATES

In order for your State to receive a grant under Part B for FY 1994, the State must (1) submit information demonstrating that it is meeting the new State Plan requirements that were added by the September 29, 1992, final Part B regulations, and (2) meet any other applicable provisions -- including the public participation requirements -- that apply. (See OSEP Memo 93-3 for specific information about the grant requirements for FY 1994.)

In meeting the new State Plan requirements, please follow the appropriate procedures, below, that apply to your State.

1. States Submitting New 3-year State Plans (i.e., Group I States).¹ If your State is submitting an FY 1994-96 State Plan, please address the new requirements added by the 9-29-92 final Part B regulations -- by incorporating the new material into each specific State Plan section that is covered by those requirements.
2. All Other States (i.e., those whose current Part B Plans remain in effect throughout FY 1994). If your State is in this category, please provide OSEP with ONLY the changes in your State Plan that have been made as a result of the 9-29-92 final Part B regulations.² Please do not re-submit the entire State Plan.

These changes may be typed on a single document -- with specific headings to identify the precise section of the plan that is being amended. Alternatively, each change may be included on a separate page(s), with specific identifying information to correspond to the specific section of the Plan that is being amended;

B. States with Conditionally Approved Plans

In addition to meeting the new requirements added by the September 29, 1992, final Part B regulations, any State that currently has a State Plan that was conditionally approved last year must also submit information demonstrating that it has met the conditions in its FY 1993 conditional approval letter. (As you know, a State's Part B grant award for FY 1994 cannot be issued until documentation is received that those conditions are met.)

C. Certification Forms and other Requirements

Please be sure to submit a signed copy of ED Form 80-0013 ("Certifications Regarding Lobbying; Debarment, Suspension and other Responsibility Matters; and Drug-Free Workplace

¹ Group I States include AR, CA, DE, GA, HI, IN, KS, KY, LA, MD, MA, MN, NV, OH, OK, RI, SC, TX, WV, and CNMI, Guam, and Palau.

² If you have made any other changes in your State Plan since it was last approved, those changes also must be submitted to OSEP, and would be subject to public comment.

Requirements") with your State Plan documents. Also, if you have not already done so, please submit your State's Annual Data Report and Annual Performance Report.

D. Preschool Grants Application with Your State Plan Documents

If your State is submitting an FY 1994-96 State Plan, please submit your State's 3-year Preschool Grants Application with the State Plan documents identified above.

E. Public Participation Requirements

Please note that all States are required to meet the public participation requirements under Part B and General Education Provisions Act (GEPA) -- for any changes in State Plans required by the new Part B regulations, and for relevant changes that the State makes on its own. (See OSEP Memo 93-3, pages 2-3). Group I States that are submitting Preschool Grants Applications also must meet applicable public participation requirements.

F. Timelines

Your agency may submit the materials discussed above as soon as possible after the documents are final and the public participation requirements are met. However, in order to facilitate timely review, these materials must be received no later than Monday, May 3, 1993. If you will not be able to meet the above timeline, please let us know by Friday, April 2, 1993, the date that you will be submitting the State Plan materials from your State.

We look forward to receiving the information that is requested in this memorandum. In the meantime, if you have comments or questions about the memorandum, or if we can be helpful in meeting the various State Plan requirements in your State, please call your OSEP/DAS State contact.



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
301 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

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	781	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	269	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	3,088
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	
	<i>Dec-92</i>	<i>Projected</i>
	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	80	\$50,326
Alaska gateway	78	\$49,068
Aleutian	7	\$4,404
Anchorage OnBase	245	\$154,124
Annette Island	77	\$48,439
Bering St.	268	\$168,593
Chatham	62	\$39,003
Chugach	13	\$8,178
Copper River	76	\$47,810
Delta	152	\$95,620
Fairbanks OnBase	255	\$160,415
Heas	558	\$351,025
Iditarod	70	\$44,035
Kashunamut	30	\$18,872
Kuspuk	93	\$58,504
Lake & Pen	0	\$0
Lower Kuskokwim	429	\$269,874
Lower Yukon	254	\$159,788
Pribilof	34	\$21,389
Raiibelt	0	\$0
Southeast Is	65	\$41,519
Southwest Region	82	\$51,584
Yukon Flats	50	\$31,454
Yukon Koyukuk	119	\$74,231
Yupik	79	\$49,697
Mt Edgcombe	5	\$3,145
total	3181	\$2,001,094
LEA		
Aleutian East	2	\$1,258
Denali	32	\$20,130
Fairbanks, LEA	88	\$55,359
Haines	7	\$4,404
Lake & Peninsula	42	\$26,421
Mat-Su	48	\$30,196
Nome	21	\$13,211
NW Arctic	0	\$0
Petersburg	0	\$0
Wrangell	1	\$629
total	241	\$151,608
GRAND TOTAL	3422	\$2,152,702
NOTE: Based on FY 93 Allocation and FY 94 Child Count		



WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF EDUCATION

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

OFFICE OF THE COMMISSIONER

April 6, 1993

The Honorable Loren Leman
Senate State Affairs Committee, Chair
State Capitol, Room 113
Juneau, AK 99801

Dear Senator Leman:

I respectfully request a hearing before the Senate State Affairs 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.



DEPARTMENT POSITION

Letter, Senator Leman
April 6, 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

Committee Substitute for House Bill 235 (FIN)
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. Adds a new subsection to clarify that each school district shall develop an individualized education program for every exceptional child.
- Sec. 16. 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. 17. Deletes the term "guardian" as this word is included in the definition of a parent, AS 14.30.350 (11).
- Sec. 18. 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. 19. Replaces the phrase "handicaps" with "disabilities" to match federal terminology.
- Sec. 20. Conforms the definition of "consent" to the required federal components. Consent means the parent has been fully informed and voluntarily agrees.
- Sec. 21. Simplifies the definition of "exceptional children".
- Sec. 22. Includes "rehabilitation counseling" as a related service provided under special education as mandated by the federal re-authorization of PL 94-142.
- Sec. 23. Replaces the term "handicapped child" with the defined term "exceptional children".

Sec. 24. 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. 25. Establishes June 30, 1993, as the effective date of the legislation.

HB 235, "EDUCATIONAL PROGRAMS AND SERVICES FOR CHILDREN WITH DISABILITIES AND OTHER EXCEPTIONAL CHILDREN AND PERSONS WITH A HANDICAP"

Testimony:

1. Representative Con Bunde, Prime Sponsor
2. Patricia Swenson, Aide to Rep. Con Bunde
3. Myra Howe, DOE
4. Shiela Peterson, DOE
5. Dennis Wetherall (in Anchorage via teleconference)
6. Marc Grober (Family/Parents' Rights Attorney on an off net line in Nenana. He is very knowledgeable) Bridge #800-478-7612
- X Tom Slagle, Department of Law
18. Jan Levy, Department of Law

Home #
(832-5227)

9. Rhonda Weiss, USDE, (Washington D.C.)
(Attorney)
10. C.J. Jenzano, USDE (Washington D.C.)
(Attorney)



Alaska State Legislature

Please enter into the record my testimony to the _____

Senate State Affairs Comm.

committee name

committee on HB 235

dated April 14, 1993

bill/subject

I have a few concerns about this bill. Moving Gifted Ed. out from under Special Education to Vocational Ed. would certainly reduce the paperwork for the gifted programs. However, we would then be the only state in the country with such an arrangement, and I am concerned that this would make administration, grants, and other funding more difficult for gifted ed. in Alaska, as we would be outside normal federal and state channels. Gifted education in Alaska would then be vulnerable to being cut out or eliminated altogether in some future action. Voc. Ed. is certainly not a "natural" placement for gifted programs.

Gifted education is definitely needed as part of our educational system. Past attempts to mainstream gifted students back into regular education, along with other special ed. students, have met with frustration on the part of regular ed. teachers, who are already dealing with overcrowded classrooms and do not have the specialized training to meet the needs of students at the extremes, be they gifted or with some kind of handicapping condition.

Research has shown that gifted students are at the highest risk of any student group for dropping out of school, are at the highest risk for suicidal behavior, and that they have no special ability to look after themselves or take care of themselves just because they are gifted. Gifted students come from all walks of life, and can include those from both rich and poor families, and from all sorts of social and ethnic groupings.

Assisting gifted students with their educational needs has the distinct advantage of giving support to a group that has the potential to make some real contributions to our future society, so it can be seen as an investment with a payback. Most school districts in this state and in the country already support gifted programs without realizing it. We have sports and athletic programs already for the physically

Signed: _____

Testifier
Self

Dr. Roger Poppe gifted, and band & chorus for the musically gifted.

Representing (Optional)

Box 874601

Address

Wasilla, Alaska 99687

Phone No.

Dennis Wetherell
P.O. Box 876882
Wasilla, AK 99687
April 14, 1993
285-6501 wk / 745-2007 hm

Sen. Loren Leman
State Capitol
Juneau, AK 99801-1182

Dear Sen. Leman:

I have had an opportunity to review CSHB235(STA) and would like to offer my comments on the amendments made. I have expressed reservations in the past that sections 6 and 8 of the original bill appear to reduce parents rights with respect to their child's education so I appreciate your efforts to reword these provisions to strengthen parents rights. However, these sections do make the findings of the hearing officer non-binding and, as we heard today from the US Department of Education, would place Alaska law in conflict with federal law. If passed as amended, Alaska will lose federal funds.

I do not wish to suggest that we return to the original bill because I think there are other ways of meeting federal requirements and retaining parents rights. Specifically, I would endorse Marc Grober's bill as a way of doing this. I don't know whether the committee caught it or not, but the first statement made by the federal representative, before she was asked to state her name, was that she concurred with Mr. Grober's statements.

CSHB235(STA) does nothing to address my main complaint with the proposed legislation which is that there is no reason to include changes to gifted law in a bill that is designed to comply with federal disabilities law. The only reason DOE is doing this is because they did not want to take the time to properly rewrite HB419 and because DOE has a very public agenda to eliminate gifted education from state law. Although HB235 does not accomplish this goal, I believe that the proposed changes to gifted education weaken existing law and make it easier for DOE to eventually achieve their stated goal.

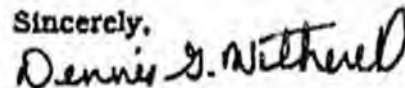
An amendment was made to paragraph (c) of section 15 so that it reads: Each school district shall develop an individualized education program for every exceptional child who receives services under AS 14.30.180 - 14.30.350. Although this amendment seems logical (why should a district develop an IEP for a child not receiving services?), it has the effect of weakening state law. There are many identified and unidentified exceptional children who are not receiving services despite existing law. If left as originally worded and assuming this provision was enforced, the school districts would be required to develop an IEP for these children and once an IEP was drafted, would be required to provide services to these children. The amendment allows school districts to continue to ignore the needs of these students by not requiring an IEP. It may be stretching a point but what about students who transfer into a district or newly enrolled students? Technically they are not receiving services so would they be exempt from having an IEP under this amendment?

Again I would like to refer to Marc Grober's bill as an alternative. His bill is restricted to the issue at hand, compliance with federal disabilities statutes. Gifted education is not changed from the status quo. If anything Mr. Grober's bill strengthens gifted education by making all parts of AS 14.30.180 - AS 14.30.350 refer to exceptional children as a group instead of referring to handicapped and gifted separately. This contrasts with the divide and conquer approach used in HB235 and in current law.

The amendments I have suggested in previous correspondence and in my testimony today are merely patches on a patchwork bill. I think the same can be said of the committee's proposed amendments. Mr. Grober's bill, however, is clear, concise, satisfies federal requirements, and protects parents rights. I urge you to adopt his bill as a substitute for HB235.

Thank you for your interest in this matter.

Sincerely,



Dennis G. Wetherell



WALTER J. HICKEL/GOVERNOR
State of Alaska

GOVERNOR'S COUNCIL ON DISABILITIES AND SPECIAL EDUCATION

P.O. Box 240249 • Anchorage, Alaska 99524-0249 • Phone: 907-563-5355 • Fax: 907-563-5357

April 12, 1993

Senator Loren Leman, Chair
State Affairs Committee
State Capitol, Room 113
Juneau, Alaska 99801 1182

Dear Senator Leman:

As we understand it, House Bill 235 is scheduled for discussion in the State Affairs Committee on Wednesday, April 14, 1993. The bill proposes changes in state law that will affect special education. Under AS 14.30, the Governors Council acts as the state's Special Education Advisory Panel.

At this point, the Council has not taken a position on the bill. In order to give the bill our endorsement, our practice is to obtain broad public input. Apparently, the legislative process is moving faster than we expected.

However, we have discussed the bill in several forms with representatives of the Department of Education. Before the bill was introduced and numbered we reviewed the sectional analysis with DOE. The Department has accommodated some of our original concerns raised during that session.

Given the Council's limited meeting schedule, it is doubtful that we could take a position on HB 235 very soon. Realizing there are a number of sections in the bill which may be of concern to parents of students enrolled in Special Education, we strongly recommend that the legislature attain adequate public input before voting on the bill.

Thank you for your consideration of this matter. Should you need more information, call our office at 563 5355.

Sincerely,

A handwritten signature in black ink, appearing to read "David Maltman".

David Maltman
Executive Director

TESTIMONY

Dennis Wetherell
P.O. Box 876862
Wasilla, AK 99687
April 12, 1993

Sen. Loren Lehman
State Capitol
Juneau, AK 99801-1182

Dear Sen Lehman:

As a parent of a gifted child, I am concerned with the potential effect HB235 may have on gifted education. Although the stated purpose of this bill is to comply with federal disabilities education law, many provisions relating to gifted education have also been changed. I do not understand why any changes need to be made to gifted education if the problem is compliance with disabilities law.

In light of recent policy statements made by DOE (they intend to do away with IEP's, plans of service, and state review of local programs) when discussing other bills (HB85/SB82), I am concerned that changes to HB235 may have opened a loophole which will allow DOE to change existing regulations that mandate gifted programs. HB235, section 3 eliminates the requirement for re-evaluation of gifted students at least once every 3 years. Section 5 states that school districts need to consult with parents about their child's program only after such a re-evaluation or after a change in placement of the child. This would seem to open the door for DOE to exempt school districts from preparing an IEP for gifted students. The language of section 15, which was added in the House Finance committee, requires an IEP to be developed for every exceptional child, but this is a singular reference. There still does not appear to be any requirement for the school district to review or revise the IEP after its initial development.

The only public testimony taken on this bill was when it came before the House HESS committee on March 22. Testimony was limited to 2 minutes each and only about five people testified. Several people were upset with the short notice given before the bill came up for hearing. Most had learned about it Friday and testimony was taken on Monday. I would appreciate it if a public hearing could be scheduled for HB235 before it leaves your committee.

I would like you to consider 3 amendments to this bill. Two of these only change the law to reflect current practice and would prevent DOE from changing existing regulations. The third is a change to existing law which would strengthen and improve the consistency of gifted programs throughout the state.

1) Add a paragraph to AS 14.30.278 that says "Each Individual Education Program must be reviewed or revised on at least an annual basis or upon reasonable request by a parent."

2) Add a new section which states "Each school district shall develop a plan of service for every category of exceptional child served and submit this plan to the Department of Education for approval at least once every three years."

3) Modify section 24(9) to read "'gifted children' means children who exhibit outstanding intellect, ability, or creative talent as determined using methods of evaluation and eligibility thresholds defined under regulations adopted by the department." This last amendment would force DOE to develop a set of consistent, enforceable criteria for identifying gifted children which could be applied throughout the state. Such a change was recommended by the Governor's Council last fall.

I am forwarding a statement which details my concerns with this bill and HB85/SB82. Many of the changes I advocate for the latter bills were incorporated by Sen. Phillips' committee substitute SB82. Unfortunately, HB85 is still alive and well in the House and has not been modified significantly with respect to gifted education.

Thank you for your interest in this matter.

Sincerely,

Dennis G. Wetherell
Dennis G. Wetherell

Dennis Wetherell
P.O. Box 876862
Wasilla, AK 99687
745-2007 hm
265-6501 wk

POSITION STATEMENT RE HB85/SB62 & HB235

CONCERNS

As a parent of a gifted child, I am concerned about changes that are being proposed to state statutes governing gifted education. Existing law is already weak in this area and gifted programs throughout the state are often inadequate and poorly designed. Any further weakening of the law as has been proposed with the introduction of HB235 and HB85/SB62 will tend to eliminate gifted education altogether.

Why are provisions relating to gifted education being changed in HB235 when the sole requirement is to comply with the federal Individuals with Disabilities Education Act?

Why are funding levels for gifted education being cut by HB85/SB62 when there is no net reduction in overall state education spending? Why should gifted education allocations be adjusted at all when the purpose of this bill is to alter the state's foundation formula?

DOE policy

One of the main reasons for my concern is that representatives of the Department of Education have repeatedly made policy statements which indicate that the state would like to remove gifted education protections from state law and leave the issue of gifted education entirely up to local school board policy decisions.

Duane Guiley, when discussing HB85/SB62 before the House HESS committee on Feb. 23 and Mar. 22 stated that it was DOE's intent to remove gifted education from state law, especially those provisions relating to Individual Education Programs, plans of service, and requirements for state review of local programs.

Harry Gamble, DOE public information officer, has said that the state wants to disassociate itself from gifted education. DOE would like to

allow each individual school board to decide whether the education needs of the gifted would be met.

Myra Howe, Director of Special Education at DOE, has stated that Commissioner Covey is opposed to keeping protective clauses for gifted education in state law because only 5% of DOE's budget is allocated for gifted program support. If DOE personnel spend more than 1.5 hours per week on gifted education, the Department will be liable for a Federal audit exception for misuse of funds allocated to disabilities related Special Education programs. Rather than monitor their work load or seek increased funding for gifted education, Mr. Covey's solution is to do away with the state mandate for gifted education.

Precedent in other states

One only has to look at other states where protections for gifted education have been eliminated to see what the probable outcome of these changes would be. Many states have separated gifted education from special education over the last 10-15 years. In those states where gifted education was protected under separate statutes, the programs flourish and there is a high level of support from the community, parents, and educators. Where this separation was accomplished simply by removing reference to gifted education from the law, however, gifted programs have been virtually eliminated. Occasionally an individual district may have a good program, but most districts do not.

Inconsistent DOE statements

Another reason for concern stems from the conflicting statements made by DOE representatives. As mentioned above, Duane Guiley has stated that DOE intends to eliminate gifted education protection. Myra Howe, however, has told legislators, educators, and parents, that if HB235 is passed, no changes will be made; gifted education protection will remain in the law. Ms. Howe has also stated that if HB235 passes, gifted education funding allocations will not change. This comment was made in spite of the existence of HB85/SB62 which, according to public testimony by Mr. Guiley, will cut gifted education funding by nearly \$4 million (40%) if passed. Ms. Howe has stated that the plans of service provisions will remain in effect for gifted education upon passage of HB235, but Sheila Peterson, legislative liaison for DOE, has told me that those provisions have already been eliminated from DOE regulations.

Regulation vs. Law

This conflicting commentary is frustrating, confusing, and points out a fundamental problem with both of these pieces of legislation. Neither HB85/SB62 nor HB235, as originally written, address the issue of whether

Individual Education Programs, district plans of service, or state review of those plans will be required for gifted education. Instead, these items are covered only in regulations drafted by DOE. Mr. Guiley is emphatically stating that those regulations will be changed, while Ms. Howe is asking us to trust her and the Department not to change anything.

SPECIFIC PROBLEMS

HB235/CSHB235(FIN)

Permissive Legislation

HB235 is "permissive" legislation, i.e. it opens a loophole which would allow DOE to change the regulations with respect to gifted education. Under Section 3, gifted children are exempt from mandatory re-evaluation. Section 5 requires the school district to consult with the parents of an exceptional child after each re-evaluation or each change in placement of the child. Since re-evaluation of a gifted child is not required, the district does not have to consult with the parents of the child unless the child's placement is changed. Throughout most of the state, the gifted program consists of a pull-out program where supplemental services are provided for 1-3 hours each week. The program does not change from Kindergarten through High School. Therefore it is likely that the placement of the child in the regular classroom with cursory supplemental services will not be changed. As a consequence, HB235 has opened a loophole which will allow DOE to eliminate the requirement for an annual Individual Education Program with mandatory parent consultation for the gifted child.

CSHB235(FIN) has narrowed this loophole by adding Section 15 which states that each school district shall develop an Individual Education Program for every exceptional child. However the language of this amendment is still permissive because it is singular, i.e. the letter of the law could be satisfied by developing one Individual Education Plan upon initial identification.

Parents Rights

Section 6 has reworded AS 14.30.191(e) in such a way that it appears to place the burden of proof on the parent if there is a disagreement with the school district's plan of action, whereas existing law places the burden of proof on the school district.

When combined with the language of section 8, I believe that the end result is that the parent has fewer rights with respect to their child's education, or at least less likelihood of being able to successfully disagree with a school district's desired placement.

Inadequate definition

Section 24 of CSHB235(FIN) places the definition of gifted children under DOE regulation. The existing regulations are vague and unenforceable. This leads to inconsistencies in identifying gifted children from one area of the state to another.

HB85/SB62

Funding

Section 6 removes gifted education from special education for funding purposes. Section 7 (AS 14.17.048(1),(2)) provides for funding for gifted education. According to testimony by Mr. Guiley, the weighting factor referenced in paragraph 2 is 0.012 and has been approved by the state school board. The result of this change will reduce funding for gifted education in 32 out of 54 school districts. The average loss of funds is about 40%. By this formula, any school district which identifies more than 2.16% (less than half the national average) of its population as gifted will lose funds.

As provided for in Section 7, gifted education will be funded at about 20% of the minimum funding level for students with disabilities. This is not consistent with national research which shows that gifted students are at risk of dropping out of school, dropping out of society, or committing suicide with twice the frequency of disabled children. Proper education of gifted children can be just as expensive as services for minimally handicapped children. Funding levels should reflect these needs.

The funds removed from gifted education will be applied to vocational education. Because of this provision, the state is not cutting the budget, it is just hurting gifted children and their educational programs.

No guaranteed minimum funding level is provided for gifted education as was done for vocational and special education under Sections 5 and 6.

Abuses of funding provisions

In his testimony before the House HESS committee on Mar. 22, Mr. Guiley stated that the changes to gifted education funding were partially in response to perceived abuses of the current system. By setting a flat rate, funding levels would be independent of the number of students identified. The flaw in this approach is that only 2.16% of the student population is actually being funded (as compared to current funding formulas). The amount of gifted students will vary from district to district and a funding cap discriminates against those districts which have more identified gifted students.

Lack of fiscal responsibility

No provisions are made within the law that funds allocated must be used for the purpose for which they were allocated. Each district can take the funds for gifted education and apply those funds for any purpose they wish. The money does not have to be used for gifted education.

RECOMMENDED SOLUTIONS

HB235/CSHB235(FIN)

Individual Education Programs

This loophole could be closed by adding one additional amendment to AS 14.30.278 stating "Each Individual Education Program must be reviewed or revised on at least an annual basis or upon reasonable request by a parent." This statement is adapted from Title 4 Chapter 52 Section 130(d) of the Alaska Administrative Code. It does not change the intent of HB235 in any way. It does modify the law to reflect current practice. If, as Ms. Howe has stated, DOE does not plan to change existing regulations regarding Individual Education Programs for gifted children then DOE should have no objection to this amendment.

Plans of Service

Add a new section to HB235 which states "Each school district shall develop a plan of service for every category of exceptional child served and submit this plan to the Department of Education for approval at least once every three years." Again, this would not change the intent of HB235 but would only modify it to reflect current practice. Plans of service are required by existing regulation. This amendment would ensure that DOE does not change those regulations with respect to gifted children.

An even better solution would be to require DOE to draft plans of service guidelines that must be followed by each school district unless the district submits an alternative plan and justifies the need for deviation from the guidelines.

Eligibility Criteria

DOE should be required to develop consistent, enforceable criteria for identifying gifted and talented children as recommended by Linda Manwill of the Governor's Council for Disabilities and Special Education. These criteria should prescribe a specific referral/screening process, indicate what types of tests or other measures of ability may be used, who may administer the tests, and what the eligibility thresholds are. This could be accomplished by amending Section 24(9) to read: "gifted children" means children who exhibit

outstanding intellect, ability, or creative talent as determined using methods of evaluation and eligibility thresholds defined under regulations adopted by the department.

HB85/SB62

Restore status quo

Section 7 should be dropped from this bill and Section 6 amended to restore the original wording of AS 14.17.045. This will restore gifted education funding to its original level and guarantee at least minimum funding levels.

Fiscal Responsibility

Section 6 should be further amended to add a paragraph (c) Funds allocated under this section may not be used for any purpose other than to provide special educational services to the category of exceptional children for which the funds were appropriated.

CONCLUSION

Existing law is very weak with respect to gifted education. Ultimately, the law needs to be rewritten to strengthen it and ensure the continuation of gifted education programs. One of the main problems that exists is that too much is left up to DOE regulation. These regulations are too easily changed and do not receive the same public scrutiny that changes to law receive. Many of the existing DOE regulations should be incorporated into the law and other provisions not addressed by regulation should be added to the law.

However, this legislative session is not the time to tackle these larger issues. Instead, I ask that you critically review any changes to existing provisions for gifted education. Ask whether these changes are necessary and do they strengthen or weaken existing statutes? Be particularly wary of "permissive" legislation such as HB235.

Significant problems with HB235 can be mitigated by making 2 amendments which do nothing more than make the law reflect current practice. A third amendment regarding eligibility criteria for gifted programs is consistent with the Governor's Council recommendations and would significantly improve gifted education law.

HB85/SB62 could be cleaned up by restoring the status quo and making one amendment to ensure fiscal responsibility.

Ms. Claudia Walton 248-1323 Distribution 60
PC Box 221166 Anchorage AK 99522 Date POM Sent 04/06/93
Constituency N Bill Number HB 235 Response AMEND
Subject LL Back?

PB

DL - stay on top of this - Jack Phelps gave us a proposed amendment - we need to get this bill referred to STA

THE ORIGINAL FORM OF HB 235 IS VERY DANGEROUS. PLEASE TAKE ALL STEPS POSSIBLE TO ENSURE THE PARENTS ALWAYS HAVE THE LEGAL AUTHORITY TO RESTRICT THE INVOLVEMENT OF THEIR CHILDREN IN THESE EDUCATION PROGRAMS. PLEASE ENSURE EVALUATIONS, PLACEMENT, ETC., ARE OPTIONS AVAILABLE TO THE PARENTS AND NOT REQUIREMENTS IMPOSED BY OTHERS.

8-LS0869NO ✓

Ford

4/19/93

SENATE CS FOR CS FOR HOUSE BILL NO. 235(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVES BUNDE, Grussendorf

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

12 * Sec. 2. AS 14.30.186 is amended by adding a new subsection to read:

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

1 AS 14.30.180 - 14.30.350. The exceptional child of a parent who elects to educate the
2 child as allowed under AS 14.50.010(b) may not be compelled to receive the special
3 education and related services provided under AS 14.30.180 - 14.30.350.

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

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

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

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

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

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

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

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

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

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

22 * Sec. 7. AS 14.30 is amended by adding a new section to read:

23 Sec. 14.30.193. SCHOOL DISTRICT HEARINGS. (a) If a parent refuses to
24 consent, or does not respond within 30 days to the school district's request for consent,
25 under AS 14.30.191(a) or 14.30.285(f), the school district may appoint an impartial
26 hearing officer to conduct a hearing to determine whether the school district may
27 initiate the evaluation or placement of the child, or transfer the child.

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

Mike Ford

1 (c) A hearing officer may not be appointed under this section unless approved
2 in writing by the parent. After a hearing officer is appointed under of this section, the
3 hearing officer shall conduct an informal prehearing settlement conference and attempt
4 to resolve the disagreement between the parent and the school district. If, after a
5 hearing under this section, the hearing officer determines that the school district's
6 intended action is in accordance with law and is in the child's best interest, the hearing
7 officer shall approve that action.

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

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

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

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

24 (h) The department shall maintain a list of qualified hearing officers. The
25 department shall qualify hearing officers by annual examination that shall be open to
26 all residents of the state and shall qualify hearing officers for a period not to exceed
27 five years. The list shall be maintained as a public record.

28 (i) The district in which a hearing or administrative appeal arises shall bear all
29 the costs and expenses of district level and district level administrative appeal hearings,
30 including the costs of all hearing officers.

31 * Sec. 8. AS 14.30.195(a) is amended to read:

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

7 * Sec. 9. AS 14.30.195 is amended by adding new subsections to read:

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

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

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

16 * Sec. 10. AS 14.30 is amended by adding a new section to read:

17 Sec. 14.30.235. WITHDRAWAL OF CONSENT. If under a provision of this
18 chapter the consent of the parent is required, the parent may withdraw the parent's
19 consent.

20 * Sec. 11. AS 14.30.272 is amended to read:

21 Sec. 14.30.272. PROCEDURAL SAFEGUARDS. A school district shall
22 inform the parent [OR GUARDIAN] of an exceptional child of the right to review the
23 child's educational record, to review evaluation tests and procedures, to refuse to
24 permit evaluation or a change in the child's educational placement, to be informed of
25 the results of evaluation, to obtain an independent evaluation by a person of the
26 parent's choosing or by a person the parent consents to in writing, to request an
27 impartial hearing, to appeal a hearing officer's decision, and to give consent or deny
28 access to others to the child's educational record.

29 * Sec. 12. AS 14.30.272 is amended by adding a new subsection to read:

30 (b) The department shall establish, by regulation, impartial procedures for a
31 school district to follow for hearings under AS 14.30.193 to comply with requirements

1 necessary to participate in federal grant-in-aid programs, including 20 U.S.C. 1400 -
2 1485 (Individuals with Disabilities Education Act).

3 * Sec. 13. AS 14.30.278(b) is amended to read:

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

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

7 (2) the child's teacher;

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

9 (4) the child, when appropriate;

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

12 * Sec. 14. AS 14.30.278 is amended by adding a new subsection to read:

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

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

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

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

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

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

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

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

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

10 Sec. 14.30.347. TRANSPORTATION OF EXCEPTIONAL CHILDREN.

11 When transportation is required to be provided as related services, exceptional children
12 shall be carried with other children, except when the nature of their physical or mental
13 disabilities [HANDICAPS] is such that it is in the best interest of the exceptional
14 children, as determined by the school district, that they be transported separately. State
15 reimbursement for transportation of exceptional children shall be as provided for
16 transportation of all other pupils except that eligibility for reimbursement is not subject
17 to restriction based on the minimum distance between the school and the residence of
18 the exceptional child.

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

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

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

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

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

29 (4) "related services" means transportation and developmental,
30 corrective, and other supportive services required to assist children with disabilities
31 [A HANDICAPPED] or gifted children [CHILD] to benefit from special education

1 and includes but is not limited to speech pathology and audiology, psychological
2 services, physical and occupational therapy, recreation, counseling services including
3 rehabilitation counseling, and medical services for diagnostic or evaluation purposes;
4 the term also includes school health services, school social work services, and parent
5 counseling and training;

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

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

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

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

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

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

31 (7) "children with disabilities" means children with mental retardation;

1 hearing impairments, including deafness; speech or language impairments; visual
2 impairments, including blindness; serious emotional disturbance; orthopedic
3 impairments; autism; traumatic brain injury; other health impairments; specific learning
4 disabilities; or preschool developmental delays;

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

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

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

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

20 (B) the child's teacher;

21 (C) the child's parent;

22 (D) the child, if appropriate;

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

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

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

8-LS08690
Ford
4/15/93

SENATE CS FOR CS FOR HOUSE BILL NO. 235(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES BUNDE, Grussendorf

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

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

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

1 education and related services.

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

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

5 * Sec. 4. AS 14.30.191(d) is amended to read:

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

10 * Sec. 5. AS 14.30.191(f) is amended to read:

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

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

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

16 * Sec. 6. AS 14.30 is amended by adding a new section to read:

17 Sec. 14.30.193. SCHOOL DISTRICT HEARINGS. (a) If a parent refuses to
18 consent, or does not respond within 30 days to the school district's request for consent,
19 under AS 14.30.191(a) or 14.30.285(f), the school district may appoint an impartial
20 hearing officer to conduct a hearing to determine whether the school district may
21 initiate the evaluation or placement of the child, or transfer the child.

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

26 (c) After a hearing officer is appointed under (a) or (b) of this section, the
27 hearing officer shall conduct an informal prehearing settlement conference and attempt
28 to resolve the disagreement between the parent and the school district. If, after a
29 hearing under (a) or (b) of this section, the hearing officer determines that the school
30 district's intended action is in accordance with law and is in the child's best interest,
31 the hearing officer shall approve that action.

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

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

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

13 (g) A parent or a school district may appeal a hearing officer's decision under
14 this section to the department by requesting an appeal hearing under AS 14.30.195.
15 The appeal hearing request must be in writing and must be received by the department
16 within 30 days after receipt of the hearing officer's decision.

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

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

24 * Sec. 8. AS 14.30.195 is amended by adding new subsections to read:

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

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

30 * Sec. 9. AS 14.30 is amended by adding a new section to read:

31 Sec. 14.30.235. WITHDRAWAL OF CONSENT. If under a provision of this

Hearing
Officers

1 chapter the consent of the parent is required, the parent may withdraw the parent's
2 consent.

3 * Sec. 10. AS 14.30.272 is amended to read:

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

11 * Sec. 11. AS 14.30.272 is amended by adding a new subsection to read:

12 (b) The department shall establish, by regulation, impartial procedures for a
13 school district to follow for hearings under AS 14.30.193 to comply with requirements
14 necessary to participate in federal grant-in-aid programs, including 20 U.S.C. 1400 -
15 1485 (Individuals with Disabilities Education Act).

16 * Sec. 12. AS 14.30.278(b) is amended to read:

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

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

20 (2) the child's teacher;

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

22 (4) the child, when appropriate;

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

25 * Sec. 13. AS 14.30.278 is amended by adding a new subsection to read:

26 (c) Each school district shall develop an individualized education program for
27 every exceptional child who receives services under AS 14.30.180 - 14.30.350.

28 * Sec. 14. AS 14.30.285(f) is amended to read: *or where parents request services*

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

1 * Sec. 15. AS 14.30.285(g) is amended to read:

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

6 * Sec. 16. AS 14.30.340 is repealed and reenacted to read:

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

13 (b) If a physician certifies in writing, and if the child's individualized
14 education program team then determines that a child's bodily, mental, or emotional
15 condition does not permit attendance at a school and the child's parents do not elect
16 to teach the child at home, ^{in accordance w/ 14.30.010(b)} the school district in which the child is located shall enroll
17 the child in public school and provide the child with special education and related
18 services in conformance with an individualized education program under AS 14.30.278
19 at the child's home or at a medical treatment facility.

20 * Sec. 17. AS 14.30.347 is amended to read:

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

30 * Sec. 18. AS 14.30.350(2) is amended to read:

31 (?) "consent" means [IS ONLY OBTAINED IF] the parent [OR

1 GUARDIAN] has been fully informed of all information relevant to the activity or the
2 release of records for which [OBJECT OF THE] consent is sought and the parent
3 understands and voluntarily agrees to the activity or release of records;

4 * Sec. 19. AS 14.30.350(3) is repealed and reenacted to read:

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

8 * Sec. 20. AS 14.30.350(4) is amended to read:

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

17 * Sec. 21. AS 14.30.350(5) is amended to read:

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

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

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

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

10 * Sec. 22. AS 14.30.350 is amended by adding new paragraphs to read:

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

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

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

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

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

31 (B) the child's teacher;

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(C) the child's parent;

(D) the child, if appropriate;

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

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

* Sec. 23. This Act takes effect June 30, 1993.

#3

A M E N D M E N T

OFFERED IN THE SENATE
TO:

By Senator Leman

DRAFT Senate CS For CSHB235 (STA)
(Work Draft LS0869/O by Ford, dated 4/15/93)

Page 3, line 16:

Add new subsections to read:

"through a training program"

(h) The department shall maintain a list of qualified hearing officers. The department shall qualify hearing officers ~~through a training program~~, which shall be open to all residents of the state and shall qualify hearing officers for a period not to exceed five years. The list shall be maintained as public record.

(i) ~~The district in which a hearing or appeal arises shall bear all the costs and expenses of district and appeal level hearings, including the costs of all hearing officers, provided however, that~~ The parent involved in the hearing must consent in writing to the hearing officer selected. ~~The parent must consent to one of the first three hearing officers offered for consideration by the school district.~~

✓ adopted
w/m.

Waiting
New CS!

#4

A M E N D M E N T

OFFERED IN THE SENATE
TO:

By Senator Leman

DRAFT Senate CS For CSHB235 (STA)
(Work Draft LS0869/O by Ford, dated 4/15/93)

Page 4, line 8:

Following: "to obtain an independent evaluation"

Insert: "by a person of the parent's choosing or by ~~a person of the~~
~~parent's choosing to be in writing,~~ ^{agreement} between the parent and
School district,"

Page 4, line 27:

Following: "who receives services"

Insert: "or whose parent requests services"

Page 5, line 16:

Following: "to teach the child at home"

Insert: "in accordance with AS 14.30.010(b)"

Adopted
unanim.

1

A M E N D M E N T

OFFERED IN THE SENATE
TO:

By Senator Leman

DRAFT Senate CS For CSHB235 (STA)
(Work Draft LS0869/O by Ford, dated 4/15/93)

✓ adopted
unan.

"Conceptual" amendment:

Make clear in statute that indigent parents have the right to state appointed counsel during the court appellate review process if the parents appeal under AS 14.30.193 (g)

A M E N D M E N T

#2

OFFERED IN THE SENATE
TO:

By Senator Leman

DRAFT Senate CS For CSHB235 (STA)
(Work Draft LS0869/O by Ford, dated 4/15/93)

✓ adopted
unam.

Page 1, line 12:

Add a NEW Section 2:

AS 14.30.186 is amended to read:

(e) nonpublic school children have the right to public agency services under AS 14.30.180 - AS 14.30.350. A parent who elects to educate their exceptional child in a nonpublic education program in accordance with AS 14.30.010 (b) shall not be compelled to receive services under AS 14.30.180 - AS 14.30.350.

8-LS0869NO ✓
Ford
4/19/93

SENATE CS FOR CS FOR HOUSE BILL NO. 235(STA)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES BUNDE, Grussendorf

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

12 * Sec. 2. AS 14.30.186 is amended by adding a new subsection to read:

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

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

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

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

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

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

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

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

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

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

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

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

22 * Sec. 7. AS 14.30 is amended by adding a new section to read:

23 Sec. 14.30.193. SCHOOL DISTRICT HEARINGS. (a) If a parent refuses to
24 consent, or does not respond within 30 days to the school district's request for consent,
25 under AS 14.30.191(a) or 14.30.285(f), the school district may appoint an impartial
26 hearing officer to conduct a hearing to determine whether the school district may
27 initiate the evaluation or placement of the child, or transfer the child.

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

Mike Ford

1 (c) A hearing officer may not be appointed under this section unless approved
2 in writing by the parent. After a hearing officer is appointed under ~~the~~ this section, the
3 hearing officer shall conduct an informal prehearing settlement conference and attempt
4 to resolve the disagreement between the parent and the school district. If, after a
5 hearing under this section, the hearing officer determines that the school district's
6 intended action is in accordance with law and is in the child's best interest, the hearing
7 officer shall approve that action.

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

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

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

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

24 (h) The department shall maintain a list of qualified hearing officers. The
25 department shall qualify hearing officers by annual examination that shall be open to
26 all residents of the state and shall qualify hearing officers for a period not to exceed
27 five years. The list shall be maintained as a public record.

28 (i) The district in which a hearing or administrative appeal arises shall bear all
29 the costs and expenses of district level and district level administrative appeal hearings,
30 including the costs of all hearing officers.

31 * Sec. 8. AS 14.30.195(a) is amended to read:

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

7 * **Sec. 9.** AS 14.30.195 is amended by adding new subsections to read:

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

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

13 (e) A parent who appeals to the court and who is determined by the court to
14 be an indigent person ~~shall~~^{may} be provided with a court appointed attorney at public
15 expense. In this subsection, "indigent person" has the meaning given in AS 18.85.170.

16 * **Sec. 10.** AS 14.30 is amended by adding a new section to read:

17 Sec. 14.30.235. WITHDRAWAL OF CONSENT. If under a provision of this
18 chapter the consent of the parent is required, the parent may withdraw the parent's
19 consent.

20 * **Sec. 11.** AS 14.30.272 is amended to read:

21 Sec. 14.30.272. PROCEDURAL SAFEGUARDS. A school district shall
22 inform the parent [OR GUARDIAN] of an exceptional child of the right to review the
23 child's educational record, to review evaluation tests and procedures, to refuse to
24 permit evaluation or a change in the child's educational placement, to be informed of
25 the results of evaluation, to obtain an independent evaluation by a person of the
26 parent's choosing or by a person the parent consents to in writing, to request an
27 impartial hearing, to appeal a hearing officer's decision, and to give consent or deny
28 access to others to the child's educational record.

29 * **Sec. 12.** AS 14.30.272 is amended by adding a new subsection to read:

30 (b) The department shall establish, by regulation, impartial procedures for a
31 school district to follow for hearings under AS 14.30.193 to comply with requirements

1 necessary to participate in federal grant-in-aid programs, including 20 U.S.C. 1400 -
2 1485 (Individuals with Disabilities Education Act).

3 * Sec. 13. AS 14.30.278(b) is amended to read:

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

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

7 (2) the child's teacher;

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

9 (4) the child, when appropriate;

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

12 * Sec. 14. AS 14.30.278 is amended by adding a new subsection to read:

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

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

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

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

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

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

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

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

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

10 Sec. 14.30.347. TRANSPORTATION OF EXCEPTIONAL CHILDREN.

11 When transportation is required to be provided as related services, exceptional children
12 shall be carried with other children, except when the nature of their physical or mental
13 disabilities [HANDICAPS] is such that it is in the best interest of the exceptional
14 children, as determined by the school district, that they be transported separately. State
15 reimbursement for transportation of exceptional children shall be as provided for
16 transportation of all other pupils except that eligibility for reimbursement is not subject
17 to restriction based on the minimum distance between the school and the residence of
18 the exceptional child.

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

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

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

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

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

29 (4) "related services" means transportation and developmental,
30 corrective, and other supportive services required to assist children with disabilities
31 [A HANDICAPPED] or gifted children [CHILD] to benefit from special education

1 and includes but is not limited to speech pathology and audiology, psychological
2 services, physical and occupational therapy, recreation, counseling services including
3 rehabilitation counseling, and medical services for diagnostic or evaluation purposes;
4 the term also includes school health services, school social work services, and parent
5 counseling and training;

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

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

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

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

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

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

31 (7) "children with disabilities" means children with mental retardation;

1 hearing impairments, including deafness; speech or language impairments; visual
2 impairments, including blindness; serious emotional disturbance; orthopedic
3 impairments; autism; traumatic brain injury; other health impairments; specific learning
4 disabilities; or preschool developmental delays;

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

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

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

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

20 (B) the child's teacher;

21 (C) the child's parent;

22 (D) the child, if appropriate;

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

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

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

SENATE BILL NO. _____
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

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

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

4 * Section 1. AS 14.30.180 is repealed and reenacted to read:

5 Section 14.30.180. PURPOSE. (a) It is the mandate of AS 14.30.120 - 14.30.350 that
6 all exceptional children in this state who are at least three years of age but less than 22 years
7 of age receive all such special education and related services so as to afford each exceptional
8 child a free appropriate public education at no cost.

9 (b) The provisions of AS 14.30.185 - 14.30.350 are to be construed liberally for the
10 dual purposes of assuring the maximum development of exceptional children in the state and
11 of complying with the requirements of federal law including but not limited to the Individuals
12 with Disabilities Education Act, as codified at 20 U.S.C. 1400-1485.

15 * Section 2. AS 47.10.010 is amended by adding a new paragraph to read:

1 (e) The provisions of this chapter apply to all cases in which an educational institution
2 believes that a parents refusal to consent to any evaluation of, placement of, or programming
3 for, the child under AS 14.30.180 - 14.30.350 will deny the child a free appropriate public
4 education.

5 * Section 3. AS 14.30.195 is repealed and reenacted to read:

6 AS 14.30.195. HEARINGS. (a) The department shall, by regulation, provide for
7 school district and administrative appeal hearings. All hearings and hearing procedures shall
8 comply with all requirements necessary for participation in federal grant-in-aid programs,
9 including the Individuals with Disabilities Education Act, as codified at 20 U.S.C. 1400-1485
10 and with the provisions of Title 44, Chapter 62 relating to adjudicatory hearings.

11 (b) The department shall maintain a list of qualified hearing officers. The department
12 shall qualify hearing officers by ^{semi-yearly} ~~quarterly~~ examination, which shall be open to all residents of
13 the state and shall qualify hearing officers for a period not to exceed five years. The list shall
14 be maintained as a public record.

15 (c) The district in which any hearing or appeal arises shall bear all costs and expenses
16 of district and appeal level hearings, including the costs of all hearing officers, provided
17 however, that the parent involved in the hearing must consent in writing to the hearing officer
18 selected.

19 (d) A decision in a hearing under these regulations is final and binding upon the parent
20 and district, unless appealed in accordance with AS 14.30.180 - 14.30.350 or an original
21 action is filed in ~~federal district court~~ ^{the appropriate court}.

22 (e) An appellate administrative hearing shall be based on the record below. The
23 departmental hearing officer shall affirm, reverse, modify or remand the district hearing
24 officer's decision.

25 (f) A decision of a district hearing officer may be appealed to the department and a
26 decision of a departmental hearing officer may be appealed to the ^{appropriate} ~~superior~~ court within thirty
27 days after receipt of the lower tribunal's decision rendered under AS 14.30.180 - 14.40.350.

1 This provision does not constitute any limitation upon a parent's filing of an original action in
2 ~~federal district~~ court. For the purposes of identifying an appropriate statute of limitations any
3 federal action must be filed within the six years of the act complained of.

4 * Section 4. AS 14.30.272 is repealed and reenacted to read:

5 Section 14.30.272 PROCEDURAL SAFEGUARDS. A school district shall inform
6 the parent [or guardian] of an exceptional child of the right

7 (a) to review the child's educational record;

8 (b) to review evaluation tests and procedures, including but not limited to
9 documentation that tests and procedures are statistically validated for the purposes for which
10 they were used and were administered by someone qualified to administer and in conformance
11 with the requirements of the tests or procedures and be fully informed of all results thereof;

12 (c) to refuse to permit evaluation or a change in the child's educational placement and
13 that no evaluation or placement shall occur without consent;

14 (d) to obtain an independent evaluation by a person of the parent's choosing, and to
15 have the district pay for same unless the district, upon receipt of the independent evaluation
16 demands a hearing on the appropriateness of the evaluation and a hearing officer finds that the
17 district's prior evaluation is more appropriate;

18 (e) to request an impartial hearing, to appeal the hearing decision to the department
19 and the superior court and to file an original action in the federal district court;

20 (f) to give or deny consent to access to others to the child's educational record;

21 (g) to obtain counsel and obtain payment of attorney fees.

22 * Section 5. AS 14.30.340 is repealed and reenacted to read:

23 Section 14.30.340 PROVISION OF SPECIAL EDUCATION IN A PRIVATE
24 SCHOOL, HOME OR HOSPITAL SETTING. (a) The school district in which an exceptional
25 child's parent maintains legal residence, wheresoever the child is domiciled, shall ~~provide~~ offer
26 special education and related services under AS 14.30.180-14.30.350 to all such exceptional
27 children without regard to whether the child is enrolled in private, home or correspondence

1 school in accordance with an individualized education program established under AS
2 14.30.278. No individual education program may require as a condition of receiving the
3 benefit of such program that the child enroll or attend the district's schools to receive the
4 services mandated under authority of this section.

5 (b) A district shall enroll and serve any child not otherwise enrolled in some education
6 program by reason of medical necessity in accordance with the provisions of AS 14.30.180 -
7 14.30.350.

8 * Section 6. AS 14.30.347 is amended to read:

9 Section 14.30.347 TRANSPORTATION OF EXCEPTIONAL CHILDREN. When
10 transportation is required to be provided as related services, exceptional children shall be
11 carried with other children, except when the nature of their exceptionality is such that it is in
12 the best interest of ~~the~~ ^{children} exceptional ~~child~~, as set forth in the individual education program, that
13 they be transported separately. State reimbursement for transportation of exceptional children
14 shall be as provided for transportation of all other pupils except that eligibility for
15 reimbursement is not subject to restriction based upon the minimum distance between the
16 school and the residence of the exceptional child.

17 * Section 7. AS 14.30.350(2) is repealed and reenacted to read:

18 (2) "consent" means that the parent has been fully informed of all information relevant
19 to the purpose and act for which consent is sought and the parent understands and agrees to
20 the act and purpose for which the consent is sought. Consent must be in writing and must
21 specifically set forth the information provided to the parent and certify that the parent received
22 and understood the material provided. Consent is to any act under AS 14.30.180 - AS
23 14.30.350 is voluntary and may be revoked at any time. A statement by a parent that the
24 parent did not understand the material received or that he consented in error or under duress
25 shall render the consent previously given and all acts taken thereupon null and void.

26 * Section 8. AS 14.30.350(3) is repealed and reenacted to read:

1 (4) "exceptional" children are children who differ markedly from their peers to the
2 degree that special facilities, equipment, or methods are required to make their educational
3 program effective; these children may be mentally retarded, hearing impaired, deaf, speech or
4 language impaired, mute, visually impaired, blind, seriously emotionally disturbed,
5 orthopedically impaired, autistic, subject to traumatic brain injury or minimal brain
6 dysfunction, gifted, developmentally delayed, subject to specific learning disabilities, and other
7 health impairments requiring intervention;

8 * Section 9. AS 14.30.550(4) is amended to read:

9 (5) "related services" means transportation and developmental, corrective, and other
10 supportive services required to assist exceptional children [A HANDICAPPED OR GIFTED
11 CHILD] to benefit from special education and includes but is not limited to speech pathology
12 and audiology, psychological services, physical and occupational therapy, recreation,
13 counseling services including rehabilitation counseling, social work services, parent counseling
14 and training, medical services for diagnostic or evaluation purposes and to maintain the child
15 with such medical treatment and nursing services as may be required in the individual
16 education program for the purpose of assuring that the child will obtain an educational benefit
17 and costs of room, board and transportation for family members where the child's placement
18 is not residential but is not so proximate to the parent's residence so as to allow the child to
19 live at home [; the term also includes school health services, school social work services, ~~and~~
20 parent counseling and training;]

21 * Section 10. AS 14.30.550(5) is repealed and reenacted to read:

22 (6) "special education" means specially designed instruction, at no cost to the parent,
23 to meet the needs of the exceptional child, including classroom instruction, instruction in
24 physical education, home instruction, and instruction in hospitals and institutions;

25 * Section 11. AS 14.30.350 is amended by adding new paragraphs to read:

26 (7) "at no cost" means that special education and related services must be provided
27 without charge but does not preclude incidental fees that are normally charged to

1 nonexceptional students or their parents as a part of the regular educational program in effect
2 in the district;

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

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

10 (10) "education records" means those files, documents, records, and other material that
11 contain information directly related to a student and are maintained by a school district or a
12 person acting for a school district as more specifically defined at 34 C.F.R. Part 99. The term
13 is used here to reflect the nature of the child's rights of privacy and confidentiality. The term
14 does not provide any protection to persons other than the child and the child's parents as to
15 the personnel records of the school district or any other records of the district or the
16 department;

17 (11) "parent" or "guardian" is used interchangeably to refer to a person lawfully acting
18 in the role of a parent, including but not limited to any person acting under the authority
19 of the child's lawful parent, any person acting under the written authority of a court of
20 competent jurisdiction, and anyone acting under the authority of the State of Alaska Division
21 of Family and Youth Services where the child is lawfully in the custody of the State of Alaska,
22 to the extent of the authority granted.

23 * Section 12. AS 14.30.315 is repealed and reenacted to read:

24 Section 14.30.315. STATE SUPPORT OF PROGRAMS FOR EXCEPTIONAL
25 CHILDREN. The department shall provide by regulation for a program of unannounced
26 inspections of state school districts, including random review of files and individual education
27 programs to assure compliance with these statutes. The department shall provide by regulation

1 for withholding state funding in support of education for exceptional children where districts
2 are out of compliance. Any action under this section does not excuse the provision of services
3 required under AS 14.30.180 - AS 14.30.350.

4 * Section 13. This Act takes effect June 30, 1993.

CINA by adding a line that imposes the process where any educational institution alleges that a parent's refusal would harm the child. Certainly this is the intent of the federal regulations. If, however, we look at the CINA provision Ms. Levy cites, is it DOE's position that a district should be entitled to override a parent's refusal if the proposed services ("treatment" in the parlance of the provision cited by Levy) would not produce a failure to thrive, anxiety, depression, hostility etc.? In other words, under what conditions are a parent's perceptions of what the district is or is not doing and the parent's position thereon going to be rejected, ignored, disposed of? DOE argues that this should happen anytime that it hires a hearing officer, parents argue that their right to control should only be interfered with when there is a demonstrable potential for harm to the child, and that determination should be made by a judge with appointed counsel available.

→ Now let's look at what CINA really provides. CINA applies to a child whose parents or parents fail or refuse to provide for the emotional, social or mental needs of the child. AS 47.10.990(1) and AS 47.10.010(a)(2)(A). CINA also applies to children who suffer from neglect. AS 47.10.010(a)(F). This provision may be redundant as the CINA does not define "neglect", but the Child Protection statutes define neglect as failing to provide care. And while speaking of child protection, the school districts and their personnel are required by law to report any failure to provide appropriate care. AS 47.17.010 et seq. This is required to "safeguard and enhance the general well being of children in this state". A failure to provide care exists any time there is potential for or threat of "injury to the emotional well-being, or intellectual or psychological capacity of the child ..." It must be abundantly clear at this point that a parent's refusal to consent to services that are reasonably necessary for the child's well-being or intellectual or psychological capacity is not only squarely within CINA, but the school district and its employees MUST report same to the Division of Family and Youth Services of the Department of Health and Human Services for investigation under CINA. So much for Ms. Levy's unschooled arguments!

We must also note that a substantial part of the special education and related services that children may be entitled to are medical and psychiatric services. It is the provision of this type of service based upon evaluation and certification as severely emotionally disturbed that would most likely trigger the pertinent due process demands by a district and it is these very services that are most clearly within the ambit of CINA. It is in this arena that districts are also in grossest violation of the law and in which improper certification and programming by incompetent "school" psychologists (who are practicing in violation of the Alaska Special Education Plan anyway) and poorly trained special education teachers can most severely injure a child. The alarming incidence of miscertification of gifted/learning disabled children as severely emotionally disturbed is somber testimony to the need for parents to stand up to malpracticing educational institutions.

Let's also look at the underlying process and the court's authority under CINA. There must be a complete pre-disposition report. Hearings may be formal or they may be totally informal. All parties are entitled to appointed counsel (including the child.) All proceedings are presided over by a judge of the Superior Court or a master appointed by such a judge. All participants are entitled to pre-empt both the judge and an appointed master and a master is largely limited to making recommendations, upon which the participants are entitled to a hearing. The court can implement a broad range of orders ranging from simply requiring that the parent consent to removing the child from the home and terminating parental rights; but most importantly can fashion what amounts to "custom" orders that accommodate the exigencies of the particular situation.

Some might suggest that our position reflects an inappropriate paranoia. As a father (their mother is a special educator teaching severely emotionally disturbed children) of an eleven year old gifted child and a three year old developmentally delayed child (neither of whom receive services), who has practiced law in this area extensively and has provided in service training to school districts, I can safely say that our position is not paranoid at all.

Ms. Libby Stortz 747-5916 Distribution 05
Box 6198
Sitka AK 99835 Date POM Sent 04/16/93
Constituency N Bill Number HB 235 Response SUPPORTS
Subject LL Back?

PB - response

PLEASE SUPPORT HB 235 WHICH WOULD ELIMINATE THE REQUIREMENT FOR RETESTING GT STUDENTS EVERY 3 YEARS. RESEARCH CONCLUSIVELY INDICATES IQ REMAINS STABLE OVER TIME. RETESTING COSTS OUR EDUCATIONAL SYSTEMS VALUABLE

TIME AND MONEY BETTER SPENT IN OTHER WAYS. THANK YOU.

Dennis Wetherell
P.O. Box 876862
Wasilla, AK 99687
April 19, 1993

Sen. Loren Leman
State Capitol
Juneau, AK 99801-1182

Dear Sen. Leman:

Thank you for the responsiveness you and the members of your staff have shown with respect to concerns raised by members of the public about HB295. I support this bill as amended and hope it is passed by the legislature.

I appreciate the open forum of the teleconferences your committee has hosted on this bill. This conveyed a sense that public input was important and that the committee was willing to listen and entertain reasonable discussion. This contrasts with other committees where the public has been made to feel that their testimony was unimportant, that testimony was being taken only because it was a requirement and not from any desire of legislators to listen to constituents. In other committees, testimony was often rushed and the public was not allowed to ask questions or provide rebuttal to conflicting testimony.

Throughout this process, I have had the sense that you really cared and wanted to accommodate the wishes of the public where possible and appropriate. Thanks again for your responsiveness and for the courtesy and professionalism of your staff.

Sincerely,

Dennis G. Wetherell

Dennis G. Wetherell

P.S. Could you please fax me a copy of the bill as amended and as it will be received by the Senate HESS committee? Thanks (265-6928 Fax)

ALASKA LEGAL INFORMATION FOR HOME SCHOOL FAMILIES

Jack E. Phelps

Please note: The following is offered for information only and nothing in this article should be construed as the giving of legal advice.

The Constitution of the State of Alaska provides that the state shall afford an educational opportunity for all children residing in the state. Because of the inordinate size of Alaska and the difficulty of travel in major portions of it, the Centralized Correspondence Study program (CCS) was started in 1939. In recent years, this program has been made available to all students in the state whether or not they reside in a remote area. It is, then, a state sponsored home study program and students enrolled in it are automatically exempt from the compulsory attendance law. Additionally, several school districts have their own correspondence programs which are made available to students residing within their boundaries.

Currently hundreds of Alaska families are home schooling using programs other than those provided by state or local government. These range from private, full-service correspondence schools such as Calvert and Christian Liberty Academy, to free-lance, homemade eclectic programs.

Under state law, there are several routes parents can take to legally teach their own children at home. Alaska's compulsory attendance law is found in statute 14.30.010. It provides eleven categories of exceptions for compulsory attendance at public school under subsection (b). The exceptions that apply or may apply to home school families are (1)(B), (1)(C), (7), (8), (10)(B), and (11). In the following paragraphs we will consider each of these possible exceptions individually.

Option One

If a parent holds a current Alaska Type A teaching certificate, subsection (b)(1)(B) would allow that parent to tutor his own child at home and exempt the child from compulsory attendance as required in subsection (a).

Option Two

Subsection (b)(1)(C) provides that a student enrolled in a private, exempt school as authorized under Alaska statute 14.45.100 shall be exempt from the compulsory attendance requirement. AS 14.45.100 through 14.45.200 allows a family to establish a private school exempt from "provisions of law and regulations relating to education except law and regulations relating to physical health, fire safety, sanitation, immunization, and

physical examinations.

Specifically, this provision requires the home school to file an Affidavit of Compliance, an annual enrollment report, and an annual calendar. The parent must also file an annual notice of enrollment with the local superintendent. The private, exempt school must also maintain attendance records indicating at least 180 days of academic instruction; maintain transcripts of courses completed; administer a standardized test in grades four, six and eight; and ensure that all students are current on required immunizations. If the parents have religious objections to immunizations, an exemption form must be filed with the state. All forms necessary for full compliance with these provisions may be obtained from APHEA in a legal packet which is available upon request. They may also be requested from the state Department of Education.

Home schools are excluded from obligation to two provisions of the regulations governing exempt, private schools. These have to do with asbestos inspections and corporal punishment. The original proposal regulating spanking in private schools recognized no distinction between traditional private schools and those that are actually home schools. APHEA intervened on behalf of home schools and the Board of Education amended the regulation to include the following language: "The requirements . . . of this section do not apply to a school in which only the children of a single family are enrolled and the schooling is provided by the parent or legal guardian of the children."

Option Three

Some private schools established under AS 14.45.100 operate home school satellite programs. These programs provide a legal umbrella of protection for parents whose children are enrolled in them, provided the parent and school comply with the reporting requirements mentioned under Option Two. This may be the best option for home school families who attend churches that have such schools as part of their ministry. An added advantage to this approach is the educational assistance available to such parents when the private school is truly supportive of home school.

continued on page 8

Option Four

A few home school families in Alaska live in such a place that lets them take advantage of subsection (b)(7). This provision exempts from compulsory attendance any child who lives more than two miles from a school or school bus route.

Option Five

Subsection (b)(10)(B) clearly was intended to establish an exemption for those students who are enrolled in CCS or a borough correspondence program. However, the language does not specify CCS. Rather, it refers to a "full-time program of correspondence study approved by the department." Preliminary discussions have been held with Department of Education officials to explore the possibility of including private correspondence programs under this provision. The state currently uses material developed by at least one non-Alaska correspondence program in its own CCS curriculum.

Option Six

Another way to home school legally in Alaska is to seek exemption from compulsory attendance based upon subsection (b)(11), the "equally well-served" provision. For home schoolers, there is little practical difference between (b)(11) and (b)(8), so the two will be considered together here. The reason for applying under (11) rather than (8) is that the language of (11) provides a baseline argument for the home school family.

For the strongly academic home school family, this route may be preferable since it requires less paperwork once exemption has been recognized. Depending upon the attitude of the school principal and the district administration, however, approval may be more difficult to obtain. Under Option Two, the family is required only to file the paperwork. If parents choose Option Six, their curriculum and educational plan is likely to come under intense scrutiny from local public school officials.

General comments

Beyond the six options listed, the home school family may want to consider the question of whether the decision to home school is a privilege or a right. Home school parents may want to be very careful about asking for permission to home

school as opposed to notifying the authorities of their intent to home school. Under American constitutional law and its forerunner, English common law, the parent has the inherent right to direct the upbringing and education of his child. As recently as 1977, the United States Supreme Court noted that interests of natural parents are "intrinsic human rights" and are, therefore, antecedent to state interests. For Christians, this is not only a legal issue, it is a religious and moral one as well.

With respect to this question, HSLDA's Michael Farris has written, "If you believe that God forbids you to seek government approval for your home school, then we suggest that you respond to an 'approval' law by following Daniel's example. Offer your official a respectful 'notice of intent to home school.' This means that you courteously inform the official what you plan to do as opposed to asking him for permission."

In his book, *Home Schooling and the Law*, Mr. Farris lists 10 rules for legal preparedness that home schoolers should follow. We recommend these for your consideration and we urge you to obtain a copy of Mr. Farris' book and read it carefully. The 10 rules are:

1. Join Home School Legal Defense Association.
2. Know your state's law.
3. Know your local school district's stance on home schooling.
4. Join your state support group.
5. Keep good records.
6. Don't hide your children.
7. Give your home school a name.
8. Write a full statement of your family's religious conviction about home schooling.
9. If you are contacted by an official, ask for his request in writing.
10. Remember that God is your ultimate protector.

In summary, we should remember that home schooling is a legal and constitutionally protected way of providing a good education for our children. For many of us, it has become the only way. Let us be good stewards of our right to teach our own children at home. This means that we will work hard to ensure that they receive a good education, both in academics and character.



**HOME SCHOOL
LEGAL DEFENSE ASSOCIATION**

PAEONIAN SPRINGS, VIRGINIA 22129
PHONE: (703) 492-3929 **338-5600**

FACSIMILE TRANSMITTAL

DATE: 4-8-93

TO: Jack Phelps To Rep. Katt

LOCATION: Alaska House of Representatives

FAX NUMBER: (907) 465-4565

FROM: Dee Clark

SENDER'S FAX NUMBER: (703) 338-1952

- URGENT - Please notify recipient for pickup
- LEAVE IN FAX AREA - Recipient is aware of fax.

No. of pages (including cover): 9

SPECIAL INSTRUCTIONS:

Jack, I am sending along copies of answer to inquiries made to the U.S. Dept. of Education re whether special ed. services are mandatory. The provisions of section 8 in the proposed law are contrary to the requirements of federal law, because section 8 would mandate that students be evaluated and then receive the services if the hearing officer agreed with the school officials.

I am also enclosing a section from the Oregon Admin. Rules from which you should be able to extract some language to remedy this problem. I would delete (c) from Sec. 14.30.193 and then substitute language similar to that found in the Oregon law at (6)(a) and (b). I would then add another paragraph before (f) saying:

Notwithstanding any decision by the hearing officer, no child shall be compelled to be evaluated, placed, or transferred or ^{compelled} to receive special education or related services ^{through the school district} without the consent of the parent or guardian.

Jack, the legislation as it is presently proposed is probably unconstitutional because it compels services through the public school. Parents have the right to choose private sources to meet the needs of their handicapped children. Thanks, Dee

213:142

Memorandum Advisory Group
(received 4/1/92)

EDUCATION for the HANDICAPPED LAW REPORT

→ These letters have been edited to eliminate extraneous and irrelevant material.

of this letter, the State educational agency (SEA) must also meet the requirements at 34 C.F.R. 74.92. That section states that:

Methods and procedures for making payments to recipients shall minimize the time elapsing between the transfer of funds and the recipient's disbursements.

A Federal auditor may object to a procedure for payments which releases funds to LEAs months before the funds are actually expended. On the other hand, it may not be effective to hold back the last fifty percent of an LEA's entitlement until the end of the fiscal year. A Federal auditor may also question that practice.

If the SEA is concerned about reports regarding the expenditure of entitlement funds by LEAs, it would be possible to require quarterly reports on actual expenditures and still allow LEAs to draw out entitlement funds as they were expended. Quarterly reports could be used to help satisfy the requirements in EDGAR and other Federal requirements regarding a grantee's responsibility for monitoring a subgrantee's activities. As you know, the non-supplanting requirements for LEAs in the EHA-B do take into account the actual expenditure of funds, so the detailed report you currently require is useful (see 34 C.F.R. 300.230). However, an SEA has the option of establishing its own procedures for demonstrating compliance with the requirements used for Federal entitlement funds when there is no specific Federal standard. We are not aware of any Federal requirements which would make it necessary to collect a detailed report about an LEA's expenditures for a six-month period before the SEA releases the balance of an LEA's entitlement funds.

In your letter, you asked if, instead of asking for a report showing actual expenditures, you could ask LEAs for the following information:

A simple one-page report showing a line item budget (as approved by the SEA) and a column for actual expenditures by line item; and

An assurance from the LEA superintendent that the required accounting procedures have been followed and that records are available for audit.

Regardless of the single audit requirement, as long as detailed information showing actual expenditures is available for audits, there is no Federal requirement for the SEA to continually collect this information at the State level. As long as proposed procedures provide the SEA with access to the information it needs to monitor LEAs' compliance with the Federal requirements for these three entitlement programs, it appears that the proposed procedures you described do not conflict with Federal requirements at this time.

If you propose any changes in the procedures currently used by LEAs to collect entitlement funds, you must discuss these changes with the officials who are responsible for State audits. State auditors must be agreeable to any changes you propose to make in existing procedures.

We hope that you find this information useful. Please let us know if you have any additional questions.

G. Thomas Bellamy, Ph.D.
Director
Office of Special Education
Programs

Inquiry by: Michael P. Farris
Home School Legal Defense Association
731 Walker Road
Suite E-2
P.O. Box 950
Great Falls, VA 22066

Digest of Inquiry
(March 18, 1988)

- May a public school district require that handicapped children take part in its special education program?
- May parents of handicapped children opt to make nonpublic arrangements for their children's education such as private or home schooling?

Digest of Response
(June 24, 1988)

Public Education Not Mandatory for Handicapped Children

While neither the EHA nor its regulations require that children who are handicapped must receive a public education, nonpublic school children have the right to public agency services.

Parents May Educate Handicapped Child At Home or in Private School

Nothing in the EHA or its regulations permits interference with parents' right to educate their handicapped child at home or in a private school, regardless of whether the child was ever enrolled in public school.

EHA RULINGS/POLICY LETTERS

213:143

→ These letters have been edited to eliminate extraneous and irrelevant material.

Text of Inquiry

We have recently run into problems in several states with school districts who interpret the Education of the Handicapped Act, 20 U.S.C. Sec. 1401 (et seq.), in what we believe to be an incorrect manner, and I would like to ask for your help in clearing up the confusion. The dispute centers over whether handicapped children *must* participate in the public school's special education programs, or whether parents may opt to make other arrangements for their handicapped child's education, such as through private or home schooling. We have had several superintendents insist that handicapped children *must* be educated in the public school system.

In looking over the wording of the pertinent section of the regulations, 34 C.F.R. Sec. 300.403(a),¹ it appears, as we have always understood to be the case, that a public education must be *made available* to every handicapped child, but that the parents have the option of providing an alternative education if they so desire. The parents cannot receive government funding for anything other than the public school's program, but they do have the choice to forego funding and make their own provision for their child's education.

Our problems with school districts have fallen into two different, but closely related categories. The first involves children who have never been enrolled in the public schools (by reason of being home schooled), but who are handicapped. The school district claims it has jurisdiction over the child's education under the EHA simply by virtue of the child's being handicapped, although the parents have never requested that the child receive a public education in any form, including a special education under the EHA.

The second involves children who have been a part of special education programs in the public schools, but whose parents decide at some point that they want to end their relationship with the public schools and to provide education for their children via either home or private schooling. In such cases, the school district claims that its jurisdiction over the child continues, since the child was once part of an EHA program. They view the parents' refusal of the continuing Individualized Education Program as they would an objection to the nature of the program, instead of (as the parents intend) a decision to remove their child from the public education system completely, and therefore from the EHA program, as well. No doubt the school districts' objections in

¹ 34 C.F.R. Sec. 300.403(a) provides in pertinent part:

If a handicapped child has available a free appropriate public education and the parents choose to place the child in a private school or facility, the public agency is not required by this part to pay for the child's education.

such cases would not arise if these children were enrolled in private schools, but since these families are home schooling, the public schools are suspicious and unwilling to give up control over the child.

In light of these confusions with school districts in several states, I would appreciate it if you or the appropriate person in the Department of Education could issue some kind of explanation or ruling on this question of whether or not public education is mandatory for handicapped children under the provisions of the Act. It would greatly help us to avoid unnecessary legal action if we could get a clear statement on what the Education for the Handicapped Act provides on this area.

Thank you very much for your help in this. If you have any questions about this, please let me know.

Text of Response

After further consultation with other staff in the Department of Education, I have some additional information on the issues you raised in your letter.

You asked about both children who are handicapped and have never been enrolled in public schools (by reason of being home-schooled), and children who are handicapped, have been enrolled in the public schools, and have left to be educated in either a private school or through home-schooling. You are concerned about public agencies taking the position that they have jurisdiction over such children under authority provided by Part B of the Education of the Handicapped Act (EHA-B).

Under EHA-B, public agencies are required to provide a free appropriate public education (FAPE) to all handicapped children within an agency's jurisdiction. However, there is nothing in the EHA-B statute or regulations that indicates that the FAPE requirement applicable to participating States was intended to interfere with the right of parents to educate their children at home or in a private school in accordance with their State's provisions for these alternatives.

It is clear under the EHA-B regulations and the Department of Education's General Administrative Regulations (EDGAR) that public education is not mandatory for children who are handicapped. In addition to the regulatory passage which you cited in your letter, 34 C.F.R. Sec. 300.403(a), the EHA-B sections immediately following, Secs. 300.450-300.452 and particularly EDGAR at 34 C.F.R. Secs. 300.651-662, define the rights of nonpublic school children and the limited obligations of public agencies for those children.

While these regulations define the nonpublic school child's right to participate in public agency services, they do not expand or limit a State's authority to regulate or otherwise set standards for the education of children residing in the State whose parents choose to enroll them in nonpublic educational programs.

110. Rec.

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EDUCATION for the HANDICAPPED LAW REPORT

→ These letters have been edited to eliminate extraneous and irrelevant material.

I hope you find this information helpful. Let me know if we can be of additional assistance.

Charles J. O'Malley, Ph.D.
Executive Assistant for Private Education



Inquiry by: Charlotte Des Jardins
Executive Director
Coordinating Council for Handicapped Children
20 E. Jackson Blvd., Room 900
Chicago, IL 60604

Digest of Inquiry
(April 5, 1988)

- Why are chemically dependent children not eligible for services under P.L. 94-142?
- Are EHA and Section 504 in conflict with respect to coverage for chemical dependency?

Digest of Response
(June 16, 1988)

Qualifying Condition

Chemical dependency alone does not make a child "other health impaired" under EHA. Unless the chemically dependent student has another health impairing or handicapping condition requiring special education, use of EHA funds to serve him is improper.

EHA Not in Conflict with Section 504

While the definitions and persons protected under EHA-B and Section 504 differ regarding coverage for chemical dependency, the statutes are not in conflict and school districts are not precluded from complying with both statutes.

Text of Inquiry

This letter comes to request a clarification of an OSEP written communication regarding eligibility of students with substance abuse problems for services under P.L. 94-142, published under your name in *Education for the Handicapped Law Report*, February 27, 1987.

As a result of this communication, and a subsequent Illinois State Board of Education Memorandum on the same issue, Illinois students with substance abuse problems have been denied access to services under P.L. 94-142.

The OSEP and ISBE communications on this issue have caused a great deal of confusion in Illinois, especially since Section 504 of the Rehabilitation Act of 1973 has defined substance abuse as a disability and Section 504 prohibits discrimination by recipients of federal funds. A number of Illinois attorneys have indicated that both the OSEP and ISBE eligibility determinations are in conflict with Section 504, and they have indicated their interest in pursuing the matter through the courts.

A number of desperate parents whose children have been denied access to services as a result of these determinations have contacted our office for assistance. In some of these cases, the parents were ordered by the courts to place their students in a drug rehabilitation facility — an order which they cannot implement without the financial cooperation of the school district.

The end result of the OSEP and ISBE determination is that students with several substance abuse problems are prevented from getting the help they need because the high cost of this service can only be borne at public expense.

The Illinois Department of Mental Health and Developmental Disabilities likewise has its own rule placing funding responsibility on local and state education agencies.

While federal and state agencies each in turn deny responsibility in substance abuse cases, students and parents get a mixed message. While the President of the United States has launched a major offensive against substance abuse with a clear, loud message SAY NO TO DRUGS, students are prevented by federal and state agencies from implementing this federal directive by the federal and state agencies whose designated responsibilities are to provide the needed assistance.

Your clarification is requested to enable students to get the educational services they need in a setting which will provide the related services needed to benefit from the educational program.

Text of Response

Thank you for your letter requesting clarification of a February 22, 1988, letter this office prepared regarding eligibility of students with substance abuse problems for services under Part B of the Education of the Handicapped Act (EHA-B).

In your letter, you state that, because of this Office of Special Education Programs (OSEP) policy letter, and a subsequent Illinois State Board of Education memorandum on the same subject, Illinois students with substance abuse problems have been denied access to services under EHA-B. You state further that these two communications have caused a great deal of confusion in Illinois, especially since Section 504 of the Rehabilitation Act of 1973 prohibits discrimination by recipients of Federal funds.

13:148

EDUCATION for the HANDICAPPED LAW REPORT

-- These letters have been edited to eliminate extraneous and irrelevant material.

Text of Inquiry

I am requesting relief from the Office of Special Education Programs regarding a denial by the Indiana Department of Education for a due process hearing regarding the provision of a free appropriate public education for my daughter, a student in the Tippecanoe (County) School Corporation, Lafayette, Indiana.

I am enclosing a copy of my request for a hearing, which was received by the Division on April 14, 1988 and the response which was received from the Indiana Department of Education.

This was a request for a second hearing for my daughter, the first of which was referred to in the April 28, 1988 letter from Kevin McDowell. I am also enclosing page seven from the decision resulting from that hearing, which was rendered by M. Jean Rawson on January 7, 1988, wherein is defined the three hearable issues. [Not reproduced.] (1) Whether the proposed IEP for 1987-1988 was appropriate for the child; (2) Whether the parents are entitled to reimbursement for their costs expended for related services and independent evaluations in 1985-86, 1986-87, and 1987-1988; (3) Whether GLASS's (the school's) procedures and practices regarding notice of parental rights in 1985-86 and 1986-87 were proper. You will note that appropriateness of the program prior to 1987-88 was not described as an issue.

It is my belief that my request for a hearing on April 6, 1988 was based on new issues, and that the request for a hearing has been unjustly denied.

Please contact me for more information and let me know what options in this matter may be afforded us by the Office for Special Education Programs. I may be reached at (317) 572-2892.

Text of Response

Thank you for your letter concerning the denial by the Indiana Department of Education (SEA) of your April 6, 1988, request for a due process hearing in regard to the provision of a free appropriate public education for your daughter.

The documents submitted with your letter stated that the SEA is refusing your request for a due process hearing based on the legal principal of *res judicata*. That is, the SEA contends that the seven issues you raised in your April 6 due process request were already raised and disposed of by the hearing officer during the first hearing convened on behalf of [] and that the orders of the hearing officer were not appealed.

Part B of the Education of the Handicapped Act does not provide any authority for an SEA to deny a parent's request for a hearing. 34 C.F.R. Sec. 300.506(a). In fact, the EHA-B regulations specifically prohibit local and State educational agency employees from functioning as due process hearing officers. The issue of whether or not a parent's request for a

hearing is based on new issues or not can only be decided by an impartial hearing officer. 34 C.F.R. Sec. 300.507(a).

While in no way presupposing how a hearing officer would decide on this issue, we are going to contact the Indiana Department of Education to remind them of the above requirement and their obligations under 34 C.F.R. Sec. 300.506 and 34 C.F.R. Sec. 300.507(a).

Thank you for bringing this matter to our attention.

G. Thomas Bellamy, Ph.D.
Director
Office of Special Education
Programs

Inquiry by: Beth E. Wierda
Legal Counsel II
Nebraska Department of Education
301 Centennial Mall South
Box 94987
Lincoln, NE 68509-4987

Digest of Inquiry
(March 17, 1988)

- Must an LEA take any action if it believes that a child in a nonpublic or home school qualifies for and would benefit from special education services but the parent will not permit the child to take part in such activities?

Digest of Response
(June 6, 1988)

Parents May Refuse Special Education for Nonpublic or Home Students

EHA regulations require that students enrolled in nonpublic or home schools be given the opportunity to take part in public school special education activities, but there is no federal authority to disregard a parent's decision not to let their handicapped child participate.

Text of Inquiry

We are seeking your assistance in answering a question related to the provision of special education services to students enrolled in nonpublic schools or home schools. Our question is as follows:

If an LEA believes that a child enrolled in a nonpublic school or a home school is eligible for and will benefit from the provision of special

EHA RULINGS/POLICY LETTERS

213:149

- These letters have been edited to eliminate extraneous and irrelevant material.

education services but the parent refuses to allow the child to participate in special education activities, what action, if any, should the LEA take?

Your assistance in answering this question will be helpful to us as we continue to provide special education services to children in Nebraska.

Text of Response

Thank you for your letter to Jeff Champagne concerning the provision of special education services to children enrolled in nonpublic or home schools. Under 34 C.F.R. Secs. 300.450-452 and 34 C.F.R. Secs. 76.650-76.662, these students must be provided with a genuine opportunity for equitable participation in the public school program. See 34 C.F.R. Sec. 76.651(a).

This Federal requirement does not limit or expand the authority of State and local agencies to provide services under State or local statutes and regulation. Rather, it defines the State or local obligation that exists when a parent exercises the right under any State or local authority to educate a child outside of the public program.

Federal rules determine the right of the nonpublic school child who is handicapped and wishes to participate to have the opportunity to participate in public school services. They do not establish or eliminate any right of a parent to refuse to allow the child to participate in special education activities when the parent's decision is that the child should not participate. In this latter situation, State and local requirements are determinative. While a school district must stand ready to serve a child when that child seeks services, either through regular enrollment or participation as a nonpublic school student, there is no Federal authority to override a parent's decision not to have their child participate.

We hope you find this information helpful.

G. Thomas Bellamy, Ph.D.
Director
Office of Special Education
Programs

Inquiry by: Honorable Phil Gramm
United States Senate
Washington, DC 20510
on behalf of
Cleon M. Scarborough
Superintendent
Martinsville Public Schools
Martinsville, TX 75958

Digest of Inquiry
(February 25, 1988)

- Are school districts required to provide summer programs for handicapped children if their parents so request?
- May EHA-B funds be used to pay legal and advocacy costs of parents of handicapped children?

Digest of Response
(July 28, 1988)

EHA-B Bars States from Denying ESY Programs to Handicapped Children

Extended school year programs must be made available when they are necessary to provide FAPE to a handicapped child.

EHA-B Funds May Not Pay Legal and Advocacy Costs

EHA-B funds cannot be used to pay for legal and advocacy costs of a parent or public agency; separately funded protection and advocacy agencies help facilitate parent involvement called for in federal special education legislation.

Text of Inquiry

We are enclosing a letter that will affect our Special Education Cooperative this coming summer. It seems that the Texas Education Agency will not fund anything but a bus route. My concern is if our tax dollars are paying for Advocacy, Incorporated, what is your position regarding their funding? I am also opposed to government-funded legal aid for representation of any malcontent to sue us as a school district and our tax dollars (state or federal) having to essentially pay for both sides.

The attitude taken by some parents of handicapped children is that if they want it, it should be provided. Our other children do not get everything they would like to have. Advocacy, Incorporated has convinced some of our parents that money is no object. According to them, we are obligated to provide any service the parents believe would be helpful. If things keep going the way they are, those parents will be demanding 24-hour service for 7 days a week.

I will be looking forward to your reply.

OREGON ADMINISTRATION

N 1111

OAR 581-21-029, Home Schooling for Handicapped Students

- (1) The following definitions apply to OAR 581-21-029:
- (a) "District" means the school district of the parent's residence on the date of the notification to the superintendent by the parent or guardian of the intent to teach the child at home.
 - (b) "Resident district superintendent" means the superintendent of the district as defined in Section (1)(a) above.
 - (c) "Superintendent" means the executive officer of the Education Service District or, where there is no ESD, the county school district serving the school district of which the child is a resident.
 - (d) "Parent" means the natural parent or legal guardian of a child whom the parent desires to be exempted from compulsory attendance under the provisions of ORS 339.030(5).
 - (e) "Handicapped child" means a child meeting the eligibility criteria for their specific handicapping condition as set forth in OAR 581-15-051.
- (2) When a parent notifies the superintendent, as provided in OAR 581-21-025, that he/she intends to teach the child at home, the superintendent, in accordance with OAR 581-21-026, shall notify the resident district superintendent.
- (3) If the child is identified as handicapped, the district shall offer, and document to the parent, opportunities for the child to receive or continue to receive special education and related services. Such services, however, shall not be provided in the home.
- (4) If the child has been identified as handicapped and the parent refuses special education services, the district shall:
- (a) record the parent's refusal;
 - (b) document to the parent the availability of special education services for their child; and
 - (c) for the students in a special education program, send a notice of change of placement to the parent stating that the parent has elected to withdraw the child from public school under ORS 339.030(5). The notice shall include statements that:
 - (A) The district has the responsibility to offer a free appropriate public education,
 - (B) The district has offered the free appropriate public education,
 - (C) The parent may request a due process hearing as provided under OAR 581-15-081, and
 - (D) The child is entitled at any time to re-enroll in the public school.
- (5) If the parent, resident district superintendent or superintendent believes a child is handicapped, the district shall follow procedures under OAR 581-15-039 to obtain parent consent for evaluation to determine the child's eligibility to receive special education and related services. If the child is eligible, the district shall notify the parent and shall offer the child a free appropriate public education.
- (6) If a parent of a child refuses consent for evaluation of the child, the district shall document the refusal and initiate due process hearing procedures under ORS 343.165 and OARs 581-15-080 through 581-15-096.
- (a) If the parent participates in the hearing but refuses to comply with the decision of the hearings officer, the district shall document, in the hearing record, its attempt to evaluate, identify and offer the child a free appropriate education.

- (b) If the parent does not participate in the hearing, the district shall document, in the hearing record, its attempt to evaluate, identify, and offer the child a free appropriate education and the parent's lack of consent thereto.
 - (c) A child who has not been evaluated and identified, shall be considered nonhandicapped by the district.
- (7) Notwithstanding OAR 581-21-027 in determining satisfactory education progress for a handicapped child, the district shall direct the multidisciplinary team to evaluate the child as required under OAR 581-15-072 to determine whether satisfactory educational progress appropriate to the age and handicapping condition of the child has been made:
- (a) In place of the child's regular teacher as specified in OAR 581-15-072(7)(a)(A), the multidisciplinary team shall include the parent, and the person teaching the child when such is the case.
 - (b) The multidisciplinary team shall state whether the child has made satisfactory educational progress, and the superintendent shall consider that report in determining the child's progress. The student need not complete all IEP goals in order for the superintendent to make a determination that the child is making satisfactory educational progress.
 - (c) If the parent refuses the annual evaluation or refuses to arrange to have a test administered as required in ORS 339.035 and OAR 581-21-026 for nonhandicapped students, the superintendent shall follow procedures set out in OAR 581-21-026(10). The local district may take action against the parent for violation of ORS 339.035 or ORS 339.020.
- (8) The superintendent may order the child back to school if the child has not made satisfactory educational progress. The parent may appeal the order of the superintendent following procedures under OAR 581-21-028. 7/23/86 (eff)

CS FOR HOUSE BILL NO. 235(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 3/30/93
Referred: Rules

Sponsor(s): REPRESENTATIVES BUNDE, Grussendorf

A BILL
FOR AN ACT ENTITLED

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

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

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

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

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

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

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

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

1 education and related services.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 consent, or does not respond promptly to the school district's request for consent,
2 under AS 14.30.191(a) or 14.30.295(f), the school district may appoint an impartial
3 hearing officer to conduct a hearing to determine whether the school district may
4 initiate the evaluation or placement of the child, or transfer the child.

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

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

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

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

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

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

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

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

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

1 under AS 14.30.193.

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

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

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

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

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

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

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

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

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

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

25 (2) the child's teacher;

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

27 (4) the child, when appropriate;

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

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

31 (c) Each school district shall develop an individualized education program for

1 every exceptional child.

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

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

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

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

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

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

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

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

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

1 to restriction based on the minimum distance between the school and the residence of
2 the exceptional child.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (B) the child's teacher;

5 (C) the child's parent;

6 (D) the child, if appropriate;

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

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

11 * Sec. 25. This Act takes effect June 30, 1993.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 235

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

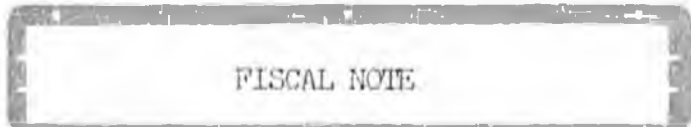
Phone: 465-2803
 Date: 3/19/93

Approved by Commissioner: *Mike Maher*
 Agency: Education

Jerry Covey
 Date: 3-19-93

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

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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.