

HB

301

HFIN

FILE

Amendment

To: HB 301

Page 4, add a new Sec. 9

From Rep Davies

Sec. 9. AS14.30.315 is repealed and reenacted to read:

Sec.14.30.315. Programs for gifted children. (a) Every school district shall establish educational services for gifted children that provide for student identification, student eligibility, student learning plans and parental and student participation including an appropriate review process, consistent with regulations adopted by the department. (b) Nothing in this section prohibits the department from requiring approval of programs of special education and related services for other categories of exceptional children.

These regulations shall include provision for the child study team, IEP, Grievance procedure, due process hearing & Associated officers.

4-14-00

Amendment

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Page 4, add a new Sec. 9

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FISCAL NOTE

Bill Version: HB 301

(H) Publish Date: 1/21/00

**STATE OF ALASKA
2000 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction) _____ Dept. Affected Education & Early Dev.
 Title Education of Exceptional Children BRU Teaching and Learning Support
 Component Special & Supplemental Services
 Sponsor Rules Committee
 Requester Governor Knowles Component No. 166

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2000) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill proposes statute changes that would bring Alaska law into compliance with federal laws and regulations regarding special education services. There are no expected fiscal impacts to the Department as a result of this bill.

Prepared by: Barbara Thompson, Deputy Director Phone 465-8727
 Division Commissioner's Office Date/Time 12/20/99 4:14 PM
 Approved by Commissioner Richard S. Cross Date 1-6-2000
 Agency Education & Early Development

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Subject: HB301

Date: Fri, 14 Apr 2000 12:51:03 -0800


From: Marc Grober <marc@interak.com>

To: Representative_Eldon_Mulder@lrgis.state.ak.us

Attached you will find testimony prepared for the Senate HESS committee. I would appreciate it if you would a) circulate this testimony to all the Finance Committee members; b) advise all the members that, thanks to the intervention of our federal Congressional delegation there is no need to pass this bill out this session; c) this is poor legislation as the House HESS committee recognized in unanimously refusing to recommend the bill pass. The only way the public is going to get the opportunity to ensure that appropriate legislation is adopted is for this bill to die. On behalf of the hundreds of people who have tried to tell the legislature how really bad this bill is I ask that you let the bill die in committee.

Marc Grober

p.s. please confirm by return e-mail that you were able to open and print the attached testimony

 sb205testimony.wpd	Name: sb205testimony.wpd Type: WordPerfect Document (application/wordperfect5.1) Encoding: base64 Download Status: Not downloaded with message
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LAW OFFICES OF MARC GROBER
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(907) 337-5687 VOICE AND FAX
MARC@INTERAK.COM

April 14, 2000

Senate HESS Committee
Via E-mail

Re: SB205/HB301

Dear Senators,

You now have before you SB205/HB301 ("bill"). This bill suffers from a variety of simple mechanical flaws as well as from a number of policy problems that have wide ranging impact. After months of review, lengthy hearings and broad consultation with bill proponents (all of which resulted in an extensive file which the Chair has and which I have requested be shared with the members of the committee) your colleagues in the House HESS committee refused to recommend that this bill pass. The bill initially survived only because of the original claims that failure to ensure passage of the bill would result in a loss of fourteen million dollars in federal funding, claims that are now acknowledged to be untrue, and I believe the bill continues to survive only out of intra-branch comity. I will present below my testimony regarding some of the more blatant defects in the legislation. My full analysis, in the form of my comment upon a sectional analysis of the current bill updated as of today (i.e. if you have looked at this information previously it has now changed to address recently developments) is available on the web at <http://akcept.interak.com/akceptionalities/govs.html> and I do hope you take the opportunity to review the material there, which I'd like to incorporate in my testimony by reference.

Before I proceed to that testimony I want to advise the committee that I have provided a copy of my resume which by now I hope you all have so you understand my background and expertise in these matters. I have been testifying before HESS committees on special education since 1992, have proposed the only omnibus rewrite of these statutes to serve as a focal point for discussion of the issues relating to special education. I am one of a very few attorneys who have litigated special education matters and may be the only attorney to have litigated gifted education issues. I have been appointed by the Courts through the Public Advocate to represent persons involved in special education litigation before our

state courts because of my expertise in this area and to my knowledge am the only attorney to be so appointed. I was first qualified as a DOE hearing officer in 1994, and though state law makes it clear that there are no currently qualified hearing officers, let me just say that I continue to be as qualified to serve as a DOE hearing officer as anyone else in the state. I have obtained in the past Secretarial Review of special education practices in this state (Secretarial Review was the process by which the Secretary acknowledged that the state was not complying with the terms of the federal grant and mandated corrective action, a process which was eliminated in the 1997 IDEA amendments leaving AKDEED without any real oversight.) I am past Chair of the Education Law Section of the Alaska Bar Association as well as past CLE Chair. I have been professionally involved with the issues before this committee longer than anyone you are ever likely to hear from and have been litigating these issues for almost 20 years. I am not speaking in any formal representational capacity today though I can tell you that as word of this bill spreads throughout the state (and it is difficult because of the confidential nature of the subject) hundreds and hundreds of parents are becoming outraged that the legislature is looking at letting the fox into the henhouse. Now I'd like to address the bill.

The bill proposes major but inconsistent changes to AS 14.30.180 et seq (also identified as "Article 3 Educational for Exceptional Children" and sometimes referred to below as the "Article"). It repeals most of the substantive provisions relating to due process rights and transfers responsibility for formulating pertinent law to the Alaska Department of Education and Early Development (AKDEED). The bill requires, whether one agrees or not with the apparent policy statement it makes (that Alaska shall do the least humanly possible for our children that will still allow us to use them to collect federal revenues), the following adjustments to address its stated purpose (as enunciated by the Governor in his transmittal letter.) Though I have continued to search for any kind of sectional analysis prepared by AkDEED that addresses this bill I have been unable to locate such a document and it is difficult to address the contents of a bill when the proponent has been unable or unwilling to substantively and publicly support the bill.

1. The current bill was presented to you as necessary to bring state law in compliance with federal regulations. Yet the bill does not address the fact that AS 14.30.350(2) IS NOT consistent with 34 CFR 300.7(a)(1) defining child with disability. You should know that one district has already been called on the carpet by AkDEED for complying with the language of AS 14.30.350(2)! If AKDEED is unable to address even this most insignificant drafting issue, can you really rely on much else they present to you?
2. The bill repeals AS 14.30.350(9) and (11) defining "related services" and "special education", but the bill repeals and re-enacts AS 14.30.186 which employs both terms.
3. The bill amends AS 14.30.180 but fails to include the complete term of art "free appropriate public education" or FAPE (the word "free" is missing) and repeals AS

14.30.350(11) which was the only portion of the statutes that mandated compliance with the federal mandate that states provide FAPE (by requiring that such benefits be provided at "no cost"). On the other hand AS 14.30.193(a) does include the entire phrase. The statute is clearly inconsistent and fails to mandate the very kernel of the IDEA, FAPE.

4. I have previously provided suggested replacement language for AS 14.30.180, drawn from the laws of the State of Missouri, which states an appropriate state policy regarding exceptional children. This proposal is appended to the end of my testimony as well. It assumes that there are also statutory definitions of special education and related services that make it clear that these benefits are offered at no cost.

5. AS 14.30.180(2) has been grossly misinterpreted by AkDEED and needs to be repealed so as to avoid further misadventure. AkDEED has been advising that this section mandates that Alaska comply with federal IDEA regulation no matter how the IDEA itself or federal regulation is amended from time to time. This is false under state law (in fact there is a specific regulation addressing this point at 4 AAC 52.900) and the Department has apparently acknowledged this before the House HESS committee (which in part was the basis for the extensive amendments restating the legislature's authority in this matter). In as much as the language is superfluous (as a number of persons testified on April 12th) there is no reason not to delete the language. If the committee feels that it must retain the language, there should be additional language included to ensure that AkDEED does not engage in such misdirection in future.

6. The bill (Section 2, amending AS 14.30.182) authorizes AkDEED to take action necessary to qualify for federal funds. While this provision amounts to moving AS 14.30.335 to Section 182, the language is still superfluous as noted above and leaves too much room for misinterpretation by AkDEED.

7. The bill makes a variety of amendments to AS 14.30.193 and 195 but fails to address underlying systemic problems:

a) First of all, while Section 195 affords the subpoena power in tier two or state hearings (in which it is rare to even take testimony as these are supposed to be largely review hearings), Section 193 which references tier one hearings or district hearings which is where most evidence is adduced, does not afford such hearing officers that power. This has been a gross violation of the IDEA mandate for 30 years and has been recognized by every expert who has looked at the issue (even the experts retained to train due process hearing officers). The subpoena power must be specified with respect to both tiers.

b) Lawyers practicing in this area of the law appear to agree that a two tiered system is inappropriate and a waste of resources. Many states use a single tier system. In response to my colleagues' concerns I contacted the federal Office of Special Education Programs and obtained the names of states that had gone from a two tier to a single tier system and then discussed this change with staff in those states. I was very impressed with the provisions of the Missouri statutes and spent a considerable amount of time with Missouri state special education staff reviewing these provisions and how they have operated in that

state. In a nutshell the Missouri system employs a single tier with a three person panel (panels are employed by quite a number of states). One panel member is a state contracted attorney responsible for administration of the program. One additional panel member is then appointed by each of the district and the parents. This results in a system where everyone believes they are being heard, a system where people believe the decisions are well reasoned thereby reducing appeals, a system that promotes well researched decisions that provide some precedential value. And, the system results in a quicker constitution of the panel. I encourage the committee to adopt a modified Missouri plan for providing due process hearings to parents in Alaska.

c) The bill essentially approves the Departments refusal to adopt regulations in compliance with the 1993 amendments to Section 193. The 1993 amendments were intended to ensure that there was an open register for hearing officers and that hearing officers would be qualified for a limited time based upon their successful completion of training. The Department has only tested hearing officers at the completion of training once since 1994. The Department has never open training to any member of the public who wanted to take that training. The training offered by the Department has been inadequate (indeed at the present time there are persons allegedly qualified as hearing officers who don't understand how to apply state statute and regulation.) The practice recommended by AkDEED and the practice and procedure embodied in the current bill are inadequate to afford due process to parents.

d) Section 193 fails to adequately address who has the burden of requesting a due process hearing and this is no small matter. Under prior federal law, if a parent did not agree to a proposed change to an IEP the proposed IEP COULD NOT be implemented (See Appendix C to 34 CFR Part 300 as applied under 4 AAC 52.900). A district which wished to override the parent's refusal had to demand a due process hearing. In practice, Alaska districts, apparently aided and abetted by AkDOE, violated these parental rights. The '97 IDEA Amendments have now gone a step further and recognized the past agency practice as acceptable (i.e. a district can arguably impose an IEP, placing the burden of requesting a due process hearing on the parent.) However, this federal policy is contradicted by Section 3 of the the bill (addressing AS 14.30.186(c)). This confusion will lead to a good deal of litigation and also presents a number of equal protection issues with regard to parents who are not home schooling their children.

8. The bill inadequately reconciles the provisions of AS 14.30.340(a) and AS 14.30.186. Section 340(a) should be repealed and the provisions rolled into Section 186. Perhaps more appropriately, more attention should be spent defining the terms employed as part of Section 350.

9. The bill attempts to use as a legal construct the residence of the child, but fails to define that construct. Again, this is not a simple matter, as drafters attempting to distinguish between residence and domicile as concerns entitlement programs have known for years. Suggestions were made in 1994 as to how to possibly address this matter but it remains

an issue. There is also concern that the current language may run afoul of the adoption of unilateral placement policy in the IDEA.

10. School districts face tremendous problems in distinguishing between that class of persons who may be qualified under the IDEA to exercise parental rights, and those persons who in fact may legally exercise those rights. By way of example, recent litigation arose over a situation in which a district allowed a parent without legal custody to approve of an IEP change while the parent with legal custody refused to approve the change. This places districts in an untenable position. Judicial officers involved suggested that they could not believe that a district would change an educational program on the basis of demand from a parent without legal custody but the district apparently claimed they had been directed to do so by the Department. While the IDEA tried to make advocacy for a child easier by requiring that a state recognize that a larger class of persons may exercise parental rights, this was not intended to wreak wholesale havoc by constituting all possible members of this class as having complete and total authority to act on behalf of the child. This defect must be resolved now.

11. The bill continues to provide for a shadow realm where parental rights are not adequately recognized. In 1993 we proposed (and AKDOE finally admitted) that the provisions of Title 47 (including the CINA statutes) could be employed to provide districts with an opportunity to override parental decisions where the district believed that such parental decisions were contrary to the child's welfare. By following the existing statutes parents would be guaranteed assistance of counsel any time a district attempted to force parents to accede to district demands with respect to special education programming or evaluation. It would also be economical by employing a single system and would avoid the situation where districts simply attempt to push parents around by subjecting such action to judicial scrutiny. The federal law DOE NOT prohibit the state from employing whatever internal process the state wishes to employ, as long as districts are afforded some opportunity to have a judicial officer review a parents refusal.

12. Section 4 of the bill only addresses the situation in which parents exercise rights. Yet under our current regulations and as authorized under federal guidelines, these rights may pass to children when they reach the age of majority. If it is the intent to maintain our current law in this respect, the amended law would be once again inconsistent with such policy. See e.g. 4 AAC 52.560, 34 CFR 300.517.

13. I have continued to recommend that this Article be amended to adopt the appropriate provisions of the Alaska Administrative Procedure Act. This would provide a wealth of precedent as well as the benefit of years of wisdom regarding administrative proceedings.

14. The IDEA amendments also require a reconstitution of the special education advisory board. AkDEED has not brought that to you because they don't want such changes to be subject to the political process. Is it reasonable to believe that AkDEED has intentionally

left a portion of the compliance mandate out of the bill in order to bypass the real intent of the IDEA and to make sure that the mandated advisory board continues to be maintained in such a manner as to only represent an interagency clearing house? I suggest that in order to avoid further public outcry regarding the unholy action of AkDEED, that the authority for appointing people to the required advisory board be transferred to the Chair of the Legislative Council or of the House or Senate HESS Committee so that the board can do what it is supposed to do.

15. The bill for the first time establishes a statute of limitations that, for no apparent reason does not apply to districts. I can tell you from extensive experience that based upon the nightmares that parents face in dealing with districts and AkDEED on these issues that 12 months is grossly inadequate. A two year statute of limitation that applies to both parties would be appropriate.

16. Section 4 of the bill represents the intent of the administration to cease using the term exceptional to generally refer to the beneficiaries of this Article (though the bill leaves the term in the purpose clause and in the definitions section of the Article). AkDEED has apparently been claiming that federal guidelines mandate such a change. This is nonsense and may stem from a gross misreading of 34 CFR 300.152 which merely requires (as SB315 recommended in 1994) that there be an audit trail so that spending of federal funds can be tracked. Much of the bickering and patching that has been engaged in before both committees stems from this apparent misreading. There is no reason whatsoever that state statute and regulation can't include a larger class as subject to federally mandated rights than that class identified under federal law. In fact the federal regulations go so far as to make it clear you need not even label a child.

The two essential requirements are a) that at least a certain minimum class of children get at least a minimum set of rights and b) the grant application for the federal funds has to be limited to those students who qualify under federal guidelines and the funds have to be tracked so that everyone can be assured the funds are being spent on something other than, say the panelling of a superintendent's office. *In sum, this body could in fact adopt statutes that provided that every child in the state was entitled to the rights and protections identified in federal regulations.* However, you would only receive federal funds for those students who qualify under the federal guidelines. I encourage the committee to retain the use of exceptional throughout the statutes and regulation (mandating that the agency employ that language.) This format has worked for this state for 30 years (yes, Senators, I said thirty years). The initial HB301 created quite a number of equal protection issues because while it removed some provisions it retained others. The current amendments, while obviously well intended, fail to provide protections necessary to ensure that our at-risk children receive services and they render the equal protection issues arguably even greater because of the continuing inconsistencies in the bill. There are a number of easy (yes, easy) solutions to the G/T problems, but I respectfully submit that

you are not going to be able to address them, together with the other problems inherent in this legislation, within the time remaining to this committee.

That concludes my overview of the most obvious issues with this legislation. I could go on for days. Let me close with some observations.

While this committee may have to co-exist and co-operate with the administration, that in no way suggests that the staff that has appeared before you is competent to testify on the issues addressed in this bill. While the nominal subject of special education is "education", the essence of special education for the past 30 years has been the law. The issues of due process and compliance, the heart and sole of special education law, are matters of legal art, not educational policy. There are only about a dozen attorneys who have ever litigated these matters and about half represent school districts, from whom you have not heard at all. Of the remaining counsel, half again are employed by agencies funded by governmental administrations. The administration has never been successful in obtaining compliance with special education law at any time during the past 30 years. The administration has spent millions and millions of dollars without any real accountability and has refused to even comply with this body's pronouncements, the law of this state (most recently AkDEED has taken to advising districts to violate state law.) The administration has given you a mistaken history of the IDEA, a mistaken view of federal requirement, and a mistaken view of federal policy. The administration has attempted to keep the public out of this discussion. This is not a pretty picture, but it is a picture that the majority of this assembly has been wrestling with for some years now. I want to see necessary educational programs properly funded so that all children get a free appropriate public education. By the same token I want to see a competent administration that understands that regulations follow statutes, not vice versa, and I want to see some accountability for the millions of dollars that have been spent WITHOUT COMPLIANCE.

Senators, I appear here before you without a client, without being on the payroll of some government funded organization, for the same reason I appeared here in 1993. I am an officer of the court and practice in this area of the law and a parent of exceptional children (both disabled and gifted), children who would have been denied all services but for the statutory rights now in place. You are being asked to abrogate those rights by the same people who have failed to protect those rights over the past 30 years (leaving it to private counsel to enforce those rights.) The paper houses that AkDEED may present are very pretty, but the realities, as always, are much less pleasant. Senators, I beg of you to protect the third of our children impacted by AS 14.30.180 et seq. I ask that you take no action on the bill, that you start from scratch with the assistance of persons like myself who have litigated these issues and are not on any payroll, and that you present to the next legislature proposed legislation that will show respect for our population.

Thank you.

Marc Grober

A Statement of Purpose for Use in Alaska

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

Sec. 14.30.180 Statement of policy. In order to fully implement section 1 of article 7, of the Constitution of the State of Alaska, providing for the establishment and maintenance of public schools open to all children of the State, it is hereby declared the policy of the State of Alaska to provide or to require public schools to provide to all exceptional children under the age of twenty-two, as an integral part of Alaska's system of public education, special educational and related services sufficient to meet the needs and maximize the capabilities of exceptional children. The need of such children for early recognition, diagnosis and intensive educational services leading to more successful participation in home, employment and community life is recognized. The timely implementation of this policy is declared to be an integral part of the policy of this state.

Alaska Department of
EDUCATION
& EARLY DEVELOPMENT

Highlights of SB 205/HB 301

"An Act relating to the education of exceptional children"

Purpose:

To update state special education statutes to conform with the federal Individuals with Disabilities Education Act of 1997. The bill removes unnecessary detail from state statute, thus removing conflicts and inconsistencies with state and federal law. Alaska stands to lose thirteen million dollars in federal funding if we fail to update our statutes.

State Statutes Proposed for Repeal:

14.30.191 Educational evaluation and placement.

The current state statute is inconsistent and incomplete with regard to evaluation and placement of students with disabilities. Federal statute on education evaluation and placement is comprehensive, and now includes parents in the process of determining their child's eligibility and evaluation needs. The state will rely on federal law.

14.30.272 Procedural safeguards.

The current state statute does not include all federal procedural safeguards (parents' and students' rights and protections including mediation, complaint investigation or due process hearings) for students with disabilities. The state will rely on federal law.

14.30.274 Identification of exceptional children.

Current state law does not hold statewide correspondence programs fully accountable for identifying enrolled children with disabilities (child find). The state will rely on federal law.

14.30.278 Individualized education program.

Parents, students and regular education teachers are now essential members of the Individual Education Plan (IEP) teams according to federal law. The state will rely on federal law.



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

FEB 28 2000

Honorable Richard S. Cross
Commissioner
Alaska Department of Education and
Early Development
Goldbelt Place
801 West 10th Street, Suite 200
Juneau, Alaska 99801-1894

Dear Commissioner Cross:

This is in response to your letter dated February 14, 2000, in which you set out what you refer to in your inquiry as "unique circumstances" that you indicate the Alaska Department of Education (AKDE) has faced since the reauthorization of the Individuals with Disabilities Education Act Amendments of 1997, Pub. L. 105-17, (IDEA '97). You ask about the possibility of a waiver of the State's requirement to review and revise Alaska's state statutes regarding special education in light of the changed Federal requirements of IDEA '97 and its implementing regulations.

As explained below, a waiver is not possible.

Under IDEA '97, to be eligible for funds a State "must demonstrate to the satisfaction of the Secretary that the State has in effect policies and procedures to ensure that it meets each of the conditions [set forth in section 612(a) of the Act and the implementing regulations]." Most of the provisions of IDEA '97 regarding State eligibility for formula grants for special education became effective on June 4, 1997, the date of enactment. See section 201(a) of IDEA '97. Some statutory changes, however, had a delayed effective date, until July 1, 1998. In addition, final Department regulations implementing IDEA '97 were published on March 12, 1999, and became effective on May 11, 1999.

Recognizing that States would need some time to revise State statutes and regulations consistent with new IDEA provisions, for Federal fiscal years 1997, 1998, and 1999, States were allowed -- in lieu of providing revised policies and procedures -- to submit an assurance that throughout the period of the grant award, all public agencies in the State would comply with the pertinent requirements of IDEA '97 and the provisions of the then current regulations that were not in conflict with the requirements of IDEA '97, as well as any State laws, policies, and procedures under IDEA approved by this Office that were not inconsistent with IDEA '97. This was not a waiver of State compliance responsibility but a realistic approach to allow States time to conform their policies and procedures to IDEA requirements, while operating in a manner that was consistent with those new requirements. Alaska submitted the required assurances for receipt of FFY 1997, 1998 and 1999 Part B grant awards. States were advised, however, that once the IDEA '97 regulations were final, they would be required to submit their conforming policies and procedures, including revised statutes and regulations, as appropriate, in order to establish

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Additional Information

eligibility for subsequent awards. Thus, final policies, procedures or regulations implementing IDEA 97 are to be submitted with the States' FFY 2000 applications. Subsequent to the publication of the final regulations, the Office of Special Education Programs staff worked cooperatively with States to review a State's existing policies and procedures in light of the changes made by IDEA '97 and its regulations and develop an 'Implementation Plan' to guide the State through conforming modifications to policies, procedures and practices. Alaska's 'Implementation Plan', like that of other States, identified the IDEA requirements that had changed and for which State statutes and regulations would need to be revised.

The only IDEA-specific waiver authority that would allow a State not to comply with program requirements is the authority the Secretary has to grant waivers relevant to State level nonsupplanting and maintenance of fiscal support in certain very limited circumstances. See 20 U.S.C. §1412(a)(18)(C) and 1412(a)(19)(C) and (E); 34 CFR §300.589. Other waiver authority of the Department under programs such as Goals 2000 and the Elementary and Secondary Education Act does not apply and has never applied to the IDEA.

We understand the personnel matters in Alaska that have occurred during the implementation of the new Federal requirements. However, we have an obligation to ensure that a State that participates in the IDEA special education program is operating consistent with IDEA '97 and its implementing regulations and that all children with disabilities in the State have the rights and protections afforded thereunder.

We appreciate your commitment to provide quality educational services to children and youth with disabilities. My staff and I are available to provide any necessary technical assistance to support your efforts.

Sincerely



Kenneth R. Warlick
Director
Office of Special Education
Programs



TONY KNOWLES, GOVERNOR
State of Alaska

GOVERNOR'S COUNCIL ON DISABILITIES AND SPECIAL EDUCATION

P.O. Box 240249 • Anchorage, Alaska 99524-0249 • Phone: 907-269-8990 • Fax: 907-269-8995

March 22, 2000

Representative Fred Dyson
Alaska State Legislature
State Capitol, Room 104
Juneau, AK 99801-1182

Dear Representative Dyson:

Subject: HB 301

In its role as the state's Special Education Advisory Committee, the Governor's Council on Disabilities and Special Education asks for your support for HB 301 under consideration by the House Health and Social Services Committee on March 23, 2000. As we understand it, the bill revises Alaska Statute by incorporating amendments to the Individuals with Disabilities Education Act (IDEA).

With the improvements that we discuss below, the Council supports the passage of HB 301.

HB 301 will repeal conflicts and inconsistencies between state and federal law and incorporate the IDEA amendments into the state's procedures. Some of the most significant changes made to IDEA in 1997 that strengthen the role and responsibilities of parents in the education of their children in special education include:

- participation of children and youth with disabilities in state and districtwide assessment (testing) programs such as the Alaska High School Qualifying Exam;
- the way in which evaluations are conducted;
- parent participation in eligibility and placement decisions
- development and review of the Individualized Education Program (IEP) including an emphasis upon participation of students with disabilities in the general education classroom and in the general curriculum, with appropriate aids and services;
- the addition of transition planning;
- voluntary mediation as a means of resolving parent-school controversies; and
- discipline of children with disabilities.

Suggested improvements to the proposed language in HB 301:

The proposed change in Section 3 (line 11) to AS 14.30.186 clarifies a district's responsibility to provide special education when the student enrolls in a statewide correspondence program. Additionally, Section 10 (line 22) which makes changes to AS 14.30.340 (a) clarifies a district's accountability for funding special education when a student enrolls in a private school with the agreement of the district. Clarifying this accountability is helpful. However, neither of the proposed changes clarifies what type of services can be received.

Creating Change That Improves The Lives Of People With Dis

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To	RFP Fred Dyson	Fr
By	WSS Kelle	Ca
Dept.	2 pages	Pho.

Sometimes when these situations have occurred in the past, districts have had problems in resolving issues of providing transportation and related services. Many times the districts will enter Memorandums of Agreement to define their responsibilities. If the department is authorized to write regulations for this section, the regulations should identify further the services that must be funded under these sections.

We are concerned about the limitations on parents to request a due process hearing and their access to information about hearing officers. In Section 5 (line 21), AS 14.30.193, the change would only allow a 6 month period of time in which a parent may request a due process hearing to resolve a dispute with the district. Given the emphasis to explore other remedies to conflicts between parents and districts, this time limit is too short and it puts the parents in a difficult position to resolve problems with schools using other methods. As we understand it, the Committee Substitute provides at a one year time period in which to request a due process hearing and we support this amendment.

The proposed change to AS 14.30.193 in Section 7 (line 06) would allow the department to set criteria for hearing officers by regulations. Under this section, the department must provide the parents requesting a hearing with a list of qualified hearing officers. This section can be improved by adding to the list of hearing officers a statement of qualifications of each hearing officer and a disclosure of any relationship that may exist between a hearing officer and a district or conflicts of interest that may interfere with the hearing officer's objectivity.

Section 9 (line 18), AS 14.30.340 (a) would separate gifted and talented programs from services for exceptional children (students in special education). This change may better represent the nature of special education and resolve concerns about the use of federal special education funding. However, the proposed language does not assure that the current procedures available to parents of gifted students will continue under the new statute. These procedures are of great value to parents as they assure that they are partners in planning, evaluating, and directing the education of their children.

We suggest the legislature make it clear that in writing regulations to implement Section 9 current procedures available to the parents of gifted students must continue. Additionally, we request that the legislature direct the department to adopt consistent criteria for eligibility, level of service, and uniform practices in the delivery of Gifted and Talented Education curriculum across the state.

Thank you for your thoughtful consideration of these suggested amendments. If we can answer any questions regarding the Council's position or suggested improvements to HB 301, please contact me at 907 269 8991.

Sincerely,



David Maltman,
Executive Director



NEA-ALASKA

Affiliated with the National Education Association

Special Services for Children April 4, 2000

NEA-Alaska offers the following considerations in response to HB 301. The positions listed below have been identified by teachers and support personnel who work with the gifted and talented and with those students with special needs.

1. It is important that an aggressive campaign be initiated to inform teachers and support personnel of the details and implications of the Individuals with Disabilities Act (ADA), Section 504 of the Rehabilitation Act and other pertinent federal law.
2. It is important for the State of Alaska through the Department of Education to fund and assist school districts in the development of local eligibility criteria for gifted and talented students.
3. Since the State of Alaska requires additional education for Special Education pre-school teachers and teachers of the gifted and talented for recertification, the Department of Education and Early Development should provide training to teachers locally using a variety of delivery systems.
4. It is important that the Department of Education and Early Development monitor and facilitate local school districts' compliance with IDEA and ADA and any other special education laws to include clear and timely guidance and assistance in program development on the local level.
5. Adequate funding and release time for the inservicing and training of all staff responsible for providing services for special education students within the least restrictive environment should be provided.
6. The integration of special education students should be monitored in order to protect the intent of PL 94-142, and IDEA to ensure that regular classes have a reasonable balance of regular and special education students.
7. A staff person should be designated by the Department of Education and Early Development to assist school districts in the development and implementation of gifted and talented programs.
8. Special education funding should be prorated so that funds will follow a transient student from one school district to another.

PARENTS, Inc. Legislative Alert

Thursday, March 23, 2000, at 3 p.m.
Hearing on Alaska Special Education Bill HB 301
House HESS Committee, Capitol 106

HB 301 and SB 205 were offered to the Alaska Legislature on January 20, 2000 by Governor Tony Knowles. The purpose of the bill as stated by the Governor is:

"In 1997 Congress reauthorized the Individuals with Disabilities Education Act (IDEA) which took effect this past July. State law and regulations contain inconsistencies that restrict our compliance with federal programs while creating confusion between the state Department of Education and Early Development (department) and individual school districts. This bill repeals those inconsistent state laws, brings the state into compliance with the intent of Congress, and offers clear guidance and assistance to school districts in delivering services to special education students."

IDEA 97 is a parent-driven law that was part of a grassroots movement that included parents of children with disabilities and special needs from every state. Through IDEA:

- Over 1 million children in the U.S. are being educated in their neighborhood schools.
- There has been over a nine percent increase in high school graduation for students with disabilities.
- Youth served under IDEA are employed twice as often as students before IDEA was enacted.
- IDEA is committed to making parents a primary participant in their child's education and an equal partner in ensuring success with schools.

FUNDING MAY BE LOST IF THIS BILL NOT PASSED

IDEA 97 provides substantial funding to Alaska for the education of our children with disabilities. If this bill is not passed into law quickly, and regulations not quickly adopted by the department, Alaska, our schools, and our children are in danger of losing federal funding. PARENTS, Inc. has received assurances from the federal government that they are very serious about delaying funding or penalizing Alaska financially if we do not come into compliance quickly with federal changes in the law. We do not want to lose what we have worked so hard to obtain in Alaska.

CONCERNS ABOUT THE LEGISLATION

Here are some of the concerns that you will hear about HB 301 and SB 205, and here are the real facts:

- **Concern:** The bill would delegate all authority to the department to adopt whatever they want through regulation.
The Truth: IDEA 97 and federal regulations clearly define what states and schools must provide for children with disabilities. Neither the Legislature or department can do anything that is less than the standard set by the federal government.
 - **Action Statement:** "Do not endanger our children's education by delaying passage of this bill."
- **Concern:** The bill does not clarify what type of service can be received for correspondence and/or private school student.
The Truth: IDEA 97 and federal regulations clearly state that public correspondence programs must provide all the same services as you would receive if enrolled in a regular public school. Federal law clearly states that private school student are not entitled to the same amount of services as public school students and discretion is left to the department or school districts to decide how much services

will be provided. Such formulas are complex and it is inappropriate to confuse this section by specifying any sort of funding formula for private schools.

- **Action Statement:** "Allow the department to set regulations allowing local control of service to student enrolled in private schools. Do not bog down this crucial bill with unnecessary details."

- **Concern:** Leaving the authority to the department to bring Alaska into compliance with IDEA 97 will ensure that we receive nothing above the minimum required by federal law.

The Truth: The State regulation process allows for considerable public comment. Agencies such as PARENTS, Inc., which is the parent training and information center authorized under IDEA 97, are specifically mandated by federal law to ensure that a maximum amount of parent participation and public comment is allowed during the process of writing the regulations. However, any sort of language added to the bill that would require Legislative approval of any regulations that differ from federal law will encourage the department to meet the minimum federal standards only. This is due primarily to the time limit set by the federal government for the regulations to be finished before Alaska will be subject to financial penalties.

- **Action Statement:** "Please do not delay this bill by adding unnecessary oversight or approval processes. The state process for regulations, and federal laws are sufficient at this time."

- **Concern:** The bill would limit parents' rights to file a due process hearing.

The Truth: Yes. The language in the bill would restrict the rights of parents to file due process hearings to be made no later than six months after the issue of disagreement. PARENTS, Inc. recommends that parents be given two years.

- **Action Statement:** "The rights of parents and children must be adequately protected. Please protect us and our children by allowing two years to file a due process hearing request."

- **Concern:** The department may enact regulations that do not allow parents to see a list of qualifications of hearing officers for due process complaints, or possible relationships that may exist between them and a district.

The Truth: IDEA 97 already requires States to maintain a list of hearing officers with full qualifications listed. Federal law and regulation also requires that these officers be impartial (in other words, they cannot have a conflict of interest relationship with the district in which they are hearing the complaint). A list of all of this information can be requested at any time through federal freedom of information law. Any such additional language in the bill would be unnecessary and confusing.

- **Action Statement:** "Please do not delay this bill by adding unnecessary language that is already covered by federal law."

- **Concern:** The bill would separate gifted and talented programs from special education services. It would be weakened. The language should be strengthened.

The Truth: This is only partially correct. IDEA does not cover gifted and talented at all. The language in this bill would bury gifted and talented programs in the wrong state law. The federal government has stated repeatedly that putting gifted and talented in Alaska's state law will endanger our federal special education funding. Strengthening the language will not solve the problem and not be very helpful to gifted and talented programs. The only real solution is to urge the Legislature to create a separate bill that recognizes gifted and talented programs as separate and unique. This bill should be tailored to fit the unique needs of Alaska's gifted students, with clear services and protections included. This can never be done by leaving it in this bill.

- **Action Statement:** "We urge the Legislature to support excellence in Alaska schools by creating a true gifted and talented program in a separate bill. Including it with this bill will only bury it and diminish it."

- **Concern:** This bill should include additional language ensuring participation of students with disabilities in state and district-wide assessments such as the Alaska High School Qualifying Exam; specify the way evaluations are conducted; parent participation in eligibility and placement decisions; participation of students in the IEP process, and additional transition planning.

The Truth: All of this is already required in detail in IDEA 97 and related federal regulations.

Including a large amount of extra language that is already required by federal law is unnecessary and may slow the passage of this bill. The new federal law already requires that students with disabilities be included in the "exit exams," "benchmark exams," and to be given an alternative assessment if the student is unable to take the exams, even with full accommodations provided.

- **Action Statement:** "Please do not delay this bill by adding unnecessary language that is already covered by federal law."
- **Concern:** Considerable language is in the bill about due process hearings, but not mediation as a means of resolving parent-school controversies.
The Truth: IDEA 97 requires that mediation be made available. This is a much better means of resolution than due process. Federal law allows states to encourage mediation by mandating the state's parent training and information (PTI) organization authorized under IDEA to provide training and information to parents and schools to encourage use of alternate means of dispute resolution.
- **Action Statement:** "Please add language to the bill to encourage alternative dispute resolution methods such as mediation. We encourage the use of Alaska's parent training and information center to encourage mediation and other alternative means of resolving disputes, as allowed in IDEA under Section 682."

What to do:

- E-mail: Representative Dyson of the House HESS committee (regarding HB 301) at Representative_Fred_Dyson@legisl.state.ak.us and call him at 907-465-2199
- E-mail: Senator Miller of the Senate HESS committee (regarding SB 205) at Senator_Mike_Miller@legis.state.ak.us and call him at 907-465-4976
- Contact the representative and senator that represents your area.
- **Note:** please let PARENTS, Inc. know what you said and what response you got by calling us at 337-7678 if you are located in Anchorage AK. Statewide please call toll-free at 1-800-478-7678 or e-mailing us at IDEA@parentsinc.org.
- Show up at your Legislative Information Office this Thursday, March 23, at 3pm to testify.

PARENTS, Inc. 1-800-478-7678

Testimony on behalf of passing HB 301

4/4/00 3pm

By: Faye Nieto, MA LMFT

Executive Director of PARENTS, Inc. – Alaska's Statewide Parent Training and Information Center

PARENTS Inc. is funded by the US Department of Education, Office of Special Education Programs to improve early intervention, educational, and transitional services and results for children with disabilities through coordinated technical assistance, support and dissemination of information activities and services.

PARENTS, Inc. to meet our mandate is required to: assist parents to understand the provisions of federal IDEA, procedural safeguards, alternative methods of dispute resolution, such as mediation, decision making processes that pertain to development of Individual Education Programs under part B and Individual Family Service Plans under part C and the services therein so ensured through education reform activities like the conformance of state and federal law through passage of HB 301.

PARENTS, Inc. is compelled to let parents and decision makers know the good things have resulted from IDEA best practice: million children are now educated in their community schools. 9% increase in graduation rates, twice the opportunity to become employed vs. those not transitioned, parents are equal partners in their child's education.

PARENTS, Inc. in an effort to ensure that minimal or better standards were set for Alaska's children with disabilities engaged in a process that compared state law to federal law, state regulation to federal regulation, proposed repeals and changes to state law as compared to federal law and regulation along with analysis of other public advocate, legal counsel and parent comments gathered during our statewide training, forum, regional advocate, e-mail and other pertinent contacts that totaled 67,000 FY00 year to date. Review of this data yielded the following recommendations:

- Protections for Surrogate Parent appointment was added back into law
- Annual review of Special Education Services by the legislature will afford continued parent input into school improvement/reform activities
- Mediation as an alternative form of dispute resolution was recommended and not included and will be added into regulations
- Extended due process hearing timeline from six months to one year which has been found acceptable by state and federal courts
- Language for gifted programs was expanded to include the types of services and protections and remain confident that once HB 301 is passed the DEED through regulation will now be able to strengthen this program and fulfill the necessity for separateness from IDEA services
- Children with disabilities have the right to receive services when enrolled in religious schools thus expanding the options for educational choice
- Parents who Home School have the right to refuse special education services, thereby protecting a parents right to privacy and right to raise their children as they see fit

PARENTS, Inc. through discussions with DEED Administration and legal counsel has been assured that the regulation process will include a complete review of Stakeholder comment that will be used to satisfactorily amend so a conceptual framework for IDEA service provision can result that will meet the needs of Alaska's special education students. We are confident that the DEED and State School Board will keep their word as we work together to bring the best of practices to our Alaskan educational system.

29 IDELR 1088**Pawlisch, Letter to (Statute of Limitations)**

Office of Special Education Programs

Dr. Juanita S. Pawlisch
 Division Learning Support
 Assistant Superintendent
 Department of Public Instruction
 125 South Webster
 P.O. Box 7841
 Madison, WI 53707-7841

Digest of Inquiry

[Date Not Provided]

- Is a one-year statute of limitations for requesting due process hearings allowable?

Digest of Response

October 22, 1997

One-Year Statute Of Limitations Permitted

Since the IDEA lacks a provision specifying a statute of limitations, courts most often borrow the most closely analogous state statute of limitations. In Wisconsin, a proposed statute required a written request for a due process hearing to be filed within one-year of the challenged action, provided the parents were made aware of the limitations period. OSEP stated a 60-day limitations period would be unreasonable, but the one-year period might be allowed. Before enacting the one-year period, the state was directed to make sure the one-year limit was similar to the most closely related state statute of limitations, and to ensure that federal education claims were not subjected to a stricter statute of limitations than state claims.

Text of Response

The Office of Special Education Programs (OSEP) has completed its review of Wisconsin's 1997 Assembly Bill 261. The Bill provides that the written request for a hearing must be filed within one year after the proposal or refusal of the school board to initiate or change the child's multidisciplinary team evaluation, individualized education program, educational placement, or the provision of an appropriate special education program. The Bill also includes a proposed addition, which states that the limitation period would apply only if the parent of a child with a disability received notice of the right to appeal.

Under current Wisconsin law, there is no specific limitation as to when a parent of a child with disabilities may file a written request with the Wisconsin Department of Public Instruction for a hearing to challenge the school board's proposal or refusal to initiate or change the child's multidisciplinary team evaluation, individualized education program, educational placement, or the provision of an appropriate special education program.

The Individuals with Disabilities Education Act does not impose any time limitations. Under the Act, there is no statute of limitations for either requesting an administrative hearing or seeking judicial review. Although the Congress has created a federal statute of limitations for civil actions arising under Acts of Congress, its application is limited to laws enacted after 1990. 28 U.S.C. § 1658. However, OSEP previously indicated in a letter to Raskin, OSEP 1991, that a 60-day time limit for filing due process requests which had been proposed in New Hampshire would be an unreasonable limitation upon Federal law.

Traditionally, Courts have imposed analogous State statute of limitations on both requests for due

process hearings and judicial appeals of those hearing decisions. *Dell v. Bd. of Educ., Township High Sch. Dist. 113*, 32 F.3d 1053 (7th Cir. 1994); *Murphy v. Timberlane Regional Sch. Dist.*, 22 F.3d 1186, 1192-1194 (1st Cir., 1994); *Oak Park and River Forest High Sch. Dist. v. Ill. St. Bd. of Educ.*, 886 F.Supp. 1417, (N.D.Ill. 1995) *rev'd on other grounds*, 79 F.3d 654 (7th Cir. 1996). One of the federal interests behind the borrowing of State limitations periods is to ensure that plaintiffs filing federal claims are not subjected to more stringent limitations than are imposed upon analogous State claims. See *Wilson v. Garcia*, 471 U.S. 261, 276 (1985).

While we are not aware of any case that specifically addresses the relevant statute of limitations in Wisconsin, in reviewing this legislation, the proposed one-year limitations period should be compared to the most analogous State statute of limitations for claims arising under State law. In enacting this limitation period for IDEA due process hearings, the State should not discriminate against federal claims by making the statute of limitations more restrictive for this federally protected right than for analogous State-based claims. Further, the application of such limitations in particular cases must be decided by impartial hearing officers and the Courts.

On August 20, 1997, a member of my staff, Ms. Barbara Route, spoke with Ms. Stephanie Petska of your staff, regarding the status of the Bill. Ms. Petska stated that the Bill was being reviewed by the Legislative Reference Bureau, an adjunct to the Legislature. Ms. Petska further stated that the Bureau would be notifying the Wisconsin Department of Public Instruction in October regarding the status of the Bill.

I hope the information in this letter will be of assistance to you. If you have additional questions and/or concerns, please do not hesitate to contact Ms. Route, State contact, at (202) 205-9029.

Thomas Hehir

Director

Office of Special Education Programs

Revised 2/9

FY2000 Proposed Special Education Legislation

2/9/2000

Proposed statutory legislation	Rationale for changes from current law	Federal Citation
<p>Proposed statutory legislation</p> <p>Sec. 14.30.180. Purpose. It is the purpose of AS 14.30.180 – 14.30.350 to</p> <ul style="list-style-type: none"> (1) provide an appropriate public education for exceptional children in the state who are at least three years of age but less than 22 years of age; (2) allow procedures and actions necessary to comply with the requirements of federal law, including <u>20 U.S.C. 1400 – 1487</u> [20 U. S. C. 1400 – 1485] (Individuals with Disabilities Education Act) as amended. 	<p>Rationale for changes from current law</p> <ul style="list-style-type: none"> ✓ No change to (1). ✓ To be consistent with the change in the federal statute number (was 1400-1485). 	<p>20 USC 1400-1487 34 CFR 300</p>

The basic purpose of this bill is to update AS 14.30 to conform to the 1997 comprehensive review of federal special education law and the 1999 comprehensive revision of the implementing of federal regulation. The approach taken by this bill removes much detail and thus removes actual and potential conflicts and inconsistencies between state and federal law.

Proposed statutory legislation	Rationale for changes from current law	Federal Citation
<p>Sec. 2 AS 14.30.182 Duties of department. The department shall</p> <ul style="list-style-type: none"> (1) cooperate with the federal government and do all things necessary to continue state eligibility for federal money available under 20 U. S. C. 1400-1487 (Individuals with Disabilities Education Act), as amended; (2) comply with the requirements of 20 U. S. C. 1400 - 1487 (Individuals with Disabilities Act), as amended, and other federal law related to children with disabilities; if a provision of this chapter conflicts with federal law and the conflict would affect the continued receipt of federal money, the department shall comply with the federal provision necessary to ensure continued receipt of that money; and (3) adopt regulations necessary to comply with state law and federal law for the education of exceptional children, including 20 U.S.C. 1400 - 1487 (Individuals with Disabilities Education Act), as amended. 	<p>✓ This new section was added to clearly delineate the duties of the department as they correspond to federal special education requirements. The state will come into compliance with federal law by performing these duties.</p>	<p>20 USC 1400-1487</p>
<p>Sec 3. AS 14.30.186 is repealed and reenacted to read:</p> <p>Sec. 14.30.186 Coverage. The school district in which a child with a disability is enrolled is responsible for providing special education and related services to the child.</p>	<p>✗ Currently, the state law requires the student's district of residence to provide special education services. The proposed change clarifies that statewide correspondence programs (that enroll students outside of their districts) are responsible to provide services to students with disabilities.</p>	<p>Publicly funded out-of-district correspondence programs are unique to Alaska.</p>

Proposed statutory legislation	Rationale for changes from current law	Federal Citation
<p>Sec. 4. AS 14.30.193(a) is repealed and reenacted to read: (a) A school district or a parent of a student with a disability may request a due process hearing on any issue related to identification, evaluation, educational placement, or the provision of a free, appropriate, public education regarding a student with a disability.</p>	<p>✓ Corresponds to federal language and clarifies/specifies under what circumstances a due process hearing should be requested.</p>	<p>20 USC 1415 This section on "procedural safeguards" is greatly expanded and very clear.</p>
<p>Sec. 5 AS 14.30.193(b) is repealed and reenacted to read: (b) A request by a parent for a due process hearing must be made not later than six months after the date the school district provides the parent with written notice of the decision with which the parent disagrees and with written notice of procedural safeguards available to that parent in federal law. A school district shall make its request under (a) of this section in accordance with regulations adopted by the department.</p>	<p>✓ Provides a timeframe in which parents can request a due process hearing. Federal legislation encourages a timeline to be set.</p>	<p>20 USC 1415</p>
<p>Sec 6. AS 14.30.193(c) is repealed and reenacted to read: (c) If a due process hearing is requested by either a parent or school district, the school district shall provide the parent with the names of three qualified hearing officers</p>	<p>✓ Allows the hearing process to proceed without undue delay.</p>	<p>20 USC 1415 Reg. 300.508 (a)(b)(c)</p>

Proposed statutory legislation	Rationale for changes from current law	Federal Citation
<p>from a list maintained by the department. The parent may choose one person from the list of three provided by the school district. If the parent does not select a name, the school district may appoint as hearing officer any person from the list maintained by the department. After appointment under this section, a hearing officer shall proceed in accordance with regulations adopted by the department.</p>		
<p>Sec. 7. AS 14.30.193(h) is amended to read: (h) the department shall maintain a list of qualified hearing officers. The department shall qualify hearing officers through a training program that <u>is</u> [SHALL BE] open to all <u>persons who meet the criteria set by the department by regulation</u> [RESIDENTS OF THE STATE. A HEARING OFFICER MAY BE QUALIFIED FOR A PERIOD NOT TO EXCEED FIVE YEARS]. The list of qualified hearing officers shall be maintained as a public record.</p>	<ul style="list-style-type: none"> ✓ Allows only qualified individuals to participate in state hearing officer training. ✓ Criteria will be set in regulation. ✓ Current law requires training to be available to all interested people, whether qualified or not. This is cost prohibitive and has resulted in wasting training resources on individuals who were not able to pass the hearing officer test. 	<p>20 USC 1415 Reg. 300.508 (a)(b)(c)</p>
<p>Sec. 8. AS 14.30.195(a) is amended to read: (a) the department shall, by regulation, provide for administrative appeal hearings, based on the record, of impartial hearing officers' decisions under AS 14.30.193. An administrative appeal hearing shall comply with all requirements</p>	<ul style="list-style-type: none"> ✓ To be consistent with the change in the federal statute number (was 1400-1485) 	<p>20 USC 1400-1487</p>

Proposed statutory legislation	Rationale for changes from current law	Federal Citation
	<p>transfers for students with disabilities.</p> <ul style="list-style-type: none"> ✓ The state will draft regulations for transfers related to students with disabilities. 	
14.30.325 Surrogate parents	<ul style="list-style-type: none"> ✓ Federal law does not require this section for gifted students. ✓ The state will rely on federal law. ✓ The state will draft regulations for surrogate parents related to special education students. 	20 USC 1415 Reg. 300.515
14.30.340(b) Provision of special education in a private school, home, or hospital setting	<ul style="list-style-type: none"> ✓ Federal law does not require these provisions for gifted students, only for students with disabilities. ✓ The state has been and will continue to rely on federal law. ✓ The state will adopt regulations related to students with disabilities. 	20 USC 1412 Reg. 300.402, 300.451, 300.452, 300.460, 300.461
14.30.347 Transportation of exceptional children	<ul style="list-style-type: none"> ✓ Federal law does not require these provisions for gifted students, only for students with disabilities. ✓ The state will rely on federal law. ✓ The state will draft regulations for transportation related to students with disabilities. 	20 USC 1401 Reg. 300.24
14.30.350(3) Definitions ("consent")	<ul style="list-style-type: none"> ✓ Contains unnecessary detail. ✓ Subject is thoroughly covered by federal law. ✓ Federal law goes into great detail. 	20 USC 1412 20 USC 1415 Reg. 300.505, 300.571
14.30.350(4) Definitions ("educational records")	<ul style="list-style-type: none"> ✓ Contains unnecessary detail. ✓ Subject is thoroughly covered by federal law. 	20 USC 1412 20 USC 1417 20 USC 1221e-3

Proposed statutory legislation	Rationale for changes from current law	Federal Citation
	✓ Federal law goes into great detail.	Reg. 300.560
14.30.350(7) Definitions ("individualized education program team")	<ul style="list-style-type: none"> ✓ Current definition conflicts with federal law, which goes into considerable detail on the subject. ✓ Participation by parent, student, regular education teacher, and district personnel are several of the many important team member additions to the IEP team. 	USC 20 1414
14.30.350(8) Definitions ("parent")	✓ Current definition conflicts with federal law, which goes into considerable detail on the subject.	20 USC 1415 Reg. 300.344, 300.345, 300.502
14.30.350(9) Definitions ("related services")	✓ Current definition conflicts with federal law, which goes into considerable detail on the subject.	20 USC 1414 Reg. 300.24, 300.533
14.30.350(11) Definitions ("special education")	✓ Current definition conflicts with federal law, which goes into considerable detail on the subject.	20 USC 1401 20 USC 1415 Reg. 300.26, 300.527
Sec. 13. This act takes effect immediately under AS 01.10.070(c)		



March 22, 2000

By fax and regular mail

Hon. John Coghill, Jr.
Co-Chair, HESS Committee
Alaska House of Representatives
Capitol Room 416
Juneau, Alaska

Hon. Fred Dyson
Co-Chair, HESS Committee
Alaska House of Representatives
Capitol Room 104
Juneau, Alaska

JUNEAU

230 South Franklin
Suite 209
Juneau, AK 99801
(907) 586-1627
FAX (907) 586-1066

Re: **HB 301: Education of exceptional children**

Dear Reps. Coghill and Dyson:

We have reviewed the above-referenced bill. We are generally supportive of the concept of ensuring that state law is not in conflict with the recent revisions in 1997 of the federal IDEA, and the issuance of implementing regulations in 1999. Attached please find detailed comments on specific provisions of the bill. In summary, we believe the following sections of the bill should be revised (listed in section order, although not necessarily in order of priority):

Section 3: We note that this section is not required in order to ensure compliance with federal law, but instead contains an important change in state law. We are concerned that a shift from an obligation to deliver special education and related services **based on residence** to an obligation **based on enrollment**, coupled with the deletion of the mandates of A.S. 14.30.285, will be stepping away from community-based, inclusive special education and related services. We raise several unresolved questions regarding out-of-state and out-of-district placements, expulsions, suspensions, and service to children placed in youth detention facilities. We provide a revised form of AS 14.30.186 that, for the most part, retains the residency-based allocation of fiscal and administrative responsibility, while also attempting to address correspondence, boarding, and private school enrollments, as well as juvenile detention facility placements.

Section 5: we believe the proposed 6-month statute of limitations is contrary to federal law, and that the most analogous period to be applied should be two years. We believe this statute of limitations should apply to both parents and school districts.

MEMBER OF THE
NATIONAL
ASSOCIATION OF
PROTECTION &
ADVOCACY
SYSTEMS

Rep. John Coghill, Jr. and Rep. Fred Dyson, co-chairs, House HESS Committee
Re: HB 301: Education of Exceptional Children

March 22, 2000

Page 2

Section 6: this section needs only a minor modification to make it consistent with the applicable federal regulation.

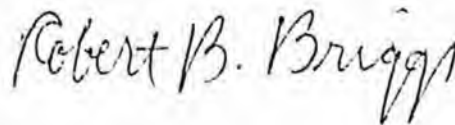
Section 12: this section contains the repeal of a number of Alaska special education laws, several of which are not clearly in conflict with federal law and have value in their own right as substantive state mandates. Thus we disagree with the proposal to delete such important State mandates as:

- the obligation to identify children needing special education and related services (also known as "childfind")
- the obligation to provide a free and appropriate public education in the least restrictive environment
- minimum State criteria for an individualized education program (IEP)
- State law definitions of "special education" and "related services" that we believe are nearly if not completely consistent with federal law

Alaskans believe in these public policy mandates. Their repeal cannot be justified on the grounds that there is conflict with federal law. We believe they should not be repealed.

Thank you for your consideration of our comments, and we look forward to continued dialog on this legislation. It is of great importance Alaska's students with disabilities, and their families.

Very truly yours,



Robert B. Briggs
Staff attorney

Encl.

Rep. John Coghill, Jr. and Rep. Fred Dyson, co-chairs, House HESS Committee
Re: HB 301: Education of Exceptional Children
March 22, 2000
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Cc: (w/ encl.)

Rep. Joe Green
Rep. Carl Morgan, Jr.
Rep Jim Whitaker
Rep. Tom Brice
Rep. Allen Kemplen
Sen. Mike Miller, Chair, Senate HESS committee
Dave Maltman, Governor's Council on Disabilities and Special Education
Faye Nieto, exec. dir., Tim Weiss, PARENTS, INC.
P.J. Ford-Slack, Ph.D., Alaska Dept. of Education & Early Development
Margot Knuth, AAG, Special Assistant to the Commissioner, Dept. of Corrections

(w/o encls.)

Dave Fleurant, legal director, Rick Tessandore, exec. dir., DLC-Anchorage



Statement of Steve Essley and Robert B. Briggs,
staff attorneys, Disability Law Center of Alaska, Inc.

Testimony before the House Health, Education and Social Services Committee
Alaska Legislature

Hearing on HB 301, Education of exceptional children

JUNEAU

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March 23, 2000

The Disability Law Center is generally supportive of the proposition that Alaska's special education laws must not be in conflict with federal special education laws. However, in the effort to eliminate conflict, it should not be forgotten that the federal IDEA provides only a framework for special education. Much latitude is left for a state to fashion a specific design that best meets its needs. States remain free to impose mandates independent of the federal law that are found to be in the public interest, over and above what a federal law may require. In reviewing any change to Alaska's special education laws, care should be taken to ensure that a change does not inadvertently discard a valued public policy mandate under the guise of avoiding conflict with a federal law, if there is no real conflict between the two.

In this regard, we believe that certain provisions of HB 301 (and its identical companion, SB 205) make changes in substantive Alaska special education law that are not required, because the existing laws are *not in conflict* with federal special education law. We also believe some changes in the bill involve questions purely of state policy, in areas that have been left open by federal law for a state to determine. Viewed in this light, we question the wisdom and necessity of some proposed changes.

Our detailed comments are listed in order of the section numbers in the bill:

A. **Section 3: Obligation to provide special education: enrollment versus residence**

Section 3 of the bill proposes to base the obligation to provide special education and related services based on "enrollment," rather than based on a student's residence, as is provided under current Alaska law. A.S. 14.30.186(a), (b); 4 AAC 52.020 (district responsibility owed to those "who reside within the district"). This significant change in state law is *not required by the federal IDEA*, as amended

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in 1997, or its implementing regulations issued in 1999. We believe this approach presents some problems for certain categories of children, may encourage the dumping of students in order to escape special education obligations, and poses new questions for students placed in youth detention facilities.

The federal IDEA regulations impose the obligation to provide a *free and appropriate public education (FAPE)* based on the fact of a student's residence in the state, even if the student may be enrolled at a school located outside the state, or may have been expelled or suspended from school. 34 C.F.R. § 300.121(a); 300.300(a). However, federal law does not define how within a state the obligation to deliver FAPE is delegated. That is a question of state law, and Section 3 of the bill proposes to change state law.

With regard to special education for students enrolled in private schools or by correspondence courses, our experience is that some parents remove their children from a school district and enroll in a private school or correspondence program precisely because they believe the resident school district is incapable of or failing to provide FAPE. It will lessen the disputes regarding special education if the parent has an option of obtaining FAPE in another way. Thus we believe the Department is on the right to track, for some students, to link the responsibility for special education to enrollment. However, basing the obligation on enrollment raises unanswered questions with regard to a large number of other students.

1. An encouragement to out-of-district placements?

The federal IDEA envisions that school districts may place or refer students with disabilities into private schools rather than serve them in the public school setting. 20 U.S.C. § 1412(a)(10)(B). There is no requirement in the IDEA or its regulations that such schools must be within the school district, or even within the state. Under federal law, ordinarily the referring school district remains "responsible" for ensuring that FAPE is provided to a child referred or placed outside the district. 34 C.F.R. § 300.349(c); Response to Question 15 contained in discussion re: IDEA regulations, 64 Fed. Reg. 12476 (Mar. 12, 1999). However, this mandate of "responsibility" does not include a clear mandate of financial liability for the expenses of providing special education and related services to a student "placed" or "referred" outside the district. Rather, the IDEA leaves financial responsibility within the state to be determined by "State law, policy or practice." *E.g.*, 34 C.F.R. §§ 300.349, 300.401, 300.403; see Response to Questions 15 and 16, contained in discussion re: IDEA regulations, 64 Fed. Reg. 12476 (Mar. 12, 1999). Ultimately, if no one else does, the state must pick up the tab for Alaskan children placed out-of-state. 34 C.F.R. §§ 300.121(a); 300.300(a).

Thus an immediate question is, in which school district will a student placed out-of-state or out-of-district be considered to be enrolled? Existing state law clearly imposes on the *originating* school district the financial responsibility despite the out-of-district or out-of-state placement, except to the extent the department provides financial assistance to the district. A.S. 14.30.285(b). In past litigation, the Disability Law Center has successfully argued that the school district of residence of a student is defined by the residence of a custodial parent, and that the financial obligation to provide special education and related services follows the student even though placed out-of-state or out-of-district – if the reason for the out-of-state or out-of-district placement was a failure by the district to provide FAPE. Section 3 of the bill implies that this financial obligation based on residence will no longer exist. Section 12 of the bill repeals A.S. 14.30.285 in its entirety.

If a school district could escape financial responsibility by referring children out of the district – because the obligation to provide special education under Section 3 is based on “enrollment” – we expect there could be an effort to “dump” special education students by some school districts by referring them to schools outside of the district, particularly if the school district does not bear the financial obligation for providing special education and services to these students.

The fiscal responsibility for a student expelled or placed on long-term suspension is also put in question under the current form of Section 3 in the bill. Special education and related services may be such a child’s only remaining link to academic and social compliance. Section 3 severs that link. This appears to be in conflict with federal special education regulations, which require a school district to continue to provide special education and related services to students removed from school for longer than 10 days, i.e., expulsions or long-term suspensions. 34 C.F.R. § 300.121(d); 300.520(a)(1)(ii).

The state will still have to ensure that special education and related services are provided to expelled or suspended students, even though they may no longer be enrolled in a school district. 34 C.F.R. § 300.121(a); 300.300(a), (b).¹ Section 3 has the potential of turning the problem of how to deal with the expelled student from a local problem into a state problem. The fiscal implications of this for the state have not been explored.

The Department may have developed plans for resolving these questions. We believe that as long as the school district of residence remains primarily financially responsible for providing special education and related services, there will be less incentive to fail to serve students, less incentive to dump students through unnecessary

¹ “Each State must have . . . in effect a policy that ensures that all children with disabilities aged 3 through 21 residing in the State have the right to FAPE, including children with disabilities who have been suspended or expelled from school.” 34 C.F.R. § 200.121(a).

referrals out-of-state or out-of-district, expulsions and the like. We believe that financial responsibility that "follows the student" will encourage quality special education services within the community, in the most integrated setting possible.

Thus we do not believe federal law "requires" the repeal of A.S. 14.30.285, and we believe it is poor public policy to abolish the mandate of that statute, without replacing it with fully explained legislative mandate that will prevent unnecessary out-of-district transfers.

2. Responsibility for students placed in juvenile detention centers

Responsibility for providing special education and related services to children placed in juvenile detention centers is unresolved in HB 301. Which school district – if any – bears the responsibility for providing special education to these students? Having been placed in the detention facility, does a student remain "enrolled" at the school district in which he or she was enrolled before incarceration?² If so, what are the FAPE obligations of the school district where the youth detention facility is located?

The IDEA '97 and its regulations also leave these sorts of questions up to individual states to resolve. Correctional facilities and juvenile detention facilities are defined as public agencies within the state that are subject to the mandates of the IDEA, 34 C.F.R. § 300.2(b)(1)(iv), but the obligation to provide a free and appropriate public education (FAPE), rests generally with the Department of Education and Early Development.³ The design of a system to deliver special education and related services is left up to the State, as prescribed by state laws, regulations and policies implemented by the Department.

We believe that school district responsibility for students placed in juvenile detention centers is analogous to ensuring district responsibility for other out-of-district or out-of-state transfers. If school districts (and their base communities) remain financially responsible for special education to students placed elsewhere during a period

² This seems unlikely. A.S. 14.30.010(b)(4) provides an exception to the required enrollment based on residence if a student is in the custody of a court or law enforcement authorities. A.S. 14.30.045 allows the suspension or denial of admission of students based on certain behaviors, including behavior "inimicable to the welfare, safety, or morals of other pupils," and conviction of certain felonies.

³ The IDEA leaves up to states whether to impose the obligation to provide a free and appropriate public education to persons ages 18 through 21 who become incarcerated at an "adult correctional facility" before having been identified as being eligible for special education or before development of an IEP. IDEA, 20 U.S.C. § 1412(a)(1)(B)(ii). The Governor, or as otherwise provided by state law, may assign to a public agency within the state the responsibility of providing FAPE to "children with disabilities that are convicted as adults . . . and incarcerated in adult prisons." *Id.*, § 1412(a)(1)(C). Other than this class of juveniles incarcerated at adult correctional centers, for which the state-provided special education is optional, the state remains obligated to ensure special education for all other incarcerated juveniles.

of incarceration, the communities may have an additional stake in the success of programs to reduce criminal behavior and promote success in special education. Statistics from youth detention facilities and our experience generally support the proposition that incarcerated youths experience a higher percentage of certain disabilities than the general population, particularly learning disabilities. *Successful special education for this population will likely have a direct impact on future criminal behavior.*

We make no recommendation as to which entity (the Department of Corrections, the Department of Education and Early Development, the resident school district, or the school district in which the youth detention facility is located) ought to bear financial responsibility for providing special education and related services to incarcerated juveniles, although as discussed above we can see reasons why the resident school district arguably ought to bear that financial obligation. The proposed language below assumes that the school district in which the facility is located bears the obligation to deliver special education and related services, while the school district of residence is financially obligated for that service. We offer this language to foster debate on the subject.

3. An alternative to Section 3 of the bill:

Based on the foregoing discussion, if the Legislature decides to retain the concept of financial obligation to deliver FAPE based on residence, we have prepared an alternative to Section 3 of the bill. This alternative attempts to address the issue of correspondence and boarding school enrollments as well as the other situations:

Sec. 14.30.186. Coverage. (a) Except as provided in (b) of this section, special education and related services shall be provided either

(1) by a borough or city school district, for a child with a disability residing within the district;

(2) by a board of a regional educational attendance area operating a school in the area, for a child with a disability residing in the area served by the school;

(3) by the borough, city school district, or regional educational attendance area in which a correctional or youth detention facility is located, for a child with a disability placed at the facility; or

(4) by a state boarding school established under AS 14.16, for a child enrolled at the boarding school;

(b) For a child with a disability enrolled in a course of study under AS 14.30.010(b)(1) or a correspondence study program under A.S. 14.30.010(b)(10)(B), the child, parent or surrogate parent may elect that special education and related services be provided by an entity other than as provided in (a)(1) or (a)(2) of this section, under regulations prescribed by the department.

(c) For a child with a disability receiving special education and related services under subsection (a)(3), (a)(4), or (b) of this section, the borough, city school district, or regional educational attendance area where the child resides shall reimburse for the expense of the special education and related services provided, under regulations prescribed by the department.

This alternative envisions that in the first instance, obligation to deliver special education and related services will rest with the school district where the student resides. If a student is incarcerated in a youth detention facility, the school district where the youth detention facility is located is obligated to provide special education and related services. If a student is enrolled in a state-operated boarding school, the boarding school is obligated to provide special education and related services. A parent of a student enrolled in a correspondence or private (including parochial) school will have the option of placing the student in another special education program, under regulations to be prescribed by the department. Financial responsibility for students in a correspondence school, private school, youth detention facility, or state boarding school remains with the school district of residence, with the details of transfer of funds in these situations to be worked out in regulations by the department.

B. Section 5: the statute of limitation should be two years, not 6 months:

We believe the statute of limitations contained in Section 5, at page 2, may conflict with federal interpretations of the IDEA. A legal opinion from the Office of Special Education Programs of the U.S. Department of Education, identified federal courts rejecting state statutes of limitations ("SOL") that effectively limit the exercise of rights under the federal IDEA, where the state-imposed SOL is shorter than one used for a similar state right or cause of action.

A longer limitations period has the added benefit of offering an opportunity for alternative dispute resolution devices, such as mediation, to be tried before litigants need to resort to a formal administrative fair hearing. With a shorter time limit, litigants may be forced to preserve their litigation rights by filing administrative fair hearing requests and prevent the use of alternative methods of dispute resolution. This would be contrary to the IDEA '97 mandate to encourage mediation.

We believe the most analogous Alaska statute of limitations is contained in AS 09.10.070 (a) (two-year statute of limitations for "any injury to the . . . rights of another not arising on contract and not specifically provided for otherwise . . . or . . . upon a liability created by statute. . . .")

A two year statute will not prevent speedy resolution of disputes regarding special education. In cases involving the need for speed, either the school district or the parents will be motivated to seek a prompt administrative hearing. For cases involving monetary liability, AS 09.10.070 (a)(5) is certainly analogous, and we don't believe the Legislature can lawfully impose a shorter time period for initiation of a cause of action for a monetary claim under the IDEA when other types of monetary claims ("liability created by statute") may be brought in Alaska within two years of accrual.

Thus we suggest that the phrase "six months" on page 2, line 21 should be changed to "two years."

Also, we suggest that you consider adoption of a statute of limitations to be applied to actions brought by the state or school districts as well. The current form of the bill appears to leave to the Department the determination of the exact period of time. Section 5, page 2, lines 23-25. We think that an existing state 6-year statute contained in AS 09.10.120(a) for actions brought in the name of the State, political subdivisions, or public corporations, is too long. *See County of Oneida v. Oneida Indian Nation*, 470 U.S. 226, 240 (1985)(stating rule that in absence of an applicable federal statute, a court must choose the most analogous state statute, in determining a limitation on the right to pursue a federal cause of action in the state, "provided that the application of the state statute would not be inconsistent with underlying federal policies"). We think it would be inconsistent with underlying federal policies to encourage appropriate education if six years were to pass before a school district brought an administrative claim regarding a student's special education, or the state brought an action against a school district to obtain compliance with the IDEA.

C. Section 6: Providing qualifications of hearing officers:

Applicable federal regulations require that a list of prospective hearing officers "must include a statement of the qualifications of each" hearing officer. 34 C.F.R. § 300.508(c). Accordingly, we recommend that in Section 6, at page 2, line 28 of the bill, the phrase "and qualifications" be added after the word "names," such that the bill read as follows: "the school district shall provide the parent with the names and qualifications of three qualified hearing officers from a list maintained by the department."

D. Section 12: State mandates for appropriate special education

should not be repealed

We are concerned that in Section 12 of the bill it is proposed to delete several substantive mandates in our state law, even though the mandates are not in conflict with federal law.⁴ We do not believe this is good policy for Alaskans.

- AS 14.30.274 imposes a mandate to identify children needing special education and related services, commonly referred to as the "*childfind*" *obligation*. This state mandate is not in conflict with federal law. The Department proposes deleting the state mandate because it does not include correspondence schools. We think AS 14.30.274 ought to be amended to be consistent with federal law, not deleted in its entirety.
- AS 14.30.276 imposes a mandate to provide special education in the *least restrictive environment*. This mandate is the linchpin of free and appropriate education, because it provides for inclusion of children with disabilities in the regular education setting, and ultimately in society. This mandate is as important for Alaskans in a regular education program as it is for Alaskans in a special education program. It promotes mutual understanding and respect that is the foundation of an integrated society. This general mandate is not in conflict with federal law. The Department proposes deleting the state mandate because it contains "unnecessary detail" but does not identify how the state mandate conflicts with federal law.
- AS 14.30.278 imposes minimum criteria of what must be contained in an *individualized education program (IEP)*, including statements of the specific education and related services to be provided, the extent of participation in the regular education setting, IEP goals and objectives, criteria for measuring whether the IEP is achieving the goals and objectives, and minimum standards of who must attend IEP meetings. These requirements are not in conflict with federal law, but instead establish a state-mandated floor of the criteria to be contained in an IEP. Without saying so directly, the bill proposes abandonment of minimal Alaska standards because the Department says it will "rely on federal law" rather than simply amending this statute to include other provisions that may be required by federal law.

⁴ In analyzing the rationale for the provisions of this bill, we have reviewed a document entitled "FY2000 Proposed Special Education Legislation," dated February 9, 2000, that has been referred to as the "side-by-side" analysis of the bill (copy enclosed).

- AS 14.30.350(9) definition of "*related services*" is not inconsistent with federal law, despite the Department's representation that it "conflicts with" federal law. The state's definition in AS 14.30.350(9) matches nearly verbatim the federal definition contained at 34 C.F.R. § 300.24(a). There may be additional gloss and subdefinitions of terms within the federal regulatory definition, but there is no conflict that we can see – other than the inclusion of "a gifted child" – in the state's definition. If the intent is to delete gifted children from the state definition, the entire definition need not be deleted.
- AS 14.30.350(11) definition of "*special education.*" Here, there is little if any conflict with federal law. The existing state definition again matches nearly verbatim the federal definition in 34 C.F.R. § 300.26. The major differences appear to be addition to the federal definition of a subdefinition of the terms "specially-designed instruction" and "travel training." Again, this difference calls for a simple revision of the state definition, if necessary at all. Repeal cannot be justified based on conflict with a federal definition.

Prior Alaska Legislatures adopted our existing laws on the premise that they are good public policy for the state. The decision was made to place the mandates in state statutes, rather than regulations. The Department has not shown that these statutes are in conflict with federal law, and does not justify why otherwise they should be removed from Alaska's statutes. We believe it is important for the Legislature to retain these mandates as substantive state mandates that do not depend upon the vagaries of federal legislation or regulations, and that the Legislature ought to retain the definitions (perhaps with slight modifications).

Conclusion

For the reasons expressed, we urge you to consider these points and to revise HB 301 accordingly.

DISABILITY LAW CENTER OF ALASKA, INC.

Steve Essley, staff attorney
Robert B. Briggs, staff attorney



Alaska State Legislature

Please enter into the record my testimony to the SENES / House Fin.
 committee on HB 301 committee name
SB 205 , dated 4/14/00
 bill/subject

I would like to take this opportunity to thank Sen. Patton for the Amendment to ^{HB 301} SB 205 recognizing the needs of the gifted, however, without the procedural safeguards and due process rights granted parents under the current law, any attempts at individualized education and gifted service will be moot. A law without teeth is no law.

The concern is comingling of funds, however, our students themselves are comingled. In Wasilla, fully 60% of my caseload of 125 children are underachieving students who, without the services of gifted programming would receive no support and be doomed to a lifetime of underachievement and regret.

Additionally, many of my students are multiply identified as learning disabled and gifted. Some of these students were first recognized as gifted and their disabilities discovered later. Many more exist in the schools who appear as 'C' average students and they are unserved and live in frustration.

Before services for gifted/talented students are lost, legislation must be in place for them that includes due process & procedural safeguards, otherwise we will lose services and programs that are successful and broad reaching.

Signed:

[Signature] Dwayne E. Bohak
 Testifier

Coordinator, Wasilla Extended Learning Program (Gifted)
 Representing (Optional)

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 Address

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8440 Sultana Drive
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99516

Dear Superintendant Chrystal,

SB205

It has been brought to my attention that a bill (HB301 in opposition of CSHB301) is circulating through the legislature concerning the separation of the gifted/talented program from the other special education programs. As a student of the former, I am concerned.

As you may know, the bill leaves the choice of maintaining the gifted program to the individual school districts. Since the Anchorage school district will, as of next year, have an eight million dollar budget cut, I fear that our program will be the first dropped if the bill passes. Even if the school board decides to keep the gifted/talented program, that program will be void of procedural safeguards (IEPs [Individual Educational Programs], etc.), without which there is a possible discord in the system.

I believe that the gifted program is beneficial because it offers more challenges highly gifted students and offers a better pace. It also allows for an environment of others with the same academic strongpoints. Rachel Shauger remarked "At my old school [Alpenglow] people would want to be my friend so that I could help them with answers or things like that. It's better here because it's faster and I'm not just reviewing stuff that I already knew."



Sincerely,
Justin Birchell

Date: April 14, 2000

To: House Finance
Representatives Fax #s
Rep. Eldon Mulder 465-3518
Rep. Gene Therrault 465-3884
Rep. Con Bunde 465-3871
Rep. Bill Williams 465-3793
Rep. John Davies 465-3519
Rep. Allen Austerman 465-4956
Rep. Ben Grussendorf 465-3175
Rep. Gary Davis 465-3835
Rep. Dick Foster 465-3789

Fax: House Finance Committee 465-6813

From: Virginia McKinney
1526 F Street
Anchorage 99501
277-4419; 277-4418 (fax)

Re: SB205/HB301

I am here today to speak in support of maintaining gifted education as a requirement for every school district, and maintaining the procedural safeguards that are currently in the program—the IEPs and appeal process outside the district. In these times of tight budgets, any program that's not mandated won't long survive. Of course we all know that the devil is in the details—and if we don't pay attention, we could very likely end up with a gifted program that exists in name only.

I am the parent of a student in the self-contained gifted program at Rogers Park. She's a 5th grader and has been in the program since kindergarten. Being involved in her classes over the years as a parent volunteer has made me realize that these are very difficult kids to educate. There is a huge dichotomy between their physical and emotional development—and how smart their brains are. This dichotomy often leads to loneliness, isolation and the feeling of just being weird because they're so different from everybody else. These children are among the best and the brightest. They're our future business leaders, scientists, judges, religious leaders and even legislators. But make no mistake—these are *at-risk children*.

It's been enormously important to have a program with teachers specially trained in how to deal with gifted kids. How to keep them challenged intellectually but also well grounded in the basic values of caring, good citizenship, and responsibility to give back to the community. All my daughter's gifted teachers have done a great job. Today Amelia is well adjusted, learning a lot and having fun—and I kind of have to say that, since she's sitting here in the room with me.

Let me switch gears here and *talk politics*. I believe every one of you campaigned on a pro-education platform. In your campaign literature and at the candidate forums you spoke of your support for children and schools. Many of you have invested enormous talent and time as leaders in strengthening Alaska's schools and making sure our students are prepared for the jobs of the future. Your work on ensuring high standards was reflected in the benchmark exams and the exit test that my 10th grade daughter took last month.

Taking the procedural teeth out of the gifted program—or even eliminating it by making it an optional add-on for districts—either of these proposals flies in the face of all your hard work and commitment. And frankly—the proposals fly in the face of your campaign promises to support a quality education for every child in Alaska. I hope you do the right thing and vote against these bad ideas.

Thank you for this opportunity to testify.

3108 Wentworth St.
Anchorage, AK 99508

April 14, 2000

Senate Health, Education and Social Services Committee

Re: HB301/*SB205*

Dear representatives:

I am writing to ask you to vote "no" on this bill. Anyone who has ever worked with highly gifted children should know that they belong in "special education" classes. I am the parent of a highly gifted child. I have taught "regular" kids, worked with autistic children, and know the challenges of ADHD children because there are many of them in our extended family.

At one point, the Anchorage School District was looking for a new name for the "JA." program. My son suggested it be called the "Highly Overactive Synapse-Firing Group" HOSFIG, for short. I think that this says it all. Highly gifted students, almost without exception, have their own challenges. Their problems are primarily related to their highly (over?) developed nervous systems. The most important part of which is, of course, the brain. It is truly amazing how these students usually understand each others individual problems and accommodate them. Teachers in the program face enormous challenges in teaching the highly gifted.

Please don't pave the way for probable removal of the existing excellent and essential program.

Please vote "no" on HB301.

Thank you.

Sincerely,

Cass Arley

Cass Arley
parent

Members of the Senate Health, Education and Social Services Committee,

As parents of a gifted child, we urge the members of this committee not to recommend passage of SB 205. The bill, as currently written, undermines the protections previously afforded to gifted students under state law, and contrary to the representations of the state DOE, is unnecessary to achieve compliance with federal law, specifically the Individuals with Disabilities Education Act, or IDEA.

Mr. Johnson of the DOE has told you that this statutory change is necessary to achieve compliance with federal law. He overstates the issue. What is needed is not for this state to abandon its commitment to an appropriate education for all exceptional children, but for the DOE to cease commingling funds it receives from the federal government for disabled children with State funds. That is all that is required by Section 300.152 of the regulations implementing the IDEA. As the regulations themselves state, the commingling prohibition can be "satisfied by the use of a separate accounting system that includes an audit trail of the expenditure of the Part B funds." There is no language in the IDEA or in the regulations promulgated under it, that would force a state to change its existing law which provides for services BEYOND what is minimally required by the IDEA, such as is currently the case with gifted education in Alaska. It simply requires that federal monies be accounted for. This statutory change is not necessary. In fact, the IDEA regulations require only changes to state policies and procedures to the extent necessary to "to ensure the State's compliance" with the regulations, and only when the federal government makes an "official finding of noncompliance with Federal law or regulations." No one has presented anything to suggest that providing State services to gifted children is not in compliance with federal law. Where there has been noncompliance is with the state's procedure for spending the federal monies it has received for disabled children. This proposed "solution" does not focus on the real problem. The real problem is NOT the state's policy to provide educational services to exceptional children, and not limit those services only to "disabled" children. The problem is the DOE's failure to properly account for federal dollars provided to it for disabled children. The solution is not to exclude the gifted from the protections afforded by state law for exceptional children, but simply to properly account for the money spent on programs for disabled children.

Compliance with the federal regulations can be achieved without gutting the state statutes that grant procedural protections to all exceptional children. The proposed change would make those protections available only to children who are disabled as that term is defined under the IDEA. This state statute, which has as its express purpose that exceptional children will be provided with an appropriate public education, represents an important state policy that will not be adequately protected if this bill is enacted. The way that the term "exceptional children" is itself defined shows why continuing this policy is important. They are "children with disabilities, and gifted children, who differ markedly from their peers to the degree that special facilities, equipment, or methods are required to make their educational program effective." Simply stated, these are students who need special services in order for their education to be worthwhile. Studies show how important it is for gifted students to be taught in programs with their gifted peers, and leaving this critical decision to individual school districts, as opposed to continuing this important statewide policy, would be a tragic mistake.

The DOE has essentially said it wants to abdicate its responsibility to oversee gifted education in the state. It proposes to do just that with the passage of this bill. It would leave the nature and extent of gifted children's education dependent solely on the shifting fortunes of local school districts, and remove it as a statewide priority. The Department gives nothing more than lip service to supporting gifted education; it supports it only to the extent that individual districts are willing to fund these programs. By passing this bill, the legislature would be dooming gifted education as it currently exists, and would relegate it to the status of a program that individual districts could severely curtail or limit. The amendment to the bill really does nothing to change that. It says only that districts will be required to have some form of gifted education, but the form of those programs is wholly undefined, and is dependent on regulations as-yet unpromulgated by a department which has said quite frankly it wants no part of any oversight of gifted education. This "mandate" is an empty promise at best, and the DOE should not be permitted to avoid its responsibilities to oversee gifted education in this state. This bill should not be passed.

Greg Silvey and Arlanda Crail
2948 Princeton Way
Anchorage, AK 99508
aparadis@alaska.net

I have two children in the low incidence gifted program in Anchorage. Both my children LOVE to get up in the morning & go to school . I fear that would not be the case if this program were not in place. They are challenged every day & they happily meet that challenge. I KNOW, particularly for our son, that would NOT be the case in a regular classroom. He would be bored & I am sure, disruptive. I don't want that for either of my children or any of the other children. If we do not channel the minds of these children in a positive direction by having gifted & talented programs, then we run the very great risk of having them become liabilities rather than assets to our communities & society. A telling statistic: 7% of the general population is considered gifted; 30% of the prison population falls in the gifted category!!

We need to have gifted & talented programs to ensure these children are given the opportunity to become positive, productive members of our communities & society. That would not happen for them in a regular classroom. These children have the greatest potential to be among those who do great things for our communities & society. They may very well be the ones who discover cures for diseases & the cause &/or cure for other children with disabilities. By investing in gifted & talented programs for these children, we help them fulfill their potential to be the best they can be, & we make an investment in our future. An investment that will come back to us many times over, by allowing them to be positive, productive members of our society. A mind is a terrible thing to waste, in this case, the waste of these minds would be a tragedy.

It seems only right & just that if we are willing to fund programs for other children with disabilities, then we should be willing to do at least as much for the gifted & talented. The goal for these other children is to allow them to develop to the best of their ability-why should it be any different for the gifted & talented? I invite you to spend time in the classroom with these gifted & talented children, as I have, & observe first hand this wise investment in our future.

Thank you for the opportunity to present my views.

Sincerely, Karen Louder Strobe

Rogers Park reading program chair 1998-2000, classroom volunteer,
Community School volunteer & board member, community volunteer

Date: April 14, 2000

To: Senate HESS
Senator fax #
Sen. Mike Miller, Chair 465-3883
Sen. Pete Kelly, Co-Chair 465-5241
Sen. Gary Wilken 465-4714
Sen. Drue Pearce 465-3872
Sen. Kim Elton 465-2108

Fax: Senate HESS Committee 465-3883

From: Virginia McKinney
1526 F Street
Anchorage 99501
277-4419; 277-4418 (fax)

Re: SB205/HB301

I am here today to speak in support of maintaining gifted education as a requirement for every school district, and maintaining the procedural safeguards that are currently in the program—the IEPs and appeal process outside the district. In these times of tight budgets, any program that's not mandated won't long survive. Of course we all know that the devil is in the details—and if we don't pay attention, we could very likely end up with a gifted program that exists in name only.

I am the parent of a student in the self-contained gifted program at Rogers Park. She's a 5th grader and has been in the program since kindergarten. Being involved in her classes over the years as a parent volunteer has made me realize that these are very difficult kids to educate. There is a huge dichotomy between their physical and emotional development—and how smart their brains are. This dichotomy often leads to loneliness, isolation and the feeling of just being weird because they're so different from everybody else. These children are among the best and the brightest. They're our future business leaders, scientists, judges, religious leaders and even legislators. But make no mistake—these are *at-risk children*.

It's been enormously important to have a program with teachers specially trained in how to deal with gifted kids. How to keep them challenged intellectually but also well grounded in the basic values of caring, good citizenship, and responsibility to give back to the community. My daughter's gifted teachers have done a great job. Today Amelia is well adjusted, learning a lot and having fun—and I kind of have to say that, since she's sitting here in the room with me.

Let me switch gears here and *talk politics*. Every one of you campaigned on a pro-education platform. In your campaign literature and at the candidate forums you spoke of your support for children and schools. Many of you have invested enormous talent and time as leaders in strengthening Alaska's schools and making sure our students are prepared for the jobs of the future. Your work on ensuring high standards was reflected in the benchmark exams and the exit test that my 10th grade daughter took last month.

Taking the procedural teeth out of the gifted program—or even eliminating it by making it an optional add-on for districts—either of these proposals flies in the face of all your hard work and commitment. And frankly—the proposals fly in the face of your campaign promises to support a quality education for every child in Alaska. I hope you do the right thing and vote against these bad ideas.

Thank you for this opportunity to testify.

Testimony 4-14-00 Senate HESS

I'm a student in the 6th grade at Rogers Park Elementary, in the I.A. fulltime gifted program. The SB205 is very disturbing. It would mean that gifted education is not directly mandated. Also lately, funding for the Anchorage School District was cut by millions of dollars because of a possible ten mil tax cap. And quite surprisingly, property tax surpluses just occurred, money that could potentially have been used for education. Added up, this reduces education to mere ashes. Children need a good education to reach full potential in life. The gifted program is important to me because it's the best way for me to receive a good education, as well as hundreds of other children. Teachers and parents have worked hard for the gifted program to work, and it's not fair to take their hard work away. WE NEED TO CONTINUE TO INCLUDE GIFTED STUDENTS AS EXCEPTIONAL CHILDREN UNDER THE LAW (ALONG WITH THE HANDICAPPED) SO THAT THEY'RE LEGALLY PROTECTED. Thank you.

Alexander Richert
Anchorage, AK
907/ 222-5304

As the parents of Alex and another son who would not have been able to attend school without the IA program, we strongly urge you to not pass out SB205, or if passed out, only if it requires the development of an IEP (Individual Educational Plan) for gifted students. These IEPs are in practice fairly general (i.e., that they will participate in the gifted or full time highly gifted program) but are the key to ensuring that there is an effort to meet their needs. Without this, another population of disenfranchised and high-risk children will be created, while also placing tremendous burdens on parents and children and wasting one of our State's best resources.

Jean Kollantai
Bernhard Richert

April 14, 2000

Senate HESS Committee

To Whom it may concern:

I teach sixth grade in a self-contained highly gifted program in Anchorage. Each of my twenty-eight sixth graders has an Individual Education Plan. The IEP ensures their rights to a free and appropriate public education, guarantees transportation to the program that provides them the appropriate services, and secures their education by holding the district accountable for the required amount of services needed to meet their exceptional needs. Many students would not be able to participate in the program without this transportation, therefore denying their right to a free and appropriate public education.

Some might say gifted kids are lucky just to have the program, and the transportation is just a perk. Some might even assume that parents of gifted students should be able to afford to transport their children to special schools if they want them to benefit from the "extras" that gifted education provides. On the contrary, these children need these services. Receiving gifted services is not a reward that children get for good behavior or getting straight A's on a report card. Gifted education is crucial to the survival of highly able individuals in a public educational system. An appropriate education is NOT a privilege for highly able children, but a requirement! Removing the language "Exceptional Children" from HB 301 takes away the right for gifted students to receive their appropriate education.

In a regular classroom environment, these exceptional learners are truly disabled. Very few teachers have sufficient training in administering gifted services, and even fewer have training in meeting the unique needs of highly gifted students. The children in my classroom are here because the regular classroom environment was a complete disaster for them. Many left regular classrooms in tears each day due to the sheer frustrations of endless boredom and difficulty making friends who had similar interests. Research proves that gifted students whose needs are not met become underachievers, and often high school drop-outs (many become criminals).

It is up to you and me to ensure these exceptional children's rights to an appropriate public education. They must have the same right to an appropriate education as all other children with special needs. If they are denied rights to procedural safeguards, currently provided by IEPs, these children will have absolutely no guarantee of an appropriate education—what a waste for them and our state! Please do not make any hasty decisions regarding the education of these exceptional youth!

Sincerely,



Tara Lindh

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