

HB

301

(7)

HOUSE COMMITTEE REPORT

Date Referred to Committee: January 21, 2000

FURTHER REFERRALS:

Finance

Date of Committee Action: 04/06/00

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:

HB 301

HOUSE BILL NO. 301

EDUCATION OF EXCEPTIONAL CHILDREN

"An Act relating to the education of exceptional children; and providing for an effective date."

recommends it be replaced with the following committee substitute

CSHB 301 (HES)

[x] the same title [] a new title

[] additional referral to _____ Committee

[] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

[] fiscal note(s) _____

[] fiscal note(s) _____

[] zero fiscal note(s) _____

[X] zero fiscal note(s) EED

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>[Signature]</i>			✓	
<i>[Signature]</i>			✓	
<i>[Signature]</i>			✓	
<i>[Signature]</i>			✓	
<i>[Signature]</i>			✓	
<i>[Signature]</i>				✓

CHAIR'S SIGNATURE

[Signature]

4/6/00

As the facilitator for the gifted and talented program in Fairbanks, I want to express a deep desire for the state to develop **state** regulations for the gifted and talented . As Alaska moves to implement benchmark testing, we find in our district, as is discovered ^{across} around the country, more time, effort and MONEY is needed to ensure that all students meet these minimum standards. For students who surpass the minimum, the students ~~who will become the~~ physicists, chemical engineers, medical and environmental researchers, ~~attorneys and the leaders of our country and the world,~~ we need to provide classes which encourage their abilities rather than limit or suppress their gifts. ² We need to provide personnel who will support and advocate for the gifted at **the state level.** ¹ We need strong ^{leg.} legislation which supports gifted education at **the state level.**

States, such as Texas, Kentucky, California and North Carolina, leaders in education; all strongly supported their gifted children. The children of Alaska deserve no less.

Kemples

- Quality Team Leaders - assistance for GT



ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the House Health and Social Services

Committee on HB 301 Committee Name 4/4/00
Dated 4/4/00
Bill / Subject

The draft HB 301 Sec 14.30.315 is inadequate for providing education of exceptional children who are gifted. Specifically p. 4 line 14 the use of "may" is not adequate and should be changed to "will."

In testimony earlier Dr. Ford-Slack stated that the GT provisions 'need more work' and stated that there is no one at DOE working on GT Services. I would urge the committee to provide some direction to the DOE to provide GT staffing and better state support for this group of exceptional students while IDEA funds cannot be used for gifted student services. There is funding planned under Senate bill S2 Elementary + Secondary Education Act. To receive those funds Alaska needs to have a GT program in place and someone at the state level to apply for and administer these funds.

Bob Biggs referred to earlier that he was disappointed that the DOE did not take time to develop a 'body of law' for the state of Alaska but instead referred to Federal Law Repeatedly. Other states have not dropped the ball on this, but have split their Special Education Bills into two roughly symmetrical parts, one for the disabled exceptional students and one for the gifted exceptional students and noted that some students may fall into both categories. I urge a similar rewrite to the section 14.30.315.

SIGNED:

Testifier Alottly Salodett

Representing self - parent of GT student.

Address / Phone Number 958 Chona Pump Rd



ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the House HESS committee
 Committee on HB 301 Committee Name Dated 4/4/00
Bill / Subject

See attached testimony

SIGNED:

Cindy Benner
 Testifier

self
 Representing

998 Willow Grouse Rd Fairbanks 99712
 Address / Phone Number 457-2887

Testimony on HB 301
3/30/00

I am testifying today to express my concern about what the impact of HB 301 will be on the future of the Gifted and Talented program in Alaska. I have two children in GT at the elementary level in Fairbanks. I feel we have been extremely fortunate here because not only do we have an excellent program and excellent teachers that work very hard to provide much-needed enrichment for our GT kids, but we also have an excellent and dedicated districtwide coordinator, Peggy Buss, who is continually advocating for the needs of the gifted children. However, this is not the case in all school districts around the state. And I worry about what will happen to GT in our district when Peggy is no longer the coordinator.

There is currently no statewide coordination of the GT program, and if HB 301 is passed, there will be no protection of GT, because there will be no regulations to address the IEP and due process rights of parents, and no procedural safeguards. HB 301 addresses these issues for disabled children, but GT is only briefly addressed. In Section 14.30.315, it states that "every school district shall establish a program for gifted children consistent with regulations adopted by the department," but it is not clear whether the regulations would come from the state or school district, and how the program should be administered. Without statewide oversight, the parents and children are at the mercy of the school district, and I know that not all school districts are as supportive of GT as our district is.

I am asking the members of the House HESS committee to amend HB 301 to provide for statewide coordination and regulations for the GT program, and thereby provide equitability and security for an essential program that serves the special needs of our gifted students. 7



ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the House Hers Committee
 Committee Name
 Committee on 301 (HFS) Sec. 14.30.315 Dated 4/4/00
 Bill / Subject

GT is important to me because if it were not for it I would be bored in regular classes. GT is a place I can go to have fun and learn at the same time. My sister Lisa enrolled in GT in kindergarden because she had learned how to read just before entering pre-school. Since it is against the law to skip up to 1st, when she got to kindergarden, she stayed there. She was only allowed half-day in 1st grade which was not enough. She was tested, and soon let in GT. She had so much fun there, and each day she came home and said at the dinner table, "Mom, did you know? ... did you know?" and mom never knew. GT helped her a lot in kindergarden, and she eventually skipped 1st grade. I am very angry that you want to stop funding for GT. If you saw how many people cared. Why do we have to say this? If there is a law to provide funding for lower challenged kids, why not for us of GT? GT brings the best out of us kids. Why take this away from our schools? Thank you for listening.

SIGNED: Eva Risse
 Testifier
GT students
 Representing
981 Risse Road Fairbanks, Alaska 488-5973
 Address / Phone Number



ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the House Hess Committee
 Committee on 301 (HES) Sec. 14.30.315 Dated 4/4/00
Committee Name
Bill / Subject

My child is an 8 year old 3rd grader in the Gift + Talented Program at Mueller Elementary School, Fairbanks AK. It is important that the GT program remains intact under the Special Education umbrella, so that parental rights are assured, by the existence of the I.E.P and also funding continues at the present level. I applaud the classroom teachers and their support of this valuable program which meets the needs of special students in our school system. The teachers realize that gifted students need greater challenges than can be offered in the regular classroom. Let's make sure we continue to challenge these students, so that our own future is as bright as they see themselves.

SIGNED: Elizabeth C Hanson ELIZABETH C HANSON
Testifier

Gifted + Talented Program - FBKS
Representing

976 Annunata Rd FBKS AK 99712
Address / Phone Number



ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the House Hess Committee

Committee on 301(Hes) Committee Name Dated 4/4/00

Bill / Subject

I think G.T. should stay because it is good that I can do a little harder work than what the classroom provides. I am looking forward to next year because the main subject is reading. In 5th grade you do a War Musum. I really like G.T because it makes learning fun.

SIGNED:

Rosemary Hanson

Testifier

Gifted & Talented Program-Fbks

Representing

976 Amanita rd Fbks AK 99712

Address / Phone Number



ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the House Hess Committee
 Committee on 301 Committee Name Dated 4/4/00
Bill / Subject

I like the math we do in G.T because we are doing algebra now in the 3rd grade G.T. I think G.T. makes learning fun.

SIGNED: Alexandra McGuire

Testifier

Gifted & Talented Program Fairbanks

Representing

2298 Larissa Dr Fbks, AK 99712 488-5070

Address / Phone Number



ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the IESS
Committee Name
Committee on HB 301 Dated 4-4-00
Bill / Subject

SIGNED:

Peggy Buss
Testifier

CT
Representing

300 Hawk Rd Fairbanks 99712
Address / Phone Number 907-457-2759

Subject: Sec. 14.30.315

Date: Mon, 3 Apr 2000 12:29:22 -0900

From: "Jacqueline W. Siglin" <siglin@northstar.k12.ak.us>

To: Representative_Fred_Dyson@legis.state.ak.us

Dear member of HESS committee:

I have been the teacher of the Gifted and Talented Program at North Pole Middle School for the past ten years and while I applaud your efforts to continue to mandate programs for gifted children, I am concerned about the wording which is used in the proposed section.

At present there are no regulations for gifted education and no one in the department of education who is responsible for monitoring this program statewide. The proposed wording of Sec. 14.30.315 which states that districts "shall" establish a program and that certain services "may" be provided allows districts too much leeway. For example: instead of testing students and working to provide for their individual needs, a district could spend all its GT program money on a computer lab and state that all the GT students have access to it. A second example would involve times of money crunches when GT funds could be spent for other school programs and there might be just a small staff serving as consultants, but no real program for students.

The students who have been identified as gifted/talented in Alaska deserve your support and the support of the Department of Education. I encourage you to strengthen the wording of this section to districts "will" provide a program and that certain services "will" be provided. I also ask that the Dept. of Education be instructed to provide staff to oversee the program statewide.

Thank you,

Jackie Siglin
GT Teacher, North Pole Middle School
North Pole, AK 99705
siglin@northstar.k12.ak.us
488-2271, ext. 171

Subject: HESS - HB301/SB 205 - Talented & Gifted Students

Date: Wed, 5 Apr 2000 14:50:29 EDT

From: Kyholland@aol.com

**To: Representative_Fred_Dyson@legis.state.ak.us, Representative_John_Coghil@legis.state.ak.us,
Representative_Tom_Brice@legis.state.ak.us,
Representative_Allen_Kemplen@legis.state.ak.us,
Representative_Carl_Morgan@legis.state.ak.us,
Representative_Jim_Whitaker@legis.state.ak.us, Wes_Keller@legis.state.ak.us,
Senator_Mike_Miller@legis.state.ak.us, Senator_Pete_Kelly@legis.state.ak.us,
Senator_Drue_Pearce@legis.state.ak.us, Senator_Gary_Wilken@legis.state.ak.us,
Senator_Kim_Elton@legis.state.ak.us, Mary_Gore@legis.state.ak.us**

To the Members of HESS Committee,

I have learned that you are urgently studying changes to the Governor's bill HB301 and possibly the impact of the bill on Talented and Gifted Students. I urge you to not reduce the safe guards and protection of our talented students to anything less than the safe guards and protection of an otherwise special needs student with special education needs. Whether a child is exceptionally gifted, or exceptionally disabled - safe guards and standards are necessary to insure that they receive appropriate attention and have necessary safe guards to how their needs are administered to.

It would be shame to think that we might afford our gifted students little recourse to insure their special needs are met. When it comes to providing education - not all people are created equal and to think and do so denies the opportunity to reach each person's fullest potential.

As a new parent in the Anchorage School district this year moving up from the Poway Unified School District in San Diego, CA I have been dismayed at the level of instruction in the 2nd grade Anchorage school classroom my daughter Heather is in. This class teaches to the normal/average student with little provision for those children my wife sees in class that are struggling - or to children like my daughter that are "gifted" The fact is there are very few students in the class that are actually "average". Neither the boy struggling with first grade math, or my daughter bored with a 2nd grade reader book are learning - both need equal safe guards and procedure to insure they are receiving an appropriate education. Denying either the appropriate support is to deny our society of each child reaching there fullest potential in society.

Please support full and equal rights for our gifted students as you do for the developmentally/learning disabled students - they both deserve our attention, equally. Do not allow the rewrite of HB301 to water down requirements for the GT programs to the passive language I see in the latest version posted on the Internet. We must conform to federal guidelines for funding - but not at the expense of controls for the GT students.

Ky

H. R. "Ky" Holland
POB 111250
Anchorage, AK 99511
907-346-1719
907-346-1729 fax
kyholland@aol.com

Subject: HB 301--Gifted and Talented Programs

Date: Tue, 04 Apr 2000 11:08:44 -0800

From: Naomi Walsworth <thewallys@mosquitonet.com>

To: Representative_Fred_Dyson@legis.state.ak.us

Dear Representative Dyson,

I am a concerned parent of 3 "gifted" children in Fairbanks, Alaska. It has been brought to my attention that HB 301 completely eliminates all due process rights and procedural safeguards for Gifted and Talented students. The remaining statutes only provide a basic definition of GT and state that programs for gifted students shall be established by school districts.

As part of the due process rights, my children have received an individual educational plan, which we update yearly. This plan has been instrumental in providing math at a grade level above the assigned grade, preparing students for Algebra I in the seventh grade. Due process rights have also been instrumental in allowing one child to have Physical Education in middle school in place of a reading class which his principal was not willing to drop due to the upcoming 8th grade Benchmark Test the following year (he already had an English class, had read most first year college texts long before seventh grade, scored 99's each year on all his California Achievement Tests, and has now scored above 600 on the verbal portion of the SAT as a seventh grader). If we want our brightest children to be well-rounded students, we need the rights associated with the required IEP. It is a tool that benefits students, teachers, parents, and eventually, communities.

Without a statewide coordinator for GT, there is no one to advocate for the program besides the parents of those using the services, so I am responding with my concerns regarding this portion of the bill. Please consider the implications before supporting this measure.

Thank you.

Naomi Walsworth, Concerned Parent, PTA President, Nurse and Community Member
767 Miners Court
Fairbanks, AK 99712

Pamela Bickford
16840 Tide View Drive
Anchorage, Alaska 99516
(907) 345-7731 fax 345-1753

April 6, 2000

CSHB 301/G Changes Relating to the Education of Exceptional Children.

Chairman Dyson and House HES Committee Members;

Thank you for this opportunity to testify regarding proposed statutory changes. I am the parent of four children, two identified as needing special education and related services as learning disabled students. As a result, I testify with 15+ years experience as a participant in educational evaluations and educational planning meetings. I have had the unfortunate experience of participating in a due process hearing for both of my children, awaiting a decision by the Ninth Circuit Court of Appeals in *K.B. v. ASD*.

As a result of a botched independent educational evaluation in my son's case, I discovered Anchorage School District conducts improper evaluations for referrals for educational evaluation to determine eligibility for services under the learning disabled category. By contacting other parents and comparing our children's educational records we discovered many school districts throughout the state follow the same erroneous practice and that the State was additionally at fault for not implementing the proper procedures in 1978 when the federal regulations were enacted. We took our concerns to the Anchorage School District at the first two school board meetings in August of 1998. We then filed a complaint and request for due process hearing with the State educational agency in October of 1998. Both the local educational agency and the state educational agency failed to respond to our concerns, so we filed a complaint in federal district court in December of 1998. We are awaiting a decision by the Ninth Circuit in *K.B., et. al., v. ASD, DEED* on the issue of representation. The merits of our complaint have yet to be addressed.

A second complaint filed with the Department regarding the State's response to our October 98 complaint and request for due process hearing, is currently on appeal to the Alaska Superior Court in *Bickford v. SOA, DEED*. I am not an expert in special education law, I am not an attorney or paralegal, and I have not been advised by an attorney in preparing these comments. I am simply a parent, compelled to provide my first-hand experiences and "two cents" opinion with the hopes my testimony and comments might prevent other parents from experiencing the roadblocks I have encountered in providing my children an appropriate education.

Issue #1. HB 301/G Proposes:

Section 1 of HB 301, draft G, amends AS 14.30.180, by updating the reference to the amended Individuals with Disabilities Education Act of 1997, 20 U.S.C. § 1400, et. seq. (IDEA). Section 2 adds a new section, 14.30.182 Duties of the department, with redundant language. For example: (1) cooperate..., (2) comply..., (3) adopt regulations... etc. The Section 2 addition restates AS 14.30.335. Eligibility for Federal Funds, which reads:

"Notwithstanding any other provision of AS 14.30.180 - 14.30.350, the department may do all things necessary to qualify for federal funds that are available to the state for the education of exceptional children."

AS 14.30.335 is not identified by the Department in the group of statutes in HB 301, Sec. 13, to be repealed or amended. AS 14.07.020 lists the duties of the department. The Department's proposed revision to its duties is misplaced in Chapter 30.

Bickford Suggestion: Delete proposed Section 2, page 1, line 11, through page 2, line 9, in its entirety and amend AS 14.07.020 to read:

"Develop procedures for implementing and enforcing state and federal laws and regulations pertaining to the education of children with disabilities."

Rationale: The Alaska Department of Education and Early Development (Department), has a legal obligation to ensure compliance with the requirements of the IDEA at both the State and local levels. This means the Department is responsible for **implementing and enforcing** the state and federal laws and regulations. Alaska's statutes should recognize the State's legal obligation to ensure compliance and demand the department stand accountable for its actions beyond simply recognizing the opportunity to seek and receive federal funding. If the Department were to implement and enforce state and federal laws and regulations there would be no need for groveling statutory language with respect to continued receipt of federal funds.

It is my opinion, based on personal experience, the Department has not accepted its responsibility for enforcing the IDEA and accompanying federal regulations. The best example to illustrate my concern is the Department's response to our October 98 Complaint and Request for Due Process Hearing alleging both the Anchorage School District and the State educational agency violate the IDEA system-wide, affecting 6,000 students in the Anchorage area alone. The original document was returned to me, 37 days later, attached to a November 17th letter by Thomas Dahl, who feigned confusion, failed to recognize the Department's legal obligation to accept a complaint and to either (1) investigate or (2) provide a hearing for alleged violations of Part B of IDEA, failed to acknowledge that a state educational agency has an obligation under, and could be held liable for violations of the IDEA. To add insult to injury, Mr. Dahl failed to provide notice of applicable procedural rights despite our December 7th letter of clarification.

If the Alaska Statutes had clearly identified the Department's duties to include the implementation and enforcement of the laws pertaining to the education of children with disabilities, the Department would not have room to feign confusion, or argue the State could not be identified as a defendant. Alaska statutes must include a general statement reflecting the State's obligation as stated in 20 USC §1412(a)(1)(A):

- In General. - The State educational agency is responsible for ensuring that -
- (i) the requirements of this part are met; and
 - (ii) all educational programs for children with disabilities in the State, including all such programs administered by any other State or local agency -
 - (I) are under the general supervision of individuals in the State who are responsible for educational programs for children with disabilities; and
 - (II) meet the educational standards of the State Educational agency."

It is imperative that the Alaska Department of Education and Early Development be given clear statutes and implementing regulations that place the primary responsibility for implementing and enforcing IDEA on the Department and all boards and councils. This committee's task will then be complete and the public interest protected.

Issue #2. Encouragement by Many Special Interest Organizations to Pass HB 301.

CSHB 301/G, with minor amendments, as presented by the Department on April 4th, repeals the heart of Title 14, Section 30. Special Interest organizations, including P.A.R.E.N.T.S, have encouraged this committee to promptly pass this bill to avert the threat that the federal government will withhold funds, a situation brought about by the Department's non-compliance and failure to follow a proscribed corrective action plan.

Bickford Suggestion: This committee must hesitate in passing this bill. Schedule a public forum in which each proposed statutory repeal identified in Section 13, page 5, lines 4-6, are discussed, reviewed, and rewritten prior to enacting this bill.

Rationale: This committee has a duty to protect the public's interest in education and provide the safeguards necessary to protect the educational opportunity provided to each child with disabilities in Alaska. Special interest groups want this committee to pass CSHB 301, thereby repealing every statute pertaining to parental rights or a parent's participation with regard to their child's education and allow Department free reign to rewrite regulation without statutory direction by this committee and legislature.

CSHB 301/G, Sec. 2, page 2, lines 10-18, suggest this committee be satisfied with an annual notification by a Department whose past actions have shown it is not able or willing to comply with its present legal obligation. It is unreasonable to trust that the Department will find the necessary resolve if the legislature provides no oversight. Unfortunately, when the Department of Law defends the non-compliance of the Department, this leaves enforcement to individual parents who must then act as a private attorney general to secure any enforcement, and this, I protest vehemently.

Federal law provides an identified "minimum" requirement for compliance. The proposed bill creatively adopts the federal minimum with no guarantee the federal minimum is not the state maximum. Should there ever be a "Nuremberg" review regarding the provision of special education and related services in the State of Alaska, it will be shown that parents have argued for no more than the federal minimum as identified in the IDEA, protected by the Equal Protection Clause of the U.S. Constitution and the Alaska Constitution, while the state abrogated its legal obligation.

Department's legal obligation cannot be satisfied with an annual legislative report and this committee should not promote false accountability.

Issue #3. Parental Authority Has Been Eliminated From Alaskan Statutes.

In general, most HB 301 references to a parent, parental authority, or their interest or participation in the proceedings with regards to their child's education have been eliminated or altered. Testimony and comments of P.J. Ford-Slack regarding parental authority and the Department's position that a parent waives future parental authority by consenting to an initial evaluation and placement of a child, is distressing.

Bickford Suggestion: (1) Review Title 14, Chapter 30 and reinstate parental rights and authority to control the interests of their minor child. (2) If, this committee determines that a parent's signature, conveying consent to the initial evaluation and placement of their child, sets aside their constitutional parental rights, that information needs to be clearly stated in the authorizing statutes.

Rationale: (1) For example, Section 3, page 2, line 19 through page 3 line 8, repeals AS 14.30.186, which refers throughout to provision of services "for exceptional children." Amended versions refer simply to "a child" without referencing a "parent," natural or surrogate. Throughout the committee's discussion, an extreme example in which a parent foregoes special education and homeschools their child, was cited by the Department of Education, the Department of Law, and NEA Alaska. The authority of all parents, not just the religious radical parents, will be summarily impacted by passage of this bill, as the federal law looks to state law with regards to representation of minor children who have no legal capacity to represent themselves. **If it is not the intent of this committee to eliminate parental authority, this committee must correct what may be an inadvertent error.** Robert Briggs of Disability Law Center provided specific references to federal law regarding consent and a state legislature's authority to place a higher priority, emphasis, or provision of service by enacting state law that exceeds the federal minimum. This committee must exert their legislative authority and ensure the final version of these statutes recognize parent authority and not be misled by the Department of Law's argument that parental authority carries a "veto" power.

(2) I was never informed that my consent included this waiver or I would have never knowingly consented to such a waiver. I am certain 100% of the parents I know were never informed the agreement they signed contain this hidden clause. This highlights the Department's lack of notification to parents and distressing disregard for parents. A school district cannot subvert a law that simply conveys a civil right to a free appropriate education into a punitive measure to impose another "duty" on parents. Any "duty" of IDEA belongs to the school district. Parents may share the responsibility for providing an appropriate education but the legal duty of compliance rests upon the school district.

Issue # 4. The 12 Month Tolling Period for Requesting A Due Process Hearing.

Sec. 5 AS 14.30.193(b) provides that a parent must request a due process hearing within a tolling period of 12 months.

Bickford Suggestion: AS 14.30.193(b) should provide a 24 month tolling period.

Rationale: In general, federal case law refers to the statute of limitation for personal injury claims under state law. In Alaska, this is a two year period. Some state have adopted an IDEA tolling period that is greater than two years, even a six-year period. This committee should adopt a reasonable period of two years.

Issue # 5. Selection of Hearing Officers.

Sec. 6 As 14.30.193(c) as provides that "If a parent does not select a name, the school district may appoint as hearing officer any person from the list maintained by the department."

Bickford Suggestion: The State should maintain a rotating list of qualified hearing officers and provide a school district with the next three names upon request. Both parties have an opportunity to strike one potential hearing officer or jointly agree to any one of the three potential hearing officers. The State should intervene and demand justification for any additional names from the rotating list.

Rationale: The reason parents are given an opportunity to select a hearing officer is to prevent potential conflicts of interest. The school district should be given the same opportunity. It make no sense to allow a school district to pick randomly from the list. If the State has trained hearing officers and certifies their qualifications and impartiality, an educational agency should not be provided an unfair advantage as this revision allows.

Issue #6. AS 14.30 Should Be Amended To Include State Complaint Procedures.

Prior to the '97 IDEA Amendments, parental appeal rights from a State complaint, were to the U.S. Secretary of Education, Office of Special Education Programs. The '97 amendments eliminated this provision but expanded authority of the state educational agency to address all issues except those that are subject to a due process hearing. An aggrieved party is currently provided appeal rights to State Superior Court without state statutory authority.

Bickford Suggestion: Adopt Department Complaint Procedures in Alaska Statute.

Rationale: Parents have a reasonable expectation that the state agency charged with monitoring and enforcement will do its job. Complaints should be resolved promptly and should be flexible enough to address any issue or circumstance that is not suited to a due process hearing. For example: the complaint cited above, in which the parents of perhaps 6,000 students were potential complainants, would not be suited for 6,000 due process hearings. However, State authority to enforce the law under State complaint procedures would provide the opportunity for the state educational agency to conduct a thorough investigation and enact a corrective action plan that could potentially remedy all 6,000 cases. The current statutes and regulations regarding due process hearings provide a reviewing court with statutory standards to measure the issues presented for review. Currently, a reviewing State Court must rely on federal statutes and regulations to adjudicate a case arising from an appeal of a state complaint.

Issue # 7. Post Administrative Hearing Decisions and Complaint Decisions.

Currently, there is no public access to administrative decisions or complaints. I was informed by Wendy Tada of the Department of Education the decisions were available as published in the Individuals with Disabilities Education Law Reporter. The basic subscription rate to the IDELR is \$1,800 per year.

Bickford Suggestion: Post Administrative Decisions on the Department's Website. After deleting any personally identifiable information, findings of non-compliance and corresponding recommendations shall be posted on the Department's website, provided to all members of the Alaska Board of Education, to all members of the Governor's Council on Special Education, to all members of the local educational agency's board of education, to all members of the local educational agency's borough

or city Council, and to all members of the local educational agency's Special Education Advisory Board. A personally identifiable report shall be issued to the parties to the complaint, and issued directly to the Commissioner of Education for further action.

Rationale: Parents, taxpayers and governing boards have a right to know about these complaints. When complaints are buried, they are forgotten and history repeats itself. The Ombudsman's office routinely publishes their investigative reports on the State's website and provides an excellent example for the Department to follow.

Issue # 8. Proposed Definition of "Appropriate Public Education" is Misleading.

Sec. 12, page 4, line 30 through page 5, line 3, amends the definition of "appropriate education" without simply repealing the statute and adopting the federal definition.

Bickford Suggestion: AS 14.30.350(l) should be amended to comply with the federal statute, 20 U.S.C. § 1401(8) to read:

"The term 'free appropriate public education' means special education and related services that –

- (A) have been provided at public expense, under public supervision and direction, and without charge;**
- (B) meet the standards of the State educational agency;**
- (C) include an appropriate preschool, elementary, or secondary school education ; and**
- (D) are provided in conformity with the Individualized education program required under the IDEA."**

Rationale: Since most disputes are related to whether or not the child is receiving an appropriate education, it is critical that the Congressional intent is reflected in the State's definition of the educational opportunity provided by the IDEA for each child. The Department's current statute and implementing definitions have confused parents, school officials and teachers for years. Adopting statutory language that meets the federal definition clears any potential interpretation problems and eliminates the need to define the state's created terms: "personalized instruction," "sufficient support services," and "benefit educationally." Unfortunately, doublespeak provides excessive wiggle room for some individuals and confuses individuals whose task is to develop an education plan that is individualized and meets the "free appropriate public education" standard.

I am gravely concerned that HB 301 will become law without further consideration. I would like to assist this committee in any manner that may be necessary to ensure the work of this committee provides an appropriate education of children with disabilities. I can be reached at (907) 345-7731. Thank you for this opportunity to comment on HB 301.

Sincerely,



Pamela Bickford
16840 Tide View Drive
Anchorage, Alaska 99516

Subject: HB301**Date:** Wed, 5 Apr 2000 13:01:45 -0900**From:** "Jeanne M Funatake" <JFUNATA@mail.aai.arco.com>**To:** Representative_Fred_Dyson@legis.state.ak.us, epresentative_John_Coghill@legis.state.ak.us,
RRepresentative_Tom_Brice@legis.state.ak.us,
Representative_Allen_Kemplen@legis.state.ak.us,
Representative_Carl_Morgan@legis.state.ak.us,
Representative_Jim_Whitaker@legis.state.ak.us, Senator_Mike_Miller@legis.state.ak.us,
Senator_Pete_Kelly@legis.state.ak.us, Senator_Drue_Pierce@legis.state.ak.us,
Senator_Gary_Wileken@legis.state.ak.us, Senator_Kim_Elton@legis.state.ak.us

I am concerned that HB301 will spell the end of funding for Gifted and Talented students throughout the state. It is my understanding that these students may lose their current services because the bill eliminates due process rights and procedural safeguards. If the Gifted & Talented programs are left entirely up to individual school districts, they will likely be eliminated at the first funding cut.

Please help protect the best and brightest in our state and in doing so, help keep Alaska's future bright as well.

Thanks

Jeanne Funatake
10724 Flagship Circle,
Anchorage, AK 99515

Subject: HB 301

Date: 4 Apr 2000 12:07:17 -0800

From: "Weber_Barbara" <weber_barbara@msmail.asd.k12.ak.us>

**To: Representative_Fred_Dyson@legis.state.ak.us, Representative_John_Coghill@legis.state.ak.us,
Senator_Mike_Miller@legis.state.ak.us**

Eliminating gifted from special education would completely eliminate any gifted services in our district. We are currently looking at ways to cut the budget and if gifted services were no longer required, they would no longer exist. That would be a crying shame!!!!!!!!!!!!

Gifted students are a population at risk. Specifically they are at risk for dropping out of school, experimentation with drugs/early sexual activity etc. Research indicates that existing gifted programs offer the students help in eliminating at risk behaviors- not offering any kind of intervention services for the gifted student is disastrous for the district gifted population.

Gifted students can create special problems in the regular classroom disrupting the learning of the entire classroom. Because of their high verbal ability they can manipulate or dominate others (rather than learning to be a leader), they question authority (rules, regulations and generally accepted facts), resist drill and repetition, become impatient with those who do not learn as quickly, can be seen as rebellious, nonconforming, have difficulty with social skills and are often overly sensitive etc. etc.

I hope before you pass this disastrous legislation that you find out about gifted students; why the population is at risk, and why it is necessary to have a program for them!

Sincerely,
Barbara Weber Ph.D.

Subject: HB 301**Date:** Thu, 06 Apr 2000 13:46:00 -0800**From:** Pam Bickford <plbickford@att.net>**To:** Representative_Fred_Dyson@legis.state.ak.us, plbickford@att.net

Pamela Bickford
 16840 Tide View Drive
 Anchorage, Alaska 99516
 (907) 345-7731

April 6, 2000

CSHB 301/G Changes Relating to the Education of Exceptional Children.

Chairman Dyson and House HES Committee Members;

Thank you for this opportunity to testify regarding proposed statutory changes. I am the parent of four children, two identified as needing special education and related services as learning disabled students. As a result, I testify with 15+ years experience as a participant in educational evaluations and educational planning meetings. I have had the unfortunate experience of participating in a due process hearing for both of my children, awaiting a decision by the Ninth Circuit Court of Appeals in K.B. v. ASD.

As a result of a botched independent educational evaluation in my son's case, I discovered Anchorage School District conducts improper evaluations for referrals for educational evaluation to determine eligibility for services under the learning disabled category. By contacting other parents and comparing our children's educational records we discovered many school districts throughout the state follow the same erroneous practice and that the State was additionally at fault for not implementing the proper procedures in 1978 when the federal regulations were enacted. We took our concerns to the Anchorage School District at the first two school board meetings in August of 1998. We then filed a complaint and request for due process hearing with the State educational agency in October of 1998. Both the local educational agency and the state educational agency failed to respond to our concerns, so we filed a complaint in federal district court in December of 1998. We are awaiting a decision by the Ninth Circuit in K.B., et. al., v. ASD, DEED on the issue of representation. The merits of our complaint have yet to be addressed.

A second complaint filed with the Department regarding the State's response to our October 98 complaint and request for due process hearing, is currently on appeal to the Alaska Superior Court in Bickford v. SOA, DEED. I am not an expert in special education law, I am not an attorney or paralegal, and I have not been advised by an attorney in preparing these comments. I am simply a parent, compelled to provide my first-hand experiences and "two cents" opinion with the hopes my testimony and comments might prevent other parents from experiencing the roadblocks I have encountered in providing my children an appropriate education.

Issue #1. HB 301/G Proposes:

Section 1 of HB 301, draft G, amends AS 14.30.180, by updating the reference to the amended Individuals with Disabilities Education Act of 1997, 20 U.S.C. § 1400, et. seq. (IDEA). Section 2 adds a new section, 14.30.182 Duties of the department, with redundant language. For example: (1) cooperate., (2) comply..., (3) adopt regulations... etc. The Section 2 addition restates AS 14.30.335. Eligibility for Federal Funds, which reads:

"Notwithstanding any other provision of AS 14.30.180 - 14.30.350, the

department may do all things necessary to qualify for federal funds that are available to the state for the education of exceptional children."

AS 14.30.335 is not identified by the Department in the group of statutes in HB 301, Sec. 13, to be repealed or amended. AS 14.07.020 lists the duties of the department. The Department's proposed revision to its duties is misplaced in Chapter 30.

Bickford Suggestion: Delete proposed Section 2, page 1, line 11, through page 2, line 9, in its entirety and amend AS 14.07.020 to read:

"Develop procedures for implementing and enforcing state and federal laws and regulations pertaining to the education of children with disabilities."

Rationale: The Alaska Department of Education and Early Development (Department), has a legal obligation to ensure compliance with the requirements of the IDEA at both the State and local levels. This means the Department is responsible for implementing and enforcing the state and federal laws and regulations. Alaska's statutes should recognize the State's legal obligation to ensure compliance and demand the department stand accountable for its actions beyond simply recognizing the opportunity to seek and receive federal funding. If the Department were to implement and enforce state and federal laws and regulations there would be no need for groveling statutory language with respect to continued receipt of federal funds.

It is my opinion, based on personal experience, the Department has not accepted its responsibility for enforcing the IDEA and accompanying federal regulations. The best example to illustrate my concern is the Department's response to our October 98 Complaint and Request for Due Process Hearing alleging both the Anchorage School District and the State educational agency violate the IDEA system-wide, affecting 6,000 students in the Anchorage area alone. The original document was returned to me, 37 days later, attached to a November 17th letter by Thomas Dahl, who feigned confusion, failed to recognize the Department's legal obligation to accept a complaint and to either (1) investigate or (2) provide a hearing for alleged violations of Part B of IDEA, failed to acknowledge that a state educational agency has an obligation under, and could be held liable for violations of the IDEA. To add insult to injury, Mr. Dahl failed to provide notice of applicable procedural rights despite our December 7th letter of clarification.

If the Alaska Statutes had clearly identified the Department's duties to include the implementation and enforcement of the laws pertaining to the education of children with disabilities, the Department would not have room to feign confusion, or argue the State could not be identified as a defendant. Alaska statutes must include a general statement reflecting the State's obligation as stated in 20 USC §1412(a)(11)(A):

In General. ? The State educational agency is responsible for ensuring that -

- (i) the requirements of this part are met; and
- (ii) all educational programs for children with disabilities in the State, including all such programs administered by any other State or local agency -
 - (I) are under the general supervision of individuals in the State who are responsible for educational programs for children with disabilities; and
 - (II) meet the educational standards of the State Educational agency."

It is imperative that the Alaska Department of Education and Early Development be given clear statutes and implementing regulations that place the primary responsibility for implementing and enforcing IDEA on the Department and all boards and councils. This committee's task will then be complete and the public interest protected.

Issue #2. Encouragement by Many Special Interest Organizations to Pass HB 301.

CSHB 301/G, with minor amendments, as presented by the Department on April 4th, repeals the heart of Title 14, Section 30. Special Interest organizations, including P.A.R.E.N.T.S, have encouraged this committee to promptly pass this bill to avert the threat that the federal government will withhold funds, a situation brought about by the Department's non-compliance and failure to follow a proscribed corrective action plan.

Bickford Suggestion: This committee must hesitate in passing this bill. Schedule a public forum in which each proposed statutory repeal identified in Section 13, page 5, lines 4-6, are discussed, reviewed, and rewritten prior to enacting this bill.

Rationale: This committee has a duty to protect the public's interest in education and provide the safeguards necessary to protect the educational opportunity provided to each child with disabilities in Alaska. Special interest groups want this committee to pass CSHB 301, thereby repealing every statute pertaining to parental rights or a parent's participation with regard to their child's education and allow Department free reign to rewrite regulation without statutory direction by this committee and legislature.

CSHB 301/G, Sec. 2, page 2, lines 10-18, suggest this committee be satisfied with an annual notification by a Department whose past actions have shown it is not able or willing to comply with its present legal obligation. It is unreasonable to trust that the Department will find the necessary resolve if the legislature provides no oversight. Unfortunately, when the Department of Law defends the non-compliance of the Department, this leaves enforcement to individual parents who must then act as a private attorney general to secure any enforcement, and this, I protest vehemently.

Federal law provides an identified "minimum" requirement for compliance. The proposed bill creatively adopts the federal minimum with no guarantee the federal minimum is not the state maximum. Should there ever be a "Nuremberg" review regarding the provision of special education and related services in the State of Alaska, it will be shown that parents have argued for no more than the federal minimum as identified in the IDEA, protected by the Equal Protection Clause of the U.S. Constitution and the Alaska Constitution, while the state abrogated its legal obligation.

Department's legal obligation cannot be satisfied with an annual legislative report and this committee should not promote false accountability.

Issue # 3. Parental Authority Has Been Eliminated From Alaskan Statutes.

In general, most HB 301 references to a parent, parental authority, or their interest or participation in the proceedings with regards to their child's education have been eliminated or altered. Testimony and comments of P.J. Ford-Slack regarding parental authority and the Department's position that a parent waives future parental authority by consenting to an initial evaluation and placement of a child, is distressing.

Bickford Suggestion: (1) Review Title 14, Chapter 30 and reinstate parental rights and authority to control the interests of their minor child. (2) If, this committee determines that a parent's signature, conveying consent to the initial evaluation and placement of their child, sets aside their constitutional parental rights, that information needs to be clearly stated in the authorizing statutes.

Rationale: (1) For example, Section 3, page 2, line 19 through page 3 line 8, repeals AS 14.30.186, which refers throughout to provision of services "for exceptional children." Amended versions refer simply to "a child" without referencing a "parent," natural or surrogate. Throughout the committee's discussion, an extreme example in which a parent foregoes special education and homeschools their child, was cited by the Department of Education, the Department of Law, and NEA Alaska. The authority of all parents, not just the religious radical parents, will be summarily impacted by passage of this bill, as the federal law looks to state law with regards to representation of minor children who have no legal capacity to represent themselves. If it is not the intent of this committee to eliminate parental authority, this committee must correct what may be an inadvertent error. Robert Briggs of Disability Law Center provided specific references to federal law regarding consent and a state legislature's authority to place a higher priority, emphasis, or provision of service by enacting state law that exceeds the federal minimum. This committee must exert their legislative authority and ensure the final version of these statutes recognize parent authority and not be misled by the Department of Law's argument that parental authority carries a "veto" power.

(2) I was never informed that my consent included this waiver or I would have never knowingly consented to such a waiver. I am certain 100% of the parents I know were never informed the agreement they signed contain this hidden clause. This highlights the Department's lack of notification to parents and distressing disregard for parents. A school district cannot subvert a law that simply conveys a civil right to a free appropriate education into a punitive measure to impose another "duty" on parents. Any "duty" of IDEA belongs to the school district. Parents may share the responsibility for providing an appropriate education but the legal duty of compliance rests upon the school district.

Issue # 4. The 12 Month Tolling Period for Requesting A Due Process Hearing.

Sec. 5 AS 14.30.193(b) provides that a parent must request a due process hearing within a tolling period of 12 months.

Bickford Suggestion: AS 14.30.193(b) should provide a 24 month tolling period.

Rationale: In general, federal case law refers to the statute of limitation for personal injury claims under state law. In Alaska, this is a two year period. Some state have adopted an IDEA tolling period that is greater than two years, even a six-year period. This committee should adopt a reasonable period of two years.

Issue # 5. Selection of Hearing Officers.

Sec. 6 AS 14.30.193(c) as provides that "If a parent does not select a name, the school district may appoint as hearing officer any person from the list maintained by the department."

Bickford Suggestion: The State should maintain a rotating list of qualified hearing officers and provide a school district with the next three names upon request. Both parties have an opportunity to strike one potential hearing officer or jointly agree to any one of the three potential hearing officers. The State should intervene and demand justification for any additional names from the rotating list.

Rationale: The reason parents are given an opportunity to select a hearing officer is to prevent potential conflicts of interest. The school district should be given the same opportunity. It make no sense to allow a school district to pick randomly from the list. If the State has trained hearing officers and certifies their qualifications and

impartiality, an educational agency should not be provided an unfair advantage as this revision allows.

Issue #6. AS 14.30 Should Be Amended To Include State Complaint Procedures.

Prior to the '97 IDEA Amendments, parental appeal rights from a State complaint, were to the U.S. Secretary of Education, Office of Special Education Programs. The '97 amendments eliminated this provision but expanded authority of the state educational agency to address all issues except those that are subject to a due process hearing. An aggrieved party is currently provided appeal rights to State Superior Court without state statutory authority.

Bickford Suggestion: Adopt Department Complaint Procedures in Alaska Statute.

Rationale: Parents have a reasonable expectation that the state agency charged with monitoring and enforcement will do its job. Complaints should be resolved promptly and should be flexible enough to address any issue or circumstance that is not suited to a due process hearing. For example: the complaint cited above, in which the parents of perhaps 6,000 students were potential complainants, would not be suited for 6,000 due process hearings. However, State authority to enforce the law under State complaint procedures would provide the opportunity for the state educational agency to conduct a thorough investigation and enact a corrective action plan that could potentially remedy all 6,000 cases. The current statutes and regulations regarding due process hearings provide a reviewing court with statutory standards to measure the issues presented for review. Currently, a reviewing State Court must rely on federal statutes and regulations to adjudicate a case arising from an appeal of a state complaint.

Issue # 7. Post Administrative Hearing Decisions and Complaint Decisions.

Currently, there is no public access to administrative decisions or complaints. I was informed by Wendy Tada of the Department of Education the decisions were available as published in the Individuals with Disabilities Education Law Reporter. The basic subscription rate to the IDELR is \$1,800 per year.

Bickford Suggestion: Post Administrative Decisions on the Department's Website. After deleting any personally identifiable information, findings of non-compliance and corresponding recommendations shall be posted on the Department's website, provided to all members of the Alaska Board of Education, to all members of the Governor's Council on Special Education, to all members of the local educational agency's board of education, to all members of the local educational agency's borough or city Council, and to all members of the local educational agency's Special Education Advisory Board. A personally identifiable report shall be issued to the parties to the complaint, and issued directly to the Commissioner of Education for further action.

Rationale: Parents, taxpayers and governing boards have a right to know about these complaints. When complaints are buried, they are forgotten and history repeats itself. The Ombudsman's office routinely publishes their investigative reports on the State's website and provides an excellent example for the Department to follow.

Issue # 8. Proposed Definition of "Appropriate Public Education" is Misleading.

Sec. 12, page 4, line 30 through page 5, line 3, amends the definition of "appropriate education" without simply repealing the

statute and adopting the federal definition.

Bickford Suggestion: AS 14.30.350(1) should be amended to comply with the federal statute, 20 U.S.C. § 1401(8) to read:

"The term 'free appropriate public education' means special education and related services that ?

(A) have been provided at public expense, under public supervision and direction, and without charge;

(B) meet the standards of the State educational agency;

(C) include an appropriate preschool, elementary, or secondary school education ; and

(D) are provided in conformity with the individualized education program required under the IDEA."

Rationale: Since most disputes are related to whether or not the child is receiving an appropriate education, it is critical that the Congressional intent is reflected in the State's definition of the educational opportunity provided by the IDEA for each child. The Department's current statute and implementing definitions have confused parents, school officials and teachers for years. Adopting statutory language that meets the federal definition clears any potential interpretation problems and eliminates the need to define the state's created terms: "personalized instruction," "sufficient support services," and "benefit educationally." Unfortunately, doublespeak provides excessive wiggle room for some individuals and confuses individuals whose task is to develop an education plan that is individualized and meets the "free appropriate public education" standard.

I am gravely concerned that HB 301 will become law without further consideration. I would like to assist this committee in any manner that may be necessary to ensure the work of this committee provides an appropriate education of children with disabilities. I can be reached at (907) 345-7731. Thank you for this opportunity to comment on HB 301.

Sincerely,

Pamela Bickford
16840 Tide View Drive
Anchorage, Alaska 99516

Subject: HB301

Date: Thu, 6 Apr 2000 15:58 -0800

From: "Marc Grober" <marc@interak.com>

To: Representative_Fred_Dyson@legis.state.ak.us,
Representative_Jim_Whitaker@legis.state.ak.us, Representative_Joe_Green@legis.state.ak.us,
Representative_Carl_Morgan@legis.state.ak.us, Representative_Tom_Brice@legis.state.ak.us,
Representative_Allen_Kempen@legis.state.ak.us,
Representative_John_Coghill@legis.state.ak.us

Gentlemen,

As may of you may know from my prior correspondence, AKDEED in responding to an Alaska Public Records Act request, denied the existence of any drafts of HB301 prepared by retained counsel Art Peterson. "Out of the blue", months after the request, and just today there arrived a parcel which contained these drafts.

It is my opinion that these drafts reflect that though AkDEED has gone on and on about how it didn't have the staff to address any of the issues you have been wrestling with over the last few weeks, AkDEED had been made aware of all these issues. The drafts reflect that Art Peterson reported on his electronic correspondence with me (in which I provided Art with where on the web he could find my analysis) to AkDEED as well as advised AKDEED of issues with G/T, issues with Alaska's parental right for home schooling parents to refuse services, etc. He also had a number of meetings with Assistant A.G.s, and top level AkDEED staff over a period of several months (during which period he was also drafting the regulations that are simply awaiting the legislatures evisceration of state and parental rights in this arena.)

I implore you to hold HB 301 until you have heard from

local school districts and your constituents and to consider that a number of the organizations you have heard from have made false and wholly misleading claims about who they represent, the nature of whatever authority they might have, etc.

Lastly, should you feel for some reason compelled to pass this bill out of committee, I ask you once again that you ensure that any bill leaving your committee includes the one paragraph policy statement I have previously supplied.

Thank you for your consideration.

Gentlemen,

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I implore you to hold HB 301 until you have heard from local school districts and your constituents and to consider that a number of the organizations you have heard from

Subject: hb 301

Date: Thu, 6 Apr 2000 00:00:18 -0800

From: bausler <bausler@alaska.net>

To: Representative_Fred_Dyson@legis.state.ak.us

We urge you to adopt the cs that protects procedural safeguards for extended learning or gifted and talented students.

Our best and brightest young Alaskans deserve the same protections as other specific groups of students.

Thanks,

Karl and Katie Bausler

Subject: RE HB 301

Date: Wed, 5 Apr 2000 18:20:24 -0800

From: "johnson" <wjohnson@ktn.net>

To: <Representative_Fred_Dyson@legis.state.ak.us>

CC: <parents@parentsinc.org>

Dear Representative Dyson,

Please pass HB 301 to ensure that ALL children (who attend public schools here in Alaska) may benefit and thrive from a appropriate education.

Sincerely, Catherine Johnson

Subject:

Date: Tue, 28 Mar 2000 09:29:06 -0900

From: "Stephanie S. Rudig" <srudig@northstar.k12.ak.us>

To: Representative_Fred_Dyson@legis.state.ak.us,
Representative_John_Coghill_@legis.state.ak.us,
Representative_Tom_Brice_@legis.state.ak.us,
Representative_Allen_Kemplen_@legis.state.ak.us,
Representative_Carl_Morgan_@legis.state.ak.us,
Representative_Jim_Whitaker_@legis.state.ak.us

To: Representative_Fred_Dyson@legis.state.ak.us,
Representative_John_Coghill_@legis.state.ak.us,
Representative_Tom_Brice_@legis.state.ak.us,
Representative_Allen_Kemplen_@legis.state.ak.us,
Representative_Carl_Morgan_@legis.state.ak.us,
Representative_Jim_Whitaker_@legis.state.ak.us
From: "Stephanie S. Rudig" <srudig@northstar.k12.ak.us>
Subject: (HB 301)

Sirs,

Please MAINTAIN all due process rights and procedural safeguards for gifted and talented students. As the parent of two gifted and talented students I relied on these rights and the goals and objectives outlined in their yearly Individual Education Plans. I know that their regular classroom teachers were not able to meet my sons educational needs despite their best intentions. It is only through the G.T. programs of Weller School, Tanana Middle School and Lathrop high school that my sons' needs were met. The goals and objectives designed for my sons to insure their continued learning and challenge, made their education meaningful and valuable. I hate to think what would have happened otherwise.

Respectfully submitted,
Stephanie S. Rudig
182 Concord Ave.
Fairbanks, Ak 99712

My name is Sam Roth. I am
9 years old and in the 4th grade.

I think you should keep GT
in the law because in the
regular classroom I do stuff I already
know, and in GT I get to learn
new things.

If you don't keep GT in the
law when the school runs out of
money GT will probably be one of
the first things they get rid of.

Please don't forget GT!

Oppose HB 329

3/27/2000

Peter Van -
Elisa Walls -
Brad Meiklejohn - 694-9060
Coralyn Phillips
Jim Huggman
Kathy Davey 563-5245
Stacie Saura - 278-0535

Support HB 329

Cheryl
Shelly Margwood - Crisis Line 581-1696
Ruthberg - Thanking you passing it out of center
Melinda Hopstad - Completely

Support HB 301

- Cheryl Westfall - 437-9243
- Pelton Louder - Please PASS
- Frank + Muriel Shaglock - Please PASS.
- Mary Conley - Support Keep funds going.
- Vivian Williams - 458-7437 VOTE YES

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.

We understand and support the passage of HB 301 and the recommendations for stakeholder input to the regulatory processes so stated by PARENTS, Inc. and by so doing urge quick action that will ensure Alaska's compliance with federal law.

NAME	ADDRESS	PHONE #	E-MAIL ADDRESS
1. Maria Johnson	112 Nanook Circle	273-3019	froggieme@aol.com
2. Pelton Goudey	735 E. 74 th Ave.	522-9476	igogoudey@ak.net
3. Gail Igo	same	same	same
4. Lori Kniefkamp	PO Box 87423	745-1857	lorikk@mataonline.net
5. Catherine Burgess		337-1284	
6. Sanja Bolling		338-1623	
7. Shelia Booksh		245-1219	
8. Shawnee Hart		337-1284	
9. Ronnie Stork	1251 Muldoon Rd.	337- 0090	bsj@rstorkacfonline.org
10. Helen Johnson	PO Box 110687	786- 6441	
11. Lori Walter	535 2 nd Ave. Suite 163B.	456-6770	FBXPRC@mosquitonet.com
12. Bernardine Jantzen	3300 Palmdale	376-0366	bsj@rogershasa.com
13. John Vogt	PO Box 211245 99521	348-0209	
14. Kathy Griffeth		688-9463	
15. Kimberly Sedgraves		245-2125	
16. Barbara Weiss	11000 Navarot	336-2203	barbweiss@chugach.net
17. Angela Eberhardt	1521 Elcadore Dr. #108	344-4234	goldie698@gei.net

Packet in HB 301

Subject: Re: Parental consent - draft amendment

Date: Wed, 05 Apr 2000 08:36:23 -0800

From: PJ Ford Slack <pj_ford@eed.state.ak.us>

To: Robert Briggs <rbriggs@pobox.alaska.net>

CC: Representative_Fred_Dyson@legis.state.ak.us, Representative_Tom_Brice@legis.state.ak.us

Dear Bob,

I know your heart is in the right place but the conversation that is going on is why we don't have people willing to teach or lead in special education. IDEA 97 presented some of the largest requirements to states and districts. We are a state that recruits teachers from the lower 48. Every state implements IDEA differently. Do you understand the enormity of that training difficulty. If Alaska at least remained consistent with the Federal statute we would have some consistency.

You will never be out of work Bob, because Alaska is in a crisis with its personnel. Our five largest districts are in trouble. Two of those districts are losing their special education directors, one of the districts hasn't had consistent leadership for over three years. Fairbanks is struggling without leadership or training. And I must say that attaching gifted and talented and the legal requirements of IDEA to one person in a district is unrealistic. One of our districts does not have some with a special education background training special educators. Anchorage is in serious trouble. They have pink slipped their administrative team and have a salary schedule that will not compete with the lower 48. You know the story of the department. There isn't a school person in this state that would take one of our jobs because we work longer hours and receive on the average of 10-25,000 dollars less than school personnel. Bob, there won't be many people left to work in special education if lawyers are what drives this law.

As someone who has been in IEP meetings, good and bad, and has seen that have parents who shouldn't be making decisions for their students because of their own struggles and challenges I will continue to support that this bill is a Student's right not a parent's right.

I don't disagree with the state's ability to go beyond the Federal requirement. However, I believe what you are suggesting is going to cause a change in how the IEP process works. I don't believe that will pass Federal inspection of our statute.

I also don't know of a district that would pay for a related service that involved purchasing pharmacological treatment. If there are all these cases why don't we have a record of them at the department?

I do hope that you have reviewed the court cases where the parent or adult child returns to the school to demand compensatory services based on allowing the parent to deny services.

Last summer we had two nineteen year olds show up at the EED stating that District X had "allowed" them to leave special education. Their claim was that the district had abdicated their professional responsibility in allowing that to occur.

I continue to be baffled by some of the testimony. I have researched the complaints, mediations, and due processes in this state. I do not find that the gifted and talented parents have requested anything this year nor have I found a case related to the testimony of the special education parent from Juneau. I will continue to advise Juneau to offer that parent services because I don't believe home schooling is a good option for her son.

As you know I am not the final say in these matters. I did want you to hear what I had to say and my growing concern about the lack of "common sense" we are all using with this law.

Thanks for your work. PJ

At 06:25 PM 4/4/00 -0800, you wrote:

>Here is a draft amendment to Work Draft G on parental consent, which for
>the benefit of the DLC folks who weren't able to attend, turned out to be a
>hot topic of debate. I have discussed this with Wes and he indicated there
>was interest in pursuing this further. Please contact me no later than
>10:00 a.m. tomorrow to discuss this, I want to send a final version of this
>to Wes no later than 11:00 a.m. on April 5.

>
>I urge review of 62 Fed. Reg. 55099, columns 1 and 2 (notes 1-3, especially
>Note 2) which clearly contemplate that States are free to define the scope
>of a parental right of consent. [I will fax this reg. to Bruce's office
>and Philip's office tomorrow morning]. This commentary clearly expresses
>the federal mandate that "if a State requires parental consent to the
>provision of all services identified in an IEP and the parent refuses to
>consent to physical therapy services included in the IEP, the agency is not
>relieved of its obligation to implement those portions of the IEP to which
>the parent consents." The clear will of the Committee today, I think, is
>to adopt a requirement of parental consent for more than just the initial
>evaluation and inception of sped services.

>
>I think appropriate legislative history can be discussed that may guide the
>Department on regulations to further implement this in a way that minimizes
>the worst case scenarios the Department may be worrying about with this.

>
>- Delete sentence in Sec. 11, page 4, lines 27, 28, that begins: "A parent
>who teaches a child...."

>
>- Add a new section to the bill to read as follows:

>
> AS 14.30.191 is repealed and reenacted to read:

>
> A parent may refuse special education or a related
> service. Refusal shall
>be provided in writing, and if not provided by the parent, shall be
>documented by the school district. The district shall provide the services
>and activities for which consent has been provided. If a school district
>believes that a parent's refusal to consent under this section will result
>in a failure to provide the child with an appropriate public education, the
>district may request a due process hearing under AS 14.30.193, or pursue
>mediation to resolve the dispute.

>
>- Delete the citation in Sec. 13, page 5, line 4: "14.30.191,"

> Dear Committee Members;

>

> It is of utmost concern that the GIFTED/TALENTED service for children be continued and not be tampered with.

> I have two children in the GT program. The IEP contract is in my children's best interest to insure that their educational needs will be met by both the Classroom Teacher and the GT Teacher.

> My children love their G/T class and teacher. The program must be left alone or more funding provided:

> 1. Because it provides the necessary continuity, consistency and quality education my children need from year to year.

> 2. My children look forward to the GT program because it challenges them and provides advanced learning in the areas of their strengths.

> 3. My children bore easily when not challenged or tend to be frustrated and easily distracted.

> 4. GT provides them with the opportunity to meet with peers to discuss matters of importance to them and receive instruction in higher level thinking and creativity skills.

> Classroom teachers cannot meet their needs within the regular classroom environment.

> My children's education is the foundation for their future, please don't take that away.

>

> Sincerely,

>

> Wallis M. Magnuson

> 2260 George Road

> Fairbanks, Alaska 99712

> (907) 488-5506

Subject: HESS Committee - House Bill 301

Date: Thu, 30 Mar 2000 15:18:25 -0900

From: "Robin L. Hall" <rhall@gci.net>

To: "Allen Kemplen" <Representative_Allen_Kemplen@legis.state.ak.us>,
"Carl Morgan" <Representative_Carl_Morgan@legis.state.ak.us>,
"Drue Pearce" <Senator_Drue_Pearce@legis.state.ak.us>,
"Fred Dyson" <Representative_Fred_Dyson@legis.state.ak.us>,
"Gary Wilken" <Senator_Gary_Wilken@legis.state.ak.us>,
"Jim Whitaker" <Representative_Jim_Whitaker@legis.state.ak.us>,
"John Coghill" <Representative_John_Coghill@legis.state.ak.us>,
"Kim Elton" <Senator_Kim_Elton@legis.state.ak.us>,
"Mary Gore" <Mary_Gore@legis.state.ak.us>,
"Mike Miller" <Senator_Mike_Miller@legis.state.ak.us>,
"Pete Kelly" <Senator_Pete_Kelly@legis.state.ak.us>,
"Tom Brice" <Representative_Tom_Brice@legis.state.ak.us>,
"Wes Keller" <Wes_Keller@legis.state.ak.us>

CC: "Stephanie Rudig" <srudig@northstar.k12.ak.us>

Dear Sir/Madam:

Please stop and take time to review this. If House Bill 301 is passed as is, we will be losing out on quite a bit.

My name is Robin Hall. My husband Ron and I currently have a daughter attending Weller Elementary School in Fairbanks. She is also attending the Gifted/Talented Program taught by Mrs. Stephanie Rudig. Stephanie notified me of this bill and how it would impact our G/T program if passed. We will lose quite a bit of support and services designed to maintain this program. We have very little for the program as it is and if this bill passes we may not have it at all.

We would hate to see this happen. Our daughter has been attending G/T classes for the past couple of years. We have found that this program provides the challenges she needs to encourage her enthusiasm for learning and further her education, something that she is unable to receive in the "normal" classroom. My daughter is maintaining a straight "A" average and I know in my heart of hearts that it is wholly due to Stephanie Rudig and the G/T program.

Please, I ask of you, review this before signing, not only will it determine our daughter's future and that of her fellow G/T classmates, but yours as well.

Sincerely,

Robin L. Hall

841 Balsam Dr.

Fairbanks, AK 99712

Subject: HB 301**Date:** Tue, 28 Mar 2000 12:59:30 -0800**From:** Fiona E Zachel <zachelfeca@juno.com>

To: Representative_Tom_Brice@legis.state.ak.us,
 Representative_John_Coghill@legis.state.ak.us,
 Representative_Fred_Dyson@legis.state.ak.us, Senator_Kim_Elton@legis.state.ak.us,
 Mary_Gore@legis.state.ak.us, Wes_Keller@legis.state.ak.us,
 Senator_Pete_Kelly@legis.state.ak.us, Representative_Allen_Kemplen@legis.state.ak.us,
 Senator_Mike_Miller@legis.state.ak.us, Representative_Carl_Morgan@legis.state.ak.us,
 Representative_Jim_Whitaker@legis.state.ak.us, Senator_Gary_Wilken@legis.state.ak.us

I have become aware that the wording in HB 301 will jeopardize the Gifted and Talented (GT) program. In our over crowded classrooms with students of widely different skills, it is very important that we at least maintain and support the programs for children with learning disabilities AND with learning super-abilities. Their needs are not being met in the standard classroom, and resource programs must be made available for BOTH, at the federal, state and local levels. If their needs are not met during the large block of time spent at school, both groups will fall through cracks and become social burdens. Very bright students who are not effectively challenged at school become bored, and unfortunately find misbehavior to be their creative outlet and their means of getting desired attention.

The GT program needs a voice (paid personnel) to represent it at DOE.

We need state regulations that require the following educational services for GT students:

- 1) student identification
- 2) student eligibility
- 3) student learning plans that include teacher, parent and student input
- 4) resource teachers

and we need stronger language in the bill's Sec. 14.30.315 that states that the "educational services[for GT students] required under this section WILL or MUST [not 'may'] include..."

and that "Every school district WILL or MUST [not 'shall'] establish a program..."

These things need to be written into the bill at the state level, so that when push comes to shove financially, GT programs and teachers are protected, both in our larger cities and districts, as well as our smaller, rural districts, just as the needs of learning disabled students are protected.

I have 2 children. One has benefited from the program for learning disabled and the other from the GT program. They are both referred to as "resource" in our household because that is what they truly are: extra help outside the regular classroom setting when needs are not being met in our overcrowded and diverse classrooms.

Sincerely,
 Constance O. Zachel, Fairbanks

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<http://dl.www.juno.com/get/tagj>.

Subject: Please Read!

Date: Tue, 4 Apr 2000 01:05:47 EDT

From: Debof16@aol.com

To: Representative_Fred_Dyson@legis.state.ak.us,
Representative_John_Coghill@legis.state.ak.us,
Representative_Tom_Brice@legis.state.ak.us,
Representative_Allen_Kemplen@legis.state.ak.us,
Representative_Carl_Morgan@legis.state.ak.us,
Representative_Jim_Whitaker@legis.state.ak.us, Wes_Keller@legis.state.ak.us,
Senator_Mike_Miller@legis.state.ak.us, Senator_Pete_Kelly@legis.state.ak.us,
Senator_Drue_Pearce@legis.state.ak.us, Senator_Gary_Wilken@legis.state.ak.us,
Senator_Kim_Elton@legis.state.ak.us, Mary_Gore@legis.state.ak.us

HESS Committee Members,

I am writing in regard to HB301, which sounds like it is cutting in to the needs of the children of this state. I am deeply concerned that you may not completely understand the needs of GT students and how important this program is to the people who matter most, our children.

Meet Alexandra, nine years old, third grade and a GT student since kindergarten. She is polite, kindhearted, observant and brilliant. She enjoys school, but the challenges she receives through the GT program at Keller Elementary keeps her constantly motivated. Recently she decided that she wants to be the first woman president, and I have news for you, watch out!

The IEP contract is the only insurance we have that our daughters needs will be met by her classroom teacher and her GT teacher. Without this we have no guarantee that her needs will be met. A child like Alexandra has needs too, regardless if that may be a greater challenge than she receives from her classroom teacher.

You would be completely remiss if you left the children of this state with abilities like this to get lost in the system. These children think differently, please treat them with the utmost concern.

In closing I thank you for your time. This is important. Please remember Alexandra and the many students like her who need your support, they truly are the leaders of tomorrow. Give them a chance today.

Sincerely,

Deborah D. McGuire
DeboF16@aol.com

Subject: HB 301

Date: Mon, 03 Apr 2000 13:07:08 -0800

From: Marc Grober <marc@interak.com>

To: Wes_Keller@legis.state.ak.us

Wes,

Could you please e-mail me a copy of any CS AkDEED is offering today so that I can provide timely comment before tomorrow's hearing.

I would also appreciate it if someone could fax me a copy of AkDEED's request for waiver and the rejection I have heard about from OSEP.

Wanted to know if my comments on the last draft you sent over (they were in an e-mail to you) were shared with the committee or whether I should resubmit them to you in that format.

Just for the committee's info: a) the Secretary has to provide notice and hearing before any decision to find a state ineligible for funding; b) I have some correspondence to/from PARENTS that I think may be of interest to the committee, should I just send it to you for distribution or send it to each committee member; c) I have spent some time working through the law and I believe it would be acceptable to have an advisory board on exceptional students appointed by the chair of the leg counsel or some such and I can present such as an addition to HB301 if the legislature is interested in wielding that authority (it certainly does not look like the Governor is doing a very good job with his appointments.....); d) I have looked at some of the suggestions from the g/t community on ways to address the g/t mes this bill creates and frankly I think that the underlying nature of this bill dooms such attempts.

Again, I think that at this point the best solution would be for the committee to start from scratch on a) a bill or jr providing for committee hearings, commission, or whatever which is intended to result in pre-filing of a bill before the next legislature to address compliance as well as b) the actual text of such a bill..... I believe that such action would show the secretary that the legislature is attempting to adopt statutes that comply with federal eligibility requirements and that the Secretary would dare not present notice of funding halt as a hearing on such a notice would make it very clear that 1) the administration, which had 3 years to address the issue took no action until 1/4 into a 120 day session and specifically ignored the advice of the Council exec. dir. in including provisions regarding g/t which would virtually be guaranteed to hold up the bill and refused to collaborate with legal practitioners in the field regarding its contents. 2) that OSEP aided and abetted this problem by failing to insist that AKDEED address the matter to the legislature before 1/20/2000; 3) that the disability community of Alaska are dissatisfied and alarmed with the current bill, which arguably reduced parental rights, and it is the legislature's obligation to address those concerns as well as OSEP's duty to encourage, not sabotage, any effort that might result in any legislation that may exceed federal standards. I don;t see how such action can hurt and I would like you to share this with the committee as a way to address the concerns being expressed as well as afford everyone an opportunity to focus on the problems outside the 120 day window (no one I think could reasonably argue that this should not have been the subject of hearings around the state this past summer.....)

Of course, the continuing problem is that unless this manner of blackmail is systemically addressed, it will happen again (though the current bill suggests that you need not worry as you will have ceded all authority over disabled children to OSEP.....)

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 laws. 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](mailto: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](mailto: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



COVER SHEET
Anchorage Legislative Information Office
Office - (907) 269-0111 Fax - (907) 269-0229

To: House HESS

Atten: _____ Fax: 465-4587 Phone: _____

From: _____ Phone: _____

Instructions: Testimony on HB 409

Sent: _____ Date: _____ Time: _____

Disposal of Original: Discard: _____ Hold for Pickup: _____

Number of Pages: _____ (counting cover sheet)

Transmitted by: ANC LEO

H 409 HES

My testimony in favor of bill 409 has to do with personal experience which I believe relates directly with this bill. On December 22, 1999, my granddaughter was taken from my home while she was there visiting. She was to stay overnight, and was in the act of opening up a present from a childhood friend when DFYS and an APD detective came by and took her away before she had time to finish her lunch. The detective said that our son was being accused of a terrible felony crime which could mean many years in prison. They said they had to take my granddaughter away for questioning and examination immediately and that I had five minutes to get her ready. I was never called back and told where my granddaughter was taken to, nor why she wasn't being returned back here. Our son finally located her later that day over at her maternal grandmother's home where DFYS had taken her. When I called DFYS and asked them why I had not been notified as to where they had taken our granddaughter, they simply said that I had no legal right to know anything as I was not a party to the case. I asked for their definition of what they consider a "party to a case" considering that I had certainly been involved in their actions against our granddaughter. She's my granddaughter and she had been put in my care by the parent, and my husband and I had been certainly hurt by their actions. They had no answer except that I had no right to know anything. ~~They did not want to tell me or my husband to have any type of communication with her..not even~~ ^{she was} under a third party situation. They would not return my phone calls until I called the governor's office and got their assistance. DFYS finally allowed us third party visitation privileges. This is not right. I should have received some notice about where my granddaughter had been taken. I should have been allowed some type visitation right away. I should have had my phone calls returned. To this day our son has not been charged with any type of crime, and yet DFYS refuses to allow him even a phone call to his daughter. If we mention even the word Dad to our granddaughter, we lose our visitation privileges, yet our ex-daughter-in-law may say anything she wants (good or bad) about our son anytime she wants. The daughter has not seen her Dad since December of 1999 due to a verbal accusation that he fondled a 12 year old. The Dad is waiting for a civil hearing or trial in May for a possible chance of getting back his daughter.

In dealing with this agency, I have found that it is an agency with lots of power over peoples lives...both the children as well as their families. The decisions DFYS makes can either help or cause lots of damage. It is in the best interest of our children to try and keep the power of this agency in check so that it provides the best results possible. I believe bill 409 is a step in the right direction because it begins to attempt giving some power back to the people. The main weakness of the bill is it contains no language for enforcement. If DFYS social workers do not abide by the law then what? This instant bill would not be needed if DFYS social workers followed their own policy as it has been written. Still, I believe this bill is helpful because it enables a citizen to take this agency to Court for violation of a State law whereas one couldn't do it for violation of their internal policy. Presently DFYS social workers may make decisions and implement their individual policies as they like without worry of any reprimand. This should not be the case. They should be made accountable. This bill may be a small beginning.

Mary H. Rapp

6885 Cutty Sark, Anch. AK. 99502

GOOD AFTERNOON,
 NAME, MY HUSBAND & I HAVE 12 CHILDREN & 19 GRANDCHILDREN.
 I WANT TO PULL ATTENTION TO THE FACT THAT A CHILD/ PARENT
 DISAGREEMENT CAN END IN A DISPUTE THAT DENIES A GRANDCHILD TO HAVE
 ANY CONNECTION TO THE GRANDPARENTS AND THUS LOOSE ALL CONTACT
 WITH THEIR FAMILY BACKGROUND.

IF SOMEONE HAD TOLD ME 4 YEARS AGO THAT THEY WEREN'T ALLOWED TO
 SEE THEIR GRANDCHILDREN BECAUSE THE PARENTS WOULDN'T ALLOW IT;
 I WOULD HAVE THOUGHT "WHAT A DISFUNCTIONAL FAMILY!" WELL, IT CAN
 HAPPEN OVER-NIGHT

~~THIS CAN HAPPEN TO ANY FAMILY, NOT JUST IN-- WHAT WE MAY CONSIDER--~~
~~A DISFUNCTIONAL FAMILY.~~ WE FEEL THAT HB 409 COULD BE VERY HELPFUL
 EVEN WHEN A GOVERNMENT AGENCY IS NOT INVOLVED IN REMOVAL OF THE
 CHILDREN FROM THE PARENTS' HOME. IF A DISPUTE GOES TO THE ENDS THAT
 THE CHILD MOVES THE FAMILY -OUT OF STATE- AND THE GRANDPARENTS
 LOOSE ALL MEANS OF CONTACT; THIS LAW MIGHT BE THE GRANDPARENTS
 ONLY HOPE OF KNOWING IF THE GRANDCHILDREN WOULD EVER BE REMOVED
 FROM THE PARENTS' HOME.

WE FIND IN OUR GROUP, THAT MOST OF THE GRANDPARENTS THERE, HAVE A
 CHILD THAT HAS OR IS DOING THE DRUG OR ALCOHOL SCENE & THEIR CHILD- *Grandchildren*
~~REN~~ ARE THE ONES SUFFERING FOR THEIR IR-RESPONSIBILITY. USUALLY THE
 DISPUTE WITHIN THE FAMILY COMES FROM THESE PROBLEMS & GRAND-
 PARENTS TRY TO HELP THE CHILDREN.

A RECENT CASE THAT COMES TO OUR ATTENTION IS ; ACTOR , GEORGE
 KENNEDY AND HIS WIFE ADOPTING THEIR 5 YEAR OLD GRANDDAUGHTER.
 AGAIN, THE OTHER CHILDREN IN THE FAMILY HAVE NORMAL RELATIONSHIPS
 WITH FAMILY & CONDUCT THEMSELVES IN MATURE & RESPONSIBLE WAYS.
 ONE CHILD - DOING THE DRUG SCENE, ETC-- COULD OR WOULD NOT CARE FOR
 THEIR CHILD & IT HAD TO BE REMOVED FROM THEIR HOME. MR. KENNEDY IS
 A SITUATION THAT HE COULD AFFORD -- WHATEVER IT MIGHT TAKE -- TO GET
 CUSTODY OF HIS GRANDCHILD. MANY OF US ARE NOT THAT FORTUNATE BUT
 WOULD BE ABLE TO SUPPORT THAT GRANDCHILD/CHILDREN IF WE WERE GIVEN
 THE CHANCE. BUT MANY TIMES-- THE ATTORNEY FEES UP-FRONT ARE A
 CHALLENGE TO THE GRANDPARENTS.

~~THE COST ASIDE~~; LET US CONSIDER THOSE INNOCENT CHILDREN THAT HAVE
 USUALLY SUFFERED MORE BY THIS TIME THAN WE CAN IMAGINE; WHO WILL
 WANT TO CARE FOR THEM & LOVE THEM MORE THAN THEIR GRANDPARENTS;
 THEIR OWN BLOOD?? WE FIND SO MUCH ABUSE IN MANY OF OUR FOSTER
 HOMES THAT IT MAKES US WANT TO CARE FOR EVERYONES GRANDCHILDREN;--
 AFTER ALL- THOSE INNOCENT KIDS DIDN'T ASK TO BE BORN INTO ABUSIVE

HOMES----I DID NOT SAY FAMILIES---- MANY OF US MAY HAVE ABSOLUTELY NORMAL FAMILIES EXCEPT FOR ONE CHILD THAT HAS FALLEN BESIDE THE ROAD & AFTER YEARS OF HELP FROM US DECIDES THEY WANT NO MORE TO DO WITH US. ~~AFTER ALL THEY DON'T WANT TO HEAR THAT THEY ARE WRONG.~~ THE GRANDCHILDREN THAT WE HAVE BEEN "JOINT CAREGIVERS" FOR ARE NOW TAKEN AWAY & WE HAVE NO WAY TO CONTACT THEM NOR THEM US.

AS MR. KENNEDY STATED ON GOOD MORNING AMERICA ON APRIL 4;; WE (THE GRANDPARENTS) NOW HAVE THE TIME & USUALLY MORE MONEY THAN WHEN WE WERE RAISING OUR OWN CHILDREN. HE SAID HIS GRANDDAUGHTER HAS BONDED WITH HER GRANDMOTHER TO THE POINT THEY ARE IN-SUPERABLE. HE SAID IT IS A JOY TO HAVE HER IN THEIR HOME & THEY WILL SHOWER HER WITH LOVE ALWAYS.

WE ARE ASKING YOU TO HELP US TO BE ABLE TO DO THIS WHEN THESE HORRIBLE THINGS HAPPEN TO OUR GRANDCHILDREN. WE FEEL HB409 IS A STEP IN THE RIGHT DIRECTION & WE THANK MR DYSON FOR HIS WORK ON THIS BILL.

Leita Nelson @ alaska.lee@juno.com
Treasurer, Grandparents Rights Organization

Subject: HB 301

Date: Fri, 24 Mar 2000 21:44:54 -0900

From: "Richard Rainery" <rainery@gci.net>

To: Representative_Fred_Dyson@legis.state.ak.us

I am sorry that work prevented me from attending today's House
> Health & Social Services Committee meeting on HB 301.
>
> This bill strips away from Gifted and Talented (GT) students the
> procedural safeguards they have been entitled to for thirty years.
> This is an outrage. GT identified students have as much right to and
> need for these safeguards as do students who are learning disabled.
>
> Please either delete all references to GT, so that current law
> remains or amend HB 301 to specify a minimum service level for GT students
> and due process safeguards for these students.
>

Subject: HB 301

Date: Thu, 23 Mar 2000 20:10:30 -0900

From: Mertz Family <dkmertz@alaska.net>

To: Representative_Fred_Dyson@legis.state.ak.us

Dear Representative Dyson,

I am sorry that work prevented me from attending today's House Health & Social Services Committee meeting on HB 301.

This bill strips away from Gifted and Talented (GT) students the procedural safeguards they have been entitled to for thirty years. This is an outrage. GT identified students have as much right to and need for these safeguards as do students who are learning disabled.

Please either delete all references to GT, so that current law remains or amend HB 301 to specify a minimum service level for GT students and due process safeguards for these students.

Sincerely,

Margo Waring

.....

Shelia B. Booksh
200 West 34th Avenue, PMB 979
Anchorage, Alaska 99503

RE: HB 301

April 3, 2000

The Honorable Fred Dyson
House of Representatives
State Capitol
Juneau Alaska 99801-1182

Dear Mr. Dyson:

As the Transition Director for PARENTS, Inc., I am concerned about our young adults leaving high school without a diploma. Many of our students across Alaska will need additional assistance, and even remedial services, to pass the mandated exit exam. Parents are worried that their young adults will not be able to find employment, and therefore not be able to support themselves.

Since the Department of Education and Early Development is under close scrutiny from the federal Department of Education for lack of compliance with IDEA, I am concerned about the delay of money for special education to our state should we delay compliance any longer. Where will the state find the money needed for these mandated services?

I urge you and the other members of the House of Representatives to pass HB 301 quickly with no extra add ons.

Sincerely,

Shelia B. Booksh

.....

[Click here and type slogan]

Subject: HB301/SB205

Date: Wed, 29 Mar 2000 21:06 -0900

From: bells@alaska.net

**To: Representative_Fred_Dyson@legis.state.ak.us,
Representative_Jim_Whitaker@legis.state.ak.us, Representative_Joe_Green@legis.state.ak.us,
Representative_Carl_Morgan@legis.state.ak.us, Representative_Tom_Brice@legis.state.ak.us,
Representative_Allen_Kemplen@legis.state.ak.us,
Representative_John_Coghill@legis.state.ak.us**

I'd like to discuss with you my reasons for asking you to kill HB301/SB205. I am the parent of a child who will be directly affected by HB301/SB205. My daughter is in ninth grade and reads at the fourth grade level. She went into the special education system in fourth grade. I have informed myself about our system and its problems ever since. **IF YOU BELIEVE IN LOCAL CONTROL THEN YOU MUST KILL THESE BILLS. PARENTS MUST HAVE A GREATER VOICE IN THE EDUCATION OF THEIR CHILDREN.** This is what America is all about. Please listen. These bills were, in my opinion, put together to meet deadlines completely irrelevant to the educational needs of our children. **LET PARENTS COMMENT. LET THE WORD GET OUT. SUPPORT US.**

I'd like to discuss with you my reasons for asking you to kill HB301/SB205. I am the parent of a child who will be directly affected by HB301/SB205. My daughter is in ninth grade and reads at the fourth grade level. She went into the special education system in fourth grade. I have informed myself about our system and its problems ever since. IF YOU BELIEVE IN LOCAL CONTROL THEN YOU MUST KILL THESE BILLS. PARENTS MUST HAVE A GREATER VOICE IN THE EDUCATION OF THEIR CHILDREN. This is what America is all about. Please listen. These bills were, in my opinion, put together to meet deadlines completely irrelevant to the educational needs of our children. **LET PARENTS COMMENT. LET THE WORD GET OUT. SUPPORT US.**

Subject: Gifted and Talented Program

Date: Wed, 29 Mar 2000 21:15:56 -0900

From: Deborah Nelson <ddnelson@mosquionet.com>

To: Representative_Fred_Dyson@legis.state.ak.us

Dear Sir,

I am a parent with a G/T student and would like to express to you how very valuable this program is in his life. As with resource students, these gifted and talented students need the out of classroom instruction to keep them interested in school and the learning process. A child should not be held back from reaching his potential, whether it is because he/she is below grade level, or because he/she is above grade level in their academic abilities.

The IEP contract is my insurance that my child's educational needs will be met by his classroom teacher and by the G.T. teacher. Without it, I have no recourse or guarantee that my child's needs will be met. The IEP, and due process rights **must** be maintained.

Thank you for your time,
Deborah Nelson
P.O. Box 10392
Fairbanks, AK 99710-0392
(907) 457-4528
ddnelson@mosquionet.com

Subject: HB301**Date:** Wed, 29 Mar 2000 16:50:46 -0800**From:** Roger Magnuson <rpmagnuson@bigbyte.mosquitonet.com>

To: "Representative_Fred_Dyson@legis.state.ak.us" <Representative_Fred_Dyson@legis.state.ak.us>
 "Representative_John_Coghill@legis.state.ak.us" <Representative_John_Coghill@legis.state.ak.us>
 "Representative_Tom_Brice@legis.state.ak.us" <Representative_Tom_Brice@legis.state.ak.us>
 "Representative_Allen_Kemplen@legis.state.ak.us" <Representative_Allen_Kemplen@legis.state.ak.us>
 "Representative_Carl_Morgan@legis.state.ak.us" <Representative_Carl_Morgan@legis.state.ak.us>
 "Representative_Jim_Whitaker@legis.state.ak.us" <Representative_Jim_Whitaker@legis.state.ak.us>
 "Representative_Wes_Keller@Legis.state.ak.us" <Representative_Wes_Keller@legis.state.ak.us>
 "Senator_Mike_Miller@legis.state.ak.us" <Senator_Mike_Miller@legis.state.ak.us>,
 "Senator_Drue_Pearce@legis.state.ak.us" <Senator_Drue_Pearce@legis.state.ak.us>,
 "Senator_Kim_Elton@legis.state.ak.us" <Senator_Kim_Elton@legis.state.ak.us>,
 "Mary_Gore@legis.state.ak.us" <Mary_Gore@legis.state.ak.us>

To: ALL HESS COMMITTEE MEMBERS OF HOUSE AND SENATE

Dear Committee Members;

It is of utmost concern that the GIFTED/TALENTD service for children be continued and not be tampered with.

I have two children in the GT program. The IEP contract is in my children's best interest to insure that their educational needs will be met by both the Classroom Teacher and the GT Teacher.

My children love their G/T class and teacher. The program must be left alone or more funding provided:

1. Because it provides the necessary continuity, consistency and quality education my children need from year to year
2. My children look forward to the GT program because it challenges them and provides advanced learning in the areas of their strengths.
3. My children bore easily when not challenged or tend to be frustrated and easily distracted.
4. GT provides them with the opportunity to meet with peers to discuss matters of importance to them and receive instruction in higher level thinking and creativity skills.

Classroom teachers cannot meet their needs within the regular classroom environment.

My children's education is the foundation for their future, please don't take that away.

Sincerely,

Wallis M. Magnuson
 2260 George Road
 Fairbanks, Alaska 99712
 (907) 488-5506

Subject: Statewide Gifted/Talented Program

Date: Thu, 30 Mar 2000 11:16:19 PST

From: "jeanette moore" <rocketmoore@hotmail.com>

To: Representative_Fred_Dyson@legis.state.ak.us

30 March 2000

To: Representative Fred Dyson,
From: Jeanette Moore, parent of GT students (ages 11-16)
Re: Statewide Gifted/Talented program support

Dear Mr. Dyson,

I am writing you on behalf of parents of gifted and talented students throughout the state. I strongly urge you to maintain the gifted/talented program within the resource education program as it currently is. Gifted students are students at risk as much as other resource students with learning disabilities. Their unique abilities - both cognitive and creative - do not necessarily translate into achievement of excellence in school, even though these students should be the academic leaders. Students particularly of the ages 10 through 14 (grades 4 through 9) are most at risk. Without the guidance that GT teachers give to these students, I feel that it is less likely that they will challenge themselves to the best of their abilities. My children have all certainly benefited from the program and will leave their schools with excellent records and a proud reputation for the school system. Please guarantee this for future students as well!

Sincerely,

Jeanette Moore
Fairbanks, Alaska
<rocketmoore@hotmail.com>

Get Your Private, Free Email at <http://www.hotmail.com>

Subject: HB 301

Date: Sun, 26 Mar 2000 09:39:49 -0900

From: "Pitcher's" <pitcher@ptialaska.net>

To: Representative_Fred_Dyson@legis.state.ak.us

Dear Representative Dyson:

Please do not rush into passing HB 301 unless safeguards are put into place to protect Gifted and Talented services. Gifted students should be viewed as a valuable resource to our state, but too often their needs are overlooked. Most districts currently provide very little in the way of Gifted and Talented services. In these times of decreasing funds, districts will most likely provide even less or nothing at all if not required to do so by the state.

There is a misconception that gifted students will make it on their own without any special help. Research has shown that this is not the case. As many as 20% of high school dropouts are gifted students. What a waste of potential! Not only for the individual students, but to society as a whole.

The state of Alaska has shown a commitment to providing a quality education to all students. Please, let's not exclude the Gifted and Talented students.

Thank you.

Karen Hanson Pitcher
PO Box 5642
Ketchikan, AK 99901

Subject: HB 301**Date: 27 Mar 2000 15:58:31 -0900****From: "Garrett_Jo" <garrett_jo@msmail.asd.k12.ak.us>****To: "Fred Dyson" <Representative_Fred_Dyson@legis.state.ak.us>**

Please read the enclosure. Our teachers are out on spring break and unable to respond. We want you to know how we feel about this bill!

Jo Garrett, Supervisor of Gifted Programs
Anchorage School District

<<<<< Attached TEXT file named "Response to HB 301" follows >>>>>

AN OPEN LETTER FROM G/T TEACHERS AND ADMINISTRATORS

Dear Legislator,

In the next few days you will be considering SB 205 and HB 301. Please take a moment to consider our concerns.

We are all teachers and/or administrators working in Alaska school districts who have extensive training in gifted education. We have labored long and hard in an area of education that is often overlooked and often looked upon

as simply icing on the cake. Nothing could be further from the truth.

G/T students are our brightest and most promising students that are so often at risk because they just don't fit the one-size-fits-all mold. Because they don't fit in, they often become anti-social, depressed and often become

a societal problem when they reach adulthood, instead of a societal resource. These children need specific resources to help them adjust and to rise to the level of performance that is appropriate for them. Their parents also need resources to ensure that these children have their needs met, just like disabled children and their parents.

The Department of Education has attempted over the past decade to reverse what has always been a source of pride for us, that in this state we have recognized the link between the g/t and disabled populations and have identified

these children as "exceptional" as indeed they are, no matter what their individual needs. We sincerely hope that you keep this source of pride and that you don't disenfranchise parents of G/T children.

You have been advised that the language in this bill is required by Federal law. We believe this is simply not the case. Alaska has managed to employ the exceptional classification successfully for a decade without problems, and nothing in the amendments to the IDEA adopted in 1997 mandate any change to this manner of addressing these students. In fact, the IDEA puts a premium on states finding their own way to comply with the federal guidelines set out in the IDEA, and this is one way in which our state has accomplished this goal.

If you adopt these bills as written you will take away from the parents of these children their only legal protection, their only source of enforcement

to ensure that these children are properly served. We have to suggest that only a person who wishes to take away a right has an interest in taking away someone's ability to enforce their rights.

Nor can we really support an effort to amend this bill or to suggest that what this bill takes away can be redressed in another bill. The simple fact of the matter is that there is no reason for this bill to make the statements it does. It is inherently flawed and should die in committee. While we all support continued compliance with the IDEA this bill is not the appropriate vehicle.

We have also heard rumors that if this bill is not adopted the state will lose federal funding. However, the Secretary has yet to say anything of the kind. We believe that as long as the legislature is working on some way to effect compliance with the IDEA that federal funding is not in jeopardy,

and that the legislature needs to start over with a new bill that does not eliminate one of the aspects of our education system that is working. To leave gifted education to the whim of school boards, who are faced with increasingly tight budgets, would mean ghost programs (found on paper only) for our brightest students.

Subject: HB 301

Date: Tue, 28 Mar 2000 12:48:02 -0900

From: Mary Farrell <fnmrf@aurora.uaf.edu>

To: Representative_Fred_Dyson@legis.state.ak.us, Representative_John_Coghill@legis.state.ak.us,
Representative_Tom_Brice@legis.state.ak.us,
Representative_Allen_Kempen@legis.state.ak.us,
Representative_Carl_Morgan@legis.state.ak.us,
Representative_Jim_Whitaker@legis.state.ak.us, Wes_Keller@legis.state.ak.us

I am sending this message in response to House Bill 301 and its impact on the gifted and talented (GT) students of Alaska. I understand that by leaving the GT program under the umbrella of special education, Alaska might lose millions of federal dollars. However, without state regulations in place to define and secure the GT program, there are no safeguards for students and their parents. My fifth-grade son is in the GT program and has been for 5 years. There have been periods during those years when his GT class was the only class he enjoyed and I credit the GT program and his GT teacher with keeping him interested and challenged at school.

If indeed the GT program needs to come out of the federally funded special education category, adequate time needs to be allowed for state regulations to be drafted and agreed upon. A target date of April 14, 2000 is unrealistic for this to happen. We are talking about the education of our Alaska's brightest pupils-a resource that deserves thoughtful consideration instead of quick reactions to a budgetary problem.

Thank you.

Subject: HB 301

Date: Wed, 29 Mar 2000 11:28:25 -0900

From: "Rich Sewell" <rich.sewell@gci.net>

To: <Representative_Fred_Dyson@legis.state.ak.us>

Dear Representative Dyson,

I heard today that the language in HB 301 would make it optional for school districts to provide resources to the so called "Gifted & Talented" students. These are the best and the brightest of our Alaskan students that we want to keep in-state; those who we want to attract to the University of Alaska through the "Scholars' Program."

Research shows that all too often the "Gifted & Talented" students, without proper direction and resources, end up getting in trouble and wasting their talent. If we do not provide the appropriate resources and direction for these kids, we can lose big time. We not only can lose their gifts and talents, but for those who end up getting in trouble we will pay to put them in jail and pay for their "rehab" later in life.

Please change the language back to require school districts to provide the direction and programs these kids deserve. This will pay big dividends for Alaska in the longer run.

Sincerely,

Rich Sewell

PO Box 100347
Anchorage, AK 99510

562-7837

March 23, 2000

Dear Representative Dyson:

I write to express my grave concern about H.B. 301 and S.B. 205, that carry the innocuous title "An Act Relating to the Education of Exceptional Children." Without saying it, what these bills do is obliterate Alaska's pioneering position in the education of gifted and talented children.

Alaska was on the cutting edge when, in 1970, it included gifted kids under our laws providing special education services and due process protections. The federal government has never matched the Alaska Legislature's leadership on this issue, and few states have stepped up to the challenge. If these bills pass, Alaska will drop into that crowded well of mediocrity.

Gifted kids are our hope for the future. They will be the core of the leadership of private enterprises and public institutions in the 21st century. Yet they do not emerge fully developed, and they most assuredly do not "take care of themselves" as the popular myth would have you believe. They are as different from the average child as the learning disabled child is different from the average child. Their brain function and patterns of learning are completely different and require a different educational strategy.

As a recent Ketchikan school district report put it:

[G]ifted children are fundamentally different from average or even bright children. A gifted child is a volatile mix of intellect, energy, and emotion that can be sometimes exhilarating, sometimes exhausting, sometimes infuriating, and often all three. You would witness the most convincing proof of that point if you changed places with the parent of a gifted child for 24 hours: imagine dealing around the clock with the insatiable inquisitiveness of a five-year old, the boundless energy of a ten-year old, and the constant challenges of a 15-year old, all rolled into a package with an IQ of 130 to 150 or higher. Where these children are concerned, Thomas Jefferson's observation could not be more apt: "Nothing is more unequal than equal treatment of unequal people."

These kids need, and current statutes require, "specially designed instruction . . . to meet [their] unique needs . . ." AS14.30.250 (11).

All this is swept away by H.B. 301 and S.B. 205. The bills are ostensibly designed to clean house and clarify the interaction of state and federal statutes for disabled kids. Yet they also repeal all the substantive rights and due process protections gifted kids have had for 30 years. They do this by two basic means: First, they repeal all state provisions that duplicate federal law on disabled children; because those state laws cover both gifted and disabled kids, the gifted kids lose state law protection while the disabled kids retain federal law protection. Second, the bill substitutes "child with a disability" (which excludes gifted children) for "exceptional child" (which includes gifted children) in several key places. See Secs. 3, 4, and 10.

Section 10 is especially pernicious because it preserves special education services for disabled kids in Christian, Catholic, and other private schools but denies special education services to gifted kids in those same schools. Yet parents of the gifted kids in private schools have an identical stake in the tax monies that support our public schools. Why discriminate between two groups of special needs kids?

Under these bills, the only provision of state law regarding gifted education would be Sec. 9, which leaves it up to the individual districts to establish "a program" consistent with regulations that the Department of Education has yet to implement and will not even permit to be read until "after the session." I trust in the assurances of the Alaska Legislature in existing law; I have no confidence that these yet-to-be promulgated secret regulations will ever provide the same protections; and any future commissioner could repeal them with a bureaucratic stroke of the pen.

Gifted education is under attack across the state as a result of a change from per capita funding to block grant funding for special education in S.B. 36 two years ago. Now, with no financial incentive to find and keep gifted students in gifted education programs, school districts are finding ways to define gifted kids out of existence, by pushing qualification criteria through the roof, by creating all manner of obstacles, and by simply keeping the programs a secret. Then they can take the non-earmarked funds and spend them any way they want.

These sweeping bills are totally unnecessary to protect federal funding for special education. If it is claimed that there is any threat to federal funding, no more than Sections 1, 2, and 8 will do the trick. If these bills pass these kids will be gifted and left for dead.

Sincerely,

Mary B. Klugherz
Parent

Subject: HB 301

Date: Mon, 3 Apr 2000 10:16 -0800

From: casler@alaska.net

**To: Representative_Fred_Dyson@legis.state.ak.us,
Representative_Jim_Whitaker@legis.state.ak.us, Representative_Joe_Green@legis.state.ak.us,
Representative_Carl_Morgan@legis.state.ak.us, Representative_Tom_Brice@legis.state.ak.us,
Representative_Allen_Kemplen@legis.state.ak.us,
Representative_John_Coghill@legis.state.ak.us**

I'd like to discuss with you my reasons for asking you to kill HB301/SB205. Dear Legislators,

I am a mother of one identified gifted child, and one whom has not be formally identified as gifted. Let me share with you why I ask that you kill HB301/SB205.

In our experience, at the elementary level especially, we have not had any support from the school for our son. He was way over his peers in all areas except writing. Complaints about boredom went unheeded because the teachers and administrators insisted that he needed to stay with his peers for social reasons. What a waste of potential! The elementary school essentially taught my son to underachieve! Now that he is in middle school and is getting some appropriate challenge, he is struggling to learn study

and organizational skills that should have been learned earlier but there was no need to because he already had mastered the material. Despite the testing results of their own tests, the school successfully resisted all attempts of ours to prevent the creation of an underachiever. The school also refused to read the current literature about gifted children and their issues that we provided for them at our expense.

Please do not take away the only recourse we have to motivate reluctant administrations from meeting the needs of this precious population of children. Parents of gifted children need the protection of IDEA to make sure that budget cuts do not sacrifice their children and their potential to inappropriate educational programs and practices. The IEP and due process in the IDEA legislation is the only thing that protects our children from further abuse and inappropriate education.

Thank you for your consideration.

Sincerely,

Chris Casler

(casler@alaska.net)

907-376-3739

I'd like to discuss with you my reasons for asking you to kill HB301/SB205. Dear Legislators, I am a mother of one identified gifted child, and one whom has not be formally identified as gifted. Let me share with you why I ask that you kill HB301/SB205. In our experience, at the elementary level especially, we have not had any support from the school for our son. He was way over his peers in all areas except writing. Complaints about boredom went

unheeded because the teachers and administrators insisted that he needed to stay with his peers for social reasons. What a waste of potential! The elementary school essentially taught my son to underachieve! Now that he is in middle school and is getting some appropriate challenge, he is struggling to learn study and organizational skills that should have been learned earlier but there was no need to because he already had mastered the material. Despite the testing results of their own tests, the school successfully resisted all attempts of ours to prevent the creation of an underachiever. The school also refused to read the current literature about gifted children and their issues that we provided for them at our expense.

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Thank you for your consideration.

Sincerely,
Chris Casler (casler@alaska.net)
907-376-3739

Subject: HB 301**Date:** Tue, 28 Mar 2000 12:59:30 -0800**From:** Fiona E Zachel <zachelfeca@juno.com>**To:** Representative_Tom_Brice@legis.state.ak.us, Representative_John_Coghill@legis.state.ak.us, Representative_Fred_Dyson@legis.state.ak.us, Senator_Kim_Elton@legis.state.ak.us, Mary_Gore@legis.state.ak.us, Wes_Keller@legis.state.ak.us, Senator_Pete_Kelly@legis.state.ak.us, Representative_Allen_Kempen@legis.state.ak.us, Senator_Mike_Miller@legis.state.ak.us, Representative_Carl_Morgan@legis.state.ak.us, Representative_Jim_Whitaker@legis.state.ak.us, Senator_Gary_Wilken@legis.state.ak.us

I have become aware that the wording in HB 301 will jeopardize the Gifted and Talented (GT) program. In our over crowded classrooms with students of widely different skills, it is very important that we at least maintain and support the programs for children with learning disabilities AND with learning super-abilities. Their needs are not being met in the standard classroom, and resource programs must be made available for BOTH, at the federal, state and local levels. If their needs are not met during the large block of time spent at school, both groups will fall through cracks and become social burdens. Very bright students who are not effectively challenged at school become bored, and unfortunately find misbehavior to be their creative outlet and their means of getting desired attention.

The GT program needs a voice (paid personnel) to represent it at DOE.

We need state regulations that require the following educational services for GT students:

- 1) student identification
- 2) student eligibility
- 3) student learning plans that include teacher, parent and student input
- 4) resource teachers

and we need stronger language in the bill's Sec. 14.30.315 that states that the "educational services[for GT students] required under this section WILL or MUST [not 'may'] include..."

and that "Every school district WILL or MUST [not 'shall'] establish a program..."

These things need to be written into the bill at the state level, so that when push comes to shove financially, GT programs and teachers are protected, both in our larger cities and districts, as well as our smaller, rural districts, just as the needs of learning disabled students are protected.

I have 2 children. One has benefited from the program for learning disabled and the other from the GT program. They are both referred to as "resource" in our household because that is what they truly are: extra help outside the regular classroom setting when needs are not being met in our overcrowded and diverse classrooms.

Sincerely,
Constance O. Zachel, Fairbanks

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<http://dl.www.juno.com/get/tagj>.

Subject: Opposed to HB 301

Date: Sat, 1 Apr 2000 17:10 -0900

From: "Tess Nott" <tess@interak.com>

To: Representative_Fred_Dyson@legis.state.ak.us,
Representative_Jirn_Whitaker@legis.state.ak.us, Representative_Joe_Green@legis.state.ak.us,
Representative_Carl_Morgan@legis.state.ak.us, Representative_Tom_Brice@legis.state.ak.us,
Representative_Allen_Kemplen@legis.state.ak.us,
Representative_John_Coghill@legis.state.ak.us

I have reviewed <http://akcept.interak.com/akceptionalities/govs.html> .HB 301 is not the carefully thought out solution we need to comply with new IDEA requirements. This bill removes parent due process and the right of our legislature to have a role in developing statutes for special education. With loss of legislative control we also lose the input of people's comments to the legislature. This bill gives too much power to DEED. As a parent of exceptional children I am very concerned about my loss of due process and input. As a special educator of emotionally disturbed children with complex needs I am very concerned because my district, school and I will ultimately be responsible for resolving legal issues which will certainly arise if this passes. I am also concerned that this bill appears to have been developed "behind closed doors" and without the usual use of input from parents and others. Please kill this bill! Please contact me to discuss this further if needed.

I have reviewed <http://akcept.interak.com/akceptionalities/govs.html> .HB 301 is not the carefully thought out solution we need to comply with new IDEA requirements. This bill removes parent due process and the right of our legislature to have a role in developing statutes for special education. With loss of legislative control we also lose the input of people's comments to the legislature. This bill gives too much power to DEED. As a parent of exceptional children I am very concerned about my loss of due process and input. As a special educator of emotionally disturbed children with complex needs I am very concerned because my district, school and I will ultimately be responsible for resolving legal issues which will certainly arise if this passes. I am also concerned that this bill appears to have been developed "behind closed doors" and without the usual use of input from parents and others. Please kill this bill! Please contact me to discuss this further if needed.

Subject: HB 301**Date: Wed, 29 Mar 2000 16:49:46 -0900****From: "Tim Weiss" <tim@parentsinc.org>****To: <Wes_Keller@legis.state.ak.us>**

Why did HB 301 get delayed again?

By the way... here is what I just e-mailed to Coghill. He called this office and requested this information. Thought you'd like to see it too.

Faye Nieto asked me to answer the following questions you had regarding HB301.

HB 301 repeals AS 14.30.191 and 14.30.235

These two parts of the Alaska special education statute deal with the following:

AS 14.30.191. Educational evaluation and placement

This is a fairly long section containing nine parts regarding evaluation and placement of "exceptional children."

The sections deal with the requirements to get parent consent for initial evaluation, initial placement, protection of parents if the district refuses placement or program, evaluation consultation to the parent, rights of parents to independent evaluation, rights of parents to private evaluation, and hearing officer requests for independent evaluation.

All of these parts in AS 14.30.191 are in conflict with current federal special education law. IDEA 97 has actually made given parents much broader rights than is contained in current state law and therefore this entire section is already null and void. For example, federal law now says that the parents must be involved in the evaluation process itself and in the interpretation of the evaluations. This is no longer to be done in "secret" school official committees. Parents are now a required part of this process. No placement or refusal for placement or special education services can be made by a single school official or by the district alone. All decisions must have the parent involved as an equal member on the committee that makes those decisions. Current federal law is considerably stronger than what is in this current part of state law. In particular, regarding parent rights. One additional change that gives the schools more rights is that the districts are no longer liable to reimburse a parent for a private evaluation that they had initiated themselves. They must only give full consideration of the results from that evaluation. This change saves the schools money and removes one of the areas that used to be in constant dispute through due process hearing and court cases (parents would fight the district to get them to reimburse them for their expenses).

AS 14.30.235. Withdrawal of consent.

This section is short and states: "If under a provision of this chapter the consent of the parent is required, the parent may withdraw the parent's consent."

This provision is stated in much more detail in the revised federal laws and in the recent federal special education (IDEA) regulations. The federal laws and regulations on this subject are very very extensive and give lay out detailed rights for parents and schools regarding exactly when parent consent is required, when a parent can refuse to grant consent, when parents can withdraw consent, and how long they can wait before withdrawing consent (they can't withdraw consent after the test, placement, or whatever action has already taken place... it is a bit too late to withdraw consent if the action has already happened).

The flow of federal money to Alaska and to the districts.

This is an issue best answered by the Department of Education and Early Development, but is also laid out in considerable detail in the federal regulation and in the Alaska State Special Education Handbook. A VERY short summary is that Alaska makes their application for funding to the U.S. Department of Education based on the number of student enrolled in special education programs (the count is based on the number enrolled on December 31 of each year), breaking the students out by several categories regarding how severe the disability or services that are needed. The federal government then allocates the money to the state based on the amount enrolled in the previous year (in other words, as of the last December 31 child count), and calculates it based on a formula based on the severity of needs the child has. The money is then allocated in a lump to the state. A portion, as defined by the federal government, is given to the department for administrative costs, a portion is for special projects (such as statewide training programs for special education administrators, teachers and parents to update everyone's skills in special education), and the largest portion is to be allocated to each district.

This is only the basic procedure for Part B money of IDEA (the "regular" special education program). Part C money deals with

Infant Learning Programs and has a different method for allocating funds.

Alaska funding for the Part B money is divided in the state's procedures into four areas:

1. State Public School Foundation Funding
2. Transportation Funding for Special Education
3. Federal Special Education Funding
4. Special Education Services Agency (SESA)

Part 1 allocates money based on the district's December 31 child count broken down by the "service category" of the student (e.g. standard, resource room, self-contained, intensive funding). The funding formula is established under AS 14.17 and is currently sent to district in a block grant with other education funding, such as bilingual, vocational education, and gifted funding.

Part 2 puts aside funding for special education transportation services based on the specific transportation needs of the district.

Part 3 provides for application to the federal government for additional funds for "excess costs" of providing special education if there are unusual circumstances (usually one-time spending needs for things like school modifications).

Part 4 provides for money for SESA which provides direct special education services for rural students in districts that have trouble obtaining specific services for children with major disabilities.

Subject: SB 205 and HB 301

Date: Mon, 3 Apr 2000 09:51 -0800

From: DJoehnk@MSB.Mat-Su.K12.AK.US

**To: Representative_Fred_Dyson@legis.state.ak.us,
Representative_Jim_Whitaker@legis.state.ak.us, Representative_Joe_Green@legis.state.ak.us,
Representative_Carl_Morgan@legis.state.ak.us, Representative_Tom_Brice@legis.state.ak.us,
Representative_Allen_Kemplen@legis.state.ak.us,
Representative_John_Coghill@legis.state.ak.us**

Please stop passage of HB301 and SB205! Passage of SB205 and HB 301 essentially guts the rights

to due process currently given the parents of gifted and talented students in the State of Alaska. As a gifted teacher in Mat-Su Borough, I am concerned for my children and my parents. In speaking with special education directors, I have been told it will save paperwork. What a grevous injustice this is to our youth for the sake of paperwork. The due process rights granted by IDEA are critical to the health of gifted education in the state. To take those rights from parents is to begin the decline of gifted education in the state.

Historically, gifted education springs forth from special education. This state has always sought protection of gifted services and has provided for the unique educational needs of their gifted children. This has resulted in some outstanding programs that are the envy of many other states. In fact, other states are trying unsuccessfully to gain the protection of IDEA for their gifted youth. States that have lost the protection have lost gifted services. Please do not allow this injustice to occur.

By taking due process from our parents and children, you allow decline of protection and services to the children who are the most equipped to make this state flourish in the future. When we are in a situation wherein we are paying our

best and brightest to stay in the state for post-secondary study, it is ludicrous to assume they will be prepared for that study by gutting elementary and secondary services to them.

Thank you for your consideration.

Dewayne E. Joehnk, MA

Coordinator, Wasilla Extended Learning Program (Gifted)

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Thank you for your consideration. SB 205 and HB 301

Dewayne E. Joehnk, MA

Coordinator, Wasilla Extended Learning Program (Gifted)



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 30, 2000

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

Dear Representative Dyson:

Subject: Support for CS for HB 301

Thank you for the opportunity to comment upon HB 301 and to work with the Department, other advocates, and your staff in making improvements that have resulted in the Committee Substitute for House Bill 301 drafted on March 27, 2000.

We support CSHB 301 because it incorporates the amendments made to the Individuals with Disabilities Education Act (IDEA) that benefit Alaskan families and it addresses many of the concerns we raised in the hearing on the bill on March 23.

Originally, we were concerned that Section 13 of HB 301 would repeal the provisions of state law that outline the rights and responsibilities of parents having children in special education. As we understand it, this section repeals the language in current state law and replaces it with language that is in compliance with IDEA. Additionally, acknowledging that future amendments to IDEA must be incorporated in state law to be in effect minimizes our other concerns.

Section 9 regarding Programs for Gifted Students makes it clear that the Department shall 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 CSHB 301. We hope that you and members of the House HESS Committee will see fit to pass the bill. If I can answer any questions regarding the Council's position or suggested improvements to CSHB 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.

Testimony of Joan Dangeli
IDEA Special Education Bill HB 301
March 23, 2000

The Individuals with Disabilities Education Act was designed to improve results for children with disabilities through appropriate implementation of IDEA. *Combined with research-based promising practices for educating children with disabilities IDEA was to be the core of educational survival and success for our children but many parents are not experiencing research-based promising practices with districts, but emotional overload and frustration due to our children not getting what they need, gaps so they can get the curriculum not being bridged, the curriculum other children can get with least effort.*

For 1.5 years I have had to go to school with my child to address his curriculum needs due to unqualified aids and spec ed teachers that lacked concern or insight to guiding him in the necessary hands-on approach to get the curriculum. If you do not know the known devised strategies specific to your child's impairment for specially designed instruction, your child is basically not getting what they need - we have to be the educator and police our impaired children heavily.

What we need for our children is not as enforceable as the municipal districts would have parents and community believe - *audits must mandatorily enforce regular parental interviewing and not just review of paper written IEPs which are very substandard in their quality if you do not get involved and know what you are doing, as I had to do. I would like DOE to support language that addresses regular parental interviewing.* We experienced discord in this process that was more detrimental to my child than productive and we could not withstand anymore - there is definitely a personal nature that occurs in responses from staff that is unfavorable to the IEP process - *much more oversight in the lives of these children is needed because tomorrow their hardships are magnified if we do not intervene today. Quality spec ed is needed. Spec ed also needs to be available to homeschoolers from their homeschools.*

Compliance with all IDEA requirements gives parents more control and I would not have even made it as far as I did in the process had it not been for Parents, Inc., federally mandated parent advocates. My child has already suffered at the lack of authority involved, the rights of parents and children are not adequately protected. If someone is not doing their job, we are left to the hands of unhearing principals and spec ed teachers (without any passion) having to witness that our child is not cared for appropriately.

I would like there to be a two-year limit for parents to file on issues of disagreement. I would also like additional language added to the bill to encourage alternative dispute resolutions such as mediation via the use of Alaska's parent training and information center because it is more easily embraced than due process - the whole due process situation was draining me emotionally that I could not continue on by the 3rd month - it had become intolerably critical. These issues are addressed in Section 5 AS 14.30.193(b).

Alaska has been out of compliance so long legislation left unpassed can cause the state to loose about 13 million in federal spec ed money in the next 30 days - *federal takeover like the subsistence issue, if not fast tracked.* Federal laws are so explicit under IDEA that adding to it is unnecessary and will not be accepted by the federal government but will slow down the issues and remove needed money. The state is currently under the threat of being audited for the expenditures of the federal IDEA money, and whether that is being spent in the Gifted and Talented program. The current general fund used for all spec ed money does not provide for an accurate audit and can cause deep sanctions if not addressed. The Gifted and Talented program can be addressed in another bill due to compliance mandates under IDEA by intent language put into HB 301 to address the Gifted and Talented issue in a separate bill so funds for that program will be strengthened and not lost, which IDEA does not provide for. Your support on this bill is deeply appreciated.

Thank you.

Joan Dangeli

Box 34711
Juneau, AK 99803-4711
586-2765

CS FOR HOUSE BILL NO. 301(HES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered:

Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the education of exceptional children; and providing for an
2 effective date."

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

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

5 Sec. 14.30.180. Purpose. It is the purpose of AS 14.30.180 - 14.30.350 to

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

8 (2) allow procedures and actions necessary to comply with the
9 requirements of federal law, including 20 U.S.C. 1400 - 1487 [20 U.S.C. 1400 - 1485]
10 (Individuals with Disabilities Education Act).

11 * Sec. 2. AS 14.30 is amended by adding a new section to read:

12 Sec. 14.30.182. Duties of department. The department shall

13 (1) cooperate with the federal government and do all things necessary
14 to continue state eligibility for federal money available under 20 U.S.C. 1400 - 1487

1 (Individuals with Disabilities Education Act);

2 (2) comply with the requirements of 20 U.S.C. 1400 - 1487 (Individuals
3 with Disabilities Education Act) and other federal law related to children with
4 disabilities; if a provision of AS 14.30.180 - 14.30.350 conflicts with federal law and
5 the conflict would affect the continued receipt of federal money, the department shall
6 comply with the federal provision necessary to ensure continued receipt of that money;

7 (3) adopt regulations necessary to comply with state law and federal
8 law for the education of exceptional children, including 20 U.S.C. 1400 - 1487
9 (Individuals with Disabilities Education Act); and

10 (4) make an annual report available to the legislature by January 31;
11 the report must include

12 (A) a side-by-side comparison of the federal requirements for
13 special education services and the special education services provided by the
14 department;

15 (B) a description of special education services provided under
16 AS 14.30.180 - 14.30.350 that are not required under federal law; and

17 (C) any suggestions for changes to special education services
18 provided by the state.

19 * Sec. 3. AS 14.30.186 is repealed and reenacted to read:

20 Sec. 14.30.186. Coverage. (a) Except when different provision is made for
21 special education and related services in regulations adopted under (b) of this section.
22 special education and related services shall be provided by

23 (1) a borough or city school district, for a child with a disability
24 residing within the district:

25 (2) a governing body of a regional educational attendance area
26 operating a school in the area, for a child with a disability residing in the area served
27 by the school:

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

31 (4) a state boarding school established under AS 14.16, for a child

1 enrolled at the boarding school; or

2 (5) a district that provides a statewide correspondence study program,
3 for a child with a disability who is enrolled in the program.

4 (b) The department shall adopt regulations necessary to provide for the
5 allocation of financial responsibilities and the coordination of the provision of special
6 education and related services between the provider agencies in cases where a child
7 with a disability is enrolled in the educational programs of more than one of the
8 provider agencies described in (a) of this section.

9 * Sec. 4. AS 14.30.193(a) is repealed and reenacted to read:

10 (a) A school district or a parent of a student with a disability may request a
11 due process hearing on any issue related to identification, evaluation, educational
12 placement, or the provision of a free, appropriate, public education regarding a student
13 with a disability.

14 * Sec. 5. AS 14.30.193(b) is repealed and reenacted to read:

15 (b) A request by a parent for a due process hearing must be made not later
16 than 12 months after the date the school district provides the parent with written notice
17 of the decision with which the parent disagrees and with written notice of procedural
18 safeguards available to that parent in federal law. A school district shall make its
19 request under (a) of this section under regulations adopted by the department.

20 * Sec. 6. AS 14.30.193(c) is repealed and reenacted to read:

21 (c) If a due process hearing is requested by a parent or school district, the
22 school district shall provide the parent with the names and qualifications of three
23 qualified hearing officers from a list maintained by the department. The parent may
24 choose one person from the list of three provided by the school district. If the parent
25 does not select a name, the school district may appoint as hearing officer any person
26 from the list maintained by the department. After appointment under this subsection,
27 a hearing officer shall proceed under regulations adopted by the department.

28 * Sec. 7. AS 14.30.193(h) is amended to read:

29 (h) The department shall maintain a list of qualified hearing officers. The
30 department shall qualify hearing officers through a training program that is [SHALL

1 BE] open to all persons who meet the criteria set by the department by regulation
2 [RESIDENTS OF THE STATE. A HEARING OFFICER MAY BE QUALIFIED FOR
3 A PERIOD NOT TO EXCEED FIVE YEARS]. The list of qualified hearing officers
4 shall be maintained as a public record.

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

6 (a) The department shall, by regulation, provide for administrative appeal
7 hearings, based on the record, of impartial hearing officers' decisions under
8 AS 14.30.193. An administrative appeal hearing shall comply with all requirements
9 necessary for participation in federal grant-in-aid programs, including 20 U.S.C. 1400 -
10 1487 [20 U.S.C. 1400 - 1485] (Individuals with Disabilities Education Act).

11 * Sec. 9. AS 14.30.315 is repealed and reenacted to read:

12 **Sec. 14.30.315. Programs for gifted children.** Every school district shall
13 establish a program for the provision of educational services for gifted children. The
14 educational services required under this section may include student identification,
15 student eligibility, student learning plans, and parental and student participation,
16 including an appropriate review process, consistent with regulations adopted by the
17 department.

18 * Sec. 10. AS 14.30.325(a) is amended to read:

19 (a) The department may by regulation provide for the appointment of surrogate
20 parents to represent children with disabilities [EXCEPTIONAL CHILDREN] in
21 matters relating to the provision of an appropriate public education.

22 * Sec. 11. AS 14.30.340(a) is amended to read:

23 (a) If a parent of a a [AN EXCEPTIONAL] child with a disability enrolls the
24 child in a private or religious school at the parent's expense or teaches the child at
25 home, the school district in which the child resides [IS LOCATED] shall make special
26 education and related services available in conformance with an individual services
27 plan as authorized by federal law. A parent who teaches a child at home may
28 refuse special education and related services [INDIVIDUALIZED EDUCATION
29 PROGRAM UNDER AS 14.30.278].

30 * Sec. 12. AS 14.30.350(1) is amended to read:

31 (1) "appropriate public education" means personalized instruction with

1 sufficient support services to permit a child to benefit educationally from the
2 instruction, under state and federal law, including regulations adopted by the
3 department:

4 * Sec. 13. AS 14.30.191, 14.30.193(d), 14.30.193(e), 14.30.235, 14.30.272, 14.30.274,
5 14.30.276, 14.30.278, 14.30.285, 14.30.340(b), 14.30.347, 14.30.350(3), 14.30.350(4),
6 14.30.350(7), 14.30.350(8), 14.30.350(9), and 14.30.350(11) are repealed.

7 * Sec. 14. This Act takes effect immediately under AS 01.10.070(c).

1

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE DYSON

TO: CSHB 301(HES), Draft Version "G"

1 Page 3, following line 8:

2 Insert a new subsection to read:

3 "(c) A parent who elects to educate a child as allowed under AS 14.30.010(b)
4 may refuse the special education and related services provided under AS 14.30.180
5 - 14.30.350. A school district that disagrees with a parent regarding the provision of
6 special education and related services may attempt to resolve the disagreement by
7 mediation or may request a hearing as provided under AS 14.30.193."

8 Page 4, lines 27 - 28:

9 Delete "A parent who teaches a child at home may refuse special education and
10 related services"

Sec. 14.30.010. When attendance compulsory.

(a) Every child between seven and 16 years of age shall attend school at the public school in the district in which the child resides during each school term. Every parent, guardian or other person having the responsibility for or control of a child between seven and 16 years of age shall maintain the child in attendance at a public school in the district in which the child resides during the entire school term, except as provided in (b) of this section.

(b) This section does not apply if a child

(1) is provided an academic education comparable to that offered by the public schools in the area, either by

(A) attendance at a private school in which the teachers are certificated according to AS 14.20.020 ;

(B) tutoring by personnel certificated according to AS 14.20.020 ; or

(C) attendance at an educational program operated in compliance with AS 14.45.100 - 14.45.200 by a religious or other private school;

(2) attends a school operated by the federal government;

(3) has a physical or mental condition that a competent medical authority determines will make attendance impractical;

(4) is in the custody of a court or law enforcement authorities;

(5) is temporarily ill or injured;

(6) has been suspended or expelled under AS 14.03.160 or suspended or denied admittance under AS 14.30.045 ;

(7) resides more than two miles from either a public school or a route on which transportation is provided by the school authorities, except that this paragraph does not apply if the child resides within two miles of a federal or private school that the child is eligible and able to attend;

(8) is excused by action of the school board of the district at a regular meeting or by the district superintendent subject to approval by the school board of the district at the next regular meeting;

(9) has completed the 12th grade;

(10) is enrolled in

(A) a state boarding school established under AS 14.16; or

(B) a full-time program of correspondence study approved by the department; in those school districts providing an approved correspondence study program, a student may be enrolled either in the district correspondence program or in the centralized correspondence study program;

(11) is equally well-served by an educational experience approved by the school board as serving the child's educational interests despite an absence from school, and the request for excuse is made in writing by the child's parents or guardian and approved by the principal or administrator of the school that the child attends;

(12) is being educated in the child's home by a parent or legal guardian.

2

Amendment

TO: HB 301
draft: G

sponsored by Rep. Kemplen

page 4, line 17, Section 9

after the last sentence add the following:

A charter school may be organized to meet the requirements of this section.

Amendment

page 2, line 15, Section 2

add the following after the words "special education"
including gifted and talented,

3

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE COGHILL

TO: CSHB 301(HES)

1 Page 4, line 11:

2 Delete lines 11 - 17

3

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14 The purpose of this amendment is to allow the Department the latitude of establishing
15 special programs such as gifted and talented, but not mandating special programs other
16 than those mandated and funding by the federal government, such as existing language in
17 the bill does.

18

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

Sec. 14.30.305. State support of programs for children hospitalized or confined to their homes. A child who is hospitalized or confined to home and who receives at least 10 hours of special education and related services per week may be counted as a pupil in average daily membership when computing state support under the public school funding program. (§ 2 ch 46 SLA 1966; am § 14 ch 147 SLA 1984; am § 29 ch 83 SLA 1998)

Cross references. — For provisions of the public school foundation program, see AS 14.17. effective July 1, 1998, substituted "funding" for "foundation" near the end.

Effect of amendments. — The 1998 amendment,

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

Sec. 14.30.315. State support of programs for gifted children. (a) *[Repealed, § 39 ch 83 SLA 1998.]*

(b) Nothing in this section prohibits the department from requiring approval of programs of special education and related services for other categories of exceptional children. (§ 15 ch 147 SLA 1984; am § 39 ch 83 SLA 1998)

Effect of amendments. — The 1998 amendment, effective July 1, 1998, repealed subsection (a).

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

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

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

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

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

Sec. 14.30.340. Provision of special education in a private school, home, or hospital setting. (a) If a parent of an exceptional child enrolls the child in a private school at the parent's expense or teaches the child at home, the school district in which the child is located shall make special education and related services available in conformance with an individualized education program under AS 14.30.278.

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

put back
in statutes

Defecto

AMENDMENT

4
Page 1
Corrected

OFFERED IN THE HOUSE

BY REPRESENTATIVE COGHILL

TO: CSHB 301(HES)

1 Page 1, line 12

2 Delete:

3 "shall"

4

5 Beginning on Page 1, line 13:

6 Delete subsection (1), subsection (2), & subsection (3);

7

8 Page 1, line 12, after the words "The department may"

9 Insert:

10 , notwithstanding any other provision of AS 14.30.180 – 14.30.350, may

11 (1) do all things necessary to qualify for federal funds that are available to the state for

12 the education of exceptional students;

13 (2) adopt regulations necessary to comply with AS 14.30 – 14.30.350.

14

15 Page 2, line 7:

16 Delete: (4)

17 Insert: (3)

18

19 Page 5, line 5, after "14.30.285,"

20 Insert: 14.30.335,

21

1 Page 5, line 2:

2 Delete:

3 "under state and federal law, including regulations adopted by the department;"

4

5 Page 5, line 2:

6 Insert:

7 under state law;

8

9

10

11 The purpose of this amendment is to make provisions for the Department to write regulations
12 consistent with state law, but to stop short of providing for the Department to write
13 regulations and impose laws to comply with new federal laws that are not consistent
14 with state law. It is the duty of the legislature to impose state laws. The original wording
15 of this section delegated to the Department the authority to implement and enforce federal
16 laws that may be inconsistent with state law and without any review by the legislature.

17

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5

Amendment No. _____

By:
Date:

- 1 In Section 6, page 3, line 22, delete "school district" and add the phrase:
- 2 "department through a process of random selection"

1-GH2003VD
Ford
3/21/00

CS FOR HOUSE BILL NO. 301(HES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered:
Referred:

Sponsor(s): **HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR**

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12 **Sec. 14.30.182. Duties of department.** The department shall

13 (1) cooperate with the federal government and do all things necessary
14 to continue state eligibility for federal money available under 20 U.S.C. 1400 - 1487

1 (Individuals with Disabilities Education Act);

2 (2) comply with the requirements of 20 U.S.C. 1400 - 1487 (Individuals
3 with Disabilities Education Act) and other federal law related to children with
4 disabilities; if a provision of AS 14.30.180 - 14.30.350 conflicts with federal law and
5 the conflict would affect the continued receipt of federal money, the department shall
6 comply with the federal provision necessary to ensure continued receipt of that money;

7 (3) adopt regulations necessary to comply with state law and federal
8 law for the education of exceptional children, including 20 U.S.C. 1400 - 1487
9 (Individuals with Disabilities Education Act); and

10 (4) make an annual report available to the legislature by January 31;
11 the report must include

12 (A) a side-by-side comparison of the federal requirements for
13 special education services and the special education services provided by the
14 department;

15 (B) a description of special education services provided under
16 AS 14.30.180 - 14.30.350 that are not required under federal law; and

17 (C) any suggestions for changes to special education services
18 provided by the state.

19 * Sec. 3. AS 14.30.186 is repealed and reenacted to read:

20 **Sec. 14.30.186. Coverage.** The school district in which a child with a
21 disability is enrolled is responsible for providing special education and related services
22 to the child.

23 * Sec. 4. AS 14.30.193(a) is repealed and reenacted to read:

24 (a) A school district or a parent of a student with a disability may request a
25 due process hearing on any issue related to identification, evaluation, educational
26 placement, or the provision of a free, appropriate, public education regarding a student
27 with a disability.

28 * Sec. 5. AS 14.30.193(b) is repealed and reenacted to read:

29 (b) A request by a parent for a due process hearing must be made not later
30 than 12 months after the date the school district provides the parent with written notice
31 of the decision with which the parent disagrees and with written notice of procedural

1 safeguards available to that parent in federal law. A school district shall make its
2 request under (a) of this section under regulations adopted by the department.

3 * Sec. 6. AS 14.30.193(c) is repealed and reenacted to read:

4 (c) If a due process hearing is requested by a parent or school district, the
5 school district shall provide the parent with the names of three qualified hearing
6 officers from a list maintained by the department. The parent may choose one person
7 from the list of three provided by the school district. If the parent does not select a
8 name, the school district may appoint as hearing officer any person from the list
9 maintained by the department. After appointment under this subsection, a hearing
10 officer shall proceed under regulations adopted by the department.

11 * Sec. 7. AS 14.30.193(h) is amended to read:

12 (h) The department shall maintain a list of qualified hearing officers. The
13 department shall qualify hearing officers through a training program that is [SHALL
14 BE] open to all persons who meet the criteria set by the department by regulation
15 [RESIDENTS OF THE STATE. A HEARING OFFICER MAY BE QUALIFIED FOR
16 A PERIOD NOT TO EXCEED FIVE YEARS]. The list of qualified hearing officers
17 shall be maintained as a public record.

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

19 (a) The department shall, by regulation, provide for administrative appeal
20 hearings, based on the record, of impartial hearing officers' decisions under
21 AS 14.30.193. An administrative appeal hearing shall comply with all requirements
22 necessary for participation in federal grant-in-aid programs, including 20 U.S.C. 1400 -
23 1487 [20 U.S.C. 1400 - 1485] (Individuals with Disabilities Education Act).

24 * Sec. 9. AS 14.30.315 is repealed and reenacted to read:

25 **Sec. 14.30.315. Programs for gifted children.** Every school district shall
26 establish a program for the provision of educational services for gifted children,
27 consistent with regulations adopted by the department.

28 * Sec. 10. AS 14.30.340(a) is amended to read:

29 (a) If a parent of a [AN EXCEPTIONAL] child with a disability enrolls the
30 child in a private or religious school at the parent's expense or teaches the child at
31 home, the school district in which the child resides [IS LOCATED] shall make special

1 education and related services available in conformance with an individual services
2 plan as authorized by federal law. A parent who teaches a child at home may
3 refuse special education and related services [INDIVIDUALIZED EDUCATION
4 PROGRAM UNDER AS 14.30.278].

5 * Sec. 11. AS 14.30.350(1) is amended to read:

6 (1) "appropriate public education" means personalized instruction with
7 sufficient support services to permit a child to benefit educationally from the
8 instruction, under state and federal law, including regulations adopted by the
9 department;

10 * Sec. 12. AS 14.30.191, 14.30.193(d), 14.30.193(e), 14.30.235, 14.30.272, 14.30.274,
11 14.30.276, 14.30.278, 14.30.285, 14.30.325, 14.30.340(b), 14.30.347, 14.30.350(3),
12 14.30.350(4), 14.30.350(7), 14.30.350(8), 14.30.350(9), and 14.30.350(11) are repealed.

13 * Sec. 13. This Act takes effect immediately under AS 01.10.070(c).

The Honorable Brian Porter
January 19, 2000
Page 2

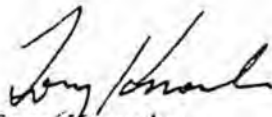
program may have to be creative in providing the required services to a special education student. It may, for example, have to contract with the student's home district for assistance in providing those services, or may have to make other arrangements.

Present state law also provides that services for "exceptional children" include programs for gifted and talented children along with programs for children with disabilities. Federal money is available for children with disabilities but cannot be used for gifted and talented programs. To be consistent with federal policy, this bill separates special education requirements from offerings for gifted and talented children, while retaining the requirement that school districts provide programs for gifted and talented children. The department will adopt regulations to assist school districts in meeting this requirement.

The bill also clarifies the method by which hearing officers are appointed to address appeals of special education issues. It requires the department to maintain a list of qualified hearing officers, establish criteria by which persons may be qualified, and provide appropriate training to them.

As part of Alaska's commitment to quality education of our young people, I urge your prompt and favorable action on this bill.

Sincerely,


Tony Knowles
Governor



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

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						
-----------------------------	--	--	--	--	--	--

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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REPEALED AND REENACTED:

Sec. 14.30.186. Coverage.

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

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

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

(d) [Repealed, Sec. 19 ch 147 SLA 1984].

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

Sec. 14.30.193. School district hearings.

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

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

(c) A hearing officer may not be appointed under this section unless approved in writing by the parent; however, parent approval of a hearing officer is not required if the parent has been offered and has rejected three different hearing officers. After a hearing officer is appointed under this section, the hearing officer shall conduct an informal prehearing settlement conference and attempt to resolve the disagreement between the parent and the school district. If, after a hearing under this section, the hearing officer determines that the school district's intended action is in accordance with law and is in the child's best interest, the hearing officer shall approve that action.

Sec. 14.30.315. State support of programs for gifted children.

(a) [Repealed, Sec. 39 ch 83 SLA 1998].

(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.

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

REPEALED:

Sec. 14.30.191. Educational evaluation and placement.

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

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

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

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

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

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

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

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

(g) If a hearing officer requests an independent educational evaluation as part of a hearing, the school district shall pay for the evaluation.

Sec. 14.30.193 (d) & (e)

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

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

Sec. 14.30.235. Withdrawal of consent.

If under a provision of this chapter the consent of the parent is required, the parent may withdraw the parent's consent.

Sec. 14.30.272. Procedural safeguards.

(a) A school district shall inform the parent of an exceptional child of the right to review the child's educational record, to review evaluation tests and procedures, to refuse to permit evaluation or a change in the child's educational placement, to be informed of the results of evaluation, to obtain an independent evaluation by choosing a person from a list provided by the district or by choosing a person by agreement between the parent and school district, to request an impartial hearing, to appeal a hearing officer's decision, and to give consent or deny access to others to the child's educational record.

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

Sec. 14.30.274. Identification of exceptional children.

Each school district shall establish and implement written procedures to ensure that all exceptional children under the age of 22 who reside in the district are identified and located for the purpose of establishing their need for special education and related services.

Sec. 14.30.276. Least restrictive environment.

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

Sec. 14.30.278. Individualized education program.

(a) The individualized education program for each exceptional child must include

- (1) a statement of the child's present levels of educational performance;
- (2) a statement of annual goals, including short term instructional objectives;
- (3) a statement of the specific special education and related services to be provided to the child, and the extent to which the child will be able to participate in regular educational programs;
- (4) the projected dates for initiation of services and the anticipated duration of the services;
- (5) appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short term instructional objectives are being achieved.

(b) Each meeting concerning an exceptional child must include

- (1) a representative of the school district, other than the child's teacher, who is qualified to provide or supervise the provision of special education;
- (2) the child's teacher;
- (3) at least one of the child's parents;
- (4) the child, when appropriate;
- (5) other individuals selected by the parent or school district.

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

Sec. 14.30.285. Transfers of exceptional children.

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

(b) An identified exceptional child may be sent to an educational program or residential school outside the child's community or school district if the child resides in a community or school district where an appropriate educational program cannot reasonably be made available and if the department determines that provision of special education and related services in another educational program or residential school is appropriate. If the school district and the department approve the enrollment of the exceptional child in another educational program or residential school outside the child's community or school district and the child is enrolled, the child's education expenses shall be paid as follows:

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

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

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

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

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

(f) A school district shall obtain the consent of the child's parent before a child may be transferred to a school outside the district in which the child resides.

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

Sec. 14.30.325. Surrogate parents.

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

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

Sec. 14.30.340. Provision of special education in a private school, home, or hospital setting.

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

Sec. 14.30.347. Transportation of exceptional children.

When transportation is required to be provided as related services, an exceptional child shall be carried with other children if the district provides transportation to other children in the district except when the nature of the physical or mental disability is such that it is in the best interest of the exceptional child, as determined by the school district, that the child be transported separately. State reimbursement for transportation of exceptional children shall be as provided for transportation of all other pupils except that eligibility for reimbursement is not subject to restriction based on the minimum distance between the school and the residence of the exceptional child.

Sec. 14.30.350 Definitions:

(3) "consent" means the parent has been fully informed of all information relevant to the activity or the release of records for which consent is sought and the parent understands and voluntarily agrees to the activity or release of records;

(4) "educational records" means those files, documents, records, and other material that contain information directly related to a student and are maintained by a school district or a person acting for a school district; the term "educational

records" does not include the personnel records of the school district, maintained in the normal course of business, that relate exclusively to a person's capacity as an employee, or other records as designated by the department in regulation;

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

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

(B) the child's teacher;

(C) the child's parent;

(D) the child, if appropriate;

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

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

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

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



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 14.30.126 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.

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To	RFP Fred Dyson	F#
cc	WSS Kelley	Co.
Dept.	2 PAGES	Prio.

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

STATE OF ALASKA

Department of Education & Early Development

Office of the Commissioner

TONY KNOWLES, GOVERNOR

Goldbell Place
801 West 10th Street, Suite 200
Juneau, Alaska 99801-1894
(907) 465-2800
(907) 465-4156 Fax

March 27, 2000

The Honorable Fred Dyson, Chair
House Health Education & Social Services Committee
Alaska State Legislature
State Capitol, Room 104
Juneau, AK 99801-1182

Dear Representative Dyson:

The enclosed committee substitute (CS) for HB 301 is offered in response to written and oral testimony received at the March 23, 2000 meeting of the House HESS committee. We offer this letter to address the points presented and to explain the manner in which they are addressed in the CS or the reason that they are not addressed through a proposed amendment.

- (1) Looking first to the extensive written testimony presented by the Disability Law Center (DLC), we have to disagree with the characterization offered that "the federal IDEA provides only a framework for special education." (Pg. 1). In fact, the federal IDEA statutes contain 51 pages of detailed requirements that the state must comply with in order to be eligible for federal IDEA funding, and the federal IDEA regulations contain 74 pages of interpretations and definitions of those federal statutes in a like format. In comparison, the current State special education statutes total eight pages of large format, much more generalized requirements. The department has therefore determined that rather than continue the practice of trying to providing a short, paraphrased duplication of the far more detailed federal requirements, the department, the districts, and the special education community would be better served by directly adopting the detailed federal provisions as the substantive requirements of state law.
- (2) The value of direct reliance on the federal law is well exemplified in responding to the next DLC suggestion (pages 2 - 4), that the proposed AS 14.30.186 would encourage districts to transfer their special education students out-of-district into private programs in order to escape financial liability for serving those students. The federal law expressly denies the possibility of this suggested scenario. 20 USC 1414(f) states:

Educational placements. Each local educational agency or State educational agency shall ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.

20 USC 1412(a)(10)(B)(i) provides:

Children with disabilities in private schools and facilities are provided special education and related services, in accordance with an individualized education program, at no cost to their parents, if such children are placed in, or referred to, such schools or facilities by the State or appropriate local educational agency as the means of carrying out the requirements of this part or any other applicable law requiring the provision of special education and related services to all children with disabilities within such State.

In summary, a district can't out-place a child with special needs – placement decisions are made by individualized education program (IEP) teams which must include the parents – and any out-of-district placement must provide for full special education services in the out-placement setting at no cost to the parents. Rather than attempting to restate these lengthy, detailed federal requirements (which must be strictly complied with to maintain State funding eligibility) verbatim in the state statutes, the department proposal directly incorporates the entire federal IDEA program language by reference.

- (3) The department agrees with the suggestions of the DLC, the Alaska Mental Health Board, and David Maltman that a clarification of the "Coverage" requirements of proposed AS 14.30.186 could improve the state statute. The listing of each category of public education provider, as suggested in the DLC proposed subsection (a), is adopted in the CS. An additional new paragraph (5) is added to include the category of statewide correspondence study programs.
 - A. AS 14.30.186(b). The DLC proposed AS 14.30.186(b) would provide that parents could unilaterally place their children in any educational program (including any private program) without compliance with the federally mandated IEP process discussed above, and could then require the district of residence to fund that unilateral placement. Federal law does allow a parent to opt-out of a special education program offered by a district. However, where a parent unilaterally places their child in a private program -- typically at tremendously greater expense than the cost of a district program -- the parent is responsible for funding that private placement unless it is established that the district offered IEP did not provide a free appropriate public education under federal law. (20 USC 1412 (a)(10)(B)(ii))

The federal law sets out an administrative process through which the parent may contest the "appropriateness" of the district program, instead of unilaterally transferring the child from the district program. This proposal – that a parent be authorized to unilaterally transfer their child from a district program to a private program at district expense *even where the district program meets IDEA requirements* – would be a substantial expansion of rights beyond those provided under the federal IDEA, and would have a very substantial fiscal note to the districts. The department proposal provides the full protections offered by the federal IDEA.

- B. AS 14.30.186(c). The DLC's proposed AS 14.30.186(c) attempts to assign financial responsibility between the districts. The department suggests that the State Board of Education is the appropriate body to determine the proper allocation of financial responsibility between the various public education entities. The Board has already addressed these allocations in regulations that allocate both financial responsibility and the coordination of provision of special education services in cases where a child is enrolled simultaneously in more than one district's programs. The CS therefore replaces the DLC proposed paragraph(c) with a new paragraph (o) that expressly charges the State Board with adopting regulations that coordinate the provision of special education and related services and allocate financial responsibility, between the various educational programs in which a child is enrolled.
- (4) Statute of limitations. The CS lengthens the statute of limitations period from six months to twelve months. This time period for filing a request for a due process hearing essentially comes into play only where a parent is seeking financial reimbursement from a district for the parent's unilateral placement of their child in a private program – since in any case where the parents are seeking a modification of the child's on-going IEP provided by a district the issues involve a current ongoing problem. Since a parent is obviously aware that they have undertaken a large financial burden as soon as they enroll their child in a private program, the department believes that a twelve month statute of limitations would provide all the reasonable time necessary for a parent to exhaust mediation and other alternative dispute resolution systems and initiate a due process hearing on the reimbursement issue.
- (5) The proposed CS incorporates the suggestion of the DLC and of David Maltman that a notice of the qualifications of the potential due process hearing officers be provided to parents.

- (6) Abolition of state mandates. As discussed above, the department strongly disagrees with the suggestion that the federal IDEA provides merely a general framework for state and district special education programs. Even a quick review of the federal IDEA reveals that the (125+) pages of detailed federal requirements far surpass the (eight pages) current state special education statutes that are suggested be retained. We have provided copies of the current state statutes attached to the corresponding provisions of the federal IDEA, to illustrate this comparison. For example, provisions on "Individualized Education Programs" (IEP) in AS 14.30.278 are 22 lines long – less than half a page – while in federal law, the IEP provisions include nearly two full pages in 20 USC 1414(d) plus over three pages in 34 CFR 300.340 - 300.350.

This is not a question of whether the state should comply with the federal law instead of complying with state law – compliance with federal requirements will ensure that students with disabilities are well served. The department has therefore proposed simply adopting the detailed federal requirements into state law. If left in the state statutes as suggested by the DLC, the differently worded state requirements will

- at a minimum be merely duplicative of the more detailed federal requirements; and
- likely open the state and districts to additional litigation based on arguments of non-compliance with the differently worded state statutes despite our compliance with the more detailed federal requirements.

In summary, the much shorter and less detailed provisions of the current state statutes provide no additional substantive protection to Alaskan children with disabilities over the detailed protections of the federal law. The department's suggestion that the detailed federal requirements be adopted by reference into the Alaska Statutes will insure that the state will provide students with disabilities with the full extensive protections of federal law.

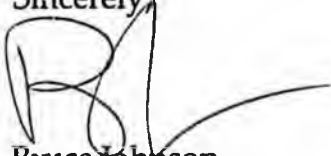
- (6) Gifted and talented program. Present state law intertwines the gifted and talented programs within the state special education program statutes. The department has been directly notified by the federal Department of Education that the expenditure of federal special education funds, including the utilization of federally funded state personnel, on gifted and talented programs is a misallocation of those federal funds and must be stopped. For this reason the proposed HB301 directly removes the

Representative Dyson
March 27, 2000
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gifted and talented program from the special education statutes and places the requirements in a separate section in AS 14.30.315.

In response to testimony received at the March 23rd House HESS committee hearing, the department's proposed CS provides an expanded outline of the required components of a district gifted and talented program, and the department plans to address additional needed guidance on specific program requirements through regulations to be adopted by the State Board of Education. Gifted and talented programs are the responsibility of the local district, and there are no federal funds provided for department pass-through to the districts designated specifically for the gifted and talented program category.

Sincerely

A handwritten signature in black ink, appearing to read "Bruce Johnson", with a long horizontal flourish extending to the right.

Bruce Johnson
Deputy Commissioner

Enclosure

WSS HB 301

FRANK H. MURKOWSKI
ALASKA

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March 1, 2000

The Honorable Fred Dyson
The Honorable Mike Miller
Senate and House Committee on
Health, Education & Social Services
State Capitol
Juneau, AK 99801-1182

Dear Fred and Mike:

Thank you for writing me about Alaska's efforts to meet the requirements of federal disability laws. I understand the difficulty in quickly complying with a regulation that just became effective on May 11, 1999. Unfortunately, after reviewing applicable law and consulting with the Department of Education's Office of Special Education Programs, I have found no provision that would allow Alaska to receive a waiver from compliance.

Under the Individuals with Disabilities Education Act Amendments of 1997 (IDEA '97), a state must demonstrate that it has in effect policies and procedures to ensure that it meets each condition set forth in the Act. Failure to comply with IDEA '97 would threaten funding in Alaska's FY 2000 applications.

There is no specific waiver which would allow Alaska to delay implementing policies and procedures to comply with IDEA '97 and still receive federal funding under the Act. The only IDEA-specific waiver authority allows the Secretary of Education to grant waivers in cases of unusual financial hardship.

While no waiver exemption exists, I would be willing to assist you in your efforts to comply with IDEA '97. Please do not hesitate to contact my office if I can be of assistance.

Sincerely,



Frank H. Murkowski
United States Senator

*I know that
you may want
to be - but big
brother makes
exceptions -*



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
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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
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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
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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

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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. § 300.121(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.¹ 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.

¹ 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

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

Office of Special Education Programs

Dr. Juanita S. Pawlich
 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

Newest 2-19

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) <u>as amended.</u> 	<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> <p>(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;</p> <p>(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</p> <p>(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>	<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:</p> <p>(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:</p> <p>(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:</p> <p>(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 [SHALL BE] open to all persons who meet the criteria set by the department by regulation [RESIDENTS OF THE STATE. A HEARING OFFICER MAY BE QUALIFIED FOR A PERIOD NOT TO EXCEED FIVE YEARS]</u>. 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>Sec. 11. AS 14.30.350(1) is amended to read: (1) "appropriate public education" means personalized instruction with sufficient support services to permit a child to benefit educationally from the instruction, <u>in accordance with state and federal law, including regulation adopted by the department;</u></p>	<ul style="list-style-type: none"> ✓ Clarifies that this section addresses appropriate "public" education (as opposed to private). 	<p>20 USC 1401 (8)</p>
<p>Sec 12. The following are repealed:</p>		
<p>14.30.191 Educational evaluation and placement</p>	<ul style="list-style-type: none"> ✓ Section (b) is incomplete. ✓ Sec. (c) and (e) violate current federal law. Further, the state is under a federal corrective action related to (c). ✓ Section (d) is not required in federal law. ✓ Section (f) is inconsistent with federal law. ✓ Current state law does not address the re-evaluation process. ✓ The state will rely on federal law related to evaluation and placement. 	<p>20 USC 1414 (a)(1-5)</p>
<p>14.30.193(d) School district hearings (parent participation in hearing with noncompliance of decision of hearing officer)</p>	<ul style="list-style-type: none"> ✓ The provisions of this subsection were clarified by amendments in AS 14.30.193 (a) and (b) (see Sections 4 and 5 of the bill). 	<p>20 USC 1415</p>
<p>14.30.193(e) School district hearings (non participation of parent)</p>	<ul style="list-style-type: none"> ✓ Provisions of this subsection represent unnecessary detail. 	<p>20 USC 1415</p>
<p>14.30.235 Withdrawal of consent (parent may withdraw parent's consent)</p>	<ul style="list-style-type: none"> ✓ Once a child is placed in special education at the parent's consent, they don't have the right to withdraw that 	<p>20 USC 1414</p>

Proposed statutory legislation	Rationale for changes from current law	Federal Citation
	consent. The decision for exiting the child from special education rests with the IEP team. By repealing this section, we will come into compliance with federal law.	
14.30.272 Procedural safeguards	<ul style="list-style-type: none"> ✓ Current state law is violation of federal law and does not include all of the procedural safeguards afforded to students with disabilities. ✓ The state will rely on the federal law. ✓ Procedural safeguards for gifted students will be addressed in state regulation. 	20 USC 1415
14.30.274 Identification of exceptional children	<ul style="list-style-type: none"> ✓ Current law does not take into account the responsibility of statewide correspondence programs for identifying children with disabilities ("child find"). ✓ The state will rely on federal law for "child find." 	20 USC 1412
14.30.276 Least restrictive environment	<ul style="list-style-type: none"> ✓ The state will rely on federal law, as current language contains unnecessary detail. 	20 USC 1414 Reg. 300.550-555
14.30.278 Individualized education program	<ul style="list-style-type: none"> ✓ Federal law changes IEP requirements. ✓ Increases the role of the parent, student and regular education teacher. ✓ The state will rely on federal law. 	20 USC 1414
14.30.285 Transfers of exceptional children	<ul style="list-style-type: none"> ✓ Federal law does not require this section for gifted students. ✓ The state will rely on federal law for 	20 USC 1412

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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)		



SB 205/HB 301

Special Education Statute Updates



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.

Federal law does not require any services for gifted students. This bill would repeal the following services for gifted students:

- 14.30.285 Transfers of exceptional children
- 14.30.325 Surrogate parents
- 14.30.340(b) Provision of special education in a private school, home, or hospital setting.
- 14.30.347 Transportation of exceptional children

The state will promulgate regulations on these topics according to AS 14.30.315, the statute requiring districts to establish programs for gifted students.

The following definitions contain unnecessary detail or conflict with federal law:

- 14.30.350(3) "consent"
- 14.30.350(4) "educational records"
- 14.30.350(7) "individualized education program team"
- 14.30.350(8) "parent"
- 14.30.350(9) "related services"
- 14.30.350(11) "special education"

The state will rely on definitions in federal law.

Other Proposed Amendments:

14.30.186 Coverage.

Currently, state law requires a student's district of residence to provide special education services. The proposed change clarifies that statewide correspondence programs, which enroll students from outside their districts, are responsible for ensuring that services are provided to students with disabilities.

14.30.315 Programs for gifted children.

This section requires every district to establish a program for gifted children. The gifted program is a state entitlement, not federal.

14.30.340(a) Special education in private school, home, or hospital setting.

New bill language clarifies that children with disabilities enrolled in private schools are entitled to some special education and related services from their public school district of residence. Public school districts would be allowed to provide the minimum amount of services as defined by federal law to students with disabilities attending private schools.

FISCAL NOTE

**STATE OF ALASKA
2000 LEGISLATIVE SESSION**

BILL NO. _____

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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AMENDMENT

FAILED

OFFERED IN THE HOUSE
TO: HB 301

BY REPRESENTATIVE BRICE

1 Page 3, following line 16:

2 Insert new bill sections to read:

3 ** Sec. 9. AS 14.30.272 is amended to read:

4 **Sec. 14.30.272. Procedural safeguards for gifted children.** (a) A school
5 district shall inform the parent of a gifted [AN EXCEPTIONAL] child of the right
6 to review the child's educational record, to review evaluation tests and procedures, to
7 refuse to permit evaluation or a change in the child's educational placement, to be
8 informed of the results of evaluation, to obtain an independent evaluation by choosing
9 a person from a list provided by the district or by choosing a person by agreement
10 between the parent and school district, to request an impartial hearing, to appeal a
11 hearing officer's decision, and to give consent or deny access to others to the child's
12 educational record.

13 (b) The department shall establish, by regulation, impartial procedures for a
14 school district to follow for hearings under this section [AS 14.30.193 TO COMPLY
15 WITH REQUIREMENTS NECESSARY TO PARTICIPATE IN FEDERAL GRANT-
16 IN-AID PROGRAMS, INCLUDING 20 U.S.C. 1400 - 1485 (INDIVIDUALS WITH
17 DISABILITIES EDUCATION ACT)].

18 * Sec. 10. AS 14.30.274 is amended to read:

19 **Sec. 14.30.274. Identification of gifted [EXCEPTIONAL] children.** Each
20 school district shall establish and implement written procedures to ensure that all
21 gifted [EXCEPTIONAL] children under the age of 22 who reside in the district are
22 identified and located for the purpose of establishing their need for gifted [SPECIAL]
23 education and related services.

24 * Sec. 11. AS 14.30.278 is amended to read:

25 **Sec. 14.30.278. Individualized education program for gifted children.** (a)

- 1 The individualized education program for each gifted [EXCEPTIONAL] child must
2 include
- 3 (1) a statement of the child's present levels of educational performance;
 - 4 (2) a statement of annual goals, including short-term [SHORT TERM]
5 instructional objectives;
 - 6 (3) a statement of the specific gifted [SPECIAL] education and related
7 services to be provided to the child, and the extent to which the child will be able to
8 participate in regular educational programs;
 - 9 (4) the projected dates for initiation of services and the anticipated
10 duration of the services;
 - 11 (5) appropriate objective criteria and evaluation procedures and
12 schedules for determining, on at least an annual basis, whether the short-term
13 [SHORT TERM] instructional objectives are being achieved.
- 14 (b) Each meeting concerning a gifted [AN EXCEPTIONAL] child must
15 include
- 16 (1) a representative of the school district, other than the child's teacher,
17 who is qualified to provide or supervise the provision of gifted [SPECIAL] education;
 - 18 (2) the child's teacher;
 - 19 (3) at least one of the child's parents;
 - 20 (4) the child, when appropriate;
 - 21 (5) other individuals selected by the parent or school district.
- 22 (c) Each school district shall develop an individualized education program for
23 every gifted [EXCEPTIONAL] child who receives services or whose parent requests
24 services under this section [AS 14.30.180 - 14.30.350]."

25 Renumber the following bill sections accordingly.

26 Page 3, line 20, following "department.":

27 Insert "The regulations adopted by the department must require separate accounting
28 by the department and each school district of money spent for programs under this section,
29 including procedures to ensure that federal money provided under 20 U.S.C. 1400 - 1487 is
30 not used under this section."

1 Page 4, following line 1:

2 Insert new bill sections to read:

3 *** Sec. 15.** AS 14.30.350(3) is amended to read:

4 (3) "consent" means, as applied to parents of gifted children, the
5 parent has been fully informed of all information relevant to the activity or the release
6 of records for which consent is sought and the parent understands and voluntarily
7 agrees to the activity or release of records;

8 *** Sec. 16.** AS 14.30.350(4) is amended to read:

9 (4) "educational records" means, as the term is applied in gifted
10 education, those files, documents, records, and other material that contain information
11 directly related to a student and are maintained by a school district or a person acting
12 for a school district; the term "educational records" does not include the personnel
13 records of the school district, maintained in the normal course of business, that relate
14 exclusively to a person's capacity as an employee, or other records as designated by
15 the department in regulation;

16 *** Sec. 17.** AS 14.30.350(7) is amended to read:

17 (7) "individualized education program team" means, as applied in
18 gifted education, a group of people that translates child assessment information
19 regarding a child into a practical plan for specially designed instruction and delivery
20 of services for the child, and includes the following:

21 (A) [A REPRESENTATIVE OF THE SCHOOL DISTRICT,
22 OTHER THAN THE CHILD'S TEACHER, WHO IS QUALIFIED TO
23 PROVIDE OR SUPERVISE THE PROVISION OF SPECIAL EDUCATION;

24 (B)] the child's teacher;

25 ~~(B)~~ [(C)] the child's parent;

26 ~~(C)~~ [(D)] the child, if appropriate;

27 ~~(D)~~ [(E)] other individuals, at the discretion of the child's
28 parent or the school district;

29 *** Sec. 18.** AS 14.30.350(8) is amended to read:

30 (8) "parent," as applied to the parents of gifted children, includes
31 a guardian and [,] a person acting as a parent of a child; [, AND A SURROGATE
32 PARENT APPOINTED UNDER AS 14.30.325.]

1 * **Sec. 19.** AS 14.30.350(9) is amended to read:

2 (9) "related services" means, as the term applies to gifted children,
3 [TRANSPORTATION AND DEVELOPMENTAL, CORRECTIVE, AND OTHER]
4 supportive services required to assist [CHILDREN WITH DISABILITIES OR] gifted
5 children to benefit from gifted [SPECIAL] education and includes [BUT IS NOT
6 LIMITED TO SPEECH PATHOLOGY AND AUDIOLOGY,] psychological services,
7 [PHYSICAL AND OCCUPATIONAL THERAPY, RECREATION,] counseling
8 services [INCLUDING REHABILITATION COUNSELING], and medical services
9 for diagnostic or evaluation purposes; the term also includes [SCHOOL HEALTH
10 SERVICES,] school social work services [,] and parent counseling and training;

11 * **Sec. 20.** AS 14.30.350 is amended by adding a new paragraph to read:

12 (12) "gifted education" means specially designed or accelerated
13 instruction, at no cost to the parent, that meets the unique needs of gifted children."

14 Renumber the following bill sections accordingly.

15 Page 4, line 2:

16 Delete "14.30.272, 14.30.274,"

17 Page 4, line 3:

18 Delete "14.30.278,"

19 Page 4, lines 3 - 4:

20 Delete "14.30.350(3), 14.30.350(4), 14.30.350(7), 14.30.350(8), 14.30.350(9),"

21 Page 4, following line 4:

22 Insert a new bill section to read:

23 *** Sec. 22.** The uncodified law of the State of Alaska is amended by adding a new section
24 to read:

25 **TRANSITION.** The Department of Education and Early Childhood Development shall
26 adopt regulations required under AS 14.30.315, as repealed and reenacted by sec. 12 of this
27 Act, by January 1, 2001."

1 Renumber the following bill section accordingly.