

SB

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22-GS1010\F
Ford
4/27/01

CS FOR SENATE BILL NO. 40(HES)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE SENATE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered:
Referred:

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

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the education of children with disabilities and to the Governor's**
2 **Council on Disabilities and Special Education; and providing for an effective date."**

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

4 *** Section 1.** AS 14.16.050(a) is amended to read:

5 (a) The following provisions apply with respect to the operation and
6 management of a state boarding school as if it were a school district:

7 (1) requirements relating to school district operations:

8 (A) AS 14.03.030 - 14.03.050 (defining the school term, day in
9 session, and school holidays);

10 (B) AS 14.03.083 - 14.03.140 (miscellaneous provisions
11 applicable to school district operations);

12 (C) regulations adopted by the board under authority of
13 AS 14.07.020(a) that are applicable to school districts and their schools, unless
14 the board specifically exempts state boarding schools from compliance with a

- 1 regulation;
- 2 (D) AS 14.12.150 (authorizing school districts to establish and
- 3 participate in the services of a regional resource center);
- 4 (E) AS 14.14.050 (imposing the requirement of an annual
- 5 audit);
- 6 (F) AS 14.14.110 (authorizing cooperation with other school
- 7 districts);
- 8 (G) AS 14.14.140(b) (establishing a prohibition on
- 9 employment of a relative of the chief school administrator);
- 10 (H) AS 14.18 (prohibiting discrimination based on sex in
- 11 public education);
- 12 (2) requirements relating to the public school funding program and the
- 13 receipt and expenditure of that funding:
- 14 (A) AS 14.17.500 (relating to student count estimates);
- 15 (B) AS 14.17.505 (relating to school operating fund balances);
- 16 (C) AS 14.17.500 - 14.17.910 (setting out the procedure for
- 17 payment of public school funding and imposing general requirements and
- 18 limits on money paid);
- 19 (3) requirements relating to teacher employment and retirement:
- 20 (A) AS 14.14.105 and 14.14.107 (relating to sick leave);
- 21 (B) AS 14.20.095 - 14.20.215 (relating to the employment and
- 22 tenure of teachers);
- 23 (C) AS 14.20.220 (relating to the salaries of teachers
- 24 employed);
- 25 (D) AS 14.20.280 - 14.20.350 (relating to sabbatical leave
- 26 provisions for teachers);
- 27 (E) AS 23.40.070 - 23.40.260 (authorizing collective
- 28 bargaining by certificated employees), except with regard to teachers who are
- 29 administrators and except that the board may delegate some or all of its
- 30 responsibilities under those statutes;
- 31 (F) AS 14.25 (provisions regarding the teachers' retirement

1 system);

2 (4) requirements relating to students and educational programs:

3 (A) AS 14.30.180 - 14.30.350 (relating to educational services
4 for [EXCEPTIONAL] children with disabilities):

5 (B) AS 14.30.360 - 14.30.370 (establishing health education
6 program standards);

7 (C) AS 14.30.400 - 14.30.410 (relating to bilingual and
8 bicultural education).

9 * Sec. 2. AS 14.30.180 is amended to read:

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

11 (1) provide an appropriate public education for each child with a
12 disability [EXCEPTIONAL CHILDREN] in the state who is [ARE] at least three
13 years of age but less than 22 years of age;

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

17 * Sec. 3. AS 14.30.186(a) is repealed and reenacted to read:

18 (a) Special education and related services shall be provided by

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

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

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

26 (4) a state boarding school established under AS 14.16 for a child with a
27 disability enrolled at a state boarding school; or

28 (5) a school district that provides a statewide correspondence study
29 program for a child with a disability who is enrolled in the program.

30 * Sec. 4. AS 14.30.186(e) is amended to read:

31 (e) If the parent of a child with a disability [EXCEPTIONAL CHILDREN

1 BEING EDUCATED AS PROVIDED UNDER AS 14.30.010(b) MAY RECEIVE
2 SPECIAL EDUCATION AND RELATED SERVICES AS PROVIDED UNDER
3 AS 14.30.180 - 14.30.350. THE EXCEPTIONAL CHILD OF A PARENT WHO]
4 elects to educate the child as allowed under AS 14.30.010(b), the child may not be
5 compelled to receive the special education and related services provided under
6 AS 14.30.180 - 14.30.350.

7 * Sec. 5. AS 14.30.186 is amended by adding a new subsection to read:

8 (f) The department shall, by regulation, establish standards for the allocation of
9 financial responsibilities and the coordination of the provision of special education and
10 related services among the educational agencies listed in (a) of this section when more
11 than one educational agency is responsible for providing those services.

12 * Sec. 6. AS 14.30.191(a) is amended to read:

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

16 * Sec. 7. AS 14.30.191(b) is amended to read:

17 (b) After initial placement in a program of special education and related
18 services and not less than once every three years for as long as the child is assigned to
19 the program, a [AN EXCEPTIONAL] child with a disability shall receive an
20 educational evaluation [FOR THE IDENTIFICATION AND CLASSIFICATION OF
21 EXCEPTIONAL CHILDREN].

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

23 (c) Before a school district initiates or refuses a change in the [A CHILD'S]
24 placement or educational program of a child with a disability, the district shall
25 notify the child's parent.

26 * Sec. 9. AS 14.30.191(d) is amended to read:

27 (d) Upon completion of an [THE] evaluation or reevaluation under this
28 section [AND BEFORE PLACEMENT], the school district shall provide to the parent
29 of each [EXCEPTIONAL] child evaluated under this section an opportunity to
30 participate in the determination of the

31 (1) child's eligibility for special education and related services;

1 [FOR CONSULTATION ABOUT THE EVALUATION. A CONSULTATION
2 MUST BE AVAILABLE AFTER EACH REEVALUATION OF THE CONDITION]
3 and

4 (2) educational placement of the [EXCEPTIONAL] child if the child
5 is determined to be eligible for special education and related services.

6 * **Sec. 10.** AS 14.30.191 is amended by adding new subsections to read:

7 (h) A school district shall provide written notice of its decision under this
8 section to the parent of the child. The notice must include a description of the
9 procedural safeguards available to the parent and child under federal law.

10 (i) In this section, "hearing" means a due process hearing under AS 14.30.193.

11 * **Sec. 11.** AS 14.30.193 is repealed and reenacted to read:

12 **Sec. 14.30.193. Due process hearing.** (a) A school district or a parent of a
13 child with a disability may request a due process hearing on any issue related to
14 identification, evaluation, or educational placement of the child, or the provision of a
15 free, appropriate, public education to the child. A request is made by providing written
16 notice to the other party to the hearing. A parent shall make a request for a due process
17 hearing under this section not later than 12 months after the date that the school district
18 provides the parent with written notice of the decision with which the parent disagrees.
19 A school district shall make its request for a due process hearing in accordance with the
20 time limit established by the department by regulation.

21 (b) If a due process hearing is requested by either a school district or a parent, the
22 school district shall contact the department to request appointment of a hearing officer.
23 The department shall select a hearing officer through a random selection process, from a
24 list maintained by the department under (g) of this section. Within five working days
25 after receipt of the request, the department shall provide to the school district and the
26 parent a notice of appointment, including the name and a statement of qualifications, of
27 the hearing officer that the department determines is available to conduct the hearing.

28 (c) The school district and the parent each have the right to reject, without stating
29 a reason, one hearing officer appointed under this section. The rejecting party shall
30 notify the department of that rejection in writing within five days after receipt of the
31 department's notice of appointment. If a hearing officer is rejected under this subsection,

1 the department shall, within five working days after receipt of the written rejection,
2 provide a notice of appointment, including the name and a statement of qualifications, of
3 another hearing officer that the department determines is available to conduct the
4 hearing. Each appointment is subject to a right of rejection under this subsection by a
5 party who has not previously rejected an appointment.

6 (d) After a hearing officer is appointed and the time for rejection under (c) of
7 this section has expired, the hearing officer shall immediately inform the parent and
8 the school district of the availability of the mediation process provided under
9 AS 14.30.194 and encourage use of that process to attempt to resolve the disagreement
10 between the parent and the school district. If the mediation process does not result in
11 settlement of all of the issues, the hearing officer shall conduct a hearing in
12 conformance with the requirements of federal law, including 34 C.F.R. 300.507 - 509.
13 After the hearing is completed, the hearing officer shall issue a written decision that

14 (1) upholds the school district's decision; or

15 (2) overturns the school district's decision with specific instructions for
16 modification of the identification, evaluation, educational placement, or provision of the
17 education program by the district.

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

24 (f) A hearing officer's decision under this section is a final administrative
25 order, subject to appeal to the superior court for review in the manner provided under
26 AS 44.62.560.

27 (g) The department shall maintain a list of qualified hearing officers and shall
28 provide for qualification of hearing officers through a training program that is open to
29 all individuals who meet the criteria set by the department by regulation. The list of
30 qualified hearing officers shall be maintained as a public record.

31 (h) For purposes of this section, a student with a disability aged 18 - 21 has the

1 same rights and obligations under this section as a parent of a child with a disability.

2 * Sec. 12. AS 14.30 is amended by adding a new section to read:

3 Sec. 14.30.194. Mediation. (a) The department shall, by regulation,
4 establish and implement a voluntary mediation process in conformance with the
5 requirements of federal law, including 34 C.F.R. 300.506. The department shall
6 encourage the use of mediation for settlement of disputes under AS 14.30.180 -
7 14.30.350.

8 (b) The department shall

9 (1) maintain a list of individuals who are qualified mediators
10 knowledgeable in the federal and state statutes and regulations relating to the
11 provision of special education and related services; and

12 (2) provide for qualification of mediators through a training program
13 that is open to all individuals who meet the criteria set by the department by
14 regulation.

15 * Sec. 13. AS 14.30.231 is amended to read:

16 Sec. 14.30.231. Advisory panel [COMMITTEE]. The Governor's Council
17 on Disabilities and Special Education established under AS 47.80 shall serve as the
18 state [AN] advisory panel [COMMITTEE], the function of which is to provide
19 information and guidance for the development of appropriate programs of special
20 education and related services for [EXCEPTIONAL] children with disabilities.

21 * Sec. 14. AS 14.30.250 is amended to read:

22 Sec. 14.30.250. Teacher qualifications. A person may not be employed as a
23 teacher of [EXCEPTIONAL] children with disabilities unless that person possesses a
24 valid teacher certificate and, in addition, the [SUCH] training that [AS] the
25 department requires [MAY REQUIRE] by regulation.

26 * Sec. 15. AS 14.30.270 is amended to read:

27 Sec. 14.30.270. Substitutes. AS 14.30.250 does not prohibit the employment
28 of a person, otherwise qualified to serve as a substitute teacher, to serve as a substitute
29 teacher of [EXCEPTIONAL] children with disabilities.

30 * Sec. 16. AS 14.30.272 is amended to read:

31 Sec. 14.30.272. Procedural safeguards. (a) A school district shall inform

1 the parent of a [AN EXCEPTIONAL] child with a disability of the right

2 (1) to review the child's educational record;

3 (2) [,] to review evaluation tests and procedures;

4 (3) [,] to refuse to permit evaluation or a change in the child's
5 educational placement;

6 (4) [,] to be informed of the results of evaluation;

7 (5) [,] to obtain an independent evaluation by choosing a person from a
8 list provided by the school district or by choosing a person by agreement between the
9 parent and school district;

10 (6) [,] to request a due process [AN IMPARTIAL] hearing;

11 (7) [,] to appeal a hearing officer's decision; and

12 (8) [, AND] to give consent or deny access to others to the child's
13 educational record.

14 (b) The department shall establish, by regulation, impartial procedures for a
15 school district to follow for due process hearings [UNDER AS 14.30.193] to comply
16 with requirements necessary to participate in federal grant-in-aid programs, including
17 20 U.S.C. 1400 - 1487 [20 U.S.C. 1400 - 1485] (Individuals with Disabilities
18 Education Act).

19 * Sec. 17. AS 14.30.274 is amended to read:

20 Sec. 14.30.274. **Identification of [EXCEPTIONAL] children with**
21 **disabilities**. Each school district shall establish and implement written procedures to
22 ensure that all [EXCEPTIONAL] children with disabilities under the age of 22 for
23 **whom the agency is responsible under AS 14.30.186 to provide special education**
24 **and related services** [WHO RESIDE IN THE DISTRICT] are identified and located
25 for the purpose of establishing their need for special education and related services.

26 * Sec. 18. AS 14.30.276 is amended to read:

27 Sec. 14.30.276. **Least restrictive environment.** Each school district shall
28 ensure that, to the maximum extent appropriate, [EXCEPTIONAL] children with
29 **disabilities**, including children in public or private institutions or other care facilities,
30 are educated with children who are not children with disabilities [EXCEPTIONAL]
31 and that special classes, separate schooling, or other removal of [EXCEPTIONAL]

1 children with disabilities from the regular educational environment occurs only when
2 the nature or severity of the child's disability [EXCEPTIONALITY] is such that
3 education in regular classes with the use of supplementary aids and services cannot be
4 achieved satisfactorily.

5 * Sec. 19. AS 14.30.278 is repealed and reenacted to read:

6 **Sec. 14.30.278. Individualized education program.** A school district shall
7 develop an individualized education program for special education and related
8 services for each eligible child with a disability. The plan must be completed not later
9 than 30 days after the determination of the child's eligibility. Each individualized
10 education program shall be developed and periodically reviewed and revised as
11 necessary in conformance with federal requirements, including 34 C.F.R. 300.340 -
12 350.

13 * Sec. 20. AS 14.30.285(a) is amended to read:

14 (a) The department shall institute a statewide program for the education of
15 [EXCEPTIONAL] children with disabilities [,] to ensure that whenever possible
16 children are educated in the state at locations in or near their resident school district.

17 * Sec. 21. AS 14.30.285(b) is amended to read:

18 (b) An identified [EXCEPTIONAL] child with a disability may be sent to an
19 educational program or residential school outside the child's community or school
20 district if the child resides in a community or school district where an appropriate
21 educational program cannot reasonably be made available and if the school district
22 [DEPARTMENT] determines that provision of special education and related services
23 in another educational program or residential school is appropriate. If the school
24 district approves [AND THE DEPARTMENT APPROVE] the enrollment of a [THE
25 EXCEPTIONAL] child with a disability in another educational program or
26 residential school outside the child's community or school district and the child is
27 enrolled, the child's education expenses shall be paid as follows:

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

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

1 adopted by the department.

2 * **Sec. 22.** AS 14.30.285(e) is amended to read:

3 (e) The educational assessment of a [AN EXCEPTIONAL] child with a
4 disability that indicates that the educational program that is locally available is
5 inappropriate for the needs of the child must conform to the standards set out in
6 AS 14.30.191.

7 * **Sec. 23.** AS 14.30.285(f) is amended to read:

8 (f) A school district shall obtain informed [THE] consent of the child's parent
9 before a child may be transferred to a school outside the district in which the child
10 resides.

11 * **Sec. 24.** AS 14.30.285(g) is amended to read:

12 (g) The withholding of informed consent by a parent [OR
13 DEPARTMENTAL APPROVAL] for the transfer of a [AN EXCEPTIONAL] child
14 with a disability under this section does not relieve a school district of the obligation
15 to provide special education and related services to the [AN EXCEPTIONAL] child
16 [UNDER AS 14.30.186].

17 * **Sec. 25.** AS 14.30.325(a) is amended to read:

18 (a) The department shall [MAY] by regulation provide for the appointment of
19 surrogate parents to represent a child with a disability [EXCEPTIONAL
20 CHILDREN] in matters relating to the provision of an appropriate public education.

21 * **Sec. 26.** AS 14.30.335 is amended to read:

22 **Sec. 14.30.335. Eligibility for federal funds.** Notwithstanding any other
23 provision of AS 14.30.180 - 14.30.350, the department may do all things necessary to
24 qualify for federal funds that are available to the state for the education of
25 [EXCEPTIONAL] children with disabilities.

26 * **Sec. 27.** AS 14.30.340 is amended to read:

27 **Sec. 14.30.340. Provision of special education in a private school, home, or**
28 **hospital setting.** (a) If a parent of a [AN EXCEPTIONAL] child with a disability
29 enrolls the child in a private school, including a religious school, at the parent's
30 expense or teaches the child at home, the school district in which the child resides [IS
31 LOCATED] shall make special education and related services available in

1 conformance with federal requirements, including 34 C.F.R. 300.450 - 462. A
2 parent teaching the parent's child at home may refuse special education and
3 related services for the child [AN INDIVIDUALIZED EDUCATION PROGRAM
4 UNDER AS 14.30.278].

5 (b) If a physician certifies in writing, and if the child's individualized
6 education program under AS 14.30.278 provides [TEAM THEN DETERMINES]
7 that a child's bodily, mental, or emotional condition does not permit attendance at a
8 school and the child's parents do not elect to teach the child at home as permitted
9 under AS 14.30.010(b), the school district in which the child is located shall enroll the
10 child in public school and provide the child with special education and related services
11 in conformance with the child's [AN] individualized education program [UNDER
12 AS 14.30.278] at the child's home or at a medical treatment facility.

13 * Sec. 28. AS 14.30.347 is amended to read:

14 Sec. 14.30.347. Transportation of [EXCEPTIONAL] children with
15 disabilities. When transportation is required to be provided as a related service, a
16 child with a disability [SERVICES, AN EXCEPTIONAL CHILD] shall be
17 transported [CARRIED] with children who are not children with disabilities
18 [OTHER CHILDREN] if the district provides transportation to [OTHER] children in
19 the district, except when the nature of the physical or mental disability is such that it is
20 in the best interest of the [EXCEPTIONAL] child with a disability, as provided in
21 the child's individualized education program [DETERMINED BY THE SCHOOL
22 DISTRICT], that the child be transported separately. State reimbursement for
23 transportation of [EXCEPTIONAL] children with disabilities shall be as provided for
24 transportation of all other pupils except that eligibility for reimbursement is not
25 subject to restriction based on the minimum distance between the school and the
26 residence of the exceptional child with a disability.

27 * Sec. 29. AS 14.30.350(2) is repealed and reenacted to read:

28 (2) "child with a disability" means a child with one or more of the
29 following:

30 (A) mental retardation;

31 (B) learning disabilities;

- 1 (C) emotional disturbance;
2 (D) deafness;
3 (E) deaf-blindness;
4 (F) hearing impairment;
5 (G) orthopedic impairment;
6 (H) other health impairment;
7 (I) speech or language impairment;
8 (J) visual impairment;
9 (K) multiple disabilities;
10 (L) early childhood development delay;
11 (M) autism;
12 (N) traumatic brain injury;

13 * Sec. 30. AS 14.30.350(8) is repealed and reenacted to read:

- 14 (8) "parent" means a
15 (A) child's natural or adoptive parent;
16 (B) child's guardian, but not the state if the child is in the legal
17 custody of the state;
18 (C) person who is acting in the place of a child's natural or
19 adoptive parent, such as a grandparent or stepparent with whom the child lives,
20 or a person who is legally responsible for the child's welfare; and
21 (D) child's surrogate parent who has been appointed under
22 AS 14.30.325;

23 * Sec. 31. AS 14.30.350(9) is repealed and reenacted to read:

- 24 (9) "related services" means services described in 34 C.F.R. 300.24;

25 * Sec. 32. AS 14.30.350(10) is repealed and reenacted to read:

- 26 (10) "school district" means a borough school district, a city school
27 district, a regional educational attendance area, a state boarding school, and the state
28 centralized correspondence study program;

29 * Sec. 33. AS 14.30.350(11) is repealed and reenacted to read:

- 30 (11) "special education" means an educational program described in 34
31 C.F.R. 300.26;

1 * Sec. 34. AS 14.30.350 is amended by adding new paragraphs to read:

2 (12) "due process hearing" means a hearing conducted under
3 AS 14.30.193;

4 (13) "informed consent" means that

5 (A) a child's parent has been fully informed, in the parent's
6 native language or other mode of communication, of all information relevant to
7 the activity for which consent is sought;

8 (B) the parent understands and agrees in writing to the carrying
9 out of the activity for which the parent's consent is sought;

10 (C) the consent describes that activity and lists any records that
11 will be released and to whom; and

12 (D) the parent understands that the granting of consent is
13 voluntary on the part of the parent and may be revoked at any time.

14 * Sec. 35. AS 14.30.640 is amended to read:

15 **Sec. 14.30.640. Eligibility for service.** The services of the agency shall be
16 available to school districts that serve children whose special education needs occur
17 infrequently, who require specialized services not normally available in the school
18 district, and who cannot be easily served by local school district personnel because of
19 the low number of students in the district in need of the particular service. The agency
20 may provide services to a child with a disability [EXCEPTIONAL CHILDREN], as
21 that term is defined in AS 14.30.350.

22 * Sec. 36. AS 29.60.599(7) is amended to read:

23 (7) "school district" means a borough school district, a city school
24 district, or a regional educational attendance area under AS 14 [HAS THE
25 MEANING GIVEN IN AS 14.30.350];

26 * Sec. 37. AS 44.21.410(a) is amended to read:

27 (a) The office of public advocacy shall

28 (1) perform the duties of the public guardian under AS 13.26.360 -
29 13.26.410;

30 (2) provide visitors and experts in guardianship proceedings under
31 AS 13.26.131;

1 (3) provide guardian ad litem services to children in child protection
2 actions under AS 47.17.030(e) and to wards and respondents in guardianship
3 proceedings who will suffer financial hardship or become dependent upon a
4 government agency or a private person or agency if the services are not provided at
5 state expense under AS 13.26.112;

6 (4) provide legal representation in cases involving judicial bypass
7 procedures for minors seeking abortions under AS 18.16.030, in guardianship
8 proceedings to respondents who are financially unable to employ attorneys under
9 AS 13.26.106(b), to indigent parties in cases involving child custody in which the
10 opposing party is represented by counsel provided by a public agency, to indigent
11 parents or guardians of a minor respondent in a commitment proceeding concerning
12 the minor under AS 47.30.775;

13 (5) provide legal representation and guardian ad litem services under
14 AS 25.24.310; in cases arising under AS 47.15 (Uniform Interstate Compact on
15 Juveniles); in cases involving petitions to adopt a minor under AS 25.23.125(b) or
16 petitions for the termination of parental rights on grounds set out in
17 AS 25.23.180(c)(3); in cases involving petitions to remove the disabilities of a minor
18 under AS 09.55.590; in children's proceedings under AS 47.10.050(a) or under
19 AS 47.12.090; in cases involving appointments under AS 18.66.100(a) in petitions for
20 protective orders on behalf of a minor; and in cases involving indigent persons who
21 are entitled to representation under AS 18.85.100 and who cannot be represented by
22 the public defender agency because of a conflict of interests;

23 (6) develop and coordinate a program to recruit, select, train, assign,
24 and supervise volunteer guardians ad litem from local communities to aid in delivering
25 services in cases in which the office of public advocacy is appointed as guardian ad
26 litem;

27 (7) provide guardian ad litem services in proceedings under
28 AS 12.45.046;

29 (8) establish a fee schedule and collect fees for services provided by
30 the office, except as provided in AS 18.85.120 or when imposition or collection of a
31 fee is not in the public interest as defined under regulations adopted by the

1 commissioner of administration;

2 (9) provide visitors and guardians ad litem in proceedings under
3 AS 47.30.839;

4 (10) provide legal representation to an indigent parent of a child with
5 a disability: in this paragraph. "child with a disability" has the meaning given in
6 AS 14.30.350 [PARENTS UNDER AS 14.30.195(e)].

7 * Sec. 38. AS 47.80.090(9) is amended to read:

8 (9) provide information and guidance for the development of
9 appropriate special educational programs and services for a child with a disability
10 [EXCEPTIONAL CHILDREN] as defined in AS 14.30.350;

11 * Sec. 39. AS 47.80.900(6) is amended to read:

12 (6) "person with a handicap" means a person with a developmental
13 disability as defined in (7) of this section or a person who is hard of hearing, deaf,
14 speech impaired, visually handicapped, seriously emotionally disturbed,
15 orthopedically or otherwise health impaired, or who has a specific learning disability;
16 the term includes a child with a disability [BUT IS NOT LIMITED TO
17 "EXCEPTIONAL CHILDREN"] as defined in AS 14.30.350;

18 * Sec. 40. AS 14.30.186(b), 14.30.195, 14.30.315(b), 14.30.350(3), 14.30.350(5),
19 14.30.350(6), and 14.30.350(7) are repealed.

20 * Sec. 41. The uncodified law of the State of Alaska is amended by adding a new section to
21 read:

22 TRANSITION: REGULATIONS. (a) The state Board of Education and Early
23 Development may immediately proceed to adopt regulations necessary to implement the
24 changes made by this Act. The regulations take effect under AS 44.62 (Administrative
25 Procedure Act), but not before the effective date of the statutory change.

26 (b) To the extent they are not inconsistent with the statutory changes made by this
27 Act, regulations adopted by the state Board of Education and Early Development and in effect
28 on July 1, 2001, continue in effect until amended or repealed by the board, and may be
29 enforced and implemented.

30 * Sec. 42. The uncodified law of the State of Alaska is amended by adding a new section to
31 read:

1 REVISOR'S INSTRUCTIONS. The revisor of statutes is requested to change the
2 following:

3 (1) the heading of Article 3 of AS 14.30 from "Education For Exceptional
4 Children" to "Education for Children With Disabilities";

5 (2) the catchline of AS 14.30.285 from "Transfers of exceptional children" to
6 "Transfers of children with disabilities."

7 * **Sec. 43.** Section 41(a) of this Act takes effect immediately under AS 01.10.070(c).

8 * **Sec. 44.** Except as provided in sec. 43 of this Act, this Act takes effect July 1, 2001.

**SENATE COMMITTEE REPORT
First Committee of Referral**

DATE: 1/17/01

FURTHER: Finance

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 04/28/01

Health, Education and Social Services Committee considered **SENATE BILL NO. 40**

"An Act relating to the education of children with disabilities and of gifted children; relating to the Governor's Council on Disabilities and Special Education; making conforming amendments; and providing for an effective date."

and recommends:

- be replaced with _____ CS SB 40 (HES)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:

same title

new title

House Bill:

same title

technical title

new: SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
DEED	4/28/01		x	1

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>			✓	
<i>[Signature]</i>			✓	
<i>[Signature]</i>			✓	
<i>[Signature]</i>				✓
CHAIR: <i>[Signature]</i>	✓			

1215 Fifth Street
Douglas, AK 99824
February 7, 2001

Senator Lyda Green
Alaska State Senate

Dear Senator Green,

I am writing in regard to SB 40. I am the parent of a gifted child who is a student in the Juneau School District. First, I want to support the Department of Education's effort to gain some additional funds for a departmental staff with responsibility for gifted education. For too long DOE has refused to provide any support to parents or districts on issues of gifted education, despite statutory responsibility. Their rationale has been lack of funds. I hope that you will recommend funding for a gifted education position. This position is needed because so many districts fail to provide parents with any information about gifted children and too many districts do not live up to their responsibilities to identify gifted children and to provide them with an appropriate public education. Even districts, such as Juneau, which make an effort to identify gifted students do a less than adequate job of providing for their educational needs.

Gifted students need academic challenge and support. Without the challenge, they may become bored and frustrated and act out in classes. An informal survey of local high school teachers in Juneau showed me that a significant number of our most gifted children become school drop-outs or school failures, because they have become so turned off to school. Parents of gifted children often use the summer as a time to provide academic challenge to students who can't be bothered with school during the academic year.

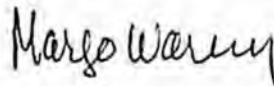
Educational research into the needs of gifted children shows that academic challenge is provided through acceleration and enrichment in settings which maximize the numbers of ability peers learning together.

For this reason, I urge you to substitute the following language for the section of SB 40 which specifies the least restrictive environment for the education of gifted students:

For purposes of gifted education, the least restrictive setting is provision of academically appropriate materials to classes or groups of gifted students with similar educational needs or "pull-outs" where the needs of groups of similarly gifted students are addressed. If instruction is in inclusive classrooms, then the curriculum must be differentiated for gifted students by teachers trained to provide a differentiated curriculum.

Gifted students are frequently "underachievers" in Alaska because their educational needs are not addressed. I appreciate any support you can give to change this situation and assure their educational needs are addressed.

Sincerely,



Margo Waring

Post-It* Fax Note	7671	Date	# of pages 4
To: MESS		From: Valdez PIO	
Co./Dept.		Co.	
Phone #		Phone #	
Fax #		Fax #	

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LOUISE PARISH

Questions for AkDEED:

Why has the dept. completely ignored my numerous requests to change the word language to speech-language in eligibility regulations, even though IDEA uses the term speech-language? Are you trying to ignore the needs of language impaired kids like my daughter? I have commented on this forever. Does AkDEED read the comments submitted by parents re:their regulations? If so, why haven't they changed that? If their regs are improper, how can I assume their statutes are better? In fact, this bill allows for a child with a disability to be identified with a (Section 29 AS 14.30.350 (2) (I)) "Speech impairment" but not a "Speech-Language Impairment." I have shouted this neglect to the rooftops and in many formal comments to AkDEED regarding their regs. They don't listen. Therefore, why should I trust this bill? IDEA says SPEECH OR LANGUAGE IMPAIRMENT (for the millionth time!!!!) My daughter, despite being referred in for language evaluation in third grade, was not identified as having a language disorder until she was in 7th grade. That was because I took her to a private SLP. THIS LANGUAGE MUST BE FIXED!!!!It seems that everything is stacked against families. We have no voice.

Testimony for 2/7/01

I asked Dr. Johnson why the dept. never invited regular parents to participate in any legislative review of this bill as it was constructed. We were left out of the picture. Dr. Johnson told me it was because the dept. didn't "have to." He said I could REAC. after the bill was constructed to the legislature. Why does AkDEED exclude parents?

My reaction is that I have no certainty whatsoever that this bill is adequate or appropriate for our kids. I asked Dr. Johnson and the state board to conferr with private counsel in the construction so that parents could feel that their interests were represented.

Has the Dept. ever conferred as it promised it would do with PRIVATE counsel practicing in this area of LAW BEFORE submitting this bill, and if so, please identify such private counsel?

Why is it that AKDEED never asked its hearing officers for input comment etc on current or proposed state regs or statutes?

Why has the department refused to consider the proposal to set up a hearing panel as adopted by Missouri?

2/6

Why does the bill fail to state Alaskan policy on exceptional children?

I have heard that counsel representing your department stated a year ago that forcing an endorsed teacher to take a special ed. position was unconstitutional though in fact such placement is provided for in statute, how accurate do you believe such counsel is now with respect to this bill?

Didn't the PTPC accept a complaint against Dr. Johnson for violation of numerous portions of state law but then dismissed that complaint based on the PTPC staff's belief that it was because Dr. Johnson was just doing what he was told..... Could Dr. Johnson address whether he disagrees with the PTPC and if not, could he explain from where he received the erroneous information that caused him to violate so many portions of our statutes and regulation?

Why did the department propose regulations that would disqualify a hearing officer who has ever represented a parent in any action against any school district but not put that in the statute?

Why should we believe that the dept. is in favor of maintaining an appropriate cadre of qualified hearing officers when the dept has never complied with the 1993 amendments regarding hearing officers?

I don't like that this bill allows the dept. to establish by regulation "impartial procedures for a school district to follow for due process hearings to comply with 20 USC 1400-1487." After going through due process steps I have reservations about what regs AKDEED may or may not write.

Why does the statute still fail to provide for a hearing officers subpoena power? Parents should not have to have a two-tier system that wastes their time and money with no subpoena power, etc.

Isn't the selection process identified impracticable as it requires both district and parent to simultaneously challenge an appointment which raises the question of

3/6

whether such simultaneous challenge results in loss of both sides pre-empts... and what about a further appointment which is not mentioned, etc. ?

WHY considering the adamant opposition from parents as well as the fact that every argument in support has been debunked is **AKDEED** still trying to adopt one set of laws for one set of exceptional children and another set for another set of exceptional children?

Investigation has demonstrated that the department has been unable to comply with state law with respect to the existing lenient statutes and regulations..... isn't it time to make those requirements a bit stricter and place oversight provisions to put an end to the department's gross misconduct with respect to supervising the issuance of credentials?

In 1994 a proposal was put forth that would have required all teachers to be endorsed in special ed to obtain certification by the Millenium. AkDEED scoffed at the proposal then and has proposed nothing remotely similar since (still allowing unqualified staff to be placed for entire years in situations where IEPs require endorsed staff), could you explain why you feel that such training is unwarranted?

Where is the Comprehensive System of Personnel Development statute? There are other items that appear to be unaddressed, but I am not a lawyer. I want a private lawyer to review this. To read more of my concerns, visit

<http://www.akexceptional.org/cgi-bin/HyperNews/get/akexceptionalities.html>

I don't like that AkDEED appears to have no oversight in this important legislation.

ADDITIONAL COMMENTS FOR SB40 FROM PARISH

4/6

IDEA 97 says the act has been....

....."impeded by low expectations, and an insufficient focus on applying replicable research on proven methods of teaching and learning for children with disabilities...." And "Over 20 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by having high expectations for such children and ensuring their access to the general curriculum to the maximum extent possible...." *(This does not necessarily mean "mainstreaming" but having the opp to learn the same content...Louise)* "supporting high-quality, intensive professional development for all personnel who work with such children in order to ensure that they have the skills and knowledge necessary to enable them to meet developmental goals and to the maximum extent possible, those same challenging expectations that have been established for all children.....

I have quickly reviewed some of IDEA 20 USC 1400.....and 34CFR Part 300 regulations. I have concerns with our proposed statutes. Without writing a huge paper, I'd like to ask that these items be put into statute. It is very hard to fit everything in as a parent with a real life. I have attached refs as I was able. I am again on deadline:

- 1.) State Performance Goals and Indicators – DEED should **publicly disaggregate** the information about reg kids and sped kids performances. This requirement should be in statute. See 20USC1412 (16)
- 2.) LRE ... allow for kids to be pulled out as needed ...add words "if cannot be achieved satisfactorily." See 20USC1412 (5) (A)
- 3.) Participation in Assessments – DEED should allow for **appropriate participation** in statewide assessments. See 20USC 1412 (17)
- 4.) **Addn'l procedural safeguards** 20USC 1412 (6) (B)testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of children with disabilities will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it is clearly not feasible to do so, and **no single procedure shall be the sole criteria for determining an appropriate educational program for a child.**
- 5.) Evaluation procedures ---Conduct of evaluation - ...LEA shall...."use a **variety of assessment tools and strategies to gather relevant functional and developmental information, including information**

5/6

- provided by the parent.....abling the child to.....progress in general curriculum..see 20USC 1414 (b) (2)
- 6.) State Advisory Panel – the panel should include parents of kids with disabilities, teachers, with a majority of the panel either those with disabilities or parents of kids with disabilities. See USC 1412 (21) (I, ii and iii) and (21) (c)
 - 7.) Advisory Panel Duties – the advisory board must make public comment on all proposed regs See 20USC 1412 21 (D) (ii)
 - 8.) Comprehensive System of Personnel Development – DEED must have a written plan. See 20USC 1412 (14)
 - 9.) Personnel Standards – Does the state require the educators to have the highest licensing in the state such as Speech Language Pathology? If not, what steps are they taking to ensure that paraeducators are working to that standard? See 20USC (15) (A)
 - 10.) Evaluation Process –DEED must provide notice to parents that describes all evaluation procedures for determination of eligibility. They must use a variety of assessment tools. 20USC 1414 B....
 - 11.) Additional Evaluation Requirements – Districts must review existing evaluation data, including evals and info provided by parents. See 20USC 1412 (6)
 - 12.) ADDN'l requirements for eval and reeval...."Review existing evaluation data on the child...including evaluations and information provided by the parents...." See 1414 5C
 - 13.) IEP team – No unnecessary members...."at the discretion of the parent or the agency other individuals WHO HAVE KNOWLEDGE OR SPECIAL EXPERTISE regarding the child," Parents tell me sometimes reps are there who do not personally know the child are not protecting the child, but others. see 1414 2 B vii
 - 14.) Development of IEP team – the IEP team SHALL...take.....the concerns of parents for enhancing the education of their child....the results of the most recent eval (*parentally obtained or district made.*)
 - 15.) Considering opps for direct instruction – IEP team MUST consider opportunity...for direct instruction....
 - 16.) Form for due process request – regs say nothing about DEED-made form. Parents can just write a letter. Don't make them do a scary form....districts have lawyers on retainer....parents have to struggle...
 - 17.) Childfind – FAPE & GRADE ADVANCEMENT is new. CHILDFIND notices should include that the child may be referred in for evaluation of any suspected disability even though advancing from grade to grade. Write it in statute.

6/6

18.) DISABILITY DEFINITIONS – 300.7, Child with a disability.

Change speech impairment to speech or language impairment. Change entire section to include IDEA definitions, not just “names” of categories.

AGAIN, I cannot seem to fit the time in to cite all of these. If we had had an opp for regular PARENTS to participate together with agencies and discuss all of these potential problem areas, perhaps I would not have to expend so much of my personal energy to try to help our kids.

Thank you,

Louise Parish
Box 1182
Valdez, AK 99686

Additions:

- 12 month Due Process should be 24
- Speech changed to speech-language thru/out

List of Participants for Legislative Review Meeting

Sept. 14th & 15th, 2000

Anchorage, AK

Governor's Council

David Maltman: Executive Director
Darrell Sanborn: Council Member and Superintendent, Unalaska City Schools
Reggie Joule: Council Member; State Representative
Kathy Fitzgerald: Parent; Member of Council's Executive Committee
Kathy Craft: Parent; AK Children's Mental Health Coordinator

Disability Law Center

Belinda Patrick: Advocate
Janel Wright: Staff Attorney
Bob Briggs: Staff Attorney
Ann Hutchins: Parent
Don Shackelford: Parent; former school administrator; UAA faculty member

PARENTS, Inc.

Faye Nieto: Executive Director
Tim Weiss: Program Director
Gail Igo: Staff Advocate
Ardyce Turner: PARENTS, Inc. Board Member
Jan Guertin: Juneau Staff Advocate

EED Participants

Bruce Johnson: Deputy Commissioner
Greg Maloney: State Director of Special Education
Wendy Tada: Special Education Staff Member
Phil Reeves: Asst. Attorney General working with EED

District Participants

Robyn Rehmann: Special Education Director, Anchorage School District
Ann Shortt: Assistant Superintendent, Fairbanks School District
Ron Delay: Student Services Director, Juneau
Ron Erickson: Superintendent, Haines Borough School District
John Owens: Special Education Director, Northwest Arctic Borough School District

State of Alaska
 Department of Education
 & Early Development

MEMORANDUM

To: Members of Senate HESS Committee Date: February 15, 2001

Through: Bruce Johnson Phone: 465-2972
 Deputy Commissioner, EED

From: Greg Maloney *GM* Subject: Proposed Changes in HB 71/
 State Director of Special SB 40 Relating to Private School
 Education Children with Disabilities

During a recent hearing on HB 71/SB 40, *An Act Relating to the Education of Children with Disabilities and Gifted Children*, members of the Senate HESS Committee requested clarification regarding proposed changes to services provided to private school children with disabilities. This memorandum provides a summary of the changes while the attached memorandum from the U.S. Department of Education, Office of Special Education Programs (OSEP), provides more detailed information.

Proposed Changes to Services Provided to Private School Children with Disabilities
 The table below provides the current statutory requirement for serving private school children with disabilities along with the proposed changes contained in HB 71/ SB 40.

Current Statutory Requirement	Proposed Statutory Changes in HB 71 /SB 40
<p>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 .</p>	<p>Sec. 14.30.340. Provision of special education in a private school, home, or hospital setting. (a) If a parent of a [AN EXCEPTIONAL] child <u>with a disability</u> enrolls the child in a private school, <u>including a religious school</u>, at the parent's expense or teaches the child at home, the school district in which the child <u>resides</u> [IS LOCATED] shall make special education and related services available in conformance with <u>federal requirements, including 34 CFR 300.450 - 462 as amended.</u> [AN INDIVIDUALIZED EDUCATION PROGRAM UNDER AS 14.30.278].</p>

Under current state law, school districts are responsible for providing special education and related services to all children with disabilities voluntarily enrolled in private schools. This may result in a financial burden to school districts who may not be able to claim these children

through the foundation formula. Although the foundation allows school districts to claim partial child attendance, the minimum level is .25. Some children with disabilities do not require services that meet this minimum level so school districts would not receive any additional federal or state funding.

Overall, special education funding at the state and federal level has not kept pace with the rising costs of providing special education and related services. Under SB 36, school districts receive a block grant for providing special education and related services, gifted education, bilingual education, and vocational education that is based on total student enrollment. If a district's total enrollment decreases, so does the funding available under the block grant. However, the district's costs for providing special education services would not necessarily decrease and may conceivably increase. The federal special education funding formula has also been changed and is also no longer based on the annual count of children with disabilities. The new formula uses the state's child count from FY 99 as its basis, and then adds additional funds based on a state's total student enrollment and the state's population of children living in poverty. Although the government has increased federal funding for special education, recent estimates suggest these funds cover only 12% of special education costs; far short of Congress's stated goal of 40%.

Under HB 71/SB 40, school districts will continue to be required to locate, identify, and evaluate all private school children with disabilities, including religious school children residing in the district. However, HB 71/SB 40 will reduce the responsibility that school districts have for providing services to private school children to the level required by the Individuals with Disabilities Education Act, as amended in 1997 (IDEA 97). IDEA 97 regulations stipulate that "no private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school" (34 CFR 300.454 (a)(1)). Instead, each school district is required to "consult with appropriate representatives of private school children with disabilities" to determine:

- which children will receive services;
- what services will be provided;
- how and where the services will be provided; and,
- how the services provided will be evaluated.

Instead of an individualized education program (IEP) document, school districts will develop service plans for private school children with disabilities. These describe the services that will be provided to the child and are created by the same individuals, along with representatives of private schools, who develop IEPs in the school district.

Consistent with IDEA 97, districts must only demonstrate that they have spent a proportionate level of their federal special education funds on providing services to private school children with disabilities. The proportion is based on the number of private school children with disabilities (ages 3-21) residing in the school district compared to the total number of children with disabilities (ages 3-21) residing in the

school district. For example, if a school district has 500 children with disabilities and 25 of these children are voluntarily placed by their parents in private schools, the district would be required to provide services in an amount that equals 5% of its federal special education grant. Districts may use any combination of local, state, and/or federal funds to demonstrate they have spent this amount. Under IDEA 97, this is the total amount that districts would be required to spend on providing services to private school children with disabilities.

For more detailed information, please refer to the attached memorandum on private school children with disabilities issued by U.S. Department of Education, Office of Special Education Programs (OSEP).



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

MAY 4 2000

CONTACT PERSONS:
Name: JoLeta Reynolds
Rhonda Weiss
Telephone: (202) 205-5507

OSEP: 00-14

MEMORANDUM

To: Chief State School Officers

From: Kenneth R. Warlick, Director *KRW/ps*
Office of Special Education Programs

Subject: Questions and Answers on Obligations of Public Agencies in Serving Children with Disabilities Placed by Their Parents at Private Schools

In response to requests from the field for a document that restates and consolidates guidance that the Department has provided regarding the nature and extent of school districts' obligations to parentally-placed private school children with disabilities under Part B of the Individuals with Disabilities Education Act (Part B), the attached question and answer document is being issued. Some of the questions contained in this document were raised by individuals who attended the six regional meetings conducted following publication of the final regulations implementing the Individuals with Disabilities Education Act Amendments of 1997, Pub. L. 105-17 (IDEA '97); others were raised subsequent to the issuance of the final regulations. This question and answer document restates the requirements reflected in these final regulations published on March 12, 1999, at 64 Fed. Reg. 12406, and the explanations provided in Attachment 1, Analysis of Comments and Changes, in response to public comments on the proposed regulations applicable to parentally-placed private school children with disabilities.

In determining school district responsibility for children with disabilities in private schools, generally such children are in one of two groups, and public agency responsibility will vary based on the group into which the children fall. The first group includes children with disabilities placed at private schools by public agencies as a means of providing special education and related services. Specifically, if a public agency places or refers a child with a disability to a private school or facility for the purpose of providing a free appropriate public education (FAPE) to that child, the child must receive a program of special education and related services at the private school at no cost to the parents, and the child and his or her parents have all of the rights that they would have if the child were served by the public agency. 34 CFR §300.401. The second group of children includes children with disabilities placed at private schools by their parents, and this second group consists of two subgroups. The children with disabilities in the first subgroup are placed by their parents at private schools when FAPE from a

public agency program or placement is not at issue, and this subgroup of children, which must be provided special education and related services consistent with their numbers and needs, has no individual entitlement to services under Part B. 34 CFR §§300.403(a) and 300.450-300.462.

The second subgroup includes children with disabilities placed at a private school by their parents without the consent of or referral by the public agency because the parents believe that the public agency has failed to offer their child FAPE. If a hearing officer or court agrees with the parent and finds that there has been a denial of FAPE, the parents may be able to obtain tuition reimbursement for part or all of the cost of their unilateral private school placement. 34 CFR §300.403(c). The specific requirements relating to disputes about FAPE are not addressed by this guidance. Rather, the guidance set forth in this question and answer document focuses on the responsibilities of public agencies to provide for the participation of all children with disabilities placed by their parents in private schools in the Part B program in accordance with 34 CFR §§300.450-300.462.

The Department believes that the right of parents to choose where their children should be educated, whether at public or private school, is extremely important. Nevertheless, the rights of parentally-placed private school children with disabilities under Part B are not the same as those of children with disabilities who are enrolled in public schools and are served at public agency programs or public agency placements at private schools.

In the 1997 reauthorization of IDEA, Congress amended Part B to include explicit statutory provisions that reflect the Department's longstanding interpretations of the obligations of State and local educational agencies (SEAs and LEAs) to parentally-placed private school children with disabilities under Part B and the Education Department General Administrative Regulations (EDGAR). The following is a brief summary of the major applicable provisions in IDEA '97 that are relevant to parentally-placed private school children with disabilities:

- (1) Provision is made for the participation of children with disabilities enrolled by their parents in private preschool, elementary, and secondary schools, consistent with their number and location in the State, in the program assisted or carried out under Part B by providing for such children special education and related services;
 - (2) Activities are conducted to locate, identify, and evaluate children placed by their parents in private schools, including religious schools, who may need special education and related services. This requirement is known as child find;
 - (3) A proportionate amount of the Federal funds available under Part B is expended for services for parentally-placed private school children with disabilities, and
 - (4) Special education and related services may be provided to parentally-placed private school children with disabilities on the premises of private, including religious schools, in a manner that does not violate the Establishment Clause of the First Amendment to the U.S. Constitution and is consistent with applicable State constitutions and laws.
- 20 U.S.C. §1412(a)(10)(A); 34 CFR §300.451-300.462.

Department regulations at 34 CFR §§300.450-300.462, which implement the above statutory provision, also contain some of the general provisions governing the participation of children

enrolled in private schools in programs assisted or carried out with Federal education program funds at 34 CFR §§76.651-76.662 of EDGAR that apply to a number of other Department programs.

Let me emphasize that there is nothing in IDEA '97 or the final Part B regulations that alters or diminishes school districts' obligations to ensure the equitable participation of parentally-placed private school children with disabilities in programs assisted or carried out under Part B. Nor is there anything in the Statute or the implementing regulations that is intended to confer an individual entitlement on these children. However, the statute and regulations in no way prohibit States or local school districts from providing services to parentally-placed private school children with disabilities in excess of those required under Part B, consistent with State law or local policy.

The attached questions and answers have been prepared to assist state and local education officials and private school representatives, as well as parents of children with disabilities in understanding the requirements of Part B, as amended by IDEA '97, and the implementing regulations that relate to the participation of parentally-placed private school children with disabilities in programs assisted or carried out under Part B. This question and answer document represents informal policy guidance; however the statute and regulations upon which it is based are binding on public agencies receiving funds under Part B. Therefore, the statute and regulations which constitute the legal authority for this document--20 U.S.C. §1412(a)(10)(A) and 34 CFR §§300.450-300.462--should be used for legal citation purposes.

We hope that the attached question and answer document is helpful. Please ensure that this document is widely disseminated throughout your State so that this information can be provided to a large variety of interested individuals and organizations. If you or members of your staff have questions, please contact either of the contact persons whose names and telephone numbers are listed at the top of this memorandum.

Attachment

cc: State Directors of Special Education
Federal Resource Center
Regional Resource Centers
Office of Non-Public Education
Secretary's Regional Representatives
National Disability Organizations
Protection and Advocacy Agencies
Parent Training and Information Centers
RSA Regional Commissioners
Independent Living Centers

**Questions and Answers on Obligations of Public Agencies
in Serving Children with Disabilities
Placed by Their Parents at Private Schools**

I. Child Find

Question 1: What is child find for parentally-placed private school children with disabilities?

Answer: The Individuals with Disabilities Education Act Amendments of 1997, Pub. L. 105-17 (IDEA '97) clarify the Department's longstanding policy and explicitly provide that the child find requirements in section 613(a)(3) of IDEA apply to private school children, including religious school children. 20 U.S.C. §1412(a)(10)(A)(ii). Child find refers to ongoing activities undertaken by SEAs and LEAs to locate, identify, and evaluate all children residing in the State who are suspected of having disabilities under Part B of IDEA (Part B), so that a free appropriate public education (FAPE) can be made available to all eligible children. 34 CFR §§300.121, 300.125 and 300.220. (For parentally-placed private school children with disabilities, the offer of FAPE is accomplished by offering to make available to an eligible child a public agency program or a public agency placement at a private school. Parents can choose not to accept public education in favor of their parental private school placement.) Under Part B, each LEA must conduct child find for all children in public and private schools, including religious schools, residing in the jurisdiction of the LEA, regardless of the severity of their disability, who are in need of special education and related services. 34 CFR §300.451.

In carrying out child find for parentally-placed private school children, SEAs and LEAs undertake activities similar to those undertaken for their publicly enrolled or publicly-placed children, such as widely distributing informational brochures, providing regular public service announcements, staffing exhibits at health fairs and other community activities, and creating direct liaisons with private schools. Once children are identified who are suspected of having disabilities under Part B, LEAs must have procedures for conducting, at no cost to parents, Part B evaluations of such children residing in their jurisdiction within a reasonable period of time and without undue delay.

Since public agencies need to have data to develop an accurate count of the total number of eligible private school children with disabilities residing in their jurisdiction in calculating the proportionate share of their Part B subgrant that must be expended annually for services for these children, child find for parentally-placed private school children with disabilities is particularly important.

Question 2: Can amounts expended for child find, including individual evaluations, be deducted from the required amount of funds to be expended on services for parentally-placed private school children with disabilities?

Answer: No. The statutory provisions regarding child find and participation of parentally-placed private school children with disabilities in programs assisted or carried out under Part B of IDEA are separate and distinct obligations. The child find obligation, including individual evaluations, exists independently from the services provision. (Compare 20 U.S.C. §1412(a)(3))

with 20 U.S.C. §1412(a)(10)(A)). Therefore, the costs of child find activities, including individual evaluations, may not be considered in determining whether an LEA has met the annual expenditure requirement for services for parentally-placed private school children with disabilities under Part B. 34 CFR §300.453(c).

Question 3: Must child find for private, including religious-school children be comparable to child find for public school children?

Answer: Yes. Activities undertaken to carry out child find for parentally-placed private school children, including religious-school children, must be comparable to activities undertaken for child find for children in public schools. 34 CFR §300.451(a). This would include the timing of these activities, and LEAs may not delay conducting child find, including individual evaluations, for parentally-placed private school children with disabilities until after child find for publicly-enrolled or publicly-placed children has been conducted. In determining how and when to carry out child find, public agencies must consult with appropriate representatives of parentally-placed private school children with disabilities. 34 CFR §300.451.

Question 4: How can LEAs meet their child find obligations for parentally-placed private school children residing in their jurisdiction, including religious schools?

Answer: LEAs can choose to meet this obligation by conducting the relevant activities or through contract, interagency agreement with some other entity, or through some other arrangement. If such an arrangement were undertaken, the LEA, and ultimately the SEA, still would retain responsibility for ensuring that all applicable Part B requirements are met. Whether an LEA could contract with a private school to conduct certain aspects of its child find, including individual evaluations, would have to be determined on a case-by-case basis.

Question 5: May LEAs restrict their child find activities to children with certain disabilities, and exclude from child find some children, if the LEA determines, through consultation, that it will offer its population of parentally-placed private school children with disabilities only certain specified services?

Answer: No. In conducting child find of all children residing in their jurisdiction, LEAs must identify and evaluate all children suspected of having any disabilities specified in Part B, regardless of whether such children are parentally-placed at private schools, including religious schools. 34 CFR §§300.125 and 300.220. Therefore, LEAs may not exclude children suspected of having certain disabilities, such as those with mild or moderate disabilities, from their child find activities. This is so, regardless of whether State laws or policies specify which children parentally-placed at private schools suspected of having certain disabilities must be evaluated.

Question 6: Once parentally-placed private school children suspected of having disabilities under Part B are identified, are the requirements applicable to evaluations of such children the same as requirements applicable to other children suspected of having disabilities?

Answer: Yes. Evaluations of all children suspected of having disabilities under Part B, regardless of whether their parents have chosen to enroll them in private schools, must be conducted within a reasonable period of time in accordance with requirements at 34 CFR §§300.532-300.535 of the Part B regulations, and the parents must give their informed consent to conduct the evaluation. 34 CFR §300.505(a)(i). Section 300.532 of the Part B regulations sets out minimum evaluation procedures. Among other requirements, evaluations conducted under Part B can be accomplished through tests and other evaluation materials that must be selected and administered so as not to be discriminatory on a racial or cultural basis, and must be provided in the child's native language or other mode of communication unless it clearly is not feasible to do so. 34 CFR §300.532(a)(1)(i)-(ii).

No single procedure can be used as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child. 34 CFR §300.532(f). Also, the child must be assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. 34 CFR §300.532(g). A review of existing data is part of both the initial evaluation, if appropriate, and a reevaluation. This would include evaluations and information provided by the parents of the child. 34 CFR §300.533(a).

Question 7: Following the evaluation, are the requirements the same for parentally-placed private school children as for other children who have been evaluated under Part B?

Answer: As with public school children, following the initial evaluation, an eligibility determination must be made by a group of qualified professionals and the child's parents, and this group must determine whether the child is a child with a disability as defined in Part B of the Act. 34 CFR §300.534(a)(1). The public agency must provide the parent a copy of the evaluation report and the documentation of the eligibility determination. 34 CFR §300.534(a)(2). In making the eligibility and placement determination, that is, in determining whether the child is a child with a disability and what the child's educational needs are, the public agency must draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, and ensure that information obtained from all of those sources is documented and carefully considered. 34 CFR §300.535(a).

Question 8: Following the initial determination that a parentally-placed private school child is an eligible child with a disability under Part B, must the public agency develop an IEP for the child?

Answer: If a determination is made that the child needs special education and related services, the general rule in 34 CFR §300.535(b) is that an IEP must be developed for the child in accordance with 34 CFR §§300.340-300.350, with one important exception. If the parents make clear their intention to enroll their child at a private school and that they are not interested in a public program or placement for their child, the public agency need not develop an IEP for the child. If the parents choose not to accept the public agency's offer to make FAPE available to their child, the public agency still must include the child in its eligible population of parentally-

placed private school children with disabilities whose needs must be considered and addressed in accordance with 34 CFR §§300.450-300.462 of the Part B regulations.

Question 9: Are public agencies required to conduct periodic reevaluations of parentally-placed private school children with disabilities, and if so, of which parentally-placed private school children?

Answer: Yes. The requirements for reevaluations that are applicable to children with disabilities served at public agency programs or at public agency placements at private schools apply equally to parentally-placed private school children with disabilities. Part B requires public agencies to conduct reevaluations of a child with a disability, if conditions warrant a reevaluation, or if the child's parent or teacher requests a reevaluation, but at least once every three years. Before additional assessments are conducted, parents must give informed consent. 34 CFR §300.536.

Question 10: Can expenditures for reevaluations be considered in determining whether a public agency has met the expenditure requirements for services for parentally-placed private school children with disabilities?

Answer: No. A reevaluation, as a part of child find, must be conducted at no cost to parents, and expenditures for reevaluations may not be considered in determining whether an LEA has met the requirement at 34 CFR §300.453(a) regarding expenditures for services for parentally-placed private school children with disabilities. 34 CFR §300.453(c). The three-year reevaluation requirement applies to all eligible parentally-placed private school children with disabilities, even to those parentally-placed private school children with disabilities who are not currently receiving special education or related services from a public agency in connection with a parental private school placement. It is essential for public agencies to ensure that required reevaluations of all parentally-placed private school children with disabilities are conducted because they provide current data for use in the annual count of the total number of eligible parentally-placed children with disabilities residing in the LEA's jurisdiction. This annual count of eligible parentally-placed private school children is used in calculating the proportionate share of funds that must be expended on services for this population of children.

Question 11: Which LEA is responsible for child find and in meeting requirements for reevaluation if the private school the child attends is located outside of the LEA of the child's parents' residence?

Answer: SEAs and, consistent with State policy, LEAs, are responsible for ongoing efforts to locate, identify, and evaluate all children residing in the State who are suspected of having disabilities under Part B, so that FAPE is made available to all eligible children. 34 CFR §§300.121, 300.125, and 300.220. Generally, as a matter of State law, children are considered to reside in the home of their parents even if they physically do not live there. This would mean that if a child attends a private school located in an LEA (either in the same State or in another State) other than the LEA in which the child's parents reside, the LEA in which the child's parents reside generally would be responsible for child find, as well as ensuring that required

reevaluations are conducted, unless the State assigns that responsibility to another entity. An LEA has flexibility as to how it ensures these responsibilities are met. For example, it may assume the responsibility itself, contract with another public agency, or make other arrangements. If the LEA through child find identifies a child as a child with a disability, and is not the entity responsible for child find, that LEA should notify the resident LEA of the child's parents so that required evaluations can occur.

Question 12: Do parents who disagree with a public agency's child find determination with respect to their parentally-placed private school child have any recourse?

Answer: Yes. Parents may use the Act's due process procedures at §§300.504-300.515 regarding issues related to the identification and evaluation of children under Part B. 34 CFR §300.457(b). This would include disputes regarding child find, including individual evaluations, of children residing in the LEA's jurisdiction whose parents choose to enroll them in private schools. For example, disagreements between parents and school districts involving the child's eligibility for special education and related services, an LEA's refusal to conduct an evaluation or reevaluation of an individual parentally-placed private school child, or an LEA's refusal to conduct a requested evaluation or reevaluation of an individual parentally-placed private school child within a reasonable period of time, are all issues that could be raised in a due process hearing. In addition, an organization or individual may file a signed written complaint in accordance with the State complaint procedures at 34 CFR §§300.660-300.662 of the Part B regulations, alleging that an SEA or LEA has violated the applicable child find requirement, including individual evaluation and reevaluation requirements.

Question 13: If parents reside in LEA A and enroll their child with a disability at a private school located in LEA B, which LEA is responsible for locating and evaluating that child, including that child in its annual count of eligible parentally-placed private school children with disabilities that is conducted for determining the expenditure requirement, and for determining whether the child should receive services under Part B?

Answer: The LEA of the parent's residence generally would be responsible for child find, unless the State assigns that responsibility to some other entity. 34 CFR §§300.125 and 300.220. If the non-resident LEA identifies a child as a child suspected of having a disability, the non-resident LEA should notify the LEA of the parent's residence so that appropriate evaluations can occur.

The LEA in which the child's parent's reside would also be responsible for including the child in the count of eligible parentally-placed private school children with disabilities, regardless of whether the child has been designated to receive services from that LEA. 34 CFR §300.453. Through consultation conducted in accordance with 34 CFR §300.454, the LEA of the parent's residence must consider the needs of parentally-placed private school children with disabilities residing in the agency's jurisdiction, even though those students have been enrolled by their parents in private schools located outside of the district's boundaries. The LEA of the parent's residence, however, after consultation with representatives of parentally-placed private school children, could elect not to serve those children in light of the available funds that must be expended on services for this population of children.

II. Annual Expenditures for Parentally-placed Private School Children with Disabilities

Question 14: How is the proportionate share for expenditures for services for parentally-placed private school children with disabilities calculated?

Answer: IDEA '97 confirms the Department's longstanding interpretation that each LEA must expend, during the grant period, on the provision of special education and related services for the parentally-placed private school children with disabilities residing in the LEA's jurisdiction an amount that is equal to--

- (1) a proportionate share of the LEA's subgrant under Section 611(g) of the Act for children with disabilities aged 3 through 21. This is an amount that is the same proportion of the LEA's total subgrant under section 611(g) of the Act as the number of parentally-placed private school children with disabilities aged 3 through 21 residing in the LEA's jurisdiction is to the total number of children with disabilities in the LEA's jurisdiction aged 3 through 21; and
- (2) a proportionate share of the LEA's subgrant under section 619(g) of the Act for children with disabilities aged 3 through 5. This is an amount that is the same proportion of the LEA's total subgrant under section 619(g) of the Act as the total number of parentally-placed private school children with disabilities aged 3 through 5 residing in the LEA's jurisdiction is to the total number of children with disabilities in the LEA's jurisdiction aged 3 through 5.
20 U.S.C. §1412(a)(10)(A)(i)(I); 34 CFR §300.453(a).

Consistent with this statutory requirement and the final Part B regulation implementing this requirement, annual expenditures for parentally-placed private school children with disabilities are calculated based on the total number of children with disabilities residing in the LEA's jurisdiction eligible to receive special education and related services under Part B, as compared with the total number of eligible parentally-placed private school children with disabilities residing in the LEA's jurisdiction. 34 CFR §300.453(a). This ratio is used to determine the proportion of the LEA's total Part B subgrants under section 611(g) for children aged 3 through 21, and under section 619(g) for children aged 3 through 5, that is to be expended on services for parentally-placed private school children with disabilities residing in the LEA's jurisdiction.

The following is an example of how the proportionate share is calculated:

Number of eligible children in public schools = 300
Number of eligible children in private school = 20
Total number of eligible children residing in the jurisdiction of the LEA = 320

The number of children served was:

300 public school children + 5 private school children = 305

Federal flow-through funds to School District is \$152,500

Using this formula,

There are 20 eligible parentally-placed private school children within a total number of 320 eligible public and private school children. The number of eligible parentally-placed private school children (20) divided by the total number of eligible public and private school children (320) indicates that 6.25 percent of the LEA's subgrant, or \$9,531.25, must be spent for the group of parentally-placed children residing in the LEA and placed by their parents in private schools.

A graphic representation of the above description on how the proportionate share is calculated is provided in Attachment 1.

Question 15: Is the proportionate share based on the number of children with disabilities receiving special education or related services in accordance with a services plan, or on the total number of eligible private school children with disabilities residing in the LEA's jurisdiction?

Answer: The proportionate share is determined based on the total number of eligible parentally-placed private school children with disabilities residing in the LEA's jurisdiction, and is not limited to the number of those children receiving special education or related services in accordance with a services plan.

Question 16: When must LEAs conduct the annual count of *eligible* parentally-placed private school children with disabilities residing in their jurisdiction (the Count required at §300.453)?

Answer: SEAs must decide, on a Statewide basis, (either December 1 or the last Friday in October) the date on which their LEAs will conduct the annual count of the total number of eligible parentally-placed children with disabilities. LEAs and SEAs are already counting children with disabilities who are receiving special education and related services either on December 1 or the last Friday in October of each year, and the SEA must conduct the annual count of eligible parentally-placed private school children with disabilities on the same date. Using the same date on a Statewide basis should reduce the amount of double counting of private school children with disabilities who move from one location to another, and should give States the same flexibility they have with regard to counting other children with disabilities who are receiving services under Part B of the Act.

Question 17: In meeting the requirement to expend a proportionate share of available Federal funds on services for parentally-placed private school children with disabilities residing in their jurisdiction, may LEAs use funds other than Federal funds?

Answer: Yes. Section 612(a)(10)(A)(i) describes the minimum amount that must be spent on services for parentally-placed private school children with disabilities and does not specify that only Federal funds can be used to satisfy this obligation. Thus, if a State or LEA uses other

funds other than Part B funds to provide special education and related services to parentally-placed private school children with disabilities, those funds can be considered in satisfying the expenditure requirements of 20 U.S.C. §1412(a)(10)(A)(i)(I) and 34 CFR §300.453, so long as the services are provided in accordance with the other provisions of §§300.452-300.462. See Analysis of Comments and Changes, Attachment 1 to the final regulations, 64 Fed. Reg. at 12603 (Mar. 12, 1999).

Question 18: May State or local funds be used to provide services to parentally-placed private school children with disabilities in excess of the services provided for this population of children with the proportionate share of available funds?

Answer: Yes. SEAs and LEAs are not prohibited from providing services to parentally-placed private school children with disabilities in excess of those provided with the proportionate share of Part B funds, if doing so is consistent with State law or local policy. §34 CFR 300.453(d) and Analysis of Comments and Changes, published as Attachment 1 to the final regulations, 64 Fed. Reg. at 12603 (Mar. 12, 1999).

Question 19: How are Part B funds distributed now that the permanent funding formula is in effect?

Answer: Until the appropriation under section 611(j) of the Act exceeds \$4,924,672,200 under the funding formula applicable to the Grants to States program, authorized by §611(g) of IDEA, funds were allocated to States under the interim formula. 34 CFR §300.703(b). Under the interim formula, funds were allocated to States, and through them to LEAs, based on an annual count of children with disabilities receiving special education and related services on the count date, and, in the case of parentally-placed private school children with disabilities, those receiving special education or related services on the count date. Now that the appropriation under section 611(j) of the Act exceeds \$4,924,672,200, funds will be allocated to States, and through them to LEAs, under the permanent formula. Thus, the permanent formula will be used to distribute Part B Grants to States funds to States on or about July 1, 2000, and allocations will no longer be based on an annual count of children receiving special education and related services on the count date. The permanent formula previously has taken effect for the Preschool Grants Program. Under the permanent formula, it will still be important for SEAs and LEAs to maintain accurate data about the number of parentally-placed private school children with disabilities receiving special education or related services and the total number of eligible parentally-placed private school children with disabilities.

The State allocation under the permanent formula to each LEA that has established its eligibility under section 613 of the Act is the total of three amounts:

- a base payment, that is, the amount the agency would have received for the fiscal year prior to the first fiscal year that the appropriation under section 611(j) of the Act exceeds \$4,924,672,200, had the State allocated 75 percent of its grant to LEAs. 34 CFR §300.712(a);

- the population payment which consists of 85 percent of any remaining funds distributed on the basis of the relative numbers of children enrolled in public and private elementary and secondary schools within each agency's jurisdiction 34 CFR §300.712(b)(3)(i); and
- 15 percent of any remaining funds allocated to eligible LEAs in accordance with their relative numbers of children living in poverty, as determined by the SEA. 34 CFR §300.712(b)(3)(ii); 34 CFR §300.712(b)(3).

Therefore, funds generated by LEAs for FFY 1999 for parentally-placed private school children with disabilities who were receiving special education or related services under §§ 300.452-300-462 that meet State standards on the count date were included in calculating an LEA's base payment under the permanent formula. (34 CFR 300.453 (a)(3))

Question 20: Under the permanent formula, will it still be necessary to conduct an annual count of parentally-placed private school children with disabilities?

Answer: Yes. The count still will be required under 34 CFR §300.453 of the part B regulations for purposes of determining the total number of eligible parentally-placed private school children with disabilities residing in the LEA's jurisdiction. This information is required for purposes of calculating the proportionate share that an LEA is required to expend on an annual basis for the provision of special education and related services for its population of parentally-placed private school children with disabilities. In addition, the count of children served that is conducted under 34 CFR §300.751 will still be required.

Question 21: In the permanent formula, 85 percent of funds above the base payment are distributed on the basis of the "relative numbers of children *enrolled* in public and private elementary and secondary schools within each agency's jurisdiction." What does this mean since some parentally-placed private school children *live* in the jurisdiction of the LEA but are *enrolled* in a private school *outside* of the LEA's jurisdiction?

Answer: In allocating 85 percent of any remaining funds to LEAs based on the relative numbers of children enrolled in public and private elementary and secondary schools within each agency's jurisdiction, States must apply on a uniform basis across all LEAs the best data that are available to them. 34 CFR §300.712(b)(3)(iii). It is within the State's discretion to determine whether the LEA where the private school is located or the LEA of the parent's residence should include the child in its private school enrollment count.

A State could determine, for example, that a child whose parents reside in LEA A and attends a private school located in the boundaries of LEA B is enrolled in LEA B in calculating the percentage of funds allocated to an LEA based on the relative numbers of children enrolled in public school and private elementary and secondary schools in the LEA's jurisdiction. While States have flexibility in this area, a uniform rule must be applied on a Statewide basis. These children would then need to be in the group of parentally-placed children with disabilities whose needs must be considered by the LEA in determining which parentally-placed private school children with disabilities will be served and the types and amounts of services to be provided to eligible children.

III. Provision of Services

Question 22: Are there any particular kinds of services, and specified amounts of services, to be provided to parentally-placed private school children with disabilities under Part B?

Answer: No. No parentally-placed private school child with a disability has an individual right to special education and related services under Part B. 34 CFR §300.454(a). Therefore, the responsible public agency is not required to provide a parentally-placed private school disabled child with some or all of the special education and related services that the child would receive if enrolled in a public school. This reflects the Department's longstanding interpretation of the limitations of SEAs' and LEAs' statutory obligations to make services available to the population of eligible parentally-placed private school children with disabilities, in light of the limited amount of funds that LEAs must expend on services for these children.

Question 23: How are decisions made about the services that are to be provided to parentally-placed private school children with disabilities, including the type and location of such services, in light of the limited amount of funds that must be expended annually on services for this population of children?

Answer: Each LEA must consult, in a timely and meaningful way, with appropriate representatives of parentally-placed private school children with disabilities, in light of the minimum amount of Part B funds that must be expended for services for this population of children, on the number of parentally-placed private school children with disabilities, the needs of those children, and their location. Through this consultation process, decisions are made about which parentally-placed private school children with disabilities will receive services, what services will be provided, how and where the services will be provided, including the timing and location of the services provided, and how the services provided will be evaluated. Each LEA must give appropriate representatives of parentally-placed private school children with disabilities a genuine opportunity to express their views regarding each matter that is the subject of the consultation process. However, the LEA makes the final decision about which eligible children will receive services, the services to be provided to eligible parentally-placed private school children with disabilities, and where the services will be provided. 34 CFR §300.454(b)(1), (2), and (4).

Question 24: When must consultation about services occur?

Answer: Consultation about the provision of services must occur, in a timely and meaningful way, before the LEA makes any decision that affects the opportunities of parentally-placed private school children with disabilities to participate in services provided under Part B requirements to those children. 34 CFR §300.454(b)(3). The needs of parentally-placed private school children with disabilities, their number and location, may vary over time, depending on the circumstances in a particular LEA in a particular year. As there is no specific schedule for consultation with appropriate representatives of parentally-placed private school children with

disabilities, States and LEAs are able to determine the appropriate period between consultations based on circumstances in their jurisdictions. Many jurisdictions have found that it works well when consultation takes place, at a minimum, to review the child find process, discuss the child count, and plan the services being offered prior to each school year. The regulations do not include specific requirements regarding matters such as public notice of meetings, public transcripts of meetings, explanations of amounts and frequency of services provided, or explanations of refusals to provide services, changes in the manner in which services are provided, or the manner in which funds are allocated, leaving these issues to State and local authorities.

Question 25: Which individuals are appropriate representatives of parentally-placed private school children with disabilities? What about parents of such children?

Answer: Part B does not specify which individuals are "appropriate representatives" of parentally-placed private school children with disabilities. However, since one aspect of consultation is intended to discuss the needs of children with disabilities placed in private schools by their parents, it would be reasonable for parents to be considered "appropriate representatives" of such children. Other appropriate representatives of parentally-placed private school children might be teachers, principals, and, in the case of private school systems, central office administrators responsible for federal program services and/or special education. Whether parents of home-schooled children or other representatives of home-schooled children should be considered "appropriate representatives" of parentally-placed private school children with disabilities depends on whether under State law, home schooling is regarded as parental placement at private school.

Question 26: Is it possible for an LEA, through consultation with appropriate representatives of parentally-placed private school children with disabilities, to provide only certain direct services to those parentally-placed private school children with disabilities designated to receive services?

Answer: Yes. Based on relevant input from consultation, and in light of available funding, it could be reasonable for an LEA to conclude that providing direct services would ensure that those parentally-placed private school children with disabilities selected to receive services will derive a benefit from the services offered. For example, an LEA could determine through consultation that providing direct services for fewer children would be more beneficial in addressing the needs of its parentally-placed private school children with disabilities than providing consultative services, instructional materials, equipment, or teacher training.

Question 27: Is it possible for an LEA, through consultation with appropriate representatives of parentally-placed private school children with disabilities, to determine that it will provide no direct services to its eligible parentally-placed private school children with disabilities, but that instead, the LEA will provide consultative services, or equipment and teacher training?

Answer: Yes. Through the consultation described above, determinations must be made about how the available amount of funds can be utilized so that the parentally-placed private school children with disabilities designated to receive services can benefit from the services offered.

The regulations specify that the LEA makes the final decision with respect to services to be provided to eligible parentally-placed private school children with disabilities, (34 CFR §300.454(b)(4)), based in part on input provided through the consultation process by appropriate representatives of parentally-placed private school children with disabilities, (34 CFR §300.454(b)(3)). Depending on local circumstances and the amount of funds available for expenditures for this population of children, it could be reasonable for an LEA to conclude that, in lieu of direct services, its parentally-placed private school children with disabilities should be provided with consultative services, equipment and materials, and that training will be provided for private school teachers and other private school personnel.

If consultative services are provided to a private school teacher, as a means of providing special education and related services to a particular private school child with a disability, there may be situations where that teacher uses the acquired skills to provide education to other children as well. However, whatever benefit those other children receive is incidental to the publicly-funded services. As is true if direct services are provided, LEAs that elect to provide consultative services to their parentally-placed private school children with disabilities also must develop a services plan for each child receiving those services in accordance with 34 CFR §300.455(b).

Question 28: How would a services plan be developed for a parentally-placed private school child with a disability receiving consultative services?

Answer: Any parentally-placed private school child with a disability whom an LEA elects to serve must have a services plan. 34 CFR §300.454(c). Each child's services plan must contain, among other elements, a statement of the special education, related services, and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child to advance appropriately toward attaining his or her annual goals, to be involved and progress in the general curriculum, and to participate in extracurricular and other nonacademic programs. Consultation between a regular education teacher and a special education teacher could allow the regular educator to provide special education, which consists of specially designed instruction that meets State education standards and is individually-designed for an individual student, or a related service, if that service is required to assist a child with a disability to benefit from special education. Consultative services also could be considered a supplementary aid or service if provided to facilitate a student's education in regular classes alongside his or her nondisabled peers (see 34 CFR §300.28) or a support for school personnel, if provided to enable the child to advance appropriately toward attaining the annual goals and to be involved and progress in the general curriculum.

Question 29: Could an LEA, through consultation with appropriate representatives of parentally-placed private school children with disabilities, decide to provide services that address some of the needs of parentally-placed private school children with disabilities?

Answer: Yes. As noted previously, an LEA must conduct child find for all children enrolled in private schools by their parents who are suspected of having disabilities, regardless of the category of their suspected disability. However, once determined eligible, an LEA must, through the consultation process previously described, determine, among other matters, which parentally-

placed private school children with disabilities will receive services, what services will be provided, and the manner in which those parentally-placed private school children with disabilities selected to receive services will be served. An LEA could properly conclude that it will provide only certain services which may mean that needs commonly associated with one or more disability categories are not met, and that only some of the needs of a child who is served are met. An LEA could decide, through consultation, not to serve any parentally-placed private school children with disabilities who are enrolled at one or more private schools, but instead to limit the services the LEA is offering with the available amount of funds to parentally-placed private school children with disabilities enrolled at only one private school.

Question 30: Is there any requirement for parentally-placed private school children with disabilities to have IEPs?

Answer: No. Current regulations provide that each parentally-placed private school child with a disability who has been designated to receive services from the LEA must have a services plan that describes the specific special education and related services that the LEA will provide to the child in light of the services that the LEA has determined, through the consultation process, that it will make available to its parentally-placed private school children with disabilities. 34 CFR §300.455(b)(1).

Question 31: Must services plans be in place for all eligible parentally-placed private school children with disabilities residing in the LEA's jurisdiction?

Answer: No. The Part B regulations do not require public agencies to develop services plans for each and every parentally-placed private school child with a disability residing in the LEA's jurisdiction, regardless of whether that child receives services from the LEA. Services plans are required only for those parentally-placed private school children with disabilities whom the LEA has elected to serve, and must reflect only the services that the LEA has determined it will provide to the particular parentally-placed child with a disability.

Question 32: How must a services plan be developed?

Answer: A services plan must be developed, reviewed, and revised consistent with §§300.342-300.346 of the Part B regulations. The LEA is responsible for initiating and conducting meetings to develop a services plan in accordance with these requirements. The LEA must ensure that a representative of the religious or other private school attends each services plan meeting, and if the representative cannot attend, the LEA must use other methods to ensure participation by the private school, including individual or conference telephone calls.

Question 33: What must a services plan contain?

Answer: As noted above, a services plan, which must reflect only the services offered to a parentally-placed private school child with a disability designated to receive services, must, to the extent appropriate, meet the IEP content requirements in 34 CFR §300.347. Since students with disabilities who are entitled to FAPE must receive the full range of services under Part B,

the IEPs generally will be more comprehensive than the more limited services plans developed and implemented for those parentally-placed private school children with disabilities designated to receive services from an LEA. The requirement that a services plan meet the requirements of an IEP, to the extent appropriate, will ensure that the services actually provided to a parentally-placed private school child with a disability will meaningfully address the child's individual needs.

Example: An LEA has elected to serve an individual parentally-placed private school child with a disability who has speech needs through the provision of speech-language pathology services.

The child's services plan would specify the present levels of educational performance in this area, and how the child's speech-language disability affects the child's ability to be involved and progress in the general curriculum. Measurable annual goals for this child would be specific to the speech-language pathology services to be provided, and would enhance the child's ability to be involved in and progress in the general curriculum. The services plan would also specify the amount, frequency, location, and duration of the services to be provided in accordance with 34 CFR §300.347(a)(6) and how the child's parents will be informed of the child's progress, in accordance with 34 CFR §300.347(a)(7). Whether other content requirements at 34 CFR §300.347 would have to be addressed in a services plan would have to be determined on a case-by-case basis, depending on the services that are provided.

Question 34: Are there any remedies available to parents who dispute the services offered or provided to their child in connection with the parental private school placement?

Answer: Since eligible parentally-placed private school children with disabilities do not have an individual entitlement to services under Part B, the due process procedures in Part B of the Act do not apply to complaints that an LEA has failed to meet applicable requirements for serving these children, including an LEA's alleged failure to provide the services specified on a child's services plan. However, an organization or individual may file a signed written complaint under the applicable State complaint procedures at 34 CFR §§300.660-300.662 alleging that an SEA or LEA has failed to meet the requirements in 34 CFR §§300.451-300.462, such as failure to properly conduct the consultation process. On the other hand, as is true with respect to due process complaints, a State complaint alleging that an LEA has failed to offer services to a particular parentally-placed private school child with a disability would not violate Part B, since no parentally-placed private school child with a disability has an individual entitlement to services under Part B. 34 CFR §300.454(a).

IV. Location of Services

Question 35: How are decisions made about the location of services that the LEA has selected through consultation to offer to its parentally-placed private school children with disabilities?

Answer: As is true regarding the services that an LEA has selected to provide its parentally-placed private school children with disabilities designated to receive services, the location of services also is a matter that is determined through the process of consultation between LEA

officials and appropriate representatives of parentally-placed private school children with disabilities. Services offered to parentally-placed private school children with disabilities may be provided on-site at a child's private school, including a religious school, to the extent consistent with law, or at another location. The phrase "consistent with law" is statutory, and means that the provision of services on the premises of a private school takes place in a manner that would not violate the Establishment Clause of the First Amendment to the U.S. Constitution and would not be inconsistent with applicable State constitutions or laws. The provision of services at private school sites will help to minimize the amounts and time spent on transportation. In addition, this should cause the least disruption in the children's education. Since some States do not allow services to be provided at the private school site, LEAs may wish to seek legal advice before making service location determinations.

Question 36: If transportation would be a related service for a child with a disability, had the child been served directly in a public agency program or a public agency placement at a private school, would transportation automatically become a related service for a parentally-placed private school child with a disability who is designated to receive services from the LEA?

Answer: Regardless of whether transportation would be a related service for a child with a disability, transportation may be necessary for an individual child. If services are offered at a site separate from the child's private school, transportation may be necessary to get the child to and from that other site. Failure to provide transportation could effectively deny the child an opportunity to benefit from the services that the LEA has determined through consultation to offer its parentally-placed private school children with disabilities. In this situation, transportation is not a related service, as defined at 34 CFR §300.24(b)(15), but it still is a necessary means of making the services that are offered accessible to the child.

Question 37: Could an LEA refuse to provide transportation to parentally-placed private school children with disabilities who reside in its jurisdiction but who attend private schools located outside of the LEA's boundaries?

Answer: LEAs are encouraged to work in consultation with appropriate representatives of parentally-placed private school children with disabilities to ensure that services are provided at sites that will not require significant transportation costs. Therefore, it may be reasonable for an LEA, through the consultation process, to elect not to provide services to a child who attends a private school outside the district. However, if any child is selected for services and the service is provided away from the school the child attends, the child must be provided transportation to the service if it is necessary for the child to benefit from or participate in the service. Therefore, it may not be unreasonable for an LEA to elect not to provide services to parentally-placed private school children with disabilities who reside in the LEA's jurisdiction but who attend private schools located outside of the LEA's boundaries because of the increased costs involved.

V. Miscellaneous

Question 38: Are the requirements for children with disabilities aged 3 through 5 who are placed by their parents at private preschool programs, including home daycare programs, the same as the requirements for children with disabilities parentally-placed private elementary and secondary schools?

Answer: Yes. The Department interprets the requirements at 20 U.S.C. §1412(a)(10)(A) and 34 CFR §§300.450-300.462 to be fully applicable to children with disabilities aged 3 through 5 who have been placed by their parents at private schools. Many preschool-aged children also attend a broad range of child care settings. Whether a private daycare program conducted in the home or otherwise outside of the administrative control of a public agency can be considered a private preschool depends on the State definition of "private school." That a day care program is licensed under State health and safety and other day care requirements does not make the day care program a "private school" unless the State definition so specifies.

Assuming a child of preschool age is enrolled by his or her parents at a private preschool that satisfies the State definition, the same procedures that govern children with disabilities parentally-placed in private elementary and secondary schools in the State would be applicable. The child would have to be evaluated in accordance with the Part B requirements at 34 CFR §§300.532-300.533, subject to informed parental consent, and determined eligible in accordance with 34 CFR §300.535. Once determined eligible, the affected LEA would offer to make FAPE available at a public agency program or a public agency placement at a private school. In some situations, if the parents were interested in having their child participate in the publicly available services, the public agency could determine that the services specified in the IEP developed for the child could be appropriately implemented in the daycare setting selected by the parent at no cost to the parents.

If the parents choose not to accept the public program or placement offered, and if the parents enroll the child in a private preschool recognized under the State's definition, the public agency must include the child in the group of parentally-placed private school children with disabilities whose needs must be considered through the consultation process at 34 CFR §300.454(a)-(b) described below.

A parentally-placed private preschool-aged child with a disability who attends a program recognized under the State definition of private school and is designated to receive services from a public agency must have a services plan in accordance with 34 CFR §300.454(c) and §300.455 with respect to the services offered. As is true for services offered to parentally-placed private school children with disabilities in other age groups, services offered to preschool-aged children with disabilities may be provided on the premises of the private program, including a religious school, to the extent consistent with law. 34 CFR §300.456(a). Children in that age group who attend programs recognized under the State definition of private school designated to receive services can be served through the proportionate share of available section 611 and 619 funds that must be expended on services for this population of children. The LEA's annual count of parentally-placed private school children with disabilities residing in the LEA's jurisdiction conducted under 34 CFR §300.453(b) must include all children with disabilities who attend private schools recognized under the State definition. However, children with disabilities parentally-placed at private programs that do not meet the State definition of private school

cannot receive services under Part B and cannot be included in the annual count of parentally-placed private school children with disabilities aged 3 through 5.

Question 39: Are children with disabilities placed by their parents at private schools entitled to a free appropriate public education at the private school?

Answer: No. Children with disabilities placed by their parents at private schools are not entitled to a free appropriate public education (FAPE) in connection with their parental private school placements. States receiving funds under Part B of IDEA, as a condition of receipt of those funds, must make FAPE available to all children with disabilities residing in the State in mandatory age ranges. 20 U.S.C. §1412(a)(1)(A); 34 CFR §300.121. States satisfy their FAPE obligation to their resident parentally-placed private school children with disabilities by offering them FAPE either at a public agency or at a public agency placement at a private school. However, LEAs generally must consider and address the needs of eligible parentally-placed private school children with disabilities residing in their jurisdiction.

Question 40: If parents choose to enroll their child with a disability at a private school because of their preference for the private school, are there any circumstances in which a public agency would be required to make FAPE available to such a child in the future?

Answer: The public agency must include these children in its eligible population of parentally-placed private school children with disabilities whose needs must be considered in accordance with 34 CFR §§300.450-300.462 of the Part B regulations.

In addition, as is true for other children with disabilities, the public agency must evaluate every parentally-placed private school child with a disability at least every three years in accordance with the requirements of 34 CFR §§300.532-300.533 to determine a child's continued eligibility for special education and related services. If the parents withdraw their child with a disability from the private school placement that they have selected and return their child to the public school, the public agency again must make FAPE available to the child either in the public agency or a public agency placement at another public school or at a private school.

Question 41: Are there any particular qualifications that are applicable to personnel who provide special education or related services to those parentally-placed private school children with disabilities LEAs elect to serve?

Answer: Yes. Services provided to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing such services in public schools. Funds awarded under Part B, sections 611 and 619, may be used to make public school personnel available in other than public facilities to the extent necessary to provide services to parentally-placed private school children with disabilities under Part B, if those services are not normally provided by the private school. In addition, if private school personnel provide the services that the LEA has determined it will provide to its parentally-placed private school children with disabilities, the private school personnel must meet the same standards as

personnel providing services in public schools, must perform the services outside of his or her regular hours of duty, and must perform the service under public supervision and control. 34 CFR §§300.455(a) and 300.460-300.461.

Question 42: How could a State educational agency monitor to ensure that parentally-placed private school children with disabilities are being served in a manner that complies with Part B?

Answer: Each SEA must exercise general supervision over all education programs for children with disabilities administered by public agencies in the State and must ensure that such programs meet State education standards and Part B requirements. Accordingly, an SEA is required to have a method of monitoring its public agencies to ensure that they are meeting the statutory and regulatory requirements applicable to services for parentally-placed private school children with disabilities. An SEA also would be required to ensure that those parentally-placed private school children with disabilities whom the LEA has elected to serve are receiving special education or related services in accordance with a services plan.

Question 43: How can representatives of parentally-placed private school children with disabilities, including parents of these children, have input into OSEP's reviews of States as part of its continuing improvement monitoring process?

Answer: In monitoring each State, OSEP conducts extensive validation planning activities to help focus its data collection on those issues that are most critical to improving compliance and results for students with disabilities in the State. The validation planning process includes a number of public input forums in which individuals and groups, including parents of parentally-placed private school children with disabilities and other representatives of these children, can provide input regarding the issues that they believe should be a focus of OSEP's data collection in the State. Further, as part of the monitoring process, each State establishes a steering committee that helps the SEA conduct a self-assessment of the State's services for children with disabilities and provides input to OSEP. This committee may, at the State's discretion, include representatives of parentally-placed private school children with disabilities. Further, each State advisory panel on the education of children with disabilities must include representatives of parentally-placed private school children with disabilities. Among the functions of this panel are to advise the SEA in developing corrective action plans to address findings identified in Federal monitoring reports under Part B of the Act. Organizations or individuals that have specific questions or concerns about services for parentally-placed private school children with disabilities in their State should contact their local school district, State Department of Education special education division, or the OSEP State contact for Part B in the Monitoring and State Improvement Planning Division. A list of the OSEP State contacts can be found on the OSEP web page at http://www.ed.gov/offices/OSERS/OSEP/state_contact_list.html

Question 44: Is home school considered a private school? What if a child is below a State's compulsory school age and receiving services from an unapproved or uncertified home day care or other location strictly for childcare purposes?

Answer: Whether home schools are "private schools," including home day care, is determined by the State. If the State recognizes home schools or home day care as private schools, children with disabilities in those home schools or home day care must be treated in the same way as other parentally-placed private school children with disabilities. If the State does not recognize home schools or home day care as private schools, children with disabilities who are home-schooled or in home day care are still covered by the child find obligations of SEAs and LEAs, and these agencies must ensure that home-schooled children and those in home day care who have disabilities are located, identified, and evaluated, and that FAPE is available if their parents choose to enroll them in public schools.

Question 45: If under State law, dual enrollment of a child in both a public agency program and a private school is required in order for the child to receive special education and related services from a public agency in connection with a parental private school placement, does the parentally-placed private school child with a disability have a right to FAPE?

Answer: The Part B regulations make clear that no parentally-placed private school child with a disability has an individual entitlement to services. 34 CFR §300.454(a). Whether dual enrollment alters the rights of a parentally-placed private school child with a disability under State law is a State matter. There is nothing in Part B that would prohibit a State from requiring dual enrollment as a condition of eligibility of a parentally-placed private school child with a disability for services from a public agency.

Attachment 1
Proportionate Share Calculation for
Parentally-Placed Private School Children with Disabilities

FOR FLINTSTONE SCHOOL DISTRICT:

# of eligible children in public schools	=	300
# of eligible children in private schools	=	20
Total # of eligible children	=	320

AT DECEMBER 1 CHILD COUNT:

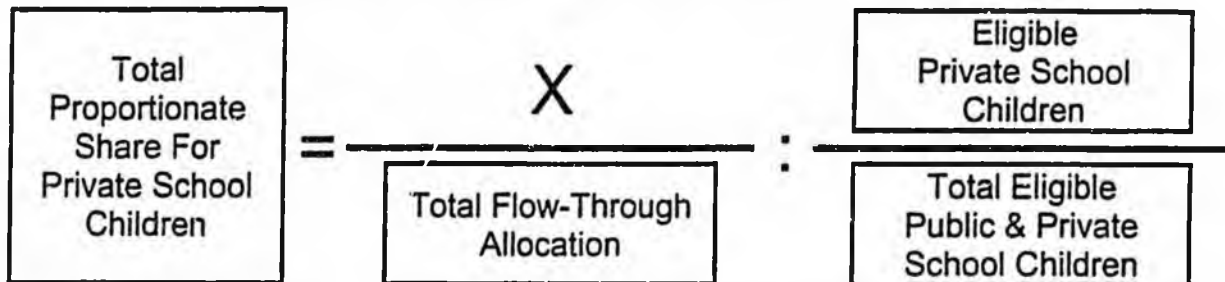
# of children served in public schools	=	300
# of children served in private schools	=	5
Total # of public & private children served	=	305

Note: 305 is the number turned in to OSEP for children served with IEP or service plan.

FEDERAL FLOW-THROUGH FUNDS TO FLINTSTONE SCHOOL DISTRICT:

Total allocation to Flintstone = \$152,500

FORMULA FOR CALCULATING PROPORTIONATE SHARE:



Note: Proportionate share for parentally-placed private school children is based on total children eligible, not children served.

FLINTSTONE SCHOOL DISTRICT OBLIGATION:

$$\frac{\text{X}}{\$152,500} : \frac{20}{320}$$

$$\text{X} = \$9,531.25$$

(This amount must be spent for the group of parentally-placed children in private schools)

1215 Fifth Street
Douglas, AK 99824
February 7, 2001

Senator Lyda Green
Alaska State Senate

Dear Senator Green,

I am writing in regard to SB 40. I am the parent of a gifted child who is a student in the Juneau School District. First, I want to support the Department of Education's effort to gain some additional funds for a departmental staff with responsibility for gifted education. For too long DOE has refused to provide any support to parents or districts on issues of gifted education, despite statutory responsibility. Their rationale has been lack of funds. I hope that you will recommend funding for a gifted education position. This position is needed because so many districts fail to provide parents with any information about gifted children and too many districts do not live up to their responsibilities to identify gifted children and to provide them with an appropriate public education. Even districts, such as Juneau, which make an effort to identify gifted students do a less than adequate job of providing for their educational needs.

Gifted students need academic challenge and support. Without the challenge, they may become bored and frustrated and act out in classes. An informal survey of local high school teachers in Juneau showed me that a significant number of our most gifted children become school drop-outs or school failures, because they have become so turned off to school. Parents of gifted children often use the summer as a time to provide academic challenge to students who can't be bothered with school during the academic year.

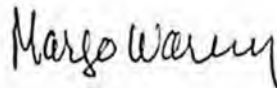
Educational research into the needs of gifted children shows that academic challenge is provided through acceleration and enrichment in settings which maximize the numbers of ability peers learning together.

For this reason, I urge you to substitute the following language for the section of SB 40 which specifies the least restrictive environment for the education of gifted students:

For purposes of gifted education, the least restrictive setting is provision of academically appropriate materials to classes or groups of gifted students with similar educational needs or "pull-outs" where the needs of groups of similarly gifted students are addressed. If instruction is in inclusive classrooms, then the curriculum must be differentiated for gifted students by teachers trained to provide a differentiated curriculum.

Gifted students are frequently "underachievers" in Alaska because their educational needs are not addressed. I appreciate any support you can give to change this situation and assure their educational needs are addressed.

Sincerely,



Margo Waring

Post-It® Fax Note	7671	Date	# of pages 6
To: <i>J. Hess</i>		From: <i>Valdez L10</i>	
Co./Dept.		Co.	
Phone #		Phone #	
Fax #		Fax #	

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LOUISE PARISH

Questions for AkDEED:

Testimony for 2/7/01

Why has the dept. completely ignored my numerous requests to change the word language to speech-language in eligibility regulations, even though IDEA uses the term speech-language? Are you trying to ignore the needs of language impaired kids like my daughter? I have commented on this forever. Does AkDEED read the comments submitted by parents re:their regulations? If so, why haven't they changed that? If their regs are improper, how can I assume their statutes are better? In fact, this bill allows for a child with a disability to be identified with a (Section 29 AS 14.30.350 (2) (1)) "Speech impairment" but not a "Speech-Language Impairment." I have shouted this neglect to the rooftops and in many formal comments to AkDEED regarding their regs. They don't listen. Therefore, why should I trust this bill? IDEA says SPEECH OR LANGUAGE IMPAIRMENT (for the millionth time!!!!) My daughter, despite being referred in for language evaluation in third grade, was not identified as having a language disorder until she was in 7th grade. That was because I took her to a private SLP. THIS LANGUAGE MUST BE FIXED!!!!It seems that everything is stacked against families. We have no voice.

I asked Dr. Johnson why the dept. never invited regular parents to participate in any legislative review of this bill as it was constructed. We were left out of the picture. Dr. Johnson told me it was because the dept. didn't "have to." He said I could REACT after the bill was constructed to the legislature. Why does AkDEED exclude parents?

My reaction is that I have no certainty whatsoever that this bill is adequate or appropriate for our kids. I asked Dr. Johnson and the state board to conferr with private counsel in the construction so that parents could feel that their interests were represented.

Has the Dept. ever conferred as it promised it would do with PRIVATE counsel practicing in this area of LAW BEFORE submitting this bill, and if so, please identify such private counsel?

Why is it that AKDEED never asked its hearing officers for input comment etc on current or proposed state regs or statutes?

Why has the department refused to consider the proposal to set up a hearing panel as adopted by Missouri?

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Why does the bill fail to state Alaskan policy on exceptional children?

I have heard that counsel representing your department stated a year ago that forcing an endorsed teacher to take a special ed. position was unconstitutional though in fact such placement is provided for in statute, how accurate do you believe such counsel is now with respect to this bill?

Didn't the PTPC accept a complaint against Dr. Johnson for violation of numerous portions of state law but then dismissed that complaint based on the PTPC staff's belief that it was because Dr. Johnson was just doing what he was told..... Could Dr. Johnson address whether he disagrees with the PTPC and if not, could he explain from where he received the erroneous information that caused him to violate so many portions of our statutes and regulation?

Why did the department propose regulations that would disqualify a hearing officer who has ever represented a parent in any action against any school district but not put that in the statute?

Why should we believe that the dept. is in favor of maintaining an appropriate cadre of qualified hearing officers when the dept has never complied with the 1993 amendments regarding hearing officers?

I don't like that this bill allows the dept. to establish by regulation "impartial procedures for a school district to follow for due process hearings to comply with 20 USC 1400-1487." After going through due process steps I have reservations about what regs AKDEED may or may not write.

Why does the statute still fail to provide for a hearing officers subpoena power? Parents should not have to have a two-tier system that wastes their time and money with no subpoena power, etc.

Isn't the selection process identified impracticable as it requires both district and parent to simultaneously challenge an appointment, which raises the question of

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whether such simultaneous challenge results in loss of both sides pre-empts... and what about a further appointment which is not mentioned, etc. ?

WHY considering the adamant opposition from parents as well as the fact that every argument in support has been debunked is AKDEED still trying to adopt one set of laws for one set of exceptional children and another set for another set of exceptional children?

Investigation has demonstrated that the department has been unable to comply with state law with respect to the existing lenient statutes and regulations..... isn't it time to make those requirements a bit stricter and place oversight provisions to put an end to the department's gross misconduct with respect to supervising the issuance of credentials?

In 1994 a proposal was put forth that would have required all teachers to be endorsed in special ed to obtain certification by the Millenium. AkDEED scoffed at the proposal then and has proposed nothing remotely similar since (still allowing unqualified staff to be placed for entire years in situations where IEPs require endorsed staff), could you explain why you feel that such training is unwarranted?

Where is the Comprehensive System of Personnel Development statute? There are other items that appear to be unaddressed, but I am not a lawyer. I want a private lawyer to review this. To read more of my concerns, visit

<http://www.akc:ptional.org/cgi-bin/HyperNews/get/akceptionalities.html>

I don't like that AkDEED appears to have no oversight in this important legislation.

ADDITIONAL COMMENTS FOR SB40 FROM PARISH

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IDEA 97 says the act has been....

....."impeded by low expectations, and an insufficient focus on applying replicable research on proven methods of teaching and learning for children with disabilities...." And "Over 20 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by having high expectations for such children and ensuring their access to the general curriculum to the maximum extent possible...." (This does not necessarily mean "mainstreaming" but having the opp to learn the same content...Louise) "supporting high-quality, intensive professional development for all personnel who work with such children in order to ensure that they have the skills and knowledge necessary to enable them to meet developmental goals and to the maximum extent possible, those same challenging expectations that have been established for all children...."

I have quickly reviewed some of IDEA 20 USC 1400.....and 34CFR Part 300 regulations. I have concerns with our proposed statutes. Without writing a huge paper, I'd like to ask that these items be put into statute. It is very hard to fit everything in as a parent with a real life. I have attached refs as I was able. I am again on deadline:

- 1.) State Performance Goals and Indicators – DEED should publicly disaggregate the information about reg kids and sped kids performances. This requirement should be in statute. See 20USC1412 (16)
- 2.) LRE ... allow for kids to be pulled out as needed ...add words "if cannot be achieved satisfactorily." See 20USC1412 (5) (A)
- 3.) Participation in Assessments – DEED should allow for appropriate participation in statewide assessments. See 20USC 1412 (17)
- 4.) Addn'l procedural safeguards 20USC 1412 (6) (B)testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of children with disabilities will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it is clearly not feasible to do so, and no single procedure shall be the sole criteria for determining an appropriate educational program for a child.
- 5.) Evaluation procedures ---Conduct of evaluation - ...LEA shall...."use a variety of assessment tools and strategies to gather relevant functional and developmental information, including information

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- provided by the parent.....abling the child to.....progress in general curriculum...see 20USC 1414 (b) (2)
- 6.) State Advisory Panel – the panel should include parents of kids with disabilities, teachers, with a majority of the panel either those with disabilities or parents of kids with disabilities. See USC 1412 (21) (I, ii and iii) and (21) (c)
 - 7.) Advisory Panel Duties – the advisory board must make public comment on all proposed regs See 20USC 1412 21 (D) (ii)
 - 8.) Comprehensive System of Personnel Development – DEED must have a written plan. See 20USC 1412 (14)
 - 9.) Personnel Standards – Does the state require the educators to have the highest licensing in the state such as Speech Language Pathology? If not, what steps are they taking to ensure that paraeducators are working to that standard? See 20USC (15) (A)
 - 10.) Evaluation Process –DEED must provide notice to parents that describes all evaluation procedures for determination of eligibility. They must use a variety of assessment tools. 20USC 1414 B....
 - 11.) Additional Evaluation Requirements – Districts must review existing evaluation data, including evals and info provided by parents. See 20USC 1412 (6)
 - 12.) ADDN'l requirements for eval and reeval...."Review existing evaluation data on the child...including evaluations and information provided by the parents...." See 1414 5C
 - 13.) IEP team – No unnecessary members...."at the discretion of the parent or the agency other individuals WHO HAVE KNOWLEDGE OR SPECIAL EXPERTISE regarding the child," Parents tell me sometimes reps are there who do not personally know the child are not protecting the child, but others. see 1414 2 B vii
 - 14.) Development of IEP team – the IEP team SHALL...take.....the concerns of parents for enhancing the education of their child....the results of the most recent eval (*parentally obtained or district made.*)
 - 15.) Considering opps for direct instruction – IEP team MUST consider opportunity...for direct instruction....
 - 16.) Form for due process request – regs say nothing about DEED-made form. Parents can just write a letter. Don't make them do a scary form....districts have lawyers on retainer....parents have to struggle...
 - 17.) Childfind – FAPE & GRADE ADVANCEMENT is new. CHILDFIND notices should include that the child may be referred in for evaluation of any suspected disability even though advancing from grade to grade. Write it in statute.

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18.) DISABILITY DEFINITIONS – 300.7, Child with a disability.

Change speech impairment to speech or language impairment. Change entire section to include IDEA definitions, not just “names” of categories.

AGAIN, I cannot seem to fit the time in to cite all of these. If we had had an opp for regular PARENTS to participate together with agencies and discuss all of these potential problem areas, perhaps I would not have to expend so much of my personal energy to try to help our kids.

Thank you,

Louise Parish
Box 1182
Valdez, AK 99686

Additions:

- 12 month Due Process should be 24
- Speech changed to speech-language thru/out

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 40
 () Publish Date: _____

Revision Date/Time (Note if correction): 2/6/01 Dept. Affected: Education & Early Dev.
 Title: An Act relating to special education . . . BRU: Teaching & Learning Support
 Component: Special and Supplemental Services
 Sponsor: Rules Committee
 Requester: Governor Component Number: 166

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services	40.4	40.4	40.4	40.4	40.4	40.4
Travel	6.0	6.0	6.0	6.0	6.0	6.0
Contractual	47.0	47.0	47.0	47.0	47.0	47.0
Supplies	10.0	10.0	10.0	10.0	10.0	10.0
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	103.4	103.4	103.4	103.4	103.4	103.4

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	103.4	103.4	103.4	103.4	103.4	103.4
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	103.4	103.4	103.4	103.4	103.4	103.4

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time	1					
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Currently, the department is charged, by state statute, to administer the state's Gifted Education program. This legislation clarifies the state's responsibilities relating to the Gifted Education program. Although the legislation does not add new responsibilities, the department has not had the resources to meet the requirements. Federal special education funds cannot be used for this purpose. The department has requested a general fund increment in the FY2002 budget for the Division of Teaching and Learning Support, Special and Supplemental Services Component to cover the costs for administering this program.

Prepared by: Barbara Thompson, Deputy Director Phone 465-8727
 Division: Teaching & Learning Support Date/Time 2/6/01 12:00 AM
 Approved by: Bruce Johnson, Deputy Commissioner Date 2/6/01
 Agency: Department of Education & Early Development

For distribution information, call the Governor's Legislative Office

SB 40
Fiscal Note Budget Narrative

Current state law and the proposed HB 71 require the state to oversee gifted education programs provided by school districts. Federal special education funding may not be used for these purposes since gifted education is not a federal mandate. Therefore, the following funds are required to enable the state to fulfill its oversight responsibility.

Personal Services

*.5 FTE Education Specialist II, 21 A/B	\$36,200
**10 FTE Admin. Clerk II, 8 B	<u>\$ 4,200</u>
Total	\$40,400

*This fiscal note includes personal services costs for a .5 FTE Education Specialist II. This position is reflected on page 1 of the fiscal note as 1 new full-time position. The other half of this position is reflected in a department increment in the FY2002 budget for the statewide correspondence program.

**An existing position will be used for the Administrative Clerk II position. No new position is being requested in this fiscal note.

Travel

Due Process Training for 2 days @ \$1,000 each	\$ 2,000
Monitoring to accompany contractor for 4 visits @ \$1,000 each	<u>\$ 4,000</u>
Total	\$ 6,000

Contractual

Contractor:	
Training, 10 days @ \$500 per day	\$ 5,000
Due Process Hearings, 4 @ \$5,000 each	\$20,000
Monitoring visits, 2 contractors at \$500 per day, 3 days each, 4 districts per year	\$12,000
Monitoring visits, \$1,000 each trip, 4 trips	\$ 4,000
Postage, phone, copier, printing	<u>\$ 6,000</u>
Total	\$47,000

Supplies

Training materials, other supplies	<u>\$10,000</u>
Total	\$10,000

Grand Total \$103,400

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SB 40
(S) Publish Date: 1/17/01

Revision Date/Time (Note if correction): _____ Dept. Affected: Education & Early Dev.
Title: An act relating to special education... BRU: Teaching & Learning
Sponsor: Rules Committee Component: Special and
Requester: Governor Component Number: Supplemental Services
166

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
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 (FY2001) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Currently, the department is charged, by state statute, to administer the state's Gifted Education program. This legislation clarifies the state's responsibilities relating to the Gifted Education program. Although the legislation does not add new responsibilities, the department has not had the resources to meet the requirements. Federal special education funds cannot be used for this purpose. The department has requested an increment of \$177,700 in general funds in the FY2002 budget for the Division of Teaching and Learning Support, Special and Supplemental Services Component to cover the costs for administering this program.

Prepared by: Barbara Thompson Phone 465-8727
Division: Teaching and Learning Support Date/Time: 11/14/00 10:00 AM
Approved by: Bruce Johnson, Deputy Commissioner of Education Date: 11/14/00
Agency: Dept. of Education & Early Development

For distribution information, call the Governor's Legislative Office

HB 71/SB 40

**An Act Relating to the Education
of Children with Disabilities and
Gifted Children**



• Alaska Department of •
EDUCATION
& EARLY DEVELOPMENT

Highlights of HB 71/SB 40

"An Act Relating to the Education of Children with Disabilities and Gifted Children"

Purpose:

1. To update state special education statutes to conform with the federal Individuals with Disabilities Education Act, as amended in 1997 (IDEA 97). IDEA 97 contains a number of policy amendments and emphasizes the importance of parental rights and parental participation in identifying and serving children with disabilities.
2. To delineate the federal and state requirements for providing educational services to children with disabilities, and the state requirements for providing educational services to gifted children.
3. To ensure that Alaska continues to qualify for federal special education funds.
4. To define Alaska's special education policy in areas where federal requirements provide states with discretion.

Revisions to Current State Law

Changes to the current state law include the following:

- The term "exceptional children" is replaced by the terms "child with a disability" and "gifted child". The statutory sections that pertain to children with disabilities have been separated from those that pertain to gifted children.
- Under current state law, the school district of a student's residence must provide special education and related services for a child with a disability. The revised statute requires state boarding schools and statewide correspondence schools that enroll children with disabilities from outside their districts to provide special education and related services to these students.
- The due process hearing procedure is changed, requiring the department rather than the school district to assign hearing officers. Appeals of hearing officer decisions will be made to superior court rather than the department. Similar hearing procedures will be used for both special education and gifted education.
- Mediation, a voluntary dispute resolution process for school districts and parents of children with disabilities, is added to the state statute in conformance with IDEA 97.
- Currently, children with disabilities enrolled in private schools are entitled to a full range of special education services from their public school district of residence. The revised statute limits district responsibility for providing special education services to children voluntarily enrolled in private schools to match the requirements contained in IDEA 97.

- Districts are required to serve only gifted children enrolled in the school district and attending public school.
- Districts are no longer required to provide related services, such as individualized transportation services, to gifted children.
- Significant changes to definitions include the following:
 - "serious emotional disturbance" is changed to "emotional disturbance" to reflect the federal definition;
 - "preschool developmental delay" is changed to "early childhood developmental delay" to reflect current terminology;
 - "parent" is changed to:
 1. specify that the state cannot serve as the child's guardian in educational matters; and,
 2. include a person with legal responsibility for a child's welfare who is acting in place of a child's natural or adoptive parent;
 - "related services" is changed to incorporate the federal IDEA 97 definition;
 - "school district" is changed to add state boarding schools and the state centralized correspondence study program;
 - "special education" is changed to incorporate the federal IDEA 97 definition;
 - "due process hearing" is added and defined according to AS 14.30.193;
 - "informed consent" is added to provide more specific guidance regarding what informed parental consent constitutes;
 - "gifted education" is added to distinguish gifted education from special education; and,
 - "Individualized gifted education program" is added to distinguish gifted program plans from special education program plans.

Budget Considerations

The department has the responsibility for administering the state's gifted education program under the current law, but has not had the resources to address due process hearings, training, and technical assistance for parents and school districts.

The department has requested an increment of \$177,700 in general funds in the F' 2002 budget to cover the costs for administering this program, since federal special education funds cannot be used for this purpose.

**HB 71 / SB 40: Special Education Statute
Comparison of Current and Proposed Legislation**

Current Statute	Proposed Statute: HB 71/ SB 40	Effect/Rationale
<p>Sec. 14.16.050. Applicability of education laws. (a) The following provisions apply with respect to the operation and management of a state boarding school as if it were a school district: (4) requirements relating to students and educational programs: (A) AS 14.30.180 - 14.30.350 (relating to educational services for exceptional children); (B) AS 14.30.360 - 14.30.370 (establishing health education program standards); (C) AS 14.30.400 - 14.30.410 (relating to bilingual and bicultural education).</p>	<p>Section 1. AS 14.16.050. (a)(4) is amended to read: (4) requirements relating to students and educational programs: (A) AS 14.30.180 - 14.30.350 (relating to educational services for <u>[EXCEPTIONAL] children with disabilities</u>); (B) <u>AS 14.30.351 - 14.30.359 (relating to educational services for gifted children)</u>; (C) AS 14.30.360 - 14.30.370 (establishing health education program standards); (D) [(C)]AS 14.30.400 - 14.30.410 (relating to bilingual and bicultural education).</p>	<p>This section is amended to:</p> <ul style="list-style-type: none"> - replace "exceptional children" with "children with disabilities" and "gifted children"; - to revise the statutory reference to education for gifted children; and, - to update other state statutory references to state boarding school responsibilities for providing educational services.
<p>Sec. 14.30.180. Purpose. It is the purpose of AS 14.30.180 - 14.30.350 to (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 20 U.S.C. 1400 - 1485 (Individuals with Disabilities Education Act).</p>	<p>AS 14.30.180 is amended to read: Sec. 14.30.180. Purpose. It is the purpose of AS 14.30.180 - 14.30.350 to (1) provide an appropriate public education for <u>each child with a disability [EXCEPTIONAL CHILDREN]</u> in the state who <u>is [ARE]</u> 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 [20 U.S.C. 1400-1485]</u> (Individuals with Disabilities Education Act), <u>as amended</u>.</p>	<p>This section is amended to clarify that "exceptional children" refers to "children with disabilities". The reference to the federal statute, the Individuals with Disabilities Education Act (IDEA 97), is also updated.</p>
<p>Sec. 14.30.185. Programs shall be established. [Repealed, Sec. 59 ch 98 SLA 1966]. Repealed or Renumbered</p>		

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<p>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.</p>	<p>Section 14.30.186 is amended to read: Sec. 14.30.186. Coverage. (a) <u>Special education and related services shall be provided</u> <u>(1) by a borough or city school district, for a child with a disability residing within the district;</u> <u>(2) by the 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;</u> <u>(3) by the borough, city school district, or regional educational attendance area in which a treatment facility, or a correctional or youth detention facility is located, for a child with a disability placed at the facility;</u> <u>(4) by a state boarding school established under AS 14.16, for a child enrolled at the boarding school; or</u> <u>(5) by a school district that provides a statewide correspondence study program, for a child with a disability who is enrolled in the program.</u> [A BOROUGH OR CITY SCHOOL DISTRICT SHALL PROVIDE SPECIAL EDUCATION AND RELATED SERVICES FOR EXCEPTIONAL CHILDREN RESIDING IN THE DISTRICT]</p>	<p>Subsection (a) is amended to indicate that state boarding schools and school districts' statewide correspondence study programs are responsible for providing special education and related services for children with disabilities enrolled in these programs.</p> <p>Subsection (e) is amended by replacing "exceptional children" with "a child with a disability".</p> <p>A new subsection (f) is added to indicate that the department will establish regulations to guide the coordination of and payment for the provision of special education and related services when more than one of the agencies listed in (a) has responsibility for providing services.</p>
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**HB 71 / SB 40: Special Education Statute
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	<p>AS 14.30.186(e) is amended to read: <u>a child with a disability</u> [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.</p> <p>AS 14.30.186 is amended by adding a new subsection to read: (f) The department shall establish standards in regulations for the allocation of financial responsibilities and the coordination of the provision of special education and related services among the educational agencies listed in (a) of this section when more than one educational agency is responsible to provide those services.</p>	
<p>Sec. 14.30.190. Establishment of standards by Department of Health and Social Services. [Repealed, Sec. 4 ch 144 SLA 1970]. Repealed or Renumbered</p>		
<p>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</p>	<p>AS 14.30.191 is amended to read: Sec. 14.30.191. Educational evaluation and placement. (a) A school district shall obtain the <u>written informed</u> consent of the child's parent before an initial evaluation or placement <u>of a child with a disability</u> in a program of special education</p>	<p>This section is amended to clarify that "consent" means "written informed consent" and to replace "exceptional children" with "a child with a disability". Subsection (d) is amended to</p>

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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

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, a [AN EXCEPTIONAL] child with a disability shall receive an educational evaluation [FOR THE IDENTIFICATION AND CLASSIFICATION OF EXCEPTIONAL CHILDREN].

(c) Before a school district initiates or refuses a change in the [A CHILD'S] placement or educational program of a child with a disability, the district shall notify the child's parent.

(d) Upon completion of an [THE] evaluation or reevaluation under this section, [AND BEFORE PLACEMENT,] the school district shall provide to the parent of each [EXCEPTIONAL] child evaluated under this section an opportunity to participate in the determination of the child's eligibility for special education and related services, [FOR CONSULTATION ABOUT THE EVALUATION. A CONSULTATION MUST BE AVAILABLE AFTER EACH REEVALUATION OF THE CONDITION] and to participate in the determination of the educational placement of the [EXCEPTIONAL] child if the child is determined to be eligible for special education and related services.

AS 14.30.193 is amended by adding new subsections to read:

(h) A school district shall provide written notice of its decision under this section to the parent of the

indicate that the requirement to provide parents with the opportunity to participate in the determination of a child's eligibility for special education and related services, as well as the child's placement, includes both initial evaluations and re-evaluations.

A new subsection (h) is added that requires school districts to provide parents with written notice of the evaluation and placement decisions made with regard to the child. The notice must include a description of the procedural safeguards available to the parent. This is in line with IDEA 97 requirements.

A new subsection (i) is added to clarify that "hearing" refers to a due process hearing.

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<p>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.</p>	<p>child. The notice shall include a description of the procedural safeguards available to that parent and child under federal law. (i) In this section, "hearing" means a due process hearing under AS 14.30.193.</p>	
<p>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.</p>	<p>AS 14.30.193 is repealed and reenacted to read: Sec. 14.30.193. <u>Due process hearing.</u> A school district or a parent of a child with a disability may request a due process hearing on any issue related to identification, evaluation, or educational placement of the child, or the provision of a free, appropriate, public education to the child. A request is made by providing written notice to the other party to the hearing. A request by a parent for a due process hearing under this section must be made not later than 12 months after the date that the school district provides the parent with written notice of the decision with which the parent disagrees. A school district shall make its request for a due process hearing in accordance with the time limit established in regulations of the department. (b) If a due process hearing is requested by</p>	<p>This section amends the due process hearing procedures. The purpose of these changes is to make the process more efficient while still ensuring that the rights of both parents and school districts are protected. This process also allows the department to more effectively track the number of due process hearings requested as well as the issues raised.</p> <p>Proposed changes include the following:</p> <ul style="list-style-type: none"> - Parents must file a request for a due process hearing

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(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.

(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.

(f) A hearing officer's decision under this section is final and binding on the school

either a school district or a parent, the school district shall contact the department to request appointment of an available hearing officer. The department shall select a hearing officer through a random selection process, from a list maintained by the department under (g) of this section. Within five working days after receipt of the request, the department shall provide to the district and the parent a notice of appointment, including the name and a statement of qualifications of the hearing officer that the department determines is available to conduct the hearing.

(c) The school district and the parent each have the right to reject without statement of cause, one hearing officer appointed under this section. The rejecting party shall notify the department of that rejection in writing within five days after receipt of the department's notice of appointment. If a hearing officer is rejected under this subsection, the department shall, within five working days after receipt of the written rejection, provide a notice of appointment, including the name and a statement of qualifications, of another hearing officer that the department determines is available to conduct the hearing. Each appointment is subject to a right of rejection under the subsection by a party who has not previously rejected an appointment.

(d) After a hearing officer is appointed and the time for rejection under (c) of this section has expired, the hearing officer shall immediately inform the parent and the school district of the availability of the mediation process provided

- with the school district no later than 12 months following the decision with which they disagree; the timeline for districts shall be established in regulation in order to allow the State Board of Education & Early Development to consider the effects of different timeline options;
- The department will appoint a hearing officer through a random selection process;
- The school district and the parent may each reject one hearing officer without stating a reason; after this is exhausted, a hearing officer will be appointed.
- The appointed hearing officer will inform the parent and the school district of the availability of mediation;
- Due process hearings will be conducted according to

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

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

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

under AS 14.30.194 and encourage use of that process to attempt to resolve the disagreement between the parent and the school district. If the mediation process does not result in settlement of all of the issues, the hearing officer shall conduct a hearing in compliance with the requirements of federal law, including 34 CFR 300.507 - 509, as amended. After the hearing is completed the hearing officer shall issue a written decision that (1) upholds the school district's decision; or (2) overturns the school district's decision with specific instructions for modification of the identification, evaluation, educational placement, or provision of the education program by the district.

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

(f) A hearing officer's decision under this section is a final administrative order, subject to appeal to the superior court for review in the manner provided under AS 44.62.560.

(g) The department shall maintain a list of qualified hearing officers. The department shall provide for the qualification of hearing officers

- federal requirements, including those contained in 34 CFR 300.507 -- 509 .
- The hearing officer's written decision is final but may be appealed to the superior court. Appeals are no longer made to the department.

Subsection (h) clarifies that students with disabilities aged 18-21 have the same rights and obligations as parents of children with disabilities.

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	<p>through a training program that is open to all individuals who meet the criteria set by the department in regulation. The list of qualified hearing officers shall be maintained as a public record.</p> <p>(h) For purposes of this section, a student with a disability aged 18-21 has the same rights and obligations under this section as a parent of a child with a disability.</p>	
	<p>AS 14.30 is amended by adding a new section to read:</p> <p>Sec. 14.30.194 Mediation (a) The department shall, by regulation, establish and implement a voluntary mediation process in conformance with the requirements of federal law, including 34 CFR 300.506, as amended. The department shall encourage the use of mediation for settlement of disputes under AS 14.30.180 - 14.30.350.</p> <p>(b) The department shall maintain a list of individuals who are qualified mediators knowledgeable in the federal and state statutes and regulations relating to the provision of special education and related services. The department shall provide for qualification of mediators through a training program that is open to all individuals who meet the criteria set by the department by regulation.</p>	<p>Mediation, under IDEA 97, is a voluntary dispute resolution process for school districts and parents that states are required to offer when due process hearings are requested.</p>
<p>Sec. 14.30.195. Hearings. (a) The department shall, by regulation, provide for administrative appeal hearings,</p>		<p>This section has been repealed since the revised due process hearing procedures no longer</p>

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<p>based on the record, of impartial hearing officers' decisions under AS 14.30.193 . An administrative appeal hearing shall comply with all requirements necessary for participation in federal grant-in-aid programs, including 20 U.S.C. 1400 - 1485 (Individuals with Disabilities Education Act).</p> <p>(b) The agency conducting a hearing under this section may issue subpoenas under AS 44.62.430 and may petition the superior court for adjudications of contempt under AS 44.62.590 .</p> <p>(c) After an appeal hearing under this section, the department shall render its decision affirming, reversing, modifying, or remanding the hearing officer's decision under AS 14.30.193 .</p> <p>(d) A parent or the school district may appeal to the appropriate court for review of the department's decision on appeal under (c) of this section.</p> <p>(e) A parent who appeals to the court and who is determined by the court to be an indigent person may be provided with a court appointed attorney at public expense. In this subsection, "indigent person" has the meaning given in AS 18.85.170 .</p>		<p>include an administrative appeal to the department. The department will now conduct the due process hearing through the department-appointed hearing officer. The appeal of the hearing officer's decision is to be made to the superior court.</p>
<p>Sec. 14.30.200. - 14.30.220 Eligibility; budget; forfeiture of right to reimbursement. [Repealed, Sec. 5 ch 70</p>		

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<p>SLA 1963]. :ao;14.30.220 Repealed or Renumbered</p>		
<p>Sec. 14.30.230. Special education. [Repealed, Sec. 6 ch 144 SLA 1970]. Repealed or Renumbered</p>		
<p>Sec. 14.30.231. Advisory committee. The Governor's Council on Disabilities and Special Education established under AS 47.80 shall serve as an advisory committee, the function of which is to provide information and guidance for the development of appropriate programs of special education and related services for exceptional children.</p>	<p>Section 14.30.231 is amended to read: Sec. 14.30.231. Advisory panel [COMMITTEE]. The Governor's Council on Disabilities and Special Education established under AS 47.80 shall serve as the <u>state</u> [AN]advisory <u>panel</u> [COMMITTEE], the function of which is to provide information and guidance for the development of appropriate programs of special education and related services for [EXCEPTIONAL] children <u>with disabilities</u>.</p>	<p>This section is amended by changing "advisory committee" to "state advisory panel" consistent with IDEA 97 terminology. This section is amended to substitute "children with disabilities" for "exceptional children".</p>
<p>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.</p>		
<p>Sec. 14.30.240. Supervisor. [Repealed, Sec. 5 ch 70 SLA 1963]. Repealed or Renumbered</p>		
<p>Sec. 14.30.250. Teacher qualifications. A person may not be employed as a teacher of exceptional children unless that person possesses a valid teacher certificate and, in addition, such training as the department may require by regulation.</p>	<p>Section 14.30.250 is amended to read: Sec. 14.30.250. Teacher qualifications. A person may not be employed as a teacher of [EXCEPTIONAL] children <u>with disabilities</u> unless that person possesses a valid teacher certificate and, in addition, such training as the department may require by regulation.</p>	<p>This section is amended to substitute "children with disabilities" for "exceptional children".</p>

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<p>Sec. 14.30.255. Administrator qualifications. A person may not be employed as an administrator of a program of special education and related services unless that person possesses a valid administrative certificate and, in addition, such training as the department may require by regulation.</p>		
<p>Sec. 14.30.260. Exception to qualifications. [Repealed, Sec. 19 ch 147 SLA 1984]. Repealed or Renumbered</p>		
<p>Sec. 14.30.270. Substitutes. AS 14.30.250 does not prohibit the employment of a person, otherwise qualified to serve as a substitute teacher, to serve as a substitute teacher of exceptional children.</p>	<p>AS 14.30.270 is amended to read Sec. 14.30.270. Substitutes. AS 14.30.250 does not prohibit the employment of a person, otherwise qualified to serve as a substitute teacher, to serve as a substitute teacher of [EXCEPTIONAL] children <u>with disabilities</u>.</p>	<p>This section is amended to substitute "children with disabilities" for "exceptional children".</p>
<p>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</p>	<p>AS 14.30.272 is amended to read: Sec. 14.30.272. Procedural safeguards. (a) A school district shall inform the parent of [AN EXCEPTIONAL] child <u>with a disability</u> 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</p>	<p>This section is amended to substitute "child with disabilities" for "exceptional child".</p> <p>This section is amended to clarify that "impartial hearing" and "hearings" refer to due process hearings.</p>

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<p>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.</p> <p>(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).</p>	<p>district or by choosing a person by agreement between the parent and school district, to request a <u>due process</u> [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.</p> <p>(b) The department shall establish, by regulation, impartial procedures for a school district to follow for <u>due process</u> hearings [UNDER AS 14.30.193] to comply with requirements necessary to participate in federal grant-in-aid programs, 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>	<p>Subsection (b) is amended by updating the citation to the federal Individuals with Disabilities Education Act as amended in 1997.</p>
<p>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.</p>	<p>AS 14.30.274 is amended to read:</p> <p>Sec. 14.30.274. Identification of [EXCEPTIONAL] children with disabilities. Each school district shall establish and implement written procedures to ensure that all [EXCEPTIONAL] children <u>with disabilities</u> under the age of 22 <u>for whom the agency is responsible under AS 14.30.186 to provide special education and related services</u> [WHO RESIDE IN THE DISTRICT] are identified and located for the purpose of establishing their need for special education and related services.</p>	<p>This section is amended to substitute "children with disabilities" for "exceptional children".</p> <p>This section is amended to clarify that a school district's responsibility for serving children with disabilities is consistent with the criteria listed in AS 14.30.86, rather than based solely on a child's residency.</p>
<p>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</p>	<p>AS 14.30.276 is amended to read</p> <p>Sec. 14.30.276. Least restrictive environment. Each school district shall ensure that to the maximum extent appropriate, [EXCEPTIONAL] children <u>with</u></p>	<p>This section is amended to substitute "children with disabilities" for "exceptional children" and "disability" for</p>

TONY KNOWLES
GOVERNOR
governor@gov.state.ak.us

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

P.O. Box 110001
Juneau, Alaska 99811-0001
907-465-3500
Fax 907-465-3532
www.gov.state.ak.us

AK-HC

January 15, 2001

The Honorable Rick Halford
President of the Senate
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear President Halford:

Alaska's responsibility for providing quality educational services for our children extends to all children, including those with unique educational needs. I transmit today a bill clarifying the state's role in the education of our exceptional children.

In 1997, Congress authorized amendments to the Individuals with Disabilities Education Act (IDEA). The subsequent federal regulations related to the IDEA took effect in May 1999. This bill amends inconsistent components of our state statutes to bring Alaska into compliance with these current federal special education mandates, including emphasizing the participation of parents in making decisions relating to special education eligibility and services.

An important protection provided to both school districts and children with disabilities is the due process hearing. This bill clarifies the procedures for requesting a due process hearing and streamlines the process for selecting a hearing officer by having the Department of Education and Early Development (department) randomly assign officers from a list maintained by the department. These procedures will help due process hearings be completed in a fair and timely fashion.

Alaska law presently requires that a school district provide special education services to children with disabilities who reside in the district. State law also exempts children from attending public school if children are enrolled in an alternative education program. This has resulted in confusion regarding which school district or other educational agency is responsible for providing special education services when children are enrolled in

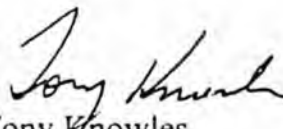
The Honorable Rick Halford
January 15, 2001
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alternate programs. This bill addresses this problem by providing for allocation of the responsibilities and coordination of the provision of special education services among the various educational agencies.

Present state law provides a combined program of services for gifted children and for children with disabilities. The detailed requirements of the federal IDEA and the federal program financing apply only to the state's educational programs for children with disabilities; federal money for the IDEA may not be used for programs for gifted children. To be consistent with federal requirements, this bill separates statutes regarding special education requirements for children with disabilities from those regarding requirements for gifted children. However, the bill maintains procedural safeguards for both programs.

As part of Alaska's commitment to quality education for all children, including children with disabilities and gifted children, I urge your prompt and favorable action on this bill.

Sincerely,


Tony Knowles
Governor

HB 71/SB 40

**An Act Relating to the Education
of Children with Disabilities and
Gifted Children**



Alaska Department of
EDUCATION
& EARLY DEVELOPMENT

Highlights of HB 71/SB 40

"An Act Relating to the Education of Children with Disabilities and Gifted Children"

Purpose:

1. To update state special education statutes to conform with the federal Individuals with Disabilities Education Act, as amended in 1997 (IDEA 97). IDEA 97 contains a number of policy amendments and emphasizes the importance of parental rights and parental participation in identifying and serving children with disabilities.
2. To delineate the federal and state requirements for providing educational services to children with disabilities, and the state requirements for providing educational services to gifted children.
3. To ensure that Alaska continues to qualify for federal special education funds.
4. To define Alaska's special education policy in areas where federal requirements provide states with discretion.

Revisions to Current State Law

Changes to the current state law include the following:

- The term "exceptional children" is replaced by the terms "child with a disability" and "gifted child". The statutory sections that pertain to children with disabilities have been separated from those that pertain to gifted children.
- Under current state law, the school district of a student's residence must provide special education and related services for a child with a disability. The revised statute requires state boarding schools and statewide correspondence schools that enroll children with disabilities from outside their districts to provide special education and related services to these students.
- The due process hearing procedure is changed, requiring the department rather than the school district to assign hearing officers. Appeals of hearing officer decisions will be made to superior court rather than the department. Similar hearing procedures will be used for both special education and gifted education.
- Mediation, a voluntary dispute resolution process for school districts and parents of children with disabilities, is added to the state statute in conformance with IDEA 97.
- Currently, children with disabilities enrolled in private schools are entitled to a full range of special education services from their public school district of residence. The revised statute limits district responsibility for providing special education services to children voluntarily enrolled in private schools to match the requirements contained in IDEA 97.

- Districts are required to serve only gifted children enrolled in the school district and attending public school.
- Districts are no longer required to provide related services, such as individualized transportation services, to gifted children.
- Significant changes to definitions include the following:
 - "serious emotional disturbance" is changed to "emotional disturbance" to reflect the federal definition;
 - "preschool developmental delay" is changed to "early childhood developmental delay" to reflect current terminology;
 - "parent" is changed to:
 1. specify that the state cannot serve as the child's guardian in educational matters; and,
 2. include a person with legal responsibility for a child's welfare who is acting in place of a child's natural or adoptive parent;
 - "related services" is changed to incorporate the federal IDEA 97 definition;
 - "school district" is changed to add state boarding schools and the state centralized correspondence study program;
 - "special education" is changed to incorporate the federal IDEA 97 definition;
 - "due process hearing" is added and defined according to AS 14.30.193;
 - "informed consent" is added to provide more specific guidance regarding what informed parental consent constitutes;
 - "gifted education" is added to distinguish gifted education from special education; and,
 - "Individualized gifted education program" is added to distinguish gifted program plans from special education program plans.

Budget Considerations

The department has the responsibility for administering the state's gifted education program under the current law, but has not had the resources to address due process hearings, training, and technical assistance for parents and school districts.

The department has requested an increment of \$177,700 in general funds in the FY 2002 budget to cover the costs for administering this program, since federal special education funds cannot be used for this purpose.

**HB 71 / SB 40: Special Education Statute
Comparison of Current and Proposed Legislation**

Current Statute	Proposed Statute: HB 71/ SB 40	Effect/Rationale
<p>Sec. 14.16.050. Applicability of education laws. (a) The following provisions apply with respect to the operation and management of a state boarding school as if it were a school district: (4) requirements relating to students and educational programs: (A) AS 14.30.180 - 14.30.350 (relating to educational services for exceptional children); (B) AS 14.30.360 - 14.30.370 (establishing health education program standards); (C) AS 14.30.400 - 14.30.410 (relating to bilingual and bicultural education).</p>	<p>Section 1. AS 14.16.050. (a)(4) is amended to read: (4) requirements relating to students and educational programs: (A) AS 14.30.180 - 14.30.350 (relating to educational services for [EXCEPTIONAL] children <u>with disabilities</u>); (B) <u>AS 14.30.351 - 14.30.359 (relating to educational services for gifted children)</u>; (C) AS 14.30.360 - 14.30.370 (establishing health education program standards); (D) [(C)]AS 14.30.400 - 14.30.410 (relating to bilingual and bicultural education).</p>	<p>This section is amended to:</p> <ul style="list-style-type: none"> - replace "exceptional children" with "children with disabilities" and "gifted children"; - to revise the statutory reference to education for gifted children; and, - to update other state statutory references to state boarding school responsibilities for providing educational services.
<p>Sec. 14.30.180. Purpose. It is the purpose of AS 14.30.180 - 14.30.350 to (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 20 U.S.C. 1400 - 1485 (Individuals with Disabilities Education Act).</p>	<p>AS 14.30.180 is amended to read: Sec. 14.30.180. Purpose. It is the purpose of AS 14.30.180 - 14.30.350 to (1) provide an appropriate public education for <u>each child with a disability [EXCEPTIONAL CHILDREN]</u> in the state who <u>is [ARE]</u> 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 [20 U.S.C. 1400-1485]</u> (Individuals with Disabilities Education Act), <u>as amended.</u></p>	<p>This section is amended to clarify that "exceptional children" refers to "children with disabilities". The reference to the federal statute, the Individuals with Disabilities Education Act (IDEA 97), is also updated.</p>
<p>Sec. 14.30.185. Programs shall be established. [Repealed, Sec. 59 ch 98 SLA 1966]. Repealed or Renumbered</p>		

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<p>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.</p>	<p>Section 14.30.186 is amended to read: Sec. 14.30.186. Coverage. (a) <u>Special education and related services shall be provided</u> <u>(1) by a borough or city school district, for a child with a disability residing within the district;</u> <u>(2) by the 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;</u> <u>(3) by the borough, city school district, or regional educational attendance area in which a treatment facility, or a correctional or youth detention facility is located, for a child with a disability placed at the facility;</u> <u>(4) by a state boarding school established under AS 14.16, for a child enrolled at the boarding school; or</u> <u>(5) by a school district that provides a statewide correspondence study program, for a child with a disability who is enrolled in the program. [A BOROUGH OR CITY SCHOOL DISTRICT SHALL PROVIDE SPECIAL EDUCATION AND RELATED SERVICES FOR EXCEPTIONAL CHILDREN RESIDING IN THE DISTRICT]</u></p>	<p>Subsection (a) is amended to indicate that state boarding schools and school districts' statewide correspondence study programs are responsible for providing special education and related services for children with disabilities enrolled in these programs.</p> <p>Subsection (e) is amended by replacing "exceptional children" with "a child with a disability".</p> <p>A new subsection (f) is added to indicate that the department will establish regulations to guide the coordination of and payment for the provision of special education and related services when more than one of the agencies listed in (a) has responsibility for providing services.</p>
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**HB 71 / SB 40: Special Education Statute
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	<p>AS 14.30.186(e) is amended to read: <u>a child with a disability</u> [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.</p> <p>AS 14.30.186 is amended by adding a new subsection to read: (f) The department shall establish standards in regulations for the allocation of financial responsibilities and the coordination of the provision of special education and related services among the educational agencies listed in (a) of this section when more than one educational agency is responsible to provide those services.</p>	
<p>Sec. 14.30.190. Establishment of standards by Department of Health and Social Services. [Repealed, Sec. 4 ch 144 SLA 1970]. Repealed or Renumbered</p>		
<p>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</p>	<p>AS 14.30.191 is amended to read: Sec. 14.30.191. Educational evaluation and placement. (a) A school district shall obtain the <u>written informed</u> consent of the child's parent before an initial evaluation or placement <u>of a child with a disability</u> in a program of special education</p>	<p>This section is amended to clarify that "consent" means "written informed consent" and to replace "exceptional children" with "a child with a disability".</p> <p>Subsection (d) is amended to</p>

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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

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, a [AN EXCEPTIONAL] child with a disability shall receive an educational evaluation [FOR THE IDENTIFICATION AND CLASSIFICATION OF EXCEPTIONAL CHILDREN].

(c) Before a school district initiates or refuses a change in the [A CHILD'S] placement or educational program of a child with a disability, the district shall notify the child's parent.

(d) Upon completion of an [THE] evaluation or reevaluation under this section, [AND BEFORE PLACEMENT,] the school district shall provide to the parent of each [EXCEPTIONAL] child evaluated under this section an opportunity to participate in the determination of the child's eligibility for special education and related services. [FOR CONSULTATION ABOUT THE EVALUATION. A CONSULTATION MUST BE AVAILABLE AFTER EACH REEVALUATION OF THE CONDITION] and to participate in the determination of the educational placement of the [EXCEPTIONAL] child if the child is determined to be eligible for special education and related services.

AS 14.30.193 is amended by adding new subsections to read:

(h) A school district shall provide written notice of its decision under this section to the parent of the

indicate that the requirement to provide parents with the opportunity to participate in the determination of a child's eligibility for special education and related services, as well as the child's placement, includes both initial evaluations and re-evaluations.

A new subsection (h) is added that requires school districts to provide parents with written notice of the evaluation and placement decisions made with regard to the child. The notice must include a description of the procedural safeguards available to the parent. This is in line with IDEA 97 requirements.

A new subsection (i) is added to clarify that "hearing" refers to a due process hearing.

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<p>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.</p>	<p>child. The notice shall include a description of the procedural safeguards available to that parent and child under federal law. (i) In this section, "hearing" means a due process hearing under AS 14.30.193.</p>	
<p>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.</p>	<p>AS 14.30.193 is repealed and reenacted to read: Sec. 14.30.193. Due process hearing. A school district or a parent of a child with a disability may request a due process hearing on any issue related to identification, evaluation, or educational placement of the child, or the provision of a free, appropriate, public education to the child. A request is made by providing written notice to the other party to the hearing. A request by a parent for a due process hearing under this section must be made not later than 12 months after the date that the school district provides the parent with written notice of the decision with which the parent disagrees. A school district shall make its request for a due process hearing in accordance with the time limit established in regulations of the department. (b) If a due process hearing is requested by</p>	<p>This section amends the due process hearing procedures. The purpose of these changes is to make the process more efficient while still ensuring that the rights of both parents and school districts are protected. This process also allows the department to more effectively track the number of due process hearings requested as well as the issues raised.</p> <p>Proposed changes include the following:</p> <ul style="list-style-type: none"> - Parents must file a request for a due process hearing

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<p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(f) A hearing officer's decision under this section is final and binding on the school</p>	<p>either a school district or a parent, the school district shall contact the department to request appointment of an available hearing officer. The department shall select a hearing officer through a random selection process, from a list maintained by the department under (g) of this section. Within five working days after receipt of the request, the department shall provide to the district and the parent a notice of appointment, including the name and a statement of qualifications of the hearing officer that the department determines is available to conduct the hearing</p> <p>(c) The school district and the parent each have the right to reject without statement of cause, one hearing officer appointed under this section. The rejecting party shall notify the department of that rejection in writing within five days after receipt of the department's notice of appointment. If a hearing officer is rejected under this subsection, the department shall, within five working days after receipt of the written rejection, provide a notice of appointment, including the name and a statement of qualifications, of another hearing officer that the department determines is available to conduct the hearing. Each appointment is subject to a right of rejection under the subsection by a party who has not previously rejected an appointment.</p> <p>(d) After a hearing officer is appointed and the time for rejection under (c) of this section has expired, the hearing officer shall immediately inform the parent and the school district of the availability of the mediation process provided</p>	<ul style="list-style-type: none"> - with the school district no later than 12 months following the decision with which they disagree; the timeline for districts shall be established in regulation in order to allow the State Board of Education & Early Development to consider the effects of different timeline options; - The department will appoint a hearing officer through a random selection process; - The school district and the parent may each reject one hearing officer without stating a reason; after this is exhausted, a hearing officer will be appointed. - The appointed hearing officer will inform the parent and the school district of the availability of mediation; - Due process hearings will be conducted according to
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<p>district and parent, unless appealed under (g) of this section. Notwithstanding a decision by the hearing officer, a child may not be evaluated, placed, transferred, or compelled to receive special education or related services from the school district until the period for filing an appeal under (g) of this section has expired or, if an appeal is filed, until the department and court appellate review process has been completed.</p> <p>(g) A parent or a school district may appeal a hearing officer's decision under this section to the department by requesting an appeal hearing under AS 14.30.195 . The appeal hearing request must be in writing and must be received by the department within 30 days after receipt of the hearing officer's decision.</p> <p>(h) The department shall maintain a list of qualified hearing officers. The department shall qualify hearing officers through a training program that shall be open to all residents of the state. A hearing officer may be qualified for a period not to exceed five years. The list of qualified hearing officers shall be maintained as a public record.</p>	<p>under AS 14.30.194 and encourage use of that process to attempt to resolve the disagreement between the parent and the school district. If the mediation process does not result in settlement of all of the issues, the hearing officer shall conduct a hearing in compliance with the requirements of federal law, including 34 CFR 300.507 - 509, as amended. After the hearing is completed the hearing officer shall issue a written decision that (1) upholds the school district's decision; or (2) overturns the school district's decision with specific instructions for modification of the identification, evaluation, educational placement, or provision of the education program by the district.</p> <p>(e) A hearing officer's decision under this section is final and binding on the school district and parent, unless appealed under (f) of this section. Notwithstanding a decision by the hearing officer, a child may not be evaluated, placed, transferred, or compelled to receive special education or related services from the school district until the period for filing an appeal under (f) of this section has expired or, if an appeal is filed, until the appellate review process has been completed.</p> <p>(f) A hearing officer's decision under this section is a final administrative order, subject to appeal to the superior court for review in the manner provided under AS 44.62.560.</p> <p>(g) The department shall maintain a list of qualified hearing officers. The department shall provide for the qualification of hearing officers</p>	<ul style="list-style-type: none"> - federal requirements, including those contained in 34 CFR 300.507 – 509 . - The hearing officer's written decision is final but may be appealed to the superior court. Appeals are no longer made to the department. <p>Subsection (h) clarifies that students with disabilities aged 18-21 have the same rights and obligations as parents of children with disabilities.</p>
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	<p>through a training program that is open to all individuals who meet the criteria set by the department in regulation. The list of qualified hearing officers shall be maintained as a public record.</p> <p>(h) For purposes of this section, a student with a disability aged 18-21 has the same rights and obligations under this section as a parent of a child with a disability.</p>	
	<p>AS 14.30 is amended by adding a new section to read:</p> <p>Sec. 14.30.194 Mediation (a) The department shall, by regulation, establish and implement a voluntary mediation process in conformance with the requirements of federal law, including 34 CFR 300.506, as amended. The department shall encourage the use of mediation for settlement of disputes under AS 14.30.180 - 14.30.350.</p> <p>(b) The department shall maintain a list of individuals who are qualified mediators knowledgeable in the federal and state statutes and regulations relating to the provision of special education and related services. The department shall provide for qualification of mediators through a training program that is open to all individuals who meet the criteria set by the department by regulation.</p>	<p>Mediation, under IDEA 97, is a voluntary dispute resolution process for school districts and parents that states are required to offer when due process hearings are requested.</p>
<p>Sec. 14.30.195. Hearings. (a) The department shall, by regulation, provide for administrative appeal hearings,</p>		<p>This section has been repealed since the revised due process hearing procedures no longer</p>

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<p>based on the record, of impartial hearing officers' decisions under AS 14.30.193 . An administrative appeal hearing shall comply with all requirements necessary for participation in federal grant-in-aid programs, including 20 U.S.C. 1400 - 1485 (Individuals with Disabilities Education Act).</p> <p>(b) The agency conducting a hearing under this section may issue subpoenas under AS 44.62.430 and may petition the superior court for adjudications of contempt under AS 44.62.590 .</p> <p>(c) After an appeal hearing under this section, the department shall render its decision affirming, reversing, modifying, or remanding the hearing officer's decision under AS 14.30.193 .</p> <p>(d) A parent or the school district may appeal to the appropriate court for review of the department's decision on appeal under (c) of this section.</p> <p>(e) A parent who appeals to the court and who is determined by the court to be an indigent person may be provided with a court appointed attorney at public expense. In this subsection, "indigent person" has the meaning given in AS 18.85.170 .</p>		<p>include an administrative appeal to the department. The department will now conduct the due process hearing through the department-appointed hearing officer. The appeal of the hearing officer's decision is to be made to the superior court.</p>
<p>Sec. 14.30.200. - 14.30.220 Eligibility; budget; forfeiture of right to reimbursement. [Repealed, Sec. 5 ch 70</p>		

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<p>SLA 1963]. :ao;14.30.220 Repealed or Renumbered</p>		
<p>Sec. 14.30.230. Special education. [Repealed, Sec. 6 ch 144 SLA 1970]. Repealed or Renumbered</p>		
<p>Sec. 14.30.231. Advisory committee. The Governor's Council on Disabilities and Special Education established under AS 47.80 shall serve as an advisory committee, the function of which is to provide information and guidance for the development of appropriate programs of special education and related services for exceptional children.</p>	<p>Section 14.30.231 is amended to read: Sec. 14.30.231. Advisory panel [COMMITTEE]. The Governor's Council on Disabilities and Special Education established under AS 47.80 shall serve as the <u>state</u> [AN]advisory <u>panel</u> [COMMITTEE], the function of which is to provide information and guidance for the development of appropriate programs of special education and related services for [EXCEPTIONAL] children <u>with disabilities</u>.</p>	<p>This section is amended by changing "advisory committee" to "state advisory panel" consistent with IDEA 97 terminology. This section is amended to substitute "children with disabilities" for "exceptional children".</p>
<p>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.</p>		
<p>Sec. 14.30.240. Supervisor. [Repealed, Sec. 5 ch 70 SLA 1963]. Repealed or Renumbered</p>		
<p>Sec. 14.30.250. Teacher qualifications. A person may not be employed as a teacher of exceptional children unless that person possesses a valid teacher certificate and, in addition, such training as the department may require by regulation.</p>	<p>Section 14.30.250 is amended to read: Sec. 14.30.250. Teacher qualifications. A person may not be employed as a teacher of [EXCEPTIONAL] children <u>with disabilities</u> unless that person possesses a valid teacher certificate and, in addition, such training as the department may require by regulation.</p>	<p>This section is amended to substitute "children with disabilities" for "exceptional children".</p>

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<p>Sec. 14.30.255. Administrator qualifications. A person may not be employed as an administrator of a program of special education and related services unless that person possesses a valid administrative certificate and, in addition, such training as the department may require by regulation.</p>		
<p>Sec. 14.30.260. Exception to qualifications. [Repealed, Sec. 19 ch 147 SLA 1984]. Repealed or Renumbered</p>		
<p>Sec. 14.30.270. Substitutes. AS 14.30.250 does not prohibit the employment of a person, otherwise qualified to serve as a substitute teacher, to serve as a substitute teacher of exceptional children.</p>	<p>AS 14.30.270 is amended to read Sec. 14.30.270. Substitutes. AS 14.30.250 does not prohibit the employment of a person, otherwise qualified to serve as a substitute teacher, to serve as a substitute teacher of [EXCEPTIONAL] children <u>with disabilities</u>.</p>	<p>This section is amended to substitute "children with disabilities" for "exceptional children".</p>
<p>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</p>	<p>AS 14.30.272 is amended to read: Sec. 14.30.272. Procedural safeguards. (a) A school district shall inform the parent of [AN EXCEPTIONAL] child <u>with a disability</u> 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</p>	<p>This section is amended to substitute "child with disabilities" for "exceptional child".</p> <p>This section is amended to clarify that "impartial hearing" and "hearings" refer to due process hearings.</p>

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<p>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.</p> <p>(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).</p>	<p>district or by choosing a person by agreement between the parent and school district, to request a <u>due process</u> [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.</p> <p>(b) The department shall establish, by regulation, impartial procedures for a school district to follow for <u>due process</u> hearings [UNDER AS 14.30.193] to comply with requirements necessary to participate in federal grant-in-aid programs, 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>	<p>Subsection (b) is amended by updating the citation to the federal Individuals with Disabilities Education Act as amended in 1997.</p>
<p>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.</p>	<p>AS 14.30.274 is amended to read:</p> <p>Sec. 14.30.274. Identification of [EXCEPTIONAL] children with disabilities. Each school district shall establish and implement written procedures to ensure that all [EXCEPTIONAL] children <u>with disabilities</u> under the age of 22 <u>for whom the agency is responsible under AS 14.30.186 to provide special education and related services</u> [WHO RESIDE IN THE DISTRICT] are identified and located for the purpose of establishing their need for special education and related services.</p>	<p>This section is amended to substitute "children with disabilities" for "exceptional children".</p> <p>This section is amended to clarify that a school district's responsibility for serving children with disabilities is consistent with the criteria listed in AS 14.30.86, rather than based solely on a child's residency.</p>
<p>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</p>	<p>AS 14.30.276 is amended to read</p> <p>Sec. 14.30.276. Least restrictive environment. Each school district shall ensure that to the maximum extent appropriate, [EXCEPTIONAL] children <u>with</u></p>	<p>This section is amended to substitute "children with disabilities" for "exceptional children" and "disability" for</p>

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<p>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.</p>	<p><u>disabilities</u>, including children in public or private institutions or other care facilities, are educated with children who are not [EXCEPTIONAL] children <u>with disabilities</u>, and that special classes, separate schooling, or other removal of [EXCEPTIONAL] children <u>with disabilities</u> from the regular educational environment occurs only when the nature or severity of the child's <u>disability</u> [EXCEPTIONALITY] is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.</p>	<p>"exceptionality".</p>
<p>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</p>	<p>AS 14.30.278 is amended to read Sec. 14.30.278. Individualized education program. <u>A school district shall develop an individualized education program for special education and related services for each child with a disability. The plan must be completed no later than 30 days after the determination of the child's eligibility. Each individualized education program shall be developed and periodically reviewed and revised as necessary in conformance with federal requirements, including 34 CFR 300.340 - 350, as amended.</u> [(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;</p>	<p>This section is amended to specify that a child's IEP must be in effect no later than 30 days after the determination of eligibility. The section is amended to include citations for federal IDEA 97 requirements that guide the development and content of an individualized education program.</p>

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<p>objectives are being achieved.</p> <p>(b) Each meeting concerning an exceptional child must include</p> <p>(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;</p> <p>(2) the child's teacher;</p> <p>(3) at least one of the child's parents;</p> <p>(4) the child, when appropriate;</p> <p>(5) other individuals selected by the parent or school district.</p> <p>(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.</p>	<p>(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;</p> <p>(4) THE PROJECTED DATES FOR INITIATION OF SERVICES AND THE ANTICIPATED DURATION OF THE SERVICES;</p> <p>(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.</p> <p>(b) EACH MEETING CONCERNING AN EXCEPTIONAL CHILD MUST INCLUDE</p> <p>(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;</p> <p>(2) THE CHILD'S TEACHER;</p> <p>(3) AT LEAST ONE OF THE CHILD'S PARENTS;</p> <p>(4) THE CHILD, WHEN APPROPRIATE;</p> <p>(5) OTHER INDIVIDUALS SELECTED BY THE PARENT OR SCHOOL DISTRICT.</p> <p>(C) EACH SCHOOL DISTRICT SHALL</p>	
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	<p>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.]</p>	
<p>Sec. 14.30.280. Psychologist qualifications. [Repealed, Sec. 19 ch 147 SLA 1984]. Repealed or Renumbered</p>		
<p>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</p>	<p>AS 14.30.285 is amended to read: Sec. 14.30.285. Transfers of [EXCEPTIONAL] children <u>with disabilities</u>. (a) The department shall institute a statewide program for the education of [EXCEPTIONAL] children <u>with disabilities</u>, 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 <u>with a disability</u> 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 <u>school district</u> [DEPARTMENT] determines that provision of special education and related services in another educational program or residential school is appropriate. If the school district <u>approves</u> [AND THE DEPARTMENT APPROVE] the enrollment of a [THE EXCEPTIONAL] child <u>with a disability</u> in another educational program or residential school outside</p>	<p>This section is amended to substitute "children with disabilities" for "exceptional children".</p> <p>This section is amended to indicate that it is the school district, with parental consent, that determines if it is appropriate for a child with a disability to receive special education and related services outside of his/her district of residence.</p> <p>Subsection (f) is amended to specify that a parent's consent must be informed consent.</p>

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<p>school district and the child is enrolled, the child's education expenses shall be paid as follows:</p> <p>(1) except as otherwise provided by (2) of this subsection, the sending district shall pay all costs associated with the transfer;</p> <p>(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.</p> <p>(c) [Repealed, Sec. 19 ch 147 SLA 1984].</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(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</p>	<p>the child's community or school district and the child is enrolled, the child's education expenses shall be paid as follows:</p> <p>(1) except as otherwise provided by (2) of this subsection, the sending district shall pay all costs associated with the transfer;</p> <p>(2) the department may provide financial assistance to the <u>school</u> district for a child's education provided for in (1) of this subsection under regulations adopted by the department.</p> <p>(c) [Repealed, Sec. 19 ch 147 SLA 1984].</p> <p>(e) The educational assessment of a [AN EXCEPTIONAL] child <u>with a disability</u> 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.</p> <p>(f) A school district shall obtain [THE] <u>informed</u> consent of the child's parent before a child may be transferred to a school outside the district in which the child resides.</p> <p>(g) The withholding of <u>informed</u> consent by a parent [OR DEPARTMENTAL APPROVAL] for the transfer of a [AN EXCEPTIONAL] child <u>with a disability</u> under this section does not relieve a school district of the obligation to provide special education and related services to <u>the</u> [AN EXCEPTIONAL] child. [UNDER AS 14.30.186.]</p>	
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services to an exceptional child under AS 14.30.186.		
Sec. 14.30.290. Purposes of appropriations. [Repealed, Sec. 5 ch 70 SLA 1963]. Repealed or Renumbered		
Sec. 14.30.295. Special education outside state. [Repealed, Sec. 4 ch 79 SLA 1974]. Repealed or Renumbered		
Sec. 14.30.300. Nonresident apportionment. [Repealed, Sec. 5 ch 70 SLA 1963]. Repealed or Renumbered		
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.		
Sec. 14.30.310. Hospitalized and homebound children. [Repealed, Sec. 5 ch 70 SLA 1963]. Repealed or Renumbered		

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<p>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.</p>		<p>Subsection (b) is repealed since the term "exceptional children" is no longer used.</p>
<p>Sec. 14.30.320. Reimbursement for hospitalized or homebound children. [Repealed, Sec. 5 ch 70 SLA 1963]. Repealed or Renumbered</p>		
<p>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.</p>	<p>AS 14.30.325 is amended to read: Sec. 14.30.325. Surrogate parents. (a) The department <u>shall</u> [MAY] by regulation provide for the appointment of surrogate parents to represent <u>a child with a disability</u> [EXCEPTIONAL CHILDREN] in matters relating to the provision of an appropriate public education.</p>	<p>This section is amended to substitute "child with a disability" for "exceptional children". This section is amended to indicate that the department is required to provide for the appointment of surrogate parents.</p>
<p>Sec. 14.30.330. Application for enrollment. [Repealed, Sec. 19 ch 147 SLA 1984]. Repealed or Renumbered</p>		

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<p>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.</p>	<p>AS 14.30.335 is amended to read: 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 <u>with disabilities</u>.</p>	<p>This section is amended to substitute "children with disabilities" for "exceptional children".</p>
<p>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</p>	<p>AS 14.30.340 is amended to read: Sec. 14.30.340. Provision of special education in a private school, home, or hospital setting. (a) If a parent of a [AN EXCEPTIONAL] child <u>with a disability</u> enrolls the child in a private school, <u>including a religious school</u>, at the parent's expense or teaches the child at home, the school district in which the child <u>resides</u> [IS LOCATED] shall make special education and related services available in conformance with <u>federal requirements, including 34 CFR 300.450 - 462 as amended. Parents teaching their children at home may refuse special education and related services for their children</u> [AN INDIVIDUALIZED EDUCATION PROGRAM UNDER AS 14.30.278]. (b) If a physician certifies in writing, and if the child's individualized education program <u>under AS 14.30.278 then provides</u> [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</p>	<p>This section is amended to substitute "children with disabilities" for "exceptional children". Subsection (a) is amended to clarify that religious schools are included in the category of private schools. Subsection (a) is changed to align the requirements for districts to provide special education and related services to children with disabilities with federal IDEA 97 requirements, which are not as comprehensive as the requirements for children with disabilities enrolled in publicly funded educational agencies. Subsection (b) is changed to state that along with written certification by a physician, it is</p>

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<p>education program under AS 14.30.278 at the child's home or at a medical treatment facility.</p>	<p>located shall enroll the child in public school and provide the child with special education and related services in conformance with <u>the child's</u> [AN] individualized education program [UNDER AS 14.30.278] at the child's home or at a medical treatment facility.</p>	<p>the individualized education program created by the school district under state statutory requirements that determines whether a child's condition does not permit school attendance.</p>
<p>Sec. 14.30.345. Regulations. [Repealed, Sec. 59 ch 98 SLA 1966]. Repealed or Renumbered</p>		
<p>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.</p>	<p>AS 14.30.347 is amended to read: Sec. 14.30.347. Transportation of [EXCEPTIONAL] children with disabilities. When transportation is required to be provided as a related service[S], a <u>child with a disability</u> [AN EXCEPTIONAL] shall be <u>transported</u> [CARRIED] with <u>children who are not children with disabilities</u> [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 <u>child with a disability</u> [EXCEPTIONAL CHILD], as <u>provided in the child's individualized education program</u> [DETERMINED BY THE SCHOOL DISTRICT], that the child be transported separately. State reimbursement for transportation of [EXCEPTIONAL] children <u>with disabilities</u> 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</p>	<p>This section is amended to substitute "child with a disability" for "an exceptional child". This section is amended to specify that "other children" refers to children who do not have disabilities.</p>

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	the [EXCEPTIONAL] child <u>with a disability</u> .	
<p>Sec. 14.30.350. Definitions. In AS 14.30.180 - 14.30.350, (1) "appropriate education" means personalized instruction with sufficient support services to permit a child to benefit educationally from the instruction; (2) "children with disabilities" means children with mental retardation; hearing impairments, including deafness; speech or language impairments; visual impairments, including blindness; serious emotional disturbance; orthopedic impairments; autism; traumatic brain injury; other health impairments; specific learning disabilities; or preschool developmental delays; (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</p>	<p>AS 14.30.350 is amended to read: Sec. 14.30.350. Definitions. (2) "child with a disability" means a child with one or more of the following: (A) mental retardation; (B) learning disabilities; (C) emotional disturbance; (D) deafness; (E) deaf-blindness; (F) hearing impairment; (G) orthopedic impairment (H) other health impairment; (I) speech impairment; (J) visual impairments; (K) multiple disabilities; (L) early childhood developmental delay; (M) autism; (N) traumatic brain injury; (8) "parent" means a (A) child's natural or adoptive parent; (B) child's guardian, but not the state if the child is in the legal custody of the state; (C) person who is acting in the place of a child's natural or adoptive parent, such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare; and (D) child's surrogate parent who has been appointed under AS 14.30.325;</p>	<p>The following changes are made to the definitions section: (2) is changed as follows: - "children with disabilities" is changed to "child with a disability"; - the category "serious emotional disturbance" is changed to "emotional disturbance" to reflect the federal definition; and - "preschool developmental delay" is changed to "early childhood developmental delay" to reflect current terminology; (8) "parent" is changed to specify that the state cannot serve as the child's guardian in educational matters, and to include a person with legal responsibility for a child's welfare who is acting in place of a child's natural or adoptive parent; (9) "related services" is changed to adopt the definition of "related services" contained in the federal IDEA 97 regulations; (10) "school district" is changed</p>

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<p>records as designated by the department in regulation;</p> <p>(5) "exceptional children" means children with disabilities, and gifted children, who differ markedly from their peers to the degree that special facilities, equipment, or methods are required to make their educational program effective;</p> <p>(6) "gifted children" means children who exhibit outstanding intellect, ability, or creative talent as determined under regulations adopted by the department;</p> <p>(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:</p> <p>(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;</p> <p>(B) the child's teacher;</p> <p>(C) the child's parent;</p> <p>(D) the child, if appropriate;</p> <p>(E) other individuals, at the discretion of the child's parent or the school district;</p> <p>(8) "parent" includes a guardian, a person acting as a parent of a child, and a surrogate parent appointed under AS 14.30.325 .</p>	<p>(9) "related services" means services that are considered as "related services" in 34 CFR 300.24, as amended;</p> <p>(10) "school district" means a borough school district, a city school district, a regional educational attendance area, a state boarding school, and the state centralized correspondence study program;</p> <p>(11) "special education" means an educational program that is considered as "special education" in 34 CFR 300.26, as amended;</p> <p>(12) "due process hearing" means a hearing conducted under AS 14.30.193;</p> <p>(13) "informed consent" means that</p> <p>(A) a child's parent has been fully informed, in the parent's native language or other mode of communication, of all information relevant to the activity for which consent is sought;</p> <p>(B) the parent understands and agrees in writing to the carrying out of the activity for which the parent's consent is sought;</p> <p>(C) the consent describes that activity and lists any records that will be released and to whom; and</p> <p>(D) the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.</p>	<p>to add state boarding schools and the state centralized correspondence study program;</p> <p>(11) "special education" is changed to incorporate the federal definition of special education under IDEA 97;</p> <p>(12) "due process hearing" is added to this section and provides the state statutory reference;</p> <p>(13) "informed consent" is added to this section to specify the conditions under which appropriate written consent may be obtained from parents.</p>
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<p>(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;</p> <p>(10) "school district" means a borough school district, a city school district, or a regional educational attendance area;</p> <p>(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</p>		
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<p>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 (A) "at no cost" means that all specially designed instruction is provided without charge but does not preclude incidental fees that are normally charged to nonexceptional students or their parents as a part of the regular education program; (B) "physical education" means the development of physical and motor fitness, fundamental motor skills and patterns, skills in aquatics, dance, and individual and group games, and sports (including intramural and lifetime sports); the term includes special physical education, adapted physical education, movement education, and motor development; (C) "vocational education" means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.</p>		
	<p>AS 14.30 is amended by adding new sections to read: Article 3A. Education for Gifted Children</p>	<p>The following sections have been added to clarify the statutory requirements for providing gifted education programs.</p>

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<p>Sec. 14.30.180. Purpose. It is the purpose of AS 14.30.180 - 14.30.350 to (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 20 U.S.C. 1400 - 1485 (Individuals with Disabilities Education Act).</p>	<p>Sec. 14.30.351. Purpose. It is the purpose of AS 14.30.351 - 14.30.359 to provide an appropriate education for each gifted child who enrolls in a public school in the state.</p>	<p>This section substitutes "gifted child" for "exceptional children".</p> <p>This section changes "appropriate public education" to "appropriate education" for children enrolled in a public school.</p>
<p>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</p>	<p>Sec. 14.30.352. Coverage. Each school district shall establish a program for identification and provision of educational services to gifted children who enroll in the schools of the district.</p>	<p>This section substitutes "gifted child" for "exceptional children".</p> <p>This section clarifies that districts must provide gifted education services only to gifted children who are enrolled in the district.</p>

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<p>and related services provided under AS 14.30.180 - 14.30.350.</p>		
<p>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</p>	<p>Sec. 14.30.353. Identification, evaluation and placement of gifted children. (a) Each school district shall establish and implement written procedures to ensure that all gifted children who enroll in public school in the district are identified and located for the purpose of establishing their need for a gifted education program. (b) A school district shall obtain the written informed consent of the child's parent before an initial evaluation or placement in a gifted education program. (c) After initial placement in a gifted education program and not less than once every three years for as long as the child is assigned to the program, a gifted child shall receive an educational evaluation for the identification of gifted children. (d) Before a school district initiates or refuses a change in a child's placement or program, the school district shall notify the child's parent. (e) Upon completion of the evaluation and before placement, the school district shall provide to the parent of each gifted child an opportunity for consultation about the evaluation. A consultation must be available after each reevaluation of the condition and placement of the gifted child. (f) A parent may obtain an independent educational evaluation by choosing a person from a list provided by the school district or by choosing a</p>	<p>This section substitutes "gifted child" for "exceptional child".</p> <p>This section specifies that each district must create a plan for identifying children enrolled in public school who are gifted.</p> <p>This section lists the requirements that districts must fulfill in providing gifted education services, including</p> <ul style="list-style-type: none"> - obtaining informed parental consent; - notifying parents of changes in their child's placement or program; - providing parents with the opportunity to consult with the team regarding the results of evaluations and re-evaluations; - providing for independent evaluations; and - providing written notice

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<p>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.</p> <p>(f) If the parent obtains an independent educational evaluation at private expense, the results of the evaluation</p> <p>(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;</p> <p>(2) may be presented as evidence at a hearing regarding the child.</p> <p>(g) If a hearing officer requests an independent educational evaluation as part of a hearing, the school district shall pay for the evaluation.</p>	<p>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 due process hearing under AS 14.30.357 to show that its evaluation is appropriate. If the hearing officer determines that the evaluation is appropriate, the school district is not required to pay for the independent educational evaluation.</p> <p>(g) If the parent obtains an independent educational evaluation at private expense, the results of the evaluation</p> <p>(1) must be considered by the school district in a decision made with respect to the provision of an appropriate gifted education program to the child; and</p> <p>(2) may be presented as evidence at a due process hearing regarding the child.</p> <p>(h) If a hearing officer requests an independent educational evaluation as part of a due process hearing, the school district shall pay for the evaluation.</p> <p>(i) A school district shall provide written notice of its decisions under this section to the parent of the child. The notice shall include a description of the procedural safeguards available under AS 14.30.356.</p>	<ul style="list-style-type: none"> - of its decisions under this - section that includes a description of the available procedural safeguards.
<p>Sec. 14.30.278. Individualized education program.</p> <p>(a) The individualized education program for each exceptional child must include</p> <p>(1) a statement of the child's present levels</p>	<p>Sec. 14.30.354. Individualized gifted education program. (a) Each school district shall provide for the development of an individualized gifted education program for each gifted child, that includes:</p>	<p>This section substitutes "gifted child" for "exceptional children".</p> <p>This section changes "individualized education</p>

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<p>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</p>	<p>(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 gifted education 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) The persons invited to participate in each meeting to develop the program under (a) of this section 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 gifted education; (2) the child's teacher; (3) at least one of the child's parents; (4) the child, if appropriate; and (5) other individuals selected by the parent or school district.</p>	<p>program" to "individualized gifted education program" and lists the components required to be addressed in the gifted education program.</p> <p>This section clarifies that "related services" are not required to be provided for gifted children. A gifted child may still receive these types of services if also determined eligible for special education and related services as a child with a disability.</p> <p>This section clarifies the required team members to develop the gifted education program.</p>
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<p>under AS 14.30.180 - 14.30.350.</p>		
<p>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.</p>	<p>Sec. 14.30.355. Least restrictive environment. Each school district shall ensure that to the maximum extent appropriate, gifted children are educated with children who are not gifted and that special classes, separate schooling, or other removal of gifted children from the regular educational environment occurs only when education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.</p>	<p>This section substitutes "gifted child" for "exceptional children".</p>
<p>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</p>	<p>Sec. 14.30.356. Procedural safeguards. A school district shall inform the parent of a gifted child of the following procedural safeguard rights: (1) to review the child's educational record; (2) to review evaluation tests and procedures; (3) to refuse to permit evaluation or a change in the child's educational placement; (4) to be informed of the results of evaluation; (5) to obtain an independent evaluation by choosing a person from a list provided by the school district or by choosing a person by</p>	<p>This section substitutes "gifted child" for "exceptional children".</p>

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<p>appeal a hearing officer's decision, and to give consent or deny access to others to the child's educational record.</p> <p>(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).</p>	<p>agreement between the parent and school district;</p> <p>(6) to request an impartial hearing;</p> <p>(7) to appeal a hearing officer's decision; and</p> <p>(8) to give consent or deny access to others to the child's educational record.</p>	
<p>Sec. 14.30.193. School district hearings.</p> <p>(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.</p> <p>(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.</p> <p>(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</p>	<p>Sec. 14.30.357. Due process hearing. (a) A school district or a parent of a gifted child may request a due process hearing on any issue related to identification, evaluation, educational placement of the child, or the provision of a free, appropriate, public education to the child. A request is made by providing written notice to the other party to the hearing. A request for a due process hearing under this section must be made not later than 12 months after the date that the school district provides the parent with written notice of the decision or initially takes the action with which the parent disagrees.</p> <p>(b) If a due process hearing is requested by either a school district or a parent, the school district shall contact the department to request appointment of an available hearing officer. The department shall select a hearing officer through a random selection process, from a list maintained by the department. Within five working days after receipt of the request, the department shall provide to the district and the parent a notice of appointment, including the name,</p>	<p>This section amends the due process hearing procedures. The purpose of these changes is to make the process more efficient while still ensuring that the rights of both parents and school districts are protected. This process will also allow the department to more effectively track the number of due process hearings as well as the issues involved. This process will ensure consistency for due process hearings relating to children with disabilities and gifted children.</p> <p>Proposed changes include the following:</p> <ul style="list-style-type: none"> - Parents must request a

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<p>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.</p> <p>(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.</p> <p>(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.</p> <p>(f) A hearing officer's decision under this section is final and binding on the school district and parent, unless appealed under (g) of this section. Notwithstanding a decision by the hearing officer, a child may not be evaluated, placed, transferred, or compelled to receive special education or</p>	<p>and a statement of qualifications of the hearing officer that the department determines is available to conduct the hearing.</p> <p>(c) The school district and the parent each have the right to reject without statement of cause, one hearing officer appointed under this section. The rejecting party shall notify the department of that rejection in writing within five days of receipt of the department's notice of appointment. If a hearing officer is rejected under this subsection, the department shall, within five working days after receipt of the written rejection, provide a notice of appointment, including the name and a statement of qualifications, of another hearing officer that the department determines is available to conduct the hearing. Each appointment is subject to a right of rejection under this subsection by a party who has not previously rejected an appointment.</p> <p>(d) After a hearing officer is appointed and the time for rejection under (c) of this section has expired, the hearing officer shall conduct an informal prehearing settlement conference and attempt to resolve the disagreement between the parent and the school district. If the conference does not result in settlement of all of the issues and a hearing is conducted, the hearing officer shall issue a written decision that (1) upholds the school district's decision, or (2) overturns the school district's decision with specific instructions for modification of the identification, evaluation, educational placement, or provision of the education program by the district.</p>	<p>due process hearing no</p> <ul style="list-style-type: none"> - later than 12 months - following the decision; - The department will appoint a hearing officer through a random selection process; - The school district and the parent may each reject one hearing officer for any reason; after this is exhausted, a hearing officer will be appointed. - Once appointed, the hearing officer will conduct an informal prehearing settlement conference to attempt to resolve the issue. - If the prehearing conference is unsuccessful, the officer will conduct a due process hearing; - The hearing officer's written decision is final but may be appealed to the superior court.
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<p>related services from the school district until the period for filing an appeal under (g) of this section has expired or, if an appeal is filed, until the department and court appellate review process has been completed.</p> <p>(g) A parent or a school district may appeal a hearing officer's decision under this section to the department by requesting an appeal hearing under AS 14.30.195 . The appeal hearing request must be in writing and must be received by the department within 30 days after receipt of the hearing officer's decision.</p> <p>(h) The department shall maintain a list of qualified hearing officers. The department shall qualify hearing officers through a training program that shall be open to all residents of the state. A hearing officer may be qualified for a period not to exceed five years. The list of qualified hearing officers shall be maintained as a public record.</p>	<p>(e) A hearing officer's decision under this section is a final administrative order, subject to appeal to the superior court for review in the manner provided under AS 44.62.560.</p>	<p>Appeals are no longer</p> <ul style="list-style-type: none"> - made to the department.
	<p>Sec. 14.30.358. Teacher qualifications; substitutes. A person may not be employed as a teacher of gifted children unless that person possesses a valid teacher certificate and, in addition, any training the department requires by regulation. This section does not prohibit the employment of a person, otherwise qualified to serve as a substitute teacher, to serve as a substitute teacher of gifted children.</p>	<p>This section specifies that teachers of gifted children must be certified.</p> <p>This section clarifies that qualified substitute teachers without gifted certification may also serve as substitute teachers of gifted children.</p>

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<p>Sec. 14.30.350. Definitions. In AS 14.30.180 - 14.30.350,</p> <p>(1) "appropriate education" means personalized instruction with sufficient support services to permit a child to benefit educationally from the instruction;</p> <p>(2) "children with disabilities" means children with mental retardation; hearing impairments, including deafness; speech or language impairments; visual impairments, including blindness; serious emotional disturbance; orthopedic impairments; autism; traumatic brain injury; other health impairments; specific learning disabilities; or preschool developmental delays;</p> <p>(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;</p> <p>(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</p>	<p>Sec. 14.30.359. Definitions. Unless the context otherwise specifies, in AS 14.30.351 - 14.30.359,</p> <p>(1) "appropriate education" means personalized instruction with sufficient support services to permit a child to benefit educationally from the instruction;</p> <p>(2) "due process hearing" means a hearing under AS 14.30.357;</p> <p>(3) "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; "educational records" does not include the personnel records of the school district that are 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;</p> <p>(4) "gifted children" means children who exhibit outstanding intellect, ability, or creative talent as determined under regulations adopted by the department;</p> <p>(5) "gifted education" means specially designed instruction, at no cost to the parent, to meet the unique needs of gifted children; in this paragraph "at no cost" means that all specially designed instruction is provided without charge but does not preclude incidental fees that are normally charged students who are not gifted children or their parents as a part of the regular</p>	<p>These definitions have been placed in this section since they pertain to gifted education.</p> <p>The term "gifted education" has been added to the definition list to distinguish the term from special education or education for exceptional children.</p>
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<p>a person's capacity as an employee, or other records as designated by the department in regulation;</p> <p>(5) "exceptional children" means children with disabilities, and gifted children, who differ markedly from their peers to the degree that special facilities, equipment, or methods are required to make their educational program effective;</p> <p>(6) "gifted children" means children who exhibit outstanding intellect, ability, or creative talent as determined under regulations adopted by the department;</p> <p>(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:</p> <p>(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;</p> <p>(B) the child's teacher;</p> <p>(C) the child's parent;</p> <p>(D) the child, if appropriate;</p> <p>(E) other individuals, at the discretion of the child's parent or the school district;</p> <p>(8) "parent" includes a guardian, a person acting as a parent of a child, and a</p>	<p>education program;</p> <p>(6) "informed consent" means that</p> <p style="padding-left: 40px;">(A) a child's parent has been fully informed, in the parent's native language or other mode of communication, of all information relevant to the activity for which consent is sought;</p> <p style="padding-left: 40px;">(B) the parent understands and agrees in writing to the carrying out of the activity for which the parent's consent is sought;</p> <p style="padding-left: 40px;">(C) the consent describes that activity and lists any records that will be released and to whom; and</p> <p style="padding-left: 40px;">(D) the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.</p> <p>(7) "school district" means a borough school district, a city school district, a regional educational attendance area, a state boarding school, and the state centralized correspondence study program.</p>	
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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;

(10) "school district" means a borough school district, a city school district, or a regional educational attendance area;

(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

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<p>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 (A) "at no cost" means that all specially designed instruction is provided without charge but does not preclude incidental fees that are normally charged to nonexceptional students or their parents as a part of the regular education program; (B) "physical education" means the development of physical and motor fitness, fundamental motor skills and patterns, skills in aquatics, dance, and individual and group games, and sports (including intramural and lifetime sports); the term includes special physical education, adapted physical education, movement education, and motor development; (C) "vocational education" means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.</p>		
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	<p>ADDITIONAL STATUTORY REVISIONS:</p> <p>AS 14.30.640 AS 47.80.090(9) AS 47.80.900(6)</p> <p>AS 29.60.599 (7)</p>	<p>These three sections have been amended to delete references to "exceptional" children and to insert "children with disabilities" and "gifted children" as appropriate.</p> <p>This section is amended to update its definition of "school district" to include the components listed in AS 14.30.350 and AS 14.30.359.</p>
	<p>REPEALED SECTIONS IN PROPOSED STATUTE</p> <p>AS 14.30.186(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.</p> <p>AS 14.30.193(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.</p> <p>AS 14.30.195 (a) The department shall, by regulation, provide for administrative appeal hearings, based on the record, of impartial hearing</p>	<p>The revised AS 14.30.186 clarifies the agencies responsibility for providing special education and related services.</p> <p>The revised AS 14.30.193 clarifies that the department, not the school district, is responsible for appointing an impartial hearing officer.</p> <p>This section is repealed since the revised due process hearing procedures no longer contain the</p>

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	<p>officers' decisions under AS 14.30.193 . An administrative appeal hearing shall comply with all requirements necessary for participation in federal grant-in-aid programs, including 20 U.S.C. 1400 - 1485 (Individuals with Disabilities Education Act).</p> <p>(b) The agency conducting a hearing under this section may issue subpoenas under AS 44.62.430 and may petition the superior court for adjudications of contempt under AS 44.62.590 .</p> <p>(c) After an appeal hearing under this section, the department shall render its decision affirming, reversing, modifying, or remanding the hearing officer's decision under AS 14.30.193 .</p> <p>(d) A parent or the school district may appeal to the appropriate court for review of the department's decision on appeal under (c) of this section.</p> <p>(e) A parent who appeals to the court and who is determined by the court to be an indigent person may be provided with a court appointed attorney at public expense. In this subsection, "indigent person" has the meaning given in AS 18.85.170 .</p> <p>AS 14.30.315(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.</p> <p>AS 14.350(3) (3) "consent" means the parent has been fully informed of all information relevant to the activity or the release of records for which</p>	<p>provision for an appeal of a due process hearing to the department.</p> <p>This subsection is repealed since the term "exceptional children" is no longer used. The department's general authority to regulate educational programs is also contained in AS 14.07.020.</p> <p>The definition of "consent" has been replaced by the definition of</p>
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	<p>consent is sought and the parent understands and voluntarily agrees to the activity or release of records;</p> <p>AS 14.350(5) "exceptional children" means children with disabilities, and gifted children, who differ markedly from their peers to the degree that special facilities, equipment, or methods are required to make their educational program effective;</p> <p>AS 14.350(6) "gifted children" means children who exhibit outstanding intellect, ability, or creative talent as determined under regulations adopted by the department;</p> <p>AS 14.350(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;</p>	<p>the term "informed consent".</p> <p>The definition of "exceptional children" is repealed since this term is no longer used in the statute.</p> <p>The definition of "gifted children" is repealed and replaced in section 14.30.359.</p> <p>The definition of "individualized education program team" is not carried over into the gifted program, since it is a federal regulation term applicable to special education. The persons required to be included in the development of an "individualized gifted education program" are specified and listed in the proposed section AS 14.30.354.</p>
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FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 71
 () Publish Date: _____

Revision Date/Time (Note if correction): 2/6/01 Dept. Affected: Education & Early Dev.
 Title: An Act relating to special education . . BRU: Teaching & Learning Support
 Component: Special and Supplemental Services
 Sponsor: Rules Committee
 Requester: Governor Component Number: 166

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services	40.4	40.4	40.4	40.4	40.4	40.4
Travel	6.0	6.0	6.0	6.0	6.0	6.0
Contractual	47.0	47.0	47.0	47.0	47.0	47.0
Supplies	10.0	10.0	10.0	10.0	10.0	10.0
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	103.4	103.4	103.4	103.4	103.4	103.4

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	103.4	103.4	103.4	103.4	103.4	103.4
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	103.4	103.4	103.4	103.4	103.4	103.4

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time	1					
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Currently, the department is charged, by state statute, to administer the state's Gifted Education program. This legislation clarifies the state's responsibilities relating to the Gifted Education program. Although the legislation does not add new responsibilities, the department has not had the resources to meet the requirements. Federal special education funds cannot be used for this purpose. The department has requested a general fund increment in the FY2002 budget for the Division of Teaching and Learning Support, Special and Supplemental Services Component to cover the costs for administering this program.

Prepared by: Barbara Thompson, Deputy Director
 Division: Teaching & Learning Support
 Approved by: [Signature]
 Agency: Department of Education & Early Development

Phone 465-8727
 Date/Time 2/6/01 12:00 AM
 Date 2/6/01

For distribution information, call the Governor's Legislative Office

HB 71
Fiscal Note Budget Narrative

Current state law and the proposed HB 71 require the state to oversee gifted education programs provided by school districts. Federal special education funding may not be used for these purposes since gifted education is not a federal mandate. Therefore, the following funds are required to enable the state to fulfill its oversight responsibility.

Personal Services

*.5 FTE Education Specialist II, 21 A/B	\$36,200
**10 FTE Admin. Clerk II, 8 B	<u>\$ 4,200</u>
Total	\$40,400

*This fiscal note includes personal services costs for a .5 FTE Education Specialist II. This position is reflected on page 1 of the fiscal note as 1 new full-time position. The other half of this position is reflected in a department increment in the FY2002 budget for the statewide correspondence program.

**An existing position will be used for the Administrative Clerk II position. No new position is being requested in this fiscal note.

Travel

Due Process Training for 2 days @ \$1,000 each	\$ 2,000
Monitoring to accompany contractor for 4 visits @ \$1,000 each	<u>\$ 4,000</u>
Total	\$ 6,000

Contractual

Contractor:	
Training, 10 days @ \$500 per day	\$ 5,000
Due Process Hearings, 4 @ \$5,000 each	\$20,000
Monitoring visits, 2 contractors at \$500 per day, 3 days each, 4 districts per year	\$12,000
Monitoring visits, \$1,000 each trip, 4 trips	\$ 4,000
Postage, phone, copier, printing	<u>\$ 6,000</u>
Total	\$47,000

Supplies

Training materials, other supplies	<u>\$10,000</u>
Total	\$10,000

Grand Total \$103,400

AMENDMENT

SB 40
Possible

TO: CSSB 205 (HES)

Page 4, add a new Sec. 9

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

~~shall~~ ^{may} Sec. 14.30.315. Programs for gifted children. Every school district shall establish educational services for gifted children that provide for student identification, student eligibility, student learning plans, and parental and student participation including an appropriate review process, consistent with regulations adopted by the department.

Renumber the following sections.

Comments on
gifted

X-Sender: cfmorehouse@jnumail1.state.ak.us
X-Mailer: QUALCOMM Windows Eudora Pro Version 4.2.0.58
Date: Fri, 24 Nov 2000 11:36:00 -0800
To: sheila Box <Sheila_Box@eed.state.ak.us>
From: IUSR_WEBSERVER@webserver (by way of Charito Morehouse <charito_morehouse@eed.state.ak.us>)
Subject: Comments on Regs

NAME: Anne Fuller
email: amrcomputing@gci.net
Phone: (907) 586 4422
Regulation: 4 AAC 53
Submit: Submit

comments:

As I get older, I realize that my safety and quality of life is not in my hands alone. Our society needs to provide excellent education for everyone's children.

I am writing to encourage you to provide specific programs and funding for our academically talented youngsters. Alaska is not doing this now and I fear that the proposed regulations do not go far enough.

Do not be misled by folks who claim, "those kids will survive school just fine". Do not fall for the line that "of course, they can take university classes any time they want to". Think about the results of competency testing that show many of the students failing classes already have the skills being taught in those classes.

Thank you.

X-Sender: cfmorehouse@jnumail1.state.ak.us
X-Mailer: QUALCOMM Windows Eudora Pro Version 4.2.0.58
Date: Fri, 24 Nov 2000 11:44:25 -0800
To: sheila Box <Sheila_Box@eed.state.ak.us>
From: IUSR_WEBSERVER@webserver (by way of Charito Morehouse
<charito_morehouse@eed.state.ak.us>)
Subject: Comments on Regs

NAME: Denise Greger
email: denisegreger@hotmail.com
Phone: 688-5980
Regulation: 4AAC 52 and 4AAC 53
Submit: Submit

comments:

I am writing to voice my opposition to the proposal to remove gifted children from the special education umbrella in Alaska. Separating out gifted children will not benefit children with disabilities in any way, yet it will almost certainly harm children who are gifted.

I believe that every child has the right to an appropriate education based on that child's needs and abilities. In the case of highly gifted children, it has been shown that self-contained gifted classrooms can be the best way to provide that education. However, in this time of budget constraints, school districts are not likely to provide this appropriate education unless required by law to do so.

If gifted children are removed from the special education umbrella, it is highly likely that gifted education as we know it will end. Knowing that many programs will be competing for the same finite supply of dollars, and that gifted children are often (although erroneously) perceived as an elite group who already receive too many benefits, the legislature is not likely to mandate districts to continue to provide gifted educational services.

Therefore, please do not allow 4AAC 52 and 4AAC 53 to go forward. The adoption of these bills will accomplish no good in our communities but is very likely to cause harm.

Date: Wed, 22 Nov 2000 15:32:34 -0900
Subject: Comments on Proposed Changes - Chapter 53 Gifted/Talented
To: sheila_box@eed.State.ak.us
Cc: dpeterson@kpbsd.k12.ak.us, dboehmer@kpbsd.k12.ak.us, mstoner@kpbsd.k12.ak.us
From: "Ed McLain" <emclain@kpbsd.k12.ak.us>

November 20, 2000

To: Alaska State Board of Education
Richard Cross, Alaska Commissioner of Education

From: Dr. Ed McLain, KPBSD, Assistant Superintendent

Re: Comment on Proposed Revisions to Regulations - Chapter 53

The Kenai Peninsula School District and our Department of Special Education support proposed changes in the Regulations of the Department of Education & Early Development that will create Chapter 53 for gifted education. We do suggest the following rewording:

- ° Article 2, section 100: Change to most appropriate environment instead of least restrictive
- ° Article 2, section 110: Delete reevaluation
- ° Article 2: add Personnel Development
- ° 4AAC53.050: to serve students from age 5 until graduation or age 21
- ° 4AAC53.090: delete requirements to AS14.30.278 and include condensed requirements (see attached)
- ° 4AAC53.100: change to Most Appropriate Environment (see attached for details)

Several other specific rewording suggestions can be found on the attached document. Suggested additions or new language are indicated by underline. Suggested deletions are indicated by strike throughs of the words to be deleted.

Thank you for your review and consideration of our comments and suggestions.

Cc: Dr. Donna Peterson, KPBSD, Superintendent of Schools
Mo Stoner, KPBSD, Quest (Gifted Talented Program) Manager
Dr. Donald Boehmer, KPBSD, Director of Special Services



[Ch 53 suggested revisions2.doc](#)



[Ch 53 revision memo2.doc](#)

November 20, 2000

To: Alaska State Board of Education
Richard Cross, Alaska Commissioner of Education

From: Dr. Ed McLain, KPBSD, Assistant Superintendent

Re: Comment on Proposed Revisions to Regulations - Chapter 53

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Several other specific rewording suggestions can be found on the attached document. Suggested additions or new language are indicated by underline. Suggested deletions are indicated by strike throughs of the words to be deleted.

Thank you for your review and consideration of our comments and suggestions.

Cc: Dr. Donna Peterson, KPBSD, Superintendent of Schools
Mo Stoner, KPBSD, Quest (Gifted Talented Program) Manager
Dr. Donald Boehmer, KPBSD, Director of Special Services

X-Sender: cfmorehouse@jnumail1.state.ak.us
X-Mailer: QUALCOMM Windows Eudora Pro Version 4.2.0.58
Date: Wed, 22 Nov 2000 11:22:51 -0800
To: sheila Box <Sheila_Box@eed.state.ak.us>
From: IUSR_WEBSERVER@webserver (by way of Charito Morehouse
<charito_morehouse@eed.state.ak.us>)
Subject: Comments on Regs

NAME: Sonja Schmidt
email: sscnmidt@mail.denali.k12.ak.us
Phone: 907-683-2572
Regulation: 4AAC 52: Education for Children with Disabilities
Submit: Submit

comments:

I support the division of chapter 52 into two sections, putting services for students identified as Gifted and Talented inside of the regulations for Special Education. I believe all of the procedural safeguards are necessary and of benefit to students with gifted/talented needs. I have served as a teacher of the Gifted/Talented and currently work as a classroom teacher, frequently providing services to those who have been included in a G/T category.

X-Sender: cfmorehouse@jnumail1.state.ak.us
X-Mailer: QUALCOMM Windows Eudora Pro Version 4.2.0.58
Date: Wed, 22 Nov 2000 11:22:38 -0800
To: sheila Box <Sheila_Box@eed.state.ak.us>
From: IUSR_WEBSERVER@webserver (by way of Charito Morehouse
<charito_morehouse@eed.state.ak.us>)
Subject: Comments on Regs

NAME: J. Margaret Castellini
email: maggiec@ims.uaf.edu
Phone: 907-479-5444
Regulation: 4 AAC 52 and 4 AAC 53
Submit: Submit

comments:

I am a parent of 2 GT students in the Fairbanks School District. I attended the public information meeting at the School District building on Nov 20 to discuss proposed changes to regulations concerning GT education. I would first like to thank the Board of Education and Early Development for having this meeting. It helped me to better understand the roles of the Board, the legislature and the individual school districts in providing support for these special needs children.

My main concern at this moment is that GT education not be separated from Chapter 52 (Education of Exceptional Children). While GT students and families have different needs than children with disabilities, these students still fall under the definition of exceptional children and have very special needs which are generally not met by the typical school curriculum. Dividing Chapter 52 into subsections would allow for more clarity while still making the point that GT children are considered exceptional and have special needs.

I also feel compelled to remind everyone involved in these decisions (not just the Board of Education), that while these children are exceptionally bright they are usually extremely emotionally and socially vulnerable. Having high intellectual abilities is not a guarantee for success in school or life. GT programs provide much needed intellectual, academic, social and emotional support.

Thank you for this opportunity to comment and my apologies for the earlier incomplete submission - my computer submitted my comment when I hit the TAB key.

Sincerely,
Maggie Castellini

November 15, 2000

RECEIVED

NOV 22 2000

Alaska Department of Education
& Early Development

Department of Education & Early Development
Bruce Johnson, Deputy Commissioner
801 W. 10th Street, Suite 200
Juneau, Alaska 99801

Dear Mr. Johnson:

The Anchorage Parents of Gifted Children Committee would like to extend our gratitude for having the opportunity to review your department's proposed regulation, 4 AAC 53, Education for Gifted Children. It is clear that a great deal of time and effort have been spent on this regulation, and we appreciate your hard work.

After hours of review and discussion with gifted educators and parents of gifted children, we recommend that gifted education remain in Chapter 52, Education for Exceptional Children. We acknowledge that there are different federal requirements for disabled children and gifted children, but both gifted and disabled education are covered under the same Alaska statute. To remain consistent with the current statutory structure, the regulations for both programs should remain within the same chapter. Additionally, we believe that separation of the programs into two different chapters will diminish the quality of gifted educational services in Anchorage schools.

The proposed separate regulation 4 AAC 53 does not include several critical provisions necessary for meaningful and appropriate education of gifted children. For example, complete requirements for Individualized Education Programs in the current 4 AAC 52.140 must be included in the gifted education regulation. Also, requirements for placement (current 4 AAC 52.150), application for assistance from the department (current 4 AAC 52.160), least restrictive environment (current 4 AAC 52.170), and reevaluation (current 4 AAC 52.180) are inadequate in the draft 4 AAC 53.

We would prefer the gifted education regulation to be combined with the proposed chapter 52; education for disabled children would be covered in chapter 52A; gifted education in chapter 52B. However, it seems that the state's *Drafting Manual for Administrative Regulations* prohibits this. Accordingly, enclosed is our proposal for 4 AAC 52, Education for Exceptional Children. Our proposal includes your suggested revisions to the existing chapter 52, as well as the language in the draft 4 AAC 53.

We appreciate the opportunity to have input into regulations that govern the education our children receive.

Sincerely,



to Anchorage Parents of Gifted Children
Committee

(see attached list for signatures)

2 lists attached

Petition to Approve the Parent Legislative Committee Proposal

If you agree to the Anchorage Parents of Gifted Children Legislative Committee's Chapter 52A & 52B Proposal, please sign your name and residence below. Thank You.

Mollie TeVrucht	Mollie TeVrucht	PO Box 111685 Anch 99511-1685
ERIC GROSCH	Eric Grosch	P.O. Box 111685 ANCH 99511-1685
Linda Shelton	Linda Shelton	9541 Arlene Dr Anch. 99515
Dawn B. Wilcox	Dawn B. Wilcox	3116 Madison Way 99508
CHRISTINE [unclear]	Christine [unclear]	4623 Campus Circle
Matt J Lovgren	Matt J Lovgren	24545 Teal Loop Chugiak A. 9956
Herb Spytke	Herb Spytke	2311 Jefferson Ave #1 Anch, AK 9951
MICHAEL HARVEY	Michael Harvey	9520 Lennox Dr, Anch, AK 99515
Josiah Lemay	Josiah Lemay	3672 DUNKIN CT. ANCH. AK 99502
Joy Lemay	Joy Lemay	3672 Dunkin Ct. 99502
[unclear]	[unclear]	[unclear]
Jean Scinto	Jean Scinto	12521 Birchmeadow Dr. 99515
Janet Evans	Janet Evans	2210 Dreyfus Ct. 99501
Talita I. Kahilifa	Talita I. Kahilifa	4045 Lakeview Parkway 99508
Annmarie Benier	Annmarie Benier	8111 Major Eric Ct. 99504
Bruce Bittel	Bruce Bittel	2913 Madison Way - Anch. 99
John P. Griffin	John P. Griffin	2400 Galewood St 99508
George A Conway	George A Conway	PO Box 112275 Anchorage, AK 995
Merris Kael Vanderploeg	Merris Kael Vanderploeg	7901 Casey Circle Anchorage, AK 995
KAREN LOUDER STRIBE	Karen Louder Stribe	21415 TINA ST CHUGIAK, AK. 9950
Kelley Brockway	Kelley Brockway	3043 Eagle Bay Cr Anch. 9950
Jill Griffin	Jill Griffin	2400 Galewood St 99508
Melissa Harvey	Melissa Harvey	9520 Lennox Dr Anch, AK 9951
Dallas M Price	Dallas M Price	2777 W. 66th Ave, Anch, AK 995

I agree to the CHAPTER 52 EDUCATION FOR EXCEPTIONAL CHILDREN [WITH DISABILITIES] Proposal that was written by the Anchorage Parents of Gifted Children Committee:

- ~~Kerry Walker~~ Kerry Walker 10340 Delta Circle Eagle River AK 99577
- ~~William Parker~~ William Parker 10847 Good Hope Cir Eagle River AK 99577
- Debbie Nantz Debbie Nantz 22714 Northwoods Drive Chugiak AK 99567
- ~~...~~
- Madelaine Barry Madeline Barry 10831 Klutina Circle Eagle River AK 99577
- ~~...~~
- Delashm... 17545 Laguna Circle Eagle River 99577
- Douglas E Hall Douglas E Hall 18701 Carolyn Circle Eagle River AK 99577
- Monica E. Hall Monica E. Hall 18701 Katelyn Circle Eagle River AK 99577
- Marcia M. Everson Marcia M. Everson 19420 UPPER SKYLINE DR EAGLE RIVER AK 99577
- Adam Sweet 17311 Palos Verdes Dr Eagle River AK 99577
- Donald D Sweet Jr Donald D Sweet Jr 17811 Palos Verdes Dr Eagle River AK 99577
- Tamara J. Schen 3012 Delores Dr, Eagle River, AK 99577
- Teresa J. Semmler Teresa Semmler 18080 Amosson Rd Chugiak, AK 99567
- ~~Josie Fonteyn~~ Josie Fonteyn 18105 Hidden Falls Ave Eagle River AK 99577
- ~~...~~
- Shelley Simpson POB 874025 Wasilla AK 99687
- ~~...~~
- Erleen & Robby 6523 Cobblecreek Circle, AK 99507



**Matanuska-Susitna Borough School District
STUDENT SUPPORT SERVICES**

125 West Evergreen, Palmer, AK 99645
Phone (907)746-9233 FAX (907)745-6119
Michael S. Melear, Director

Health Services 746-9254
Preschool 746-9232
SpEd Transportation 746-9221
SpEd Records 746-9220/9222

January 24, 2001

RECEIVED

JAN 30 2001

Office of the Commissioner
Department of Education and Early Development
Attn: Regulations Review
801 West 10th Street - Suite 200
Juneau, Alaska 99801-2800

Alaska Department of Education
& Early Development

RE: Comment on proposed changes to 4 AAC 52

Dear Commissioner Cross:

Subject: Special Education and Gifted Education
Citation: 4 AAC 52.800 - 52.900

As a Special Education Director in the state of Alaska for the past 16 years, I would like to encourage you and the Alaska State School Board to approve the originally proposed regulation changes regarding the addition of Chapter 53 entitled Gifted Education. It has been my experience that much confusion regarding the legal rights of students who are identified as gifted are frequently confused with those who possess disabilities.

In this regard, parents of children who receive special education as gifted are surprised that, under the current regulations, some of the procedures required under the Individuals with Disabilities Act do not correspond to those authorized for exceptional children who are currently protected under 4 AAC 52.

This confusion has been long-standing in Alaska, while a majority of the nation has made a legal distinction between special education and gifted education. This in no way limits the rights and protections afforded to gifted children, but provides more clarity which prevents disputes.

Thank you for allowing me the opportunity to respond during this public comment period.

Sincerely,

Michael Melear

X-Sender: cfmorehouse@jnumail1.state.ak.us
X-Mailer: QUALCOMM Windows Eudora Pro Version 4.2.0.58
Date: Tue, 16 Jan 2001 14:30:17 -0800
To: Sheila Box <sheila_box@eed.state.ak.us>
From: "Susan McGloin" <mint@gci.net> (by way of Charito Morehouse
<charito_morehouse@eed.state.ak.us>)
Subject: new regulations for gifted services

I oppose the separation of exceptionalities that the State Department of Education would like to propose in the 2001-2002 special education regulations. It is not true that the current state regulations has led to confusion. I have worked many years with the school district and never saw confusion regarding how the regulations apply to each group of students. The protections for the gifted children are intact in the current chapter 52. The proposed changes are harmful to the gifted program. The real intention of the change is to protect those who misused federal funding. If the proposed changes are made, I will work for an investigation of the matter. What the people of Alaska want is the education department's honest effort at saving and ensuring the services for the education for exceptional children.

Sincerely,

Susan McGloin

all other
pages
Elev

X-Sender: cfmorehouse@jnumail1.state.ak.us
X-Mailer: QUALCOMM Windows Eudora Pro Version 4.2.0.58
Date: Tue, 16 Jan 2001 14:30:06 -0800
To: Sheila Box <sheila_box@eed.state.ak.us>
From: "Susan McGloin" <mint@gci.net> (by way of Charito Morehouse
<charito_morehouse@eed.state.ak.us>)
Subject: Proposed Changes: New Regulations for Gifted Services

I oppose the separation of exceptionalities that the state department of education would like to propose in 2001-2002 special education regulations. The protection of the gifted program is not maintained in the proposed Chapter 53.

sincerely,
Susan McGloin

RECEIVED

DEC - 8 2000

Alaska Department of Education
& Early Development

November 22, 2000

Richard Cross
Department of Education and Early Development
800 West Tenth Suite 200
Juneau, AK 99801-1894

The Alaska School Psychologist Association (ASPA) is pleased to offer the following comments on the proposed regulations for Chapters 52 and 53 Education for Exceptional Children.

ASPA supports separating regulations pertaining to individuals with disabilities as defined by federal law and those pertaining to gifted and talented children. We are hopeful this will decrease the paperwork and cumbersome procedures required for documenting the evaluation and service to gifted and talented students.

4 AAC 52.020 (b) Districts offering correspondence programs shall administer a program offering special education and related services shall coordinate its provision with the district of residence in conformance with 4 AAC 33.432.

This provision needs to be spelled out to indicate how documentation, eligibility determination, service plan creation and funding will be handled.

Page 7 Comparison Chart

(4) Maintains old language about preschool developmental delays and the age 6 cut-off. New language provides the option of up to age 9. This is confusing wording and is at variance from new language found on page 11. How are we to know which you mean? ASPA supports the extension of early developmental delays up to the ninth birthday. ASPA supports wording of "on or before the ninth birthday."

4 AAC 52.120 Evaluation Each district shall conduct a "full individual evaluation"

ASPA recommends changing the wording to "full evaluation based on the educational needs of the child". "Full evaluations" can cause confusion for parents and teams. Is DOEED suggesting that every child needs an evaluation in every area (speech, occupational therapy, physical therapy, etc.) regardless of the presenting concerns? A "full evaluation" is not needed in every case and will create huge bottlenecks in the system. Evaluations should be based on the needs of the student as determined by the evaluation planning team and not by an arbitrary requirement of "full evaluation".

4 AAC 52. 125 (1) Eligibility .. "and related service providers"

ASPA recommends a change in the wording to "may include (e.g. occupational and physical therapy, counseling, assistive technology, adaptive physical education etc.). The present wording suggests that all of these sources would be required to determine eligibility for special education. This is overkill for a student with solely a math disability.

Shouldn't children regarded as having possible handicaps be given the same consideration? Psychologists, so as to expedite portions of the evaluation, evaluate some children during the summer. There are no teams available to determine eligibility or IEP services during the summer. We would either be continually out of compliance in summer months or be faced with refusing summer service to parents in order not to violate criteria of calendar days rather than school days.

4 AAC 52.990 - 13 informed consent (D) parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time. Page 48)

Current procedures are that consent is voluntary until the evaluation has begun. In practice, if a parent requests us to terminate an evaluation that request is honored. This regulation puts special education teams in an ethical and legal bind. We are required to protect the child's rights to special education. How do we do that if parents withdraw consent "at any time"? If a child has been deemed eligible for special education and requiring specialized instruction what are we to do if a parent removes the child from the program because he or she does not like the handicapping label? How do we balance the needs/rights of the child against this provision? ASPA respectfully requests DOE modify this wording to match Federal Statues. Parents can voluntarily remove consent prior to the onset of the evaluation and prior to initial placement in special education. Once a child has been placed in special education, the child's rights should become paramount with the option of parties going to mediation or hearing to determine the appropriateness of withdrawal of the student from special education when the two parties do not agree.

(24) "severely" emotionally disturbed. Page 50

Has this not been changed to "emotionally disturbed"?

Citation Referenced Proposed Changes to Title 4 Chapter 42 page
300.532. Evaluation Procedures (f)

No single procedure is used as the sole criterion...

Is the term "procedure" to be considered the same as "test" or "measure"? A procedure [*method, plan, process*] often describes the necessary steps or components of an evaluation. Different procedures are established for determining eligibility for Learning Disabilities, Emotional Disturbance, Other Health Impairments, etc. Different tests [measures, exams] are also used within certification categories. No single "test/measure" is allowable for determining presence of a disability. Clarification on meaning of the term "procedure" is desired here. ASPA supports replacing the word "procedure" with the term "test" or "measure".

Chapter 53 Education for Gifted Children

4 AAC 53.080 Criteria for Determination of Eligibility as Gifted

ASPA recommended deleting the requirement of Related Services as these services are rendered to disabled students under federal requirements and are not required under Federal guidelines for gifted and talented students. ASPA supports a change of wording to: "Each district shall adopt written eligibility criteria for use in the district's identification of children eligible for gifted education services under Chapter 53.

4 AAC 53.140. Parental Participation Page 7 Line 7-9

The parent has the right to bring to the meeting an individual with knowledge or expertise regarding the child, as determined by the parent.

Does not IDEA list attorneys as one person *not* to be brought to a meeting, unless a hearing is requested?

4 AAC 53.160 Cost of Services

(a) It is the experience of the Anchorage School District that children referred to the Advanced and Accelerated (gifted) program request repeated evaluations when the child does not meet criteria. School Psychologists are known to test a child twice within a given year and some children are tested annually at parent request. This is inappropriate for students to be repeatedly tested; knowing the pressure they are under to score well enough to gain admittance to a desired program. ASPA requests that the regulation include opportunity for districts to limit the number of times a child should be tested, at public expense, within a given time period. Children under consideration for a handicapping condition are not re-tested by parental request at a level demanded by parents who desire their child to be provided gifted education services.

4 AAC 53.230 Parental Consent for Release of Records

Does this exception include the Office of Public Advocacy and Guardian ad Litem?

4 AAC 53.250 Availability of Due Process Hearings 6 (e) page 17

Current proposed state requirements for a hearing officer is a high school diploma or equivalent education.

This low standard of training astounds the Alaska School Psychologists Association. You are granting extensive decision making powers to an individual regarding appropriateness of assessments, eligibility decisions and special education placement decisions to someone with a high school education when the *professionals* involved with the assessment and eligibility have a minimum of a Master's degree in their specialty area. It is ludicrous that someone is vested with such far-reaching authority with so little background required in education, special education, child development, legal rights etc. At the minimum, ASPA requests the state raise the standard to attainment of a Bachelor's degree from a recognized college or university. It behooves parents and the state to involve someone who has had advanced education over that of a high school diploma.

4 AAC 53.320 Maintenance of Records

(6) class and grade attendance records.

What is meant by class records? All the previously required information would reasonably be found in a special education record. Much of this information is inappropriate for a cumulative record. Tests and other documents for determining eligibility are highly protected in order to maintain integrity of the test. If test protocols were to be found in a child's cumulative record, they would be subject to photocopying. Test publishers and school psychologist's ethics prohibit this action. If test protocols containing test questions, child responses and the resulting item scores are placed in cumulative records then the integrity of the test would be violated.

Article 5. General Provisions

4 AAC 53.990 Definitions (2) "days" means calendar days.

Other federal special education regulations refer days with respect to evaluations and placement procedures to be school or business days. ASPA takes strong exception to this definition. Many times consent for assessment is obtained just before the winter break from school. In this instance, seventeen to eighteen days of the time limit is lost to vacation. School psychologists and other related service personnel are often in a school one-to-two days per week. What provides a reasonable time line to conduct a thorough evaluation by all involved parties is lost with a count of calendar days.

Forty-five days is equivalent to seven weeks. That gives a psychologist who is in a building once a week only seven opportunities to observe, assess, review records, consult with colleagues prior to arriving at placement decision. Given that we deal with children it is inappropriate for them to be subjected to full days of total assessment. We don't do this with any other high stakes examinations. Benchmarks, IOWA's, graduation exams are all spread out across several days. Shouldn't all children being tested receive those the same considerations? Some children are evaluated during the summer by psychologists. There are no teams available to determine eligibility or IEP services during the summer. We would either be continually out of compliance in summer months or be faced with refusing summer service to parents in order not to violate criteria of calendar days rather than school days.

(6) informed consent (D) parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

Current procedures are that consent is voluntary until the evaluation has begun. In practice, if a parent requests us to terminate an evaluation that request is honored. This regulation puts special education teams in an ethical and legal bind. We are required to protect the child's rights to special education. How do we do that if parents withdraw consent "at any time"? If a child has been deemed eligible for special education and requiring specialized instruction, what are we to do if a parent removes the child from the program because he or she does not like the handicapping label? How do we balance the needs/rights of the child against this provision? ASPA respectfully requests DOE modify this wording to match Federal Statues. Parents can voluntarily remove consent prior to the onset of the evaluation and prior to initial placement in special education. Once a child has been placed in special education, the child's rights should become paramount with the option of parties going to mediation or hearing to determine the appropriateness of withdrawal of the student from special education when the two parties do not agree.

(b) A child is entitled to a surrogate parent if

Does (4) "the child is committed to the department of Health and Social Services" negate other aspects? That is, if a parent is known and located does the child require not just become entitled to a surrogate parent?

Thank you for consideration of these comments.

Sincerely,



School Psychologist
ASPA member

Brett J. Erb
School Psychologist - Anchorage School District
5821 Downey Finch Drive
Anchorage, Alaska
99516

RECEIVED

DEC - 4 2000

Alaska Department of Education
& Early Development

November 22, 2000

Richard Cross
Department of Education and Early Development
800 West Tenth Suite 200
Juneau, AK 99801-1894

The Alaska School Psychologist Association (ASPA) is pleased to offer the following comments on the proposed regulations for Chapters 52 and 53 Education for Exceptional Children.

ASPA supports separating regulations pertaining to individuals with disabilities as defined by federal law and those pertaining to gifted and talented children. We are hopeful this will decrease the paperwork and cumbersome procedures required for documenting the evaluation and service to gifted and talented students.

4 AAC 52.020 (b) Districts offering correspondence programs shall administer a program offering special education and related services shall coordinate its provision with the district of residence in conformance with 4 AAC 33.432.

This provision needs to be spelled out to indicate how documentation, eligibility determination, service plan creation and funding will be handled.

Page 7 Comparison Chart

(4) Maintains old language about preschool developmental delays and the age 6 cut-off. New language provides the option of up to age 9. This is confusing wording and is at variance from new language found on page 11. How are we to know which you mean? ASPA supports the extension of early developmental delays up to the ninth birthday. ASPA supports wording of "on or before the ninth birthday."

4 AAC 52.120 Evaluation Each district shall conduct a "full individual evaluation"

ASPA recommends changing the wording to "full evaluation based on the

identification of children eligible for gifted education services under Chapter 53.

4 AAC 53.140. Parental Participation Page 7 Line 7-9

The parent has the right to bring to the meeting an individual with knowledge or expertise regarding the child, as determined by the parent. Does not IDEA list attorneys as one person not to be brought to a meeting, unless a hearing is requested?

4 AAC 53.160 Cost of Services

(a) It is the experience of the Anchorage School District that children referred to the Advanced and Accelerated (gifted) program request repeated evaluations when the child does not meet criteria. School Psychologists are known to test a child twice within a given year and some children are tested annually at parent request. This is inappropriate for students to be repeatedly tested; knowing the pressure they are under to score well enough to gain admittance to a desired program. ASPA requests that the regulation include opportunity for districts to limit the number of times a child should be tested, at public expense, within a given time period. Children under consideration for a handicapping condition are not re-tested by parental request at a level demanded by parents who desire their child to be provided gifted education services.

4 AAC 53.230 Parental Consent for Release of Records

Does this exception include the Office of Public Advocacy and Guardian ad Litem?

4 AAC 53.250 Availability of Due Process Hearings 6 (e) page 17

Current proposed state requirements for a hearing officer is a high school diploma or equivalent education.

This low standard of training astounds the Alaska School Psychologists Association. You are granting extensive decision making powers to an individual regarding appropriateness of assessments, eligibility decisions and special education placement decisions to someone with a high school education when the professionals involved with the

specialty area. It is ludicrous that someone is vested with such far-reaching authority with so little background required in education, special education, child development, legal rights etc. At the minimum, ASPA requests the state raise the standard to attainment of a Bachelor's degree from a recognized college or university. It behooves parents and the state to involve someone who has had advanced education over that of a high school diploma.

4 AAC 53.320 Maintenance of Records

(6) class and grade attendance records.

What is meant by class records? All the previously required information would reasonably be found in a special education record. Much of this information is inappropriate for a cumulative record. Tests and other documents for determining eligibility are highly protected in order to maintain integrity of the test. If test protocols were to be found in a child's cumulative record, they would be subject to photocopying. Test publishers and school psychologists' ethics prohibit this action. If test protocols containing test questions, child responses and the resulting item scores are placed in cumulative records then the integrity of the test would be violated.

Article 5. General Provisions

4 AAC 53.990 Definitions (2) "days" means calendar days.

Other federal special education regulations refer days with respect to evaluations and placement procedures to be school or business days. ASPA takes strong exception to this definition. Many times consent for assessment is obtained just before the winter break from school. In this instance, seventeen to eighteen days of the time limit is lost to vacation. School psychologists and other related service personnel are often in a school one-to-two days per week. What provides a reasonable time line to conduct a thorough evaluation by all involved parties is lost with a count of calendar days.

Forty-five days is equivalent to seven weeks. That gives a psychologist who is in a building once a week only seven opportunities to observe, assess, review records, consult with colleagues prior to arriving at placement decision. Given that we deal with children it is inappropriate for them to be subjected to full days of total assessment. We don't do

children are evaluated during the summer by psychologists. There are no teams available to determine eligibility or IEP services during the summer. We would either be continually out of compliance in summer months or be faced with refusing summer service to parents in order not to violate criteria of calendar days rather than school days.

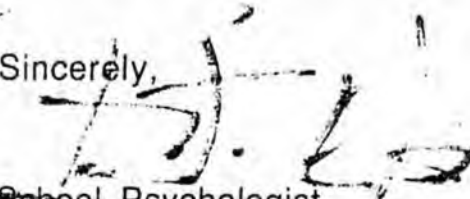
(6) informed consent (D) parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time. Current procedures are that consent is voluntary until the evaluation has begun. In practice, if a parent requests us to terminate an evaluation that request is honored. This regulation puts special education teams in an ethical and legal bind. We are required to protect the child's rights to special education. How do we do that if parents withdraw consent "at any time"? If a child has been deemed eligible for special education and requiring specialized instruction, what are we to do if a parent removes the child from the program because he or she does not like the handicapping label?

How do we balance the needs/rights of the child against this provision? ASPA respectfully requests DOE modify this wording to match Federal Statues. Parents can voluntarily remove consent prior to the onset of the evaluation and prior to initial placement in special education. Once a child has been placed in special education, the child's rights should become paramount with the option of parties going to mediation or hearing to determine the appropriateness of withdrawal of the student from special education when the two parties do not agree.

(b) A child is entitled to a surrogate parent if
Does (4) "the child is committed to the department of Health and Social Services" negate other aspects? That is, if a parent is known and located does the child require not just become entitled to a surrogate parent?

Thank you for consideration of these comments.

Sincerely,



School Psychologist
ASPA member

November 22, 2000

Richard Cross
Department of Education and Early Development
800 West Tenth Suite 200
Juneau, AK 99801-1894

RECEIVED

DEC - 4 2000

Alaska Department of Education
& Early Development

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(24) "severely" emotionally disturbed. Page 50
Has this not been changed to "emotionally disturbed"?

Citation Referenced Proposed Changes to Title 4 Chapter 42 page 300.532. Evaluation Procedures (f)

No single procedure is used as the sole criterion...

Is the term "procedure" to be considered the same as "test" or "measure"? A procedure [method, plan, process] often describes the necessary steps or components of an evaluation. Different procedures are established for determining eligibility for Learning Disabilities, Emotional Disturbance, Other Health Impairments, etc. Different tests [measures, exams] are also used within certification categories. No single "test/measure" is allowable for determining presence of a disability. Clarification on meaning of the term "procedure" is desired here. ASPA supports replacing the word "procedure" with the term "test" or "measure".

Chapter 53 Education for Gifted Children

4 AAC 53.080 Criteria for Determination of Eligibility as Gifted

ASPA recommended deleting the requirement of Related Services as these services are rendered to disabled students under federal requirements and are not required under Federal guidelines for gifted and talented students. ASPA supports a change of wording to: "Each district shall adopt written eligibility criteria for use in the district's identification of children eligible for gifted education services under Chapter 53.

4 AAC 53.140. Parental Participation Page 7 Line 7-9

The parent has the right to bring to the meeting an individual with knowledge or expertise regarding the child, as determined by the parent. Does not IDEA list attorneys as one person not to be brought to a meeting, unless a hearing is requested?

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Forty-five days is equivalent to seven weeks. That gives a psychologist who is in a building once a week only seven opportunities to observe, assess, review records, consult with colleagues prior to arriving at placement decision. Given that we deal with children it is inappropriate for them to be subjected to full days of total assessment. We don't do this with any other high stakes examinations. Benchmarks, IOWA's, graduation exams are all spread out across several days. Shouldn't all children being tested receive those the same considerations? Some children are evaluated during the summer by psychologists. There are no teams available to determine eligibility or IEP services during the summer. We would either be continually out of compliance in summer months or be faced with refusing summer service to parents in order not to violate criteria of calendar days rather than school days.

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Thank you for consideration of these comments.

Sincerely,

Charlotte Vilee

School Psychologist

X-Sender: cfmorehouse@jnumail1.state.ak.us
 X-Mailer: QUALCOMM Windows Eudora Pro Version 4.2.0.58
 Date: Fri, 24 Nov 2000 11:36:09 -0800
 To: sheila Box <Sheila_Box@eed.state.ak.us>
 From: IUSR_WEBSERVER@webserver (by way of Charito Morehouse
 <charito_morehouse@eed.state.ak.us>)
 Subject: Comments on Regs

 NAME: Louise Parish
 email: bells@alaska.net
 Phone: 907-835-4231
 Regulation: Proposed 4 AAC 52 and 4 AAC 53
 Submit: Submit

comments:

INTRODUCTION

I am the parent of a language-disordered dyslexic child who attends a public school in the state of Alaska. I have tried to follow federal and state laws regarding exceptional children for many years now. I testified against HB 301 last year. I network with a number of other parents who are concerned about services for exceptional kids in Alaska.

MY BASIC CONCERNS

My first and basic concern is that these newly proposed regs often seem to conflict with or entirely leave out portions of IDEA 97 that I believe should be included. It appears AkDEED uses some of IDEA 97 to reduce services, yet completely neglects other items that increase services. I am also concerned that parents will not understand a number of these regulations. They should be clearly written out, with little to no confusing references.

SEPARATION OF GT FROM DISABLED

I do not believe the chapters should be separated into one for gifted and talented and one for disabilities. IDEA 97 does not require this. It seem to be motivated by lack of money. It will certainly disenfranchise gifted and talented kids from the procedural safeguard process. A new chapter that offers GT services, but no remedy for parents who disagree with the services (due process) is an empty one.

CHILDFIND

Childfind has been a problem for a long time. Identifying, evaluating and serving kids should be our priority. The earlier we find them and provide intervention, the cheaper it is in the long run, for otherwise their service needs triple and quadruple. Part of the problem is NOT FINDING the kids at a young age when it's easier to remediate their difficulties. Proposed 52.100 CHILDFIND needs to add language per IDEA 97. The language should tell districts their public childfind notices MUST state that parents can refer their kids in for ANY suspected disability (not just those needing services because that's too hard to tell) and that the public notice MUST tell parents they can refer their child in for evaluation even though their child is advancing from grade to grade. Often kids go through school unidentified, falling farther and farther behind their peers. My daughter did. These changes are specifically set forth as required in IDEA 97. They should be in OUR regs too.

FAPE & GRADE ADVANCEMENT

Proposed 52.105 FAPE & GRADE ADVANCEMENT states kids deserve FAPE even though they are advancing from grade to grade, but doesn't mention that the public CHILDFIND notices must include this fact. See above.

EVALUATIONS

Proposed 52.120 EVALUATION is one paragraph long and makes parents go find out what the sentence, "a child who is referred under 4 AAC 52.110, in full conformance of 34 CFR 300.532 -300.533." means. I urge all board members to pretend they are new parents and go find out what that means without assistance. Please have the references written out long-hand, so parents can understand these important requirements.

IDEA 97 has a section about additional procedures for evaluating children with specific learning disabilities, at CFR 300.540-543. These must be included in this reg. My daughter is SLD. I know how hard it is as a parent to go through the evaluation process. The new regs must have these additional procedures listed in them, so parents can understand how to help their SLD children. The additional procedures describe seven areas of learning disability with additional criteria for determining existence of a specific learning disability: oral expression, listening comprehension, written expression, basic reading skills, reading comprehension, mathematics calculation and mathematics reasoning. The vast majority of Alaskan kids needing sped services are SLD. Please add this important information. I went through heck and high water to find out about this stuff. I asked why my SLD daughter only qualified in reading. I was told it was because she was only discrepant in that area. Three years later she became qualified in reading and writing. One year later I took her to a private speech language pathologist and found that she was dyslexic and language disordered. Dyslexia is a language-based learning disability that affects all areas of learning. Now I know that if eight years ago I had been aware of these seven areas under the category of SLD and eligibility criteria, I could've asked her IEP team to give her services in all of the areas, including oral expression and listening comprehension (also language disorder issues). I believe this is a problem in Alaska. I think districts and the department may have been disqualifying SLD kids without considering the oral expression and listening comprehension components. At least, I was told more than once that oral expression and listening comprehension were not areas of academic concern and could not be categorized as SLD, but only as a language disorder which could only be served by becoming qualified as language impaired. A mouthful, I know. All I am saying is that real k

ELIGIBILITY

Proposed 4AAC.52.125 ELIGIBILITY has the same problems. Please make 52.125 easier to understand by replacing the proposed section in (C) (1) that says "exhibits a specific learning disability defined in 34 CFR 307 (C) (10) and 34 CFR 300.541" to actually include the language it refers to. Please note that 300.541 states that the child is eligible if the child has a severe discrepancy in one or more of the following areas (see list of seven areas) it means that the child is SLD and may receive services in ALL of the areas if the team determines need, not just the one they have a severe discrepancy in

CRITERIA FOR DETERMINING ELIGIBILITY

4AAC 52.130 CRITERIA FOR DETERMINING ELIGIBILITY has some areas I also want to talk about. I don't understand why the delayed eligibility criteria is so hard to qualify for. It seems that LD is the easiest to qualify for, then delayed, then mentally retarded. I thought that the delayed category was for districts to be able to identify kids earlier, instead of

waiting for them to become deficient enough to qualify for LD. I thought this was why IDEA made the new category - for six to nine year olds to have an easier route to getting services before they fall off the cliff into LD-land in third grade. Many kids including my daughter have been caught in a system that didn't identify them in first and second grade. NICHCY says that studies have shown that kids who can't read well in third grade generally can't read well in 10th grade. The delayed category as written may not be serving the kids well enough.

Proposed 52.130 (C) needs to physically list out the learning disabilities that make them eligible for SLD instead of referring to 34 CFR again. It needs to clearly list 300.541 as well. All of the references in proposed 52.130 (j) need to include language therapy needs instead of just speech needs. All of the references to "speech" should be changed to speech/language. My daughter was not identified as needing language therapy until I took her to a private speech language pathologist in junior high school. We should fix this language so other kids don't suffer the same problem.

UNILATERAL PLACEMENTS

Proposed 4AAC 52.155....

I made a unilateral placement for a temporary period of time. The district and I had disagreed. We settled our differences eventually. My comment is that parents should have the reimbursement requirements clearly spelled out for them in this reg. If a district and a parent disagree and the parent makes a placement expecting reimbursement, as allowed for in IDEA 97, then the parent should be able to find what those pre-unilateral placement requirements are in Alaska regs or law. I found it difficult to understand the reimbursement requirement process without expensive legal assistance.

LEAST RESTRICTIVE ENVIRONMENT

Proposed 4 AAC 52.170 should have both 34 CFR 300.550 and 300.551 clearly listed in the reg, not just referred to. I especially want the 34 CFR 300.551 "Continuum of Placements" spelled out. I had been told years ago that I could not have my daughter pulled out for resource assistance because the state mandated "full" inclusion. Even though the pendulum is beginning to swing back regarding this idea of "full" inclusion, I feel you must include the entire reference to a continuum of placements in 300.551 written out so lay people understand that LRE is NOT "full" inclusion.

PARENTAL CONSENT

Proposed 4 AAC 52.200 also needs to have the referenced fed regs actually written out in the reg. Parents must understand what they are consenting too. The parent must give INFORMED consent. They can't if they can't even read the reg about it. Please spell this out in the reg.

PROTECTION OF RECORDS

Proposed 4AAC 52.505 should protect parents from destruction of records. I have had problems with my daughter's records in the past. Parents should always be notified if a record is removed or destroyed. Proposed 52.505 (b) says if a recordis not needed by the district.....the district shall MAKE REASONABLE EFFORTS to notify the parent and offer the parent a copy. IDEA 97 says "SHALL notify the parent." It was also my understanding that the district was to keep a copy of everything for a minimum of five years. This is a good idea.

In proposed 52.505, ..."if INFORMATION IS NOT NEEDED by the district to provide educational services to the child....they may destroy it, etc....." I want this language

deleted. What if a parent thinks the information is pertinent and expects it to be there, but finds that the district decided they didn't need it anymore? For instance, past private evaluations, or past medical notes, or past correspondences? As a parent, I want utmost protection of ALL records. Please spell out exactly which types of documents districts do and do not have to keep for parents. I believe IDEA 97 covers all of my concerns. AkDEED regs should too.

PARENT ACCESS TO RECORDS

Regarding proposed 4 AAC 52.510, I believe that a parent should be able to request a list that contains information about the types and locations of documents SPECIFICALLY related to their kids, not just in general. Please change the language to reflect this. I believe IDEA 97 addresses this.

I found that my daughter's sped records were in about six or more different files, not just the main file. This allowed for mass confusion, at least on my part. I also learned that the district didn't have to keep all the documents that I thought they had to.

DUE PROCESS HEARING

The entire due process hearing proposed amendment has problems. The current two-tier process does not allow parents to compel witnesses with a subpoena, according to Alaska law, thereby denying them their rights to an appropriate hearing. We should move to a one-tier system. I also note that this is the longest proposed regulation. That again leaves some parents with the impression that the department is paying particular attention to protecting themselves, not families.

IMPARTIAL HEARING OFFICER

Proposed 4AAC 52.560 says hearing officers can't have been employed by a school district for 12 months prior to serving as a hearing officer. I'd prefer the reg to say ex-school district and ex-department employees may NOT serve. I am concerned because the last time I checked, it seemed a preponderance of the mediation and hearing officers were ex-school or dept. of ed folks. As a parent, I want an impartial mediator and hearing officer. People who used to work for the schools or education departments have innate biases caused by their experiences.

Also, (E) says the department will set class size at a level appropriate to maintain a sufficient number of hearing officers. I believe this allows too much leeway for the department. If I were suspicious, I could see the department excluding all but six to ten potential hearing officers, who could possibly be of a handpicked nature. The last list I saw contained ten or so names, with some hearing officers never serving. Class size should be open to all interested persons. A list of those who pass the test should be generated. A rotation of the list should be implemented. All of this should be written in the reg.

DEFINITIONS

In proposed 4 AAC 52.990 (1) appropriate education is defined as "personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." I request that you change it to be more in line with IDEA 97, which seeks to improve services and expectations for our children.

I suggest at least a change to, "personalized instruction with sufficient support services to permit the child to obtain, to the maximum extent appropriate, the same challenging expectations as his non-disabled peers."

COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT

This one is non-existent in Alaska regs. I had recently planned to try to become involved with a continuous improvement plan team at my daughter's school, and was pleased to find that IDEA 97 supports parent involvement in such teams under their CPSD section. Where are the corresponding regs related to CPSD in Alaska? They should be in these regs.

Thank you for your time and consideration.

Louise Parish
P.O. Box 1182
Valdez, Alaska 99686
(907) 835-4231
bells@alaska.net



Anchorage School District

4600 DeBarr Road
P. O. Box 196614
Anchorage, Alaska 99519-6614
(907) 742-4000

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NOV 24 2000

Alaska Department of Education
& Early Development

November 21, 2000

Mr. Rick Cross
Commissioner of Education and Early Development
Department of Education and Early Development
Goldbelt Place
801 West 10th Street, Suite 200
Juneau, Alaska 99801

Attention: Jesse Kiehl
Via FAX (907) 465-4156

Commissioner Cross:

In response to the request for review regarding proposed changes in regulations 4 AAC 52 and 53, Special Education and Gifted Education, the Anchorage School District forwards the attached comments. Please be advised that I am providing a copy of our remarks to the Anchorage School Board.

I appreciate the opportunity to forward our comments as they relate to the proposed changes in DEED regulations.

My staff and I are available to answer any questions regarding our responses and will forward any additional remarks to the proposed changes as you deem necessary.

Sincerely,

Carol Comeau
Superintendent (Acting)

CC/LW
Attachments

X-Sender: cfmorehouse@jnumail1.state.ak.us
X-Mailer: QUALCOMM Windows Eudora Pro Version 4.2.0.58
Date: Tue, 21 Nov 2000 09:55:47 -0800
To: Sheila Box <Sheila_Box@eed.state.ak.us>
From: IUSR_WEBSERVER@webserver (by way of Charito Morehouse <charito_morehouse@eed.state.ak.us>)
Subject: Comments on Regs

NAME: Louise Parish
email: bells@alaska.net
Phone: 835-4231
Regulation: proposed regs 4AAC 52.100 and 4AAC52.105
Submit: Submit

comments:

PROPOSED AKDEED REGS 4 AAC 52.100 CHILDFIND and 4AAC 52.105 FAPE GRADE ADVANCEMENT UNACCEPTABLE

Forum: Akceptionalities
Re: PROPOSED REGULATIONS FOR EXCEPTIONAL CHILDREN PUBLISHED (New Admin)
Date: Oct 22, 17:19
From: Louise Parish <bells@alaska.net>

My name is Louise Parish. I can be reached at bells@alaska.net
I am trying, as a plain old parent, to comment on the proposed AkDEED regulations regarding special education. This is a time-consuming task, particularly since there are so many confusing references that one must look up. My first comment is to make your regulations easier for parents and districts to read and understand by writing clear regs instead of referencing so many other sites.

This comment is related to CHILDFIND. My child struggled for three years in school before being referred in for special education evaluation by her third grade teacher. I did not know I, as a parent, could refer her in myself. I saw the CHILDFIND ad. I saw no reference for parent-referral. I was not told I could make a referral. I have complained about CHILDFIND for a long time in many ways. This September, I wrote a letter to my daughter's district superintendent. I told him their Aug. 9, 2000 CHILDFIND ad was non-compliant again. I asked that the childfind ad be re-run compliantly. The new ad was just as bad as the first one. I have included references to both of these CHILDFIND ads at the bottom of this page.

MY SPECIFIC COMMENTS REGARDING AKDEED'S CURRENT PROPOSED AMENDMENT TO 4 AAC 52.100 CHILDFIND.....

4 AAC 52.100 is repealed and readopted to read:
4 AAC 52.100. CHILD FIND. (a) Each district shall establish and implement written

procedures

for identifying all children with disabilities ages 3 through [-] 21 who reside in the district for whom the district is responsible to provide and who need special education and related services under 4 AAC 52.020. The procedures established must include

(1) annual public notice that states the type of disabilities that qualify as a disabling condition, the educational needs of children with disabilities, their right to a free appropriate public education, the special services available to them within the district, confidentiality protections, and the person to contact for information and how to contact that person;

(2) a screening program, which may be operated in cooperation with other public agencies,

to include health, vision, hearing, general development and basic skills, primary language and culture, and daily skills in home and community obtained through parental input; and

(3) referral for evaluation of children suspected, upon screening, to be children with disabilities.

(b) Annual public notice under (a)(1) of this section must be reasonably calculated to reach all persons within the district and all persons responsible for children who are enrolled in the district's statewide correspondence study program and must include, as appropriate, the dissemination of information through public meetings, posters, newspapers,

radio, and television. A district shall provide notice in each language in which a bilingual program must be offered in the district under AS 14.30.400 and 4 AAC 34.055. (Eff. 7/1/83, Register 86; am 6/9/85, Register 94; am 7/16/89, Register 111; am 11/26/93, Register 128; ___/___/2000, Register ___)

Authority: AS 14.07.060 AS 14.30.274

MY COMMENTS:

I want the CHILDFIND notice to clearly tell districts to advertise about referrals and evaluations. I want the CHILDFIND notice to clearly tell parents they can refer their children in for evaluation themselves - at any time they suspect a problem - and particularly even if their child is advancing from grade to grade.

#1. The proposed 4 AAC 52.100 CHILDFIND and the next proposed amendment 4 AAC 52.105 related

to FAPE and GRADE ADVANCEMENT seem to be deliberately separated from each other, although

FAPE & GRADE ADVANCEMENT is under CHILDFIND in IDEA 97. I believe this separation may be

deliberate and/or illegal. I believe both amendments should be in 4 AAC 52.100 CHILDFIND. Or

at least 4 AAC 52.105 FAPE AND GRADE ADVANCEMENT must also be referenced and included in the

4 AAC 52.100 CHILDFIND notices.

#2. CHILDFIND should include public notice in all areas necessary to locate children suspected of having a disability.

Proposed 4 AAC. 52.100, CHILDFIND,(b) makes it seem that districts are only required to give

public notice on info in (a) (1). (b)needs to reference (a) (1) public notice , (a)(2) referrals and (a)(3)evaluations as well as an added (a)(4)FAPE AND GRADE

ADVANCEMENT.

#3. Currently, districts may simply going by (a) (1) of the old language. This is not good enough. AGAIN, please change the current proposed language so it is quite clear that under 4

AAC 52.100 (b)(1) it clearly states that public notice under (a) (1) must include information about (a) (1), (a) (2) and (a) (3) and add an (a) 4 requirement about FAPE AND GRADE ADVANCEMENTS. Pull your proposed 4 AAC 52.105 FAPE AND GRADE ADVANCEMENT out of a separate regulation, and into 4 AAC 52.100. Or in addition to it. (I'm not a lawyer or regulation-writer. But I can spot what looks like a bait and switch when I see one.)

PLEASE read the following from IDEA 97 34 CFR 300.125: in support of my contentions.

Under 34 CFR 300.125 CHILDFIND, it states this:

(a) General requirements: (1) The state must have in effect policies and procedures to ensure

that:

(i) All children with disabilities residing in the State, including children with attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located and evaluated; and

(ii) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.

(2) The requirements of paragraph (a) (1) of this section apply to

(i) highly mobile children with disabilities (such as migrant and homeless children); and

(ii) Children who are suspected of being a child with a disability under 300.7 and in need of special education, even though they are advancing from grade to grade.

MY COMMENTS: It seems that your state policies and procedures do not currently ensure that

all children with disabilities are identified, located and evaluated, and that they still won't with your proposed 4 AAC 52.100 CHILDFIND.

#####

ADDITIONAL BACKGROUND INFORMATION

Ad my district ran:

***VCS CHILDFIND AD, Aug. 9, 2000 Valdez Vanguard, page 13).

CHILDFIND FOR SPECIAL EDUCATION:

By law, all school age children (3 to 21) in Alaska have the right to a free appropriate public education. Some children, however, are not in school. They may be developmentally delayed or just left out.

If you know of a child ages 3-21 who is not in school because of problems in the following areas:

- vision
- hearing
- language
- physical development or movement
- overall delayed development

Please call Valdez City Schools Special Education office at 835-4735. The district can help find proper diagnostic and evaluation services for children with special needs and will help parents find services to benefit their children.

###END OF AD

Ad that ran after I complained again.

###VCS CHILDFIND FOR SPECIAL EDUCATION, Oct. 4, 2000, Valdez Vanguard, page 11.

The Valdez City Schools in cooperation with parents and nonpublic school agencies engages in

Child Find services throughout the school year. Childfind activities are conducted to create public awareness of special education programs, to advise the public of students rights and to alert community residents of the need for identifying and serving children with disabilities from the age of 3 through 21.

If you know of a child who is 3 through 21 years of age who may have individual needs that result from disabilities or developmental delays, and who is not enrolled in a school program, please contact Janette Peterson, Director of Special Education at 835-4735 or the school district office at 835-4357. These children may have difficulty walking, talking, hearing, or learning, or may display behaviors that appear different from other children their age.

If you are part of a community or civic group that would like more information about educating

children with disabilities, or would like pamphlets to distribute to members, please call the school office or one of the above phone numbers.

#####END OF AD

Again, these ads do not do what was intended by IDEA. Note that the ad says, "If you know of

a child WHO IS NOT ENROLLED IN A SCHOOL PROGRAM..." New ads must have all of the information

needed for parents to understand their children's rights, including referrals, evaluations, and what to do if their child is IN school but may display a learning disability, and especially that they can do so even if their children are ADVANCING FROM GRADE TO GRADE.

FYI, I am aware of at least one OCR complaint re:CHLDFIND, and dozens of personal complaints

to me re:childfind. I imagine there are many state complaints re:childfind. I would think AkDEED would WANT to address this important issue better.

to:

"PROPOSED AKDEED REGS 4 AAC 52.100 CHILDFIND and 4AAC 52.105 FAPE GRADE

ADVANCEMENT UNACCEPTABLE"

X-Sender: cfmorehouse@jnumail1.state.ak.us
X-Mailer: QUALCOMM Windows Eudora Pro Version 4.2.0.58
Date: Tue, 21 Nov 2000 11:00:25 -0800
To: sheila Box <Sheila_Box@eed.state.ak.us>
From: IUSR_WEBSERVER@webserver (by way of Charito Morehouse <charito_morehouse@eed.state.ak.us>)
Subject: Comments on Regs

NAME: Amy Keith
email: amy.keith@qm.denali.k12.ak.us
Phone: 907-683-2842
Regulation: Chapter 52/53
Submit: Submit

comments:

I do not want to see a separate chapter formed for GT. I worry that this is the start of getting rid of gifted education. I understand the need for clarification, therefore I could support the division of chapter 52 into two sections. Please keep gifted education inside of special education. The paperwork is weighty, but the IEP form does work and is a good document. Please continue to value gifted education. Gifted kids are high risk for suicide, dropping out of school, teen pregnancy and penal institutions as adults. We must serve this population in our public schools.

X-Sender: cfmorehouse@jnumail1.state.ak.us
X-Mailer: QUALCOMM Windows Eudora Pro Version 4.2.0.58
Date: Tue, 21 Nov 2000 11:45:27 -0800
To: sheila Box <Sheila_Box@eed.state.ak.us>
From: IUSR_WEBSERVER@webserver (by way of Charito Morehouse
<charito_morehouse@eed.state.ak.us>)
Subject: Comments on Regs

NAME: Barbara Lefler
email: lefler@alaska.net
Phone: 907-243-1539
Regulation: Proposed reg's in general
Submit: Submit

comments:

I would like to comment on a few specific points concerning the proposed state regulations. I am speaking as a parent of a child with a reading disability.

It is imparitive that the state follow the federal guidlines while implimenting child find procedures. I speak to parents daily who's children, like mine, have slipped through the cracks. The federal law is very clear concerning the child find out reach and assessment standards.

FERPA states clearly that parents must be informed before records are destroyed. A 'reasonable effort' by the state is far to vague to protect our rights.

As a parent who requested mediation, I understand the process one must go through to protect the rights of a child under the law. If a district requests a due process hearing, 10 days is not enough time for a parent to prepare, this must be changed.

Please, address in more detail, 'personal development' as outlined in the IDEA. Also, address the issue regarding garrentees of special education funding as stated in the law.

Anchorage School District benchmark and HSGQE test results show students with disabilities did very poorly on the tests. No sophomores at the Whaley Center passed the HSGQE, only 7% of McLaughlin sophomores passed the HSGQE, and all students at the Alaska State School for the Deaf were "not proficient" on the benchmark tests. The state has not reported the required data, and has not proposed regulations requiring it to do so.

It is important for you to understand that parents are becoming more educated regarding the rights of their children under the IDEA. Although we have seemed reluctant to exercise our rights in the past, we are gaining momentum in the effort to make sure our children receive an appropriate education. We stand firm that we would rather see educational funds go to our childrens education and not in the pockets of attornys, for either side. Please, define the regulations so we can avoid the legal battle. Spend our children's funds wisely.

RECEIVED

NOV 20 2000

Alaska Department of Education
& Early Development

3343 Seawind Cir.
Anchorage, AK 99516
November 15, 2000

Department of Education & Early Development
Bruce Johnson, Deputy Commissioner

Dear Sir,

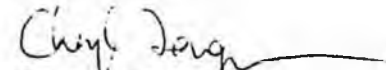
I have received information concerning the proposed changes to Chapter 52 regarding exceptional children. I wish to protest the proposed changes.

I have experience with gifted education in two ways; as a teacher I have taken classes in gifted education and taught gifted children, and as a parent I have a gifted child. The two experiences have led me to believe that gifted children are different from other children and need different services in school. I am afraid that the proposed changes to Chapter 52 may put those children in jeopardy.

The current legislature seems to lean towards the "cut-the-budget", "less government" philosophy. If they think that gifted services are not necessary, they'll cut state payment for them. And many local school districts would end up cutting back on gifted education or dropping it altogether. I'm afraid that changing Chapter 52 now would inadvertently send that message and start that process. Let's keep gifted services where they are now, protected with other services for exceptional children.

As you know, gifted children will not develop their potential without help. Left on their own, they often become underachievers who drop out of school, even become criminals. Keeping them in school is in all our best interest. If our future is in our children, then a brighter future is in our gifted children. Let's help them now so we'll have more productive citizens and a better future.

Sincerely,


Cheryl Lovegreen

To: Bruce Johnson, Dept of Educ + Early Development

RECEIVED

NOV 16 2000

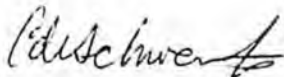
To: Parties interested in Special and Gifted Education
From: Liz de Schweinitz, Parent
Date: 11-13-00

Alaska Department of Education
& Early Development

I understand there may be new legislation separating special and gifted education funding, which could remove the mandate for funding of gifted education services in public schools. I am a parent of two children who qualified for the gifted "pull-out" program in the Anchorage School District, and have several comments on the experience:

1. It was very hard to get accurate information about the availability of gifted services from teachers and other ASD staff, probably because there has been little stability to the program. Every year, it seemed, the eligibility and availability changed, let alone the location, teachers, and bus schedules.
 - Please create a consistently funded and administered gifted education program statewide.
2. It took persistent parental pressure to get my children tested in a timely fashion, and thus able to qualify for services.
 - Please protect the right of parents to know what services their children are eligible for, and make access easy.
3. These services help prevent boredom in the classroom for those children who learn faster than others, keeping them from becoming disruptive or just tuning out altogether.
 - Please help produce future leaders for our communities by encouraging excellence and challenging the gifted, not teaching to the average.
4. Really smart kids who regard school as a waste of time often find other things to do with their talent and time - and we don't need bright kids wasting their talents and/or trashing our community by turning to substance abuse or delinquent behavior. Smart drop-outs can make smart criminals.
 - Please challenge our students to THINK, not memorize. Allow our teachers to teach the love of learning and problem solving, not how to get the highest score on a test.

Sincerely,



Liz de Schweinitz
8621 Swiss Place
Anchorage, AK 99507

From: "Reitz" <reitz@ak.net>
To: "Dept of Ed." <bruce_johnson@eed.state.ak.us>
Subject: New Regulation Proposal for Gifted Education
Date: Wed, 15 Nov 2000 01:37:06 -0900
X-Mailer: Microsoft Outlook IMO, Build 9.0.2416 (9.0.2911.0)
Importance: Normal

Dear Mr. Johnson:

I would like you to take into account my opinion about the proposed regulation which would separate the gifted students from the students with disabilities. I understand the reasoning behind it but I still oppose it because of the possibility in the future for the state to decide that it would no longer fund gifted education.

Students who are "gifted" are an "at risk" population when they are not appropriately challenged and motivated. They have the right to an education that is based on their needs, as any student does. Besides living with 3 gifted children, I am a special education teacher. I see the picture from both sides and if the regulation passes, you will find that the gifted program becomes an easy target for budget cuts. These students will most likely become our community's future leaders, doctors, lawyers, scientists, etc. Are we willing to jeopardize our future, let alone theirs? There must be another way to make it work under one umbrella, so there is federal assurance of upholding the gifted education student's rights.

Thank you for taking the time to consider my opinion.

Tina Reitz

From: "Cherie Gojenola" <ttms4@alaska.com>
To: <bruce_johnson@eed.state.ak.us>
Subject: Input on DOE regs for Gifted Services
Date: Mon, 13 Nov 2000 10:43:49 -0900
X-Mailer: Microsoft Outlook IMO, Build 9.0.2416 (9.0.2910.0)
Importance: Normal
X-MS-TNEF-Correlator: <PEEGIPAKMJFEPOMAGEOCIEAJCAAA.ttms4@alaska.com>

I oppose any separation of services for gifted and special education services. I understand that children with disabilities are supported by federal funds and the gifted children are supported by state funds however I think by separating these two services you are setting up the gifted program for cuts under the state budget.

Alaska's gifted students need more of the state education department's time, attention and resources - not less.

I appreciate your consideration of my comments.



winmail3.dat

RECEIVED

NOV 03 2000

8400-B McGuire Avenue
Elmendorf AFB, AK 99506
October 31, 2000

Alaska Department of Education
& Early Development

Ms. Beth Norland
Dept of Education and Early Development
801 W. 10th Street, Suite 200
Juneau, Alaska 99801

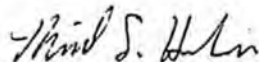
Dear Ms. Norland:

I would like to voice my concerns over the proposed regulatory changes to Chapter 52, "Education for Exceptional Children." Our son, Ethan, has been enrolled in the gifted education program, "Ignite," since April 2000. He has always been very excited about the program and looks forward to going every week. Last year Ethan was fortunate to have an exceptional 2nd grade teacher who took the time to ensure he was challenged with the day-to-day schoolwork. I believe his teacher was an exception and not the rule. For that very fact, I strongly support the gifted education program.

I am very concerned that gifted education will lose funding once separated from special education. It would be very easy to dismiss these bright girls and boys, and assume their teachers would provide the extra challenge they need. The teachers already have a full plate dealing with 25-30 students, and I would certainly not expect my child to get special treatment in that environment.

If the Legislature does pass the bills, some provision needs to be in effect to mandate the district's continued funding of gifted education programs. Achievement should be encouraged and just getting by from grade to grade is not good enough. America's future walks through the doors of our schools each day; let's keep the door for gifted education open.

Sincerely yours,



Michael Hulin

To: Sheila Box <Sheila_Box@eed.state.ak.us>
Subject: Comments on Regs

NAME: Darrell J. Sanborn
email: dsanborn@ucsd.net
Phone: 581-3151
Regulation: 4 AAC 52 & 53
Submit: Submit

see page 3

comments:

Thanks much for the opportunity to comment on these regulations dealing with special education issues.

Page 1-2, With the handful of districts that do their correspondence programs within the boundaries of other districts, there is much concern of the level of service being provided to special education students with this model. The district of residence may have a different level of expectation of special education services than the district with the correspondence program. I would also hate to see that we move backward concerning access to different programs. Many years ago, it appeared that it was very difficult to impossible to have a child with disabilities gaining admittance to Mt. Edgecumbe. Year's back, DOE had supervised/monitored the Home School programs. When DOE got out of that business and approved the concept of correspondence schools, I am not sure that we took a good look at what this would mean for special needs students.

Page 4, I feel that "qualified professionals" needs to be spelled out. Most special education teachers are trained in a specific area of expertise. What does a "qualified professional" mean in making the eligibility determination for a MR placement needs to have an endorsement in MR and so on with the other disabilities? And then in the development of an annual IEP, and providing the services, program supervision/administration are many questions that may need to be addressed.

Page 5, LD- may be good to bring in the severe discrepancy issues, as it has been an issue in the past.

Page 6, ED, I wasn't sure if we had started to license psychiatrists (type C) for work in school or this was the intent of the State Board at this time, in addition to school psychologists. This may also be a good time to clean this up? I have found that many times working with the psychiatrist to be not as productive as working with an individual licensed in school psychology. Although providing some excellent services, psychiatrists have a tendency to put too much faith in the DSM-IV as I have seen with the case of AYI.

Page 9, OHI, I worry about the large increase of ADD/ADHD labels. I don't have an answer, but just think that many folks are too quick to use this label, along with the medication issues. Also, there has been much discussion about FAS/FAE fitting under the OHI label. If this has been discussed, great, but I would think that now is the time to discuss this, bring it out in the open, as then we can move on from this issue. Right now, all I think that we sometimes do is to hope that these students qualify under some other category.

Page 11, Early childhood developmental delay at age three, I have had times where we have picked up children at age 2 1/2 with high needs. This might also be a good place to bring up the concern about ADM and how children under the age of five are to be counted in the foundation formula. I am hearing different things coming out of DOE that Quality Schools intended that the additional 20% be used to service these children. I would hope

that the foundation includes these children in this age group since they are receiving services, and some of these do meet the criteria as intensive. Really happy to see the age raised to eight, better for children.

Page 12, A, In the federal regulations I thought that I saw, included in this, "lack of instruction" which I think is important to remain there. Attendance issues.

Page 13, TBI and "external physical force" I would hope that this be expanded a bit to include other brain injuries, i.e. lack of oxygen, etc, and other medical issues.

Page 15, IFSP stuffs, let me take the very unpopular stand that the ILP program should be moved to DOE from Health & Social Services. I am just astounded by the lack of consistency on how the program operates from region to region, and district to district.

Page 17, Placement, this may be a good opportunity to evaluate AYI and look at some alternatives with this program.

Page 22, six hours of annual training sounds like a good thing, but in reality, we many times have as much turnover in our aide positions as we do in special education teachers. The cost may an issue for districts. If this is going to be implemented, it may be good for DOE to go back to where they were developing training modules for teachers and aides.

Page 30, Discipline issues continue to remain an issue with special needs children in many schools. I feel much of this concern would be handled if the issue of various social services and law enforcement services were equal around the State. In many rural communities teachers, administrators have children that may at times, conduct themselves in an way that if this same act were committed in Town, the law enforcement and court system would step in for some natural consequences. In short, support services/social services are not equal around the State, and needs to be addressed. If only in a matter of agreeing that things are not equal. If these services were available in all communities, it would assist so many children and their families, this assistance comes in many ways, including natural consequences.

Page 39, Surrogate parents many times are difficult to recruit in rural communities, it would be beneficial if members of the Tribal offices, & ICWA folks were eligible to serve in this capacity. I think that this may be a federal issue and we may not be able to do much with this.

Page 40, funding issues, again, going back to the pre-school issues, I am not sure that the whole effects of SB 36, Quality Schools have been seen to date.

With the Exit Exam now in affect, I would hope that DOE include in these regulations some guidance on if, when and how a district leaves the regular education curriculum to provide a more meaning program for the individual child. Johnny may never have a chance to pass the math portion of the exam, it may be better for the child to learn something on the lines of life skills math. IDEA appears to be very clear about remaining with the general education curriculum as much as possible. If districts are to leave the regular education curriculum, are there concerns for the child having no opportunity to receive a diploma. The statistics are not yet available on how our special education students did on the exit exam as a whole and in comparison to the other categories of students. There also has been no guidance on a variety of certificate programs of employability skills that a child may leave high school with in lieu of a diploma. At the present time, the only certificate that DOE gives out is the Certificate of Attendance. It would be nice for DOE to develop certificate programs using State standards in a variety of areas in vocational education. Examples such as welding, computer technology & programs, carpentry, work place basics, framing, etc following the State standards in employability and vocational education.

Concerning Chapter 53, dealing with Gifted and Talented, I would hope that DOE not mix

special education with the GT question. I would think that it be most appropriate if DOE wishes to supervise the GT program that they set a single criteria and definition for eligibility for being labeled "Gifted" or "Talented." Yes, districts do have the requirement to develop their own GT Plan, but then we have students, and their families transferring to other districts, which create the expectation that education, programs, and services are equal across the State. I am well aware that this is a political issue for you.

Thanks much

Darrell J. Sanborn

X-Sender: cfmorehouse@jnumail1.state.ak.us
X-Mailer: QUALCOMM Windows Eudora Pro Version 4.2.0.58
Date: Fri, 13 Oct 2000 10:25:05 -0700
To: Jesse Kiehl <jesse_kiehl@eed.state.ak.us>
From: IUSR_WEBSERVER@webserver (by way of Charito Morehouse
<charito_morehouse@eed.state.ak.us>)
Subject: Comments on Regs

NAME: Clark K. Brown
email: cbrown@crsd.k12.ak.us
Phone: 907-822-5680
Regulation: Gifted Education
Submit: Submit

comments:

I strongly believe that Gifted education need to be pulled out from under the Special Education umbrella! Parents and students I have worked with do not like the "stigma" of being in special education! Even the idea of having an IEP is not agreeable. Some students have opted not to be in the gifted program for these reasons. As a teacher the added paper work for the SPED staff is not needed, considering the "portfolio's" that have been added to the papermill for the Alternate Assessment. This paper work takes more time for me to do and gives me less time with the students in the classroom. I find I rely more on my aides to deliver instruction with me in the supervisory role, than modeling and having their assistance. Thank you for your time and consideration on this topic.

X-Sender: cfmorehouse@jnumail1.state.ak.us
X-Mailer: QUALCOMM Windows Eudora Pro Version 4.2.0.58
Date: Wed, 11 Oct 2000 13:39:10 -0700
To: Jesse Kiehl <jesse_kiehl@eed.state.ak.us>
From: IUSR_WEBSERVER@webserver (by way of Charito Morehouse <charito_morehouse@eed.state.ak.us>)
Subject: Comments on Regs

NAME: B. Rice
email: brice@crsd.k12.ak.us
Phone: 822-5356
Regulation: Special Ed and Gifted Ed
Submit: Submit

comments:

I do feel it important to seperate gifted education services from special education services for several reasons. There is confusion among practitioners, parents and community members over which rights apply to children with disabilities and which apply to gifted children. Special education teachers already have a huge work load and tremendous responsibilities. Considering the fact that many gifted and talented students (especially at the High School level) excell in core academic areas (math, science, lantage, etc...)as well as the fine arts, it would seem logical to have regular education personnel who are directly involved in these areas be directly involved in and responsible for the development of a gifted plan of service for an individual child. This seperation of gifted responsibilities from under the umbrella of special education is long over due.

RECEIVED

OCT 10 2000

interoffice
M E M O R A N D U M

Alaska Department of Education
& Early Development

to: To Whom it may concern
from: Michael Olberding
subject: Gifted Student Education Legislation
date: October 5, 2000

I'am very interested in seeing funding and legislation continue for the Gifted Students of Alaska. I currently have a son and two step daughters who are in the program at Oceanview, O'Malley elementary schools and at Service High. I feel their involvement in these programs has been very benifical in their educational growth and has encouraged them to develop their potential even further. I believe this funding should continue and legislation move forward to assure this valuable and worthwhile program continues. As a registered voter and tax payer I hope you take this letter and recommendation to heart.

Thank You

Michael Olberding

X-Sender: cfmorehouse@jnumail1.state.ak.us
X-Mailer: QUALCOMM Windows Eudora Pro Version 4.2.0.58
Date: Mon, 02 Oct 2000 15:04:16 -0700
To: Jesse Kiehl <jesse_kiehl@eed.state.ak.us>
From: IUSR_WEBSERVER@webserver (by way of Charito Morehouse <charito_morehouse@eed.state.ak.us>)
Subject: Comments on Regs

NAME: Constance K. Quinley
email: quinley@alaska.net
Phone: 563-8569
Regulation: 4 AAC 52 and 4AAC 53
Submit: Submit

comments:

I am writing to comment on proposed regulatory changes to Chapter 52, entitled "Education for Exceptional Children."

My children, now in 5th and 8th grades, are identified as gifted and have for years benefited from the programs provided under Chapter 52. As a result of gifted identification, they have been challenged in the classroom and in IGNITE programs; they are enthusiastic about learning and fully engaged in the process.

I am fearful that proposed changes to Chapter 52 will change this, both for my children and others who are similarly identified.

By removing "gifted children" from Chapter 52, and placing them in the proposed Chapter 53, I fear that needs of gifted children will be seen as "extra" or dispensable, especially to those legislators looking for ways to cut the budget. I would argue that meeting the needs of gifted children is critical to the development of productive, problem-solving adults who will be assets to our community.

I'm also concerned that establishing Chapter 53 will open the door for the state to one day abdicate the provision of gifted services to individual school districts. I believe it's the state's job to provide the framework for distributing gifted services. Gifted children around the state should be provided an equal level of gifted service.

To ensure financial accountability while protecting the needs of gifted children, I suggest that the proposed regulation be modified so that the two groups--special education and gifted services-- are split into sections A and B while remaining under Chapter 52.

Sincerely,

Constance Quinley
1812 Bowdoin Circle
Anchorage, AK 99508

X-Sender: bfjohnson@jnumail1.state.ak.us
X-Mailer: QUALCOMM Windows Eudora Pro Version 4.1
Date: Mon, 02 Oct 2000 08:16:20 -0800
To: Jesse_Kiehl@eed.state.ak.us
From: Bruce Johnson <Bruce_Johnson@eed.state.ak.us>
Subject: Fwd:

>To: Jerry Koenig <jerry.koenig@juno.com>
>From: Bruce Johnson <Bruce_Johnson@eed.state.ak.us>
>Subject: Re: Gifted Education

>

>At 05:15 PM 10/1/00 -0400, you wrote:

>>My wife and I would like to express our concern about the proposed changes
>>to the gifted education legislation this year. We are concerned that the
>>separation of gifted education from special needs education is the first
>>step in eliminating programs for the gifted.

>>

>>We understand that budget cuts force difficult decisions to be made but
>>gifted education is a bargain. Our school, for example has three special
>>education teachers, a half dozen teacher assistants, and is served by a
>>speech therapist, psychologist, physical therapist, and an adaptive physical
>>education teacher. Include the time devoted to special needs children by
>>the school nurse and you can see the enormous expense of special needs
>>children. Our school's gifted program shares two teachers with three other
>>schools and our son is bussed to another school to receive services. While
>>we agree that special needs education is vital to education as a whole, and
>>these children have the same right to education as every other student, we
>>believe that our gifted children have the same right to be educated at their
>>level. The amount spent on gifted education per child is decided lower than
>>that spent on special needs.

>>

>>It is the responsibility of a school and district to educate every child at
>>his/her level. Special needs children are given great resources to ensure
>>that federal guidelines are met. Our fear is that a separation of the
>>program into two distinct programs, with different rules and budgeting, will
>>ultimately see the decline of gifted education. This trend serves nobody
>>involved in our educational system. It only serves bean counters interested
>>in money rather than results.

>>

>>Please do your part to help us keep these special children under the same
>>protective umbrella. Education is what we are all interested in.

>>

>>Jerry J. Koenig
>>Eagle River, Alaska

>>

>>

>>

RECEIVED

SEP 29 2000

Alaska Department of Education
& Early Development

Margo W. Waring
1215 Fifth Street
Douglas, Alaska 99824
(907) 364-3155

Bruce Johnson, Deputy Commissioner
Department of Education & Early Development
Juneau, Alaska 99801

Dear Mr. Johnson,

I have had an opportunity to review the Department of Education and Early Development's proposed regulations, Chapter 52 and 53. I understand the intention to separate out the disabled from the gifted regulations and to correctly mirror what is currently in the Alaska Statutes regarding gifted education. I have had an opportunity to review the draft and have the following comments.

It has taken me some time to review these materials. As I read the proposed regulations, I found myself frequently surprised by what the current law provides, but which is frequently observed only in the breach, at least here in Juneau and other Southeast communities with which I am familiar. I also found myself having to return to the statutes, a process which was sometimes confusing. Having acknowledged my confusion, let me share some of my observations.

First, I think that a careful job has generally been done to represent the current state of law about gifted children. I had a few questions and exceptions to raise.

4 AAC 53.250 Availability of Due Process Hearing. In the list of disagreements for which a parent may request a due process hearing, no mention is made of failure to provide a service specified in an IEP or for which the child is otherwise qualified. This provision should be added.

4 AAC 53.330 Program Review. The phrase "Subject to the availability of funding," is an unnecessary addition, as it is not a condition identified in the statute. We may recognize that failure to provide services has at least part of its cause in lack of funding, but the statute does not require this language, as gifted education is an entitlement.

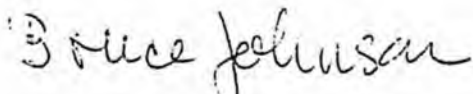
Old 4 AAC 52.740 Approval of Programs for Gifted Children. I must say that I was distressed to learn that the enabling statute, AS 14.30.315, had been repealed. I am sure that many other parents of gifted children were unaware that this action was under consideration. There is a misstatement here—section 315(a) was repealed in 1998, not 1999. Section 315(b) still exists and gives the department the authority to approve gifted programs. Since the public school

10.4.2000
copies to
Phil Re
Jesse

foundation program requires districts to file a plan related to services for gifted students, there should be a new section 4 AAC 53. 320 which specifies the minimal contents for such a plan of service, similar to specifications for services for which other special education students are eligible.

Again, thank you for your assistance regarding these newly proposed regulations.

Sincerely,

A handwritten signature in cursive script that reads "Margo Waring".

Margo Waring

November 20, 2000

Richard Cross
Department of Education and Early Development
800 West Tenth Suite 200
Juneau, AK 99801-1894

RECEIVED
NOV 27 2000
Alaska Department of Education
& Early Development

The Alaska School Psychologist Association (ASPA) is pleased to offer the following comments on the proposed regulations for Chapters 52 and 53 Education for Exceptional Children.

ASPA supports separating regulations pertaining to individuals with disabilities as defined by federal law and those pertaining to gifted and talented children. We are hopeful this will decrease the paperwork and cumbersome procedures required for documenting the evaluation and service to gifted and talented students.

4 AAC 52.020 (b) Districts offering correspondence programs shall administer a program offering special education and related services shall coordinate its provision with the district of residence in conformance with 4 AAC 33.432.

This provision needs to be spelled out to indicate how documentation, eligibility determination, service plan creation and funding will be handled.

Page 7 Comparison Chart

(4) Maintains old language about preschool developmental delays and the age 6 cut-off. New language provides the option of up to age 9. This is confusing wording and is at variance from new language found on page 11. How are we to know which you mean? ASPA supports the extension of early developmental delays up to the ninth birthday. ASPA supports wording of "on or before the ninth birthday."

4 AAC 52.120 Evaluation Each district shall conduct a "full individual evaluation"

ASPA recommends changing the wording to "full evaluation based on the educational needs of the child". "Full evaluations" can cause confusion for parents and teams. Is DOEED suggesting that every child needs an evaluation in every area (speech, occupational therapy, physical therapy, etc.) regardless of the presenting concerns? A "full evaluation" is not needed in every case and will create huge bottlenecks in the system. Evaluations should be based on the needs of the student as determined by the evaluation planning team and not by an arbitrary requirement of "full evaluation".

4 AAC 52.125 (1) Eligibility .. "and related service providers"

ASPA recommends a change in the wording to "may include (e.g. occupational and physical therapy, counseling, assistive technology, adaptive physical education etc.). The present wording suggests that all of these sources would be required to determine eligibility for special education. This is overkill for a student with solely a math disability.

4 AAC 52.130 Mental Retardation

ASPA recommends DOEED change the criteria for intellectual test performance to (1) score at or below a standard score of 75 on an individual standardized test of intelligence, (2) exhibit deficits in adaptive behavior, and (3) demonstrate commensurate delays in academic attainment. This definition brings the state of Alaska in line with the standards set for by the American Association of Mental Retardation. ASPA is concerned about the potential for pushing the 75 higher by using the standard error of measurement rationale. If DOEED does concur with ASPA's proposed changes we would also support a statement that indicates 75 is the absolute cap for IQ scores.

4 AAC 52.130 (n) Criteria for Determination of Eligibility Early Childhood Developmental Delay

ASPA supports the extension of Early Childhood Developmentally Delay Certification through age nine (9) as permitted by Federal Reauthorization of IDEA.

4 AAC 52.120 (n) (iii) "includes expressive and receptive language". ASPA recommends changing the wording to "speech/language development which includes expressive and receptive language articulation or fluency". Significant articulation and fluency problems in the absence of language related problems should continue to be part of Early Childhood Developmental Delay certification. Severely disordered oral communication can severely impact the child's progress.

4 AAC 52.130 (n) (2) (C) ASPA questions how feasible it will be to observe young children in multiple environments as required in this provision. Typically, preschool age children are evaluated in one session and may not be involved in a preschool program or even a daycare program. Home visits are excellent but are costly, time intensive and not practical given the shortages special education and related services are experiencing.

Within this section is reference to 52.130 page 24 (d) refers to early childhood developmental delay as a reevaluation before the child reaches age 8. Other sections refer to the child as "no more than 8". Page 12 refers to "through age 8". This language is inconsistent with other sections and is confusing. Does "no more than 8" mean up to age 9? Does "no more than 8" mean no more than 8 years 1 day? Please provide clarification to early developmental delay and the age guidelines.

ASPA supports wording that cannot be misinterpreted such as "on or before the 9th birthday".

52.140 ...30 calendar days after eligibility

The Federal wording allows for school days. If a student is assessed during the summer and determined eligible for service the IEP cannot reasonably be developed and implemented during the time school is not in session, ASPA supports the definition of "day" as school day.

52.140 (e) In accordance with 52.150

"It is the districts' responsibility to ensure that an IEP [for a child placed out of district] is developed and implemented". This statement confuses us. Does the sending district write the IEP? How does a district write an IEP for another location, especially one outside the district? Is the intent of this regulation to place responsibility on the sending district to ascertain the receiving district writes and implements an IEP? How is the sending district to manage supervision of another districts/placements action? ASPA requests clarification of the intent and implementation of this regulation.

4 AAC 52.170 preschool children are covered by the least-restrictive environment

Does this regulation mandate that preschool students with disabilities must be enrolled in a private preschool? At this point in time neither kindergarten nor preschool enrollment is mandated by the state. Federal or State law does not mandate preschool unless the student has disabilities. How does the state propose a student, who is not yet of school age, be educated in an environment with other non-handicapped peers? Does Alaska plan to mandate public preschool? Does the state propose to pay for enrollment of children with handicaps at private preschools? This regulation will be open to much misinterpretation and must be clarified. ASPA supports a notation for preschool aged children such that efforts to provide a least restrictive environment does not include enrollment in a private preschool at public expense.

4 AAC 52.180 Reevaluation

ASPA reads this as the job of the eligibility team to determine continued need for services within the context of the educational needs of the child. ASPA supports this change in the regulation. Needless time is spent on unnecessary and costly reevaluation to determine whether or not a specific IDEA handicapping condition continues to exist (i.e. discrepancy between ability and achievement for Learning Disabilities) rather than looking at the types of services the child requires to meet his/her educational needs. ASPA appreciates this adoption of the Federal changes and wishes further clarification that the purpose of the evaluation is not to continue to establish the presence of a disability through needless evaluation but rather determine the present need of the child and whether those needs must be met through special education services.

4 AAC 52.510

Does this request for records stating a 10 business day guideline with no more than 45 days hold during the summer when many school personnel, including records departments, are closed? ASPA requests a notation be made regarding exceptions for summer and extended holidays (Winter, Spring Breaks) or a reference to school days as the guideline.

4 AAC 52.550 Due Process

The Federal regulations for IDEA encourage mediation prior to due process hearings. ASPA supports the same for Alaska school districts. ASPA would like DOEED to provide for mediation as a prerequisite to due process hearings as a less costly and less antagonistic setting than due process hearings in order to problem solve school-parental disputes.

4 AAC 52.590 (a) and (b) are amended (page 39-40)

(b) A child is entitled to a surrogate parent if

Does (4) the child is committed to the department of Health and Social Services negate other aspects? That is, if a parent is known and located does the child require not just become entitled to a surrogate parent?

4 AAC 52.990 Definitions

F (5) "days" means calendar days. (Page 47)

Other federal special education regulations refer days with respect to evaluations and placement procedures to be school or business days. ASPA takes strong exception to this definition of day as calendar day. Many times consent for assessment is obtained just before the winter break from school. In this instance, seventeen to eighteen days of the time limit is lost to vacation. School psychologists and other related service personnel are often in a school one-to-two days per week. What provides a reasonable time line to conduct a thorough evaluation by all involved parties is lost with a count of calendar days.

Forty-five days is equivalent to seven weeks. That gives a psychologist or occupational therapist who is in a building once a week only seven opportunities to observe, assess, review records, consult with colleagues prior to arriving at placement decision. For evaluations of complex handicapping conditions those seven opportunities must be shared with resource teachers, speech pathologists, occupational and physical therapists plus planning meetings, eligibility meetings and IEP meetings. Given that these regulations focus on *children* it is inappropriate for them to be subjected to full days of total assessment. We don't do this with any other high stakes examinations. Benchmarks, IOWA's, graduation exams are all spread out across several days. Shouldn't children regarded as having possible handicaps be given the same consideration? Psychologists, so as to expedite portions of the evaluation, evaluate some children during the summer. There are no teams available to determine eligibility or IEP services during the summer. We would either be continually out of compliance in summer months or be faced with refusing summer service to parents in order not to violate criteria of calendar days rather than school days.

4 AAC 52.990 - 13 informed consent (D) parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time. Page 48)

Current procedures are that consent is voluntary until the evaluation has begun. In practice, if a parent requests us to terminate an evaluation that request is honored. This regulation puts special education teams in an ethical and legal bind. We are required to protect the child's rights to special education. How do we do that if parents withdraw consent "at any time"? If a child has been deemed eligible for special education and requiring specialized instruction what are we to do if a parent removes the child from the program because he or she does not like the handicapping label? How do we balance the needs/rights of the child against this provision? ASPA respectfully requests DOE modify this wording to match Federal Statutes. Parents can voluntarily remove consent prior to the onset of the evaluation and prior to initial placement in special education. Once a child has been placed in special education, the child's rights should become paramount with the option of parties going to mediation or hearing to determine the appropriateness of withdrawal of the student from special education when the two parties do not agree.

(24) "severely" emotionally disturbed. Page 50
Has this not been changed to "emotionally disturbed"?

Citation Referenced Proposed Changes to Title 4 Chapter 42 page
300.532. Evaluation Procedures (f)

No single procedure is used as the sole criterion...

Is the term "procedure" to be considered the same as "test" or "measure"? A procedure [*method, plan, process*] often describes the necessary steps or components of an evaluation. Different procedures are established for determining eligibility for Learning Disabilities, Emotional Disturbance, Other Health Impairments, etc. Different tests [measures, exams] are also used within certification categories. No single "test/measure" is allowable for determining presence of a disability. Clarification on meaning of the term "procedure" is desired here. ASPA supports replacing the word "procedure" with the term "test" or "measure".

Chapter 53 Education for Gifted Children

4 AAC 53.080 Criteria for Determination of Eligibility as Gifted

ASPA recommended deleting the requirement of Related Services as these services are rendered to disabled students under federal requirements and are not required under Federal guidelines for gifted and talented students. ASPA supports a change of wording to: "Each district shall adopt written eligibility criteria for use in the district's identification of children eligible for gifted education services under Chapter 53.

4 AAC 53.140. Parental Participation Page 7 Line 7-9

The parent has the right to bring to the meeting an individual with knowledge or expertise regarding the child, as determined by the parent.

Does not IDEA list attorneys as one person *not* to be brought to a meeting, unless a hearing is requested?

4 AAC 53.160 Cost of Services

(a) It is the experience of the Anchorage School District that children referred to the Advanced and Accelerated (gifted) program request repeated evaluations when the child does not meet criteria. School Psychologists are known to test a child twice within a given year and some children are tested annually at parent request. This is inappropriate for students to be repeatedly tested; knowing

the pressure they are under to score well enough to gain admittance to a desired program. ASPA requests that the regulation include opportunity for districts to limit the number of times a child should be tested, at public expense, within a given time period. Children under consideration for a handicapping condition are not re-tested by parental request at a level demanded by parents who desire their child to be provided gifted education services.

4 AAC 53.230 Parental Consent for Release of Records

Does this exception include the Office of Public Advocacy and Guardian ad Litem?

4 AAC 53.250 Availability of Due Process Hearings 6 (e) page 17

Current proposed state requirements for a hearing officer is a high school diploma or equivalent education.

This low standard of training astounds the Alaska School Psychologists Association. You are granting extensive decision making powers to an individual regarding appropriateness of assessments, eligibility decisions and special education placement decisions to someone with a high school education when the *professionals* involved with the assessment and eligibility have a minimum of a Master's degree in their specialty area. It is ludicrous that someone is vested with such far-reaching authority with so little background required in education, special education, child development, legal rights etc. At the minimum, ASPA requests the state raise the standard to attainment of a Bachelor's degree from a recognized college or university. It behooves parents and the state to involve someone who has had advanced education over that of a high school diploma.

4 AAC 53.320 Maintenance of Records

(6) class and grade attendance records.

What is meant by class records? All the previously required information would reasonably be found in a special education record. Much of this information is inappropriate for a cumulative record. Tests and other documents for determining eligibility are highly protected in order to maintain integrity of the test. If test protocols were to be found in a child's cumulative record, they would be subject to photocopying. Test publishers and school psychologist's ethics prohibit this action. If test protocols containing test questions, child responses and the resulting item scores are placed in cumulative records then the integrity of the test would be violated.

Article 5. General Provisions

4 AAC 53.990 Definitions (2) "days" means calendar days.

Other federal special education regulations refer days with respect to evaluations and placement procedures to be school or business days. ASPA takes strong exception to this definition. Many times consent for assessment is obtained just before the winter break from school. In this instance, seventeen to eighteen days of the time limit is lost to vacation. School psychologists and other related service personnel are often in a school one-to-two days per week. What provides a reasonable time line to conduct a thorough evaluation by all involved parties is lost with a count of calendar days.

Forty-five days is equivalent to seven weeks. That gives a psychologist who is in a building once a week only seven opportunities to observe, assess, review records, consult with colleagues prior to arriving at placement decision. Given that we deal with children it is inappropriate for them to be subjected to full days of total assessment. We don't do this with any other high stakes examinations. Benchmarks, IOWA's, graduation exams are all spread out across several days. Shouldn't all children being tested receive those the same considerations? Some children are evaluated during the summer by psychologists. There are no teams available to determine eligibility or IEP services during the summer. We would either be continually out of compliance in summer months or be faced with refusing summer service to parents in order not to violate criteria of calendar days rather than school days.

(6) informed consent (D) parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.


Current procedures are that consent is voluntary until the evaluation has begun. In practice, if a parent requests us to terminate an evaluation that request is honored. This regulation puts special education teams in an ethical and legal bind. We are required to protect the child's rights to special education. How do we do that if parents withdraw consent "at any time"? If a child has been deemed eligible for special education and requiring specialized instruction, what are we to do if a parent removes the child from the program because he or she does not like the handicapping label? How do we balance the needs/rights of the child against this provision? ASPA respectfully requests DOE modify this wording to match Federal Statutes. Parents can voluntarily remove consent prior to the onset of the evaluation and prior to initial placement in special education. Once a child has been placed in special education, the child's rights should become paramount with the option of parties going to mediation or hearing to determine the appropriateness of withdrawal of the student from special education when the two parties do not agree.

(b) A child is entitled to a surrogate parent if

Does (4) "the child is committed to the department of Health and Social Services" negate other aspects? That is, if a parent is known and located does the child require not just become entitled to a surrogate parent?

Thank you for consideration of these comments.

Sincerely,



Susan Hooker
School Psychologist
Anchorage School District



Anchorage School District

4600 DeBarr Road
P.O. Box 196614
Anchorage, Alaska 99519-6614
(907) 742 4000

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Carol Comeau

March 15, 2001

Dr. Shirley Holloway
Commissioner of Education and Early Development
Department of Education and Early Development
Goldbelt Place
801 West 10th Street, Suite 200
Juneau, Alaska 99801

Attention: Shelia Box
Via FAX (907) 465-4156

Commissioner Holloway:

In response to the request for review regarding proposed changes in regulation 4 AAC 52, Special Education, Gifted Children, the Anchorage School District forwards the attached comments. Please be advised that I am providing a copy of our remarks to the Anchorage School Board.

I appreciate the opportunity to forward our comments as they relate to the proposed changes in DEED regulations.

My staff and I are available to answer any questions regarding our responses and will forward any additional remarks to the proposed changes as you deem necessary.

Sincerely,

Carol Comeau
Superintendent

CC/LW
Attachments



ANCHORAGE SCHOOL DISTRICT
ANCHORAGE, ALASKA

SUBJECT: Comments on the proposed DEED regulation 4 AAC 52, Special Education, Gifted Children:

Chapter 52 regulation changes are complex and multiple. A primary concern in the proposed language is the lack of detail in the regulations with continual reference to the federal regulations. It is not possible for an individual to read and understand the proposed state regulations unless there is a set of federal regulations utilized concurrently. This makes compliance with state law cumbersome at best and impossible for many reading the proposed regulations. The department states that the Alaska Special Education Handbook will be updated annually and will provide districts with the information that is needed to interpret and implement federal and state regulations. There are specific concerns regarding this statement as the state handbook is not a legal document and does not set a standard that is legally acceptable in a court of law as a state statute or regulation does. An example of this is **4AAC 52.120 EVALUATION**. This regulation does not detail the components of an appropriate evaluation but rather references federal regulation 34 CFR 300.532-533.

Extension of the ages for early childhood developmental delay from 3-6 years of age to 3-8 years of age, will allow districts the discretion that is needed to adequately provide services to students according to their developmental levels. Many times it is difficult to properly evaluate young children ages six and seven with the standardized assessments utilized for many of the disabilities such as learning disabilities, mental retardation or emotional disturbances. This latitude will assist many IEP teams to appropriately evaluate and provide services to young children.

4AAC52140-Individualized Education Program

(g)-This change requires districts to have the complete responsibility to assure that an IEP for a child placed in out of district residential is developed and implemented. The state needs to have joint responsibility and assist the district in the implementation. The districts are not aware of the quality of operations or compliance issues regarding out of state residential programs. Assistance from the state is very important.

4 AAC 52.142-Individualized Family Service Plan-

(a)-The ability to accept an IFSP for children transitioning from Infant Learning to the LEA is going to assist districts and families. We advocate that the language be clarified to add an explanation of the differences between the IFSP and the IEP. School teams and parents may then make a decision as to which plan is best for the child and when it is best to change from one plan to another.

4 AAC 52.144-Extended School Year

The language of this regulation is confusing in reference to the federal regulation. It will be difficult for districts and parents to implement as the conditions an IEP team needs to consider for ESY are not stipulated.

4AAC 52.150 Placement

The language of this regulation clarifies the process for determining placement options to include options out of district and out of state. This language is appreciated and will be helpful.

4AAC52.155-Unilateral Placement by Parents or Other Custodians

This language needs to reflect federal regulations by adding the need for parents to give a district 10 days prior notice before removing a student from a public school. The parent may also advise the public school during an IEP meeting that they intend to make this placement and why they believe the district cannot provide FAPE. This language needs to be added.

4AAC52.160-Application For Assistance From the State

This option needs to be available for districts to apply for assistance for extraordinary costs for students certified for special education. If a student requires out of state residential service this is extremely costly at over \$100,000 per year. If the parents qualify for Medicaid or if the child is in state custody, then cost sharing is available. If these supports are not available, the total cost rests with the district. This is an unfair burden and may inappropriately influence an IEP team's decision regarding appropriate residential supports needed for a child with disabilities. The intensive funding for a child in residential does not begin to cover the total costs for this placement.

4AAC52.240-Provision of Services

Language needs to be added to this section that reflects federal language referring to third party payee. The federal regulations, 30CFR300-142-Methods of ensuring services, encourages interagency agreements, obligations of non-educational public agencies, Medicaid reimbursements and coverage by public insurance. LEAs are challenged to fund the necessary supports and services needed to provide educational benefit for students with disabilities. Any and all assistance in funding of these services will assist the districts.

4AAC52.510-Parental Access to Records

The federal regulations allow for up to 45 days to comply with a parent's request for records. The state regulation is requiring a very limited 10-business day window for compliance to this request from parents. The 10-business day limit is very difficult to comply with especially within a large district where student's records may be in several different locations. ASD would prefer a minimum of 15 business days for compliance.

4AAC52.530-Release of Records; Disciplinary Records

The addition of the contract service provider to the list of individuals who may have access to a student's records is an important and needed addition.

4AAC52.540-Parental Right to Independent Evaluation

It is important to detail the conditions under which an independent evaluation can be obtained by the parent at district expense. Reference to the federal regulations is confusing and not sufficient.

4AAC52.550-Due Process Hearing

The regulations continue to describe a two-tiered due process hearing. This is preferred to the one tiered process proposed in the new statute language. The issue of discipline of students certified for special education is one of the most controversial components of special education law. The requirements of a manifestation determination, functional behavioral assessment and other stipulations of this area of law are extremely important and must be detailed in our state regulations. Reference to federal law within this regulation is insufficient and confusing. This complex area must be clearly delineated to protect students' rights and assist districts in the provision of FAPE.

4AAC52.700-Public School Foundation Program

Changes and clarification in the definition of intensive services are very positive and allow greater flexibility in appropriately identifying these students.

Items not written within the proposed Special Education Regulations

Federal regulation CFR 300.142 METHODS FOR ENSURING SERVICES requires states to create an interagency agreement that ensures the provision of FAPE. This includes the financial responsibility of each non-educational public agency including State Medicaid and other public insurers of children with disabilities. This must precede the financial responsibility of the LEA. It is vital that this issue is addressed in the Alaska Special Education Regulations. As our districts are impacted with reduced revenues and increased needs of students with disabilities, the financial impacts are significant. The state is required to assist by

creating the interagency agreements and providing mechanisms to fund services through other appropriate means. This must be done without a corresponding decrease in services that the parents and students are currently receiving through these funding agencies.

To: Sheila Box <sheila_box@eed.state.ak.us>
Subject: Comments on Regs

NAME: Ann Turner Olson
email: Ann_Olson@health.state.ak.us
Phone: 465 - 2817
Regulation: Proposed Regulations 4 AAC 52
Submit: Submit

comments:

DFYS Comments of EDD Proposed Regulations
4 AAC 52 Education for Children with Disabilities

Comments from DFYS

The proposed regulations for the Education of Children with Disabilities, 4 AAC 52.700 (c), states that "for funding purposes under AS 14.17.420, a student may be counted as receiving special services if (3) the student's IEP team determines that out-of-state residential placement is necessary."

The necessity for placement out-of-state in order to obtain residential psychiatric treatment is determined based upon a child's need for psychiatric and behavioral treatment and services. Although a child's educational needs are included in the review for placement out-of-state in residential psychiatric treatment, the IEP team is not the eventual group to determine such placement is necessary. Treatment, in-state or out-of-state, in a residential psychiatric treatment center is almost never due solely because of a child's IEP.

DFYS requests EED to take into account the processes described below which DHSS currently has in place to review and approve children for treatment and placement out-of-state. We ask that EED work together with the division to consider the impact 4 AAC 52.700 (c) (3) may have on the funding and provision of educational services when a child is placed out-of-state for residential treatment.

Background: Out-of-state Placement in Residential Psychiatric Childcare Center (RPTC)

The Division of Family and Youth Services has policies and procedures for the placement of children in custody in out-of-state RPTC facilities. All referrals for such placement initially come from a child's social worker and/or juvenile probation officer. Referrals are reviewed by the Regional Placement Committee (RPC) chaired by the psychiatric nurse in each of DFYS' four regions. When a Regional Placement Committee determines a child's treatment needs cannot be met in state, a referral is made to the Out-of-state Placement Committee (OSPC).

The OSPC is chaired by the DFYS Social Services Program Officer and includes representatives from the divisions of Family and Youth Services, Juvenile Justice, EED/Special Education, Mental Health and Developmental Disabilities and the Deputy Compact Administrator for the Interstate Compact on the Placement of Children (ICPC).

The ICPC (AS 47.70) requires a placement evaluation and approval before placement out-of-state is made and requires the placement be in the best interests of the child. DFYS policy requires that this evaluation include a review of a child's educational needs. If the child has an IEP, this must be included in the review materials. In fact, many children who are placed out-of-state will have an IEP through their local school district.

Future Issues for DFYS and EED to Consider

1. School district personnel on DFYS regional placement committees
2. DFYS and DJJ workers on school district IEP teams
3. Funding implications of 4 AAC 52.700 (c) (3) for children placed in out-of-state residential psychiatric treatment centers

X-Sender: cfmorehouse@jnumail1.state.ak.us
X-Mailer: QUALCOMM Windows Eudora Pro Version 4.2.0.58
Date: Mon, 26 Feb 2001 13:42:55 -0800
To: Sheila Box <sheila_box@eed.state.ak.us>
From: IUSR_WEBSERVER@webserver (by way of Charito Morehouse
<charito_morehouse@eed.state.ak.us>)
Subject: Comments on Regs

NAME: Joy Gray
email: mgray@mtaonline.net
Phone: 907-357-4729
Regulation: 4aac52 Special Ed
Submit: Submit

comments:

My son, age 6, is developmentally delayed and is currently in preschool for part of the day as well as kindergarten for part of the day. He is delayed in speech, fine and gross motor skills. As of this year, because of state regulations, he is now identified as cognitively impaired even though his teachers and therapists categorize him as developmentally delayed. This is to facilitate continuing his special services. I would be for passing the regulation to extend the developmental delay classification to age 8. He is a bright young boy with an active imagination and smiles constantly. I do not think he is cognitively impaired. However, I do think he does need smaller class sizes and extra help. Please consider changing the regulations to the benefit of Alaska's kids. It would be appreciated by all. Thank you. - Joy Gray

4 AAC 52.130 Mental Retardation

ASPA recommends DOEED change the criteria for intellectual test performance to (1) score at or below a standard score of 75 on an individual standardized test of intelligence, (2) exhibit deficits in adaptive behavior, and (3) demonstrate commensurate delays in academic attainment. This definition brings the state of Alaska in line with the standards set for by the American Association of Mental Retardation. ASPA is concerned about the potential for pushing the 75 higher by using the standard error of measurement rationale. If DOEED does concur with ASPA's proposed changes we would also support a statement that indicates 75 is the absolute cap for IQ scores.

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ASPA supports wording that cannot be misinterpreted such as "on or before the 9th birthday".

52.140 ...30 calendar days after eligibility

The Federal wording allows for school days. If a student is assessed during the summer and determined eligible for service the IEP cannot reasonably be developed and implemented during the time school is not in session, ASPA supports the definition of "day" as school day.

52.140 (e) In accordance with 52.150

"It is the districts' responsibility to ensure that an IEP [for a child placed out of district] is developed and implemented". This statement confuses us. Does the sending district write the IEP? How does a district write an IEP for another location, especially one outside the district? Is the intent of this regulation to place responsibility on the sending district to ascertain the receiving district writes and implements an IEP? How is the sending district to manage supervision of another districts/placements action? ASPA requests clarification of the intent and implementation of this regulation.

4 AAC 52.170 preschool children are covered by the least-restrictive environment

Does this regulation mandate that preschool students with disabilities must be enrolled in a private preschool? At this point in time neither kindergarten nor preschool enrollment is mandated by the state. Federal or State law does not mandate preschool unless the student has disabilities. How does the state propose a student, who is not yet of school age, be educated in an environment with other

non-handicapped peers? Does Alaska plan to mandate public preschool? Does the state propose to pay for enrollment of children with handicaps at private preschools? This regulation will be open to much misinterpretation and must be clarified. ASPA supports a notation for preschool aged children such that efforts to provide a least restrictive environment does not include enrollment in a private preschool at public expense.

4 AAC 52.180 Reevaluation

ASPA reads this as the job of the eligibility team to determine continued need for services within the context of the educational needs of the child. ASPA supports this change in the regulation. Needless time is spent on unnecessary and costly reevaluation to determine whether or not a specific IDEA handicapping condition continues to exist (i.e. discrepancy between ability and achievement for Learning Disabilities) rather than looking at the types of services the child requires to meet his/her educational needs. ASPA appreciates this adoption of the Federal changes and wishes further clarification that the purpose of the evaluation is not to continue to establish the presence of a disability through needless evaluation but rather determine the present need of the child and whether those needs must be met through special education services.

4 AAC 52.510

Does this request for records stating a 10 business day guideline with no more than 45 days hold during the summer when many school personnel, including records departments, are closed? ASPA requests a notation be made regarding exceptions for summer and extended holidays (Winter, Spring Breaks) or a reference to school days as the guideline.

4 AAC 52.550 Due Process

The Federal regulations for IDEA encourage mediation prior to due process hearings. ASPA supports the same for Alaska school districts. ASPA would like DOEED to provide for mediation as a prerequisite to due process hearings as a less costly and less antagonistic setting than due process hearings in order to problem solve school-parental disputes.

4 AAC 52.590 (a) and (b) are amended (page 39-40)

(b) A child is entitled to a surrogate parent if

Does (4) the child is committed to the department of Health and Social Services negate other aspects? That is, if a parent is known and located does the child require not just become entitled to a surrogate parent?

4 AAC 52.990 Definitions

F (5) "days" means calendar days. (Page 47)

Other federal special education regulations refer days with respect to evaluations and placement procedures to be school or business days. ASPA takes strong exception to this definition of day as calendar day. Many times consent for assessment is obtained just before the winter break from school. In this instance, seventeen to eighteen days of the time limit is lost to vacation. School psychologists and other related service personnel are often in a school one-to-two days per week. What provides a reasonable time line to conduct a thorough evaluation by all involved parties is lost with a count of calendar days.

Forty-five days is equivalent to seven weeks. That gives a psychologist or occupational therapist who is in a building once a week only seven opportunities to observe, assess, review records, consult with colleagues prior to arriving at placement decision. For evaluations of complex handicapping conditions those seven opportunities must be shared with resource teachers, speech pathologists, occupational and physical therapists plus planning meetings, eligibility meetings and IEP meetings. Given that these regulations focus on *children* it is inappropriate for them to be subjected to full days of total assessment. We don't do this with any other high stakes examinations. Benchmarks, IOWA's, graduation exams are all spread out across several days.

HB 71
Fiscal Note Budget Narrative

Current state law and the proposed HB 71 require the state to oversee gifted education programs provided by school districts. Federal special education funding may not be used for these purposes since gifted education is not a federal mandate. Therefore, the following funds are required to enable the state to fulfill its oversight responsibility.

Personal Services

*.5 FTE Education Specialist II, 21 A/B	\$36,200
**10 FTE Admin. Clerk II, 8 B	<u>\$ 4,200</u>
Total	\$40,400

*This fiscal note includes personal services costs for a .5 FTE Education Specialist II. This position is reflected on page 1 of the fiscal note as 1 new full-time position. The other half of this position is reflected in a department increment in the FY2002 budget for the statewide correspondence program.

**An existing position will be used for the Administrative Clerk II position. No new position is being requested in this fiscal note.

Travel

Due Process Training for 2 days @ \$1,000 each	\$ 2,000
Monitoring to accompany contractor for 4 visits @ \$1,000 each	<u>\$ 4,000</u>
Total	\$ 6,000

Contractual

Contractor:	
Training, 10 days @ \$500 per day	\$ 5,000
Due Process Hearings, 4 @ \$5,000 each	\$20,000
Monitoring visits, 2 contractors at \$500 per day, 3 days each, 4 districts per year	\$12,000
Monitoring visits, \$1,000 each trip, 4 trips	\$ 4,000
Postage, phone, copier, printing	<u>\$ 6,000</u>
Total	\$47,000

Supplies

Training materials, other supplies	<u>\$10,000</u>
Total	\$10,000

Grand Total \$103,400

List of Participants for Legislative Review Meeting

Sept. 14th & 15th, 2000

Anchorage, AK

Governor's Council

David Maltman: Executive Director
 Darrell Sanborn: Council Member and Superintendent, Unalaska City Schools
 Reggie Joule: Council Member; State Representative
 Kathy Fitzgerald: Parent; Member of Council's Executive Committee
 Kathy Craft: Parent; AK Children's Mental Health Coordinator

Disability Law Center

Belinda Patrick: Advocate
 Janel Wright: Staff Attorney
 Bob Briggs: Staff Attorney
 Ann Hutchins: Parent
 Don Shackelford: Parent; former school administrator; UAA faculty member

PARENTS, Inc.

Faye Nieto: Executive Director
 Tim Weiss: Program Director
 Gail Igo: Staff Advocate
 Ardyce Turner: PARENTS, Inc. Board Member
 Jan Guertin: Juneau Staff Advocate

EED Participants

Bruce Johnson: Deputy Commissioner
 Greg Maloney: State Director of Special Education
 Wendy Tada: Special Education Staff Member
 Phil Reeves: Asst. Attorney General working with EED

District Participants

Robyn Rehmann: Special Education Director, Anchorage School District
 Ann Shortt: Assistant Superintendent, Fairbanks School District
 Ron Delay: Student Services Director, Juneau
 Ron Erickson: Superintendent, Haines Borough School District
 John Owens: Special Education Director, Northwest Arctic Borough School District

ALASKA STATE LEGISLATURE



Interim:
600 East Railroad Avenue
Wasilla, Alaska 99654
(907) 376-3370
(907) 376-3157 Fax

Session:
State Capitol
Juneau, Alaska 99801-1182
(907) 465-6600
(907) 465-3805 Fax

SENATOR LYDA GREEN SENATE DISTRICT N

SB40: EDUC. OF DISABLED OR GIFTED CHILDREN

QUESTIONS TO ASK

- 1) Section 19 of SB40 removes the current language regarding all of the requirements for individualized education programs and replaces it with a requirement that the programs shall be developed and reviewed and revised in conformance with federal requirements. Are those federal requirements as detailed as the current state statute and are they sufficient as a guideline for IEPs?
- 2) Gifted children are included in AS 14.30, Education for Exceptional Children, instead of being placed in a new statute section. Why is this?
- 3) On page 15, beginning on line 4, the "least restrictive environment" is defined for gifted children. Some would argue that the "least restrictive environment" would be an environment in which gifted children were being taught solely at an advanced level with other gifted children. What is the reason for the language in this bill? (NOTE: This is the same language as the "least restrictive environment" for special education children. This question comes from a woman who complained about the language)
- 4) Which sections (specifically) of this bill are required by federal law and which are not?
- 5) What would these changes mean in the way of federal funding for education?

SB40: EDUC. OF DISABLED OR GIFTED CHILDREN

SECTIONAL ANALYSIS

Prepared by Aurora Hauke, Senate HESS Committee Aide

AS 14.16 Special Schools

AS 14.16.050 Applicability of education laws, requirements relating to students and educational programs

Sec. 1: AS 14.16.050(a)(4) is amended to reflect the separation of exceptional children into children with disabilities and gifted children.

AS 14.30 Education for Exceptional Children

AS 14.30.180 Purpose

Sec. 2: AS 14.30.180 is amended to change "exceptional children" to "each child with a disability" and updates Individuals with Disabilities Education Act 97 reference.

AS 14.30.186 Coverage

Sec. 3: AS 14.30.186(a) is amended to provide that the borough or city school district or REAA where the child lives shall provide special education services. If the child is enrolled in a treatment facility, correctional or youth facility, boarding school, or statewide correspondence study program, that district is responsible for providing the special education services.

Sec. 4: AS 14.30.186(e) is amended to reflect the clarification of exceptional child as child with a disability. The language that says that a child being educated under the compulsory attendance exceptions (i.e. homeschooling, tutoring, etc.) may receive special education services is removed. This was redundant with the language that stated that a child being educated under the compulsory attendance exceptions may not be compelled to receive special education services.

Sec. 5: A new subsection is added which allows the department to establish standards in regulations in the allocation of financial responsibilities of educational agencies listed in AS 14.30.186(a) (see above).

AS 14.30.191 Educational evaluation and placement

Sec. 6: AS 14.30.191(a) is amended to clarify that a school district must obtain "written informed" consent from child's parent before initial evaluation or placement "of a child with a disability" in a special education program.

*Does this mean
a district does
not have to
provide LD
services*

- Sec. 7: AS 14.30.191(b) is amended to change "exceptional child" to "child with a disability" and removes redundant language.
- Sec. 8: AS 14.30.191(c) is amended to clarify that before a school district initiates or refuses a change in the placement or educational program of "a child with a disability", the district shall notify the child's parent.
- Sec. 9: AS 14.30.191(d) is amended to include the parent of the child evaluated to participate in the determination of the child's eligibility for special education services.
- Sec. 10: New subsections are added to AS 14.30.191 to provide that a school district provide written notice of its decision and define "hearing".

AS 14.30.193 School district hearings repealed and reenacted as Due process hearing

- Sec. 11: Due process hearing procedures laid out.
- (a) A school district or parent of a child with a disability may request a hearing in writing within 12 months of the date that the school district provides the parent written notice of the decision which the parent disagrees with.
 - (b) The school district must contact the department to request appointment of a randomly selected hearing officer, which must be done within five days of receipt of request.
 - (c) Each party has the right to reject, without statement of cause, one hearing officer within five days of notification of appointment. The department then has five days to appoint another hearing officer.
 - (d) Five days after appointment (giving time for rejection process), the hearing officer shall inform the parties of availability of mediation. If mediation doesn't work, the hearing officer shall conduct a hearing, after which the officer shall issue a written decision.
 - (e) A hearing officer's decision is final and binding unless appealed. A child may not be evaluated, placed, transferred, or compelled to receive special education services until appeal time expired or until a filed appeal is reviewed.
 - (f) A hearing officer's decision is subject to appeal to the superior court.
 - (g) The department shall maintain a list of hearing officers qualified through a training program as a public record.
 - (h) A student 18-21 with a disability has the same rights and obligations as a parent of a child with a disability in this section.

New Section AS 14.30.194 Mediation

Sec. 12: New Section AS 14.30.194 Mediation added providing that the department shall establish mediation process which conforms to federal law and shall encourage the use of said mediation process. The department shall maintain a list of individuals who are qualified through a training program.

AS 14.30.231 Advisory committee changed to Advisory panel

Sec. 13: AS 14.30.231 title changed to Advisory panel and language within modified to reflect said change. Also, "exceptional children" changed to "children with disabilities"

AS 14.30.250 Teacher qualifications

Sec. 14: "Exceptional children" changed to "children with disabilities".

AS 14.30.270 Substitutes

Sec. 15: "Exceptional children" changed to "children with disabilities".

AS 14.30.272 Procedural Safeguards

Sec. 16: Language changes: "exceptional children" changed to "children with disabilities"; "an impartial hearing" changed to "a due process hearing"; and federal statute updated.

AS 14.30.274 Identification of exceptional children changed to Identification of children with disabilities

Sec. 17: "Exceptional children" changed to "children with disabilities". Agency responsible for establishing and implementing procedures for identifying and locating children with disabilities changed to the agency which is responsible under AS 14.30.186 (the agency where the child is enrolled).

AS 14.30.276 Least restrictive environment

Sec. 18: "Exceptional children" changed to "children with disabilities" and "exceptionality" changed to "disability".

AS 14.30.278 Individualized education program

Sec. 19: Removes all current language regarding requirements of an individualized education program and adds new language stating that an individualized education program shall be developed no later than 30 days after determination of child's eligibility in accordance to federal requirements.

AS 14.30.285 Transfers of exceptional children

- Sec. 20: "Exceptional children" changed to "children with disabilities" in 14.30.285(a)
- Sec. 21: 14.30.285(b) is amended to change language of "exceptional child" to "child with a disability". Also, the school district rather than the department shall determine if a child may be sent to an educational program or residential school outside the child's district if appropriate educational programs are not available.
- Sec. 22: 14.30.285(e) is amended to change "exceptional child" to "child with a disability".
- Sec. 23: 14.30.285(f) is amended to clarify that the consent of the child's parent shall be informed before the child is transferred.
- Sec. 24: 14.30.285(g) is amended to clarify that the consent of the parent must be informed and that the withholding of said informed consent doesn't relieve the school district of the obligation to provide special education services. The language "an exceptional child" is changed to "a child with a disability".

AS 14.30.325 Surrogate parents

- Sec. 25: 14.30.325(a) is amended to provide that the department will (instead of may) provide for the appointment of surrogate parents in matters relating to education. "Exceptional children" is changed to "a child with a disability"

AS 14.30.335 Eligibility for federal funds

- Sec. 26: "Exceptional children" changed to "children with disabilities".

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

- Sec. 27: "An exceptional child" changed to "child with a disability". If a child with a disability is enrolled in a private school, including a religious school, the school district in which the child resides shall make the special education services available in conformance with federal requirements. There are also some minor clarification language changes in subsection (b).

AS 14.30.347 Transportation of exceptional children changed to Transportation of children with disabilities

- Sec. 28: "Exceptional child" changed to "child with a disability".

AS 14.30.350 Definitions

- Sec. 29: 14.30.350(2), which defines "children with disabilities," is repealed and reenacted. "Child with a disability" means a child with one or more of mental retardation, learning disabilities, emotional disturbance, deafness, deaf-blindness, hearing impairment, orthopedic impairment, other health impairment, speech impairment, visual impairment, multiple disabilities, early childhood development delay, autism, and/or traumatic brain injury.
- Sec. 30: 14.30.350(8), the definition of "parent" is changed to reflect that a parent may be a child's natural or adoptive parent, a guardian (not the state if the child is in legal custody of the state), a person who is acting in the place of the child's natural or adoptive parent, or a child's surrogate parent as appointed by the department.
- Sec. 31: 14.30.350(9), the definition of "related services" is changed to conform to federal statute definition.
- Sec. 32: 14.30.350(10), the definition of "school district" is changed to a borough school district, a city school district, a REAA, a state boarding school, and the state centralized correspondence study program.
- Sec. 33: (11) The definition "special education" is changed to mean an educational program that is considered as "special education" in federal statute.
- Sec. 34: New definitions of "due process hearing" and "informed consent."

Article 3A. Education for Gifted Children added

- Sec. 35: Article 3A. Education for Gifted Children added to include the following:

Sec. 14.30.351. Purpose. The purpose of this new article is to provide an appropriate education for each gifted child who enrolls in a public school.

Sec. 14.30.352. Coverage. Each school district shall establish a program for identification and provision of services to gifted children.

Sec. 14.30.353. Identification, evaluation, and placement of gifted children. Provides that each school district shall establish and implement procedures to ensure that gifted children are identified and located and shall obtain written informed consent of the child's parent before an initial evaluation or placement. Educational evaluations shall be given at least once every three

years. A school district must notify the parent if they initiate or refuse a change in child's placement. When the evaluation is completed, an opportunity for consultation must be provided to the parent by the school district. A parent may obtain an independent educational evaluation by choosing a person from a list provided by the SD or by a person who the parent and SD agree upon, at the expense of the SD if the parent disagrees with SD's evaluation. The school district may initiate a due process hearing to show that its evaluation is appropriate and is not required to pay for independent educational evaluation if the hearing officer rules in their favor. If a parent obtains an independent evaluation at private expense the results must be considered by the SD and may be presented in due process hearings as evidence. If the hearing officer request an independent evaluation, the SD pays for it. The school district must provide written notice of its decisions to the parent.

Sec. 14.30.354. Individualized gifted education program. The school district will provide for the development of an individualized gifted education program. It must include statements of child's present level of performance, annual goals, and services to be provided to the child to the extent to which the child will be able to participate in regular educational programs, as well as the projected dates for initiation of services and duration of services, criteria and evaluation procedures, schedules for determining whether objects are being achieved. Persons participating in the development must include SD representative who is qualified to provide or supervise the provision of gifted education, the child's teacher, parent, the child (if appropriate), and other individuals selected by the parent or SD.

Sec. 14.30.355. Least restrictive environment. Gifted children are to be educated in regular educational environment as much as possible. Removal from this environment only occurs when education in regular classes with supplementary aids and services cannot be achieved satisfactorily.

Sec. 14.30.356. Procedural safeguards. A SD shall inform the parent of the rights to review the child's educational record and evaluation tests and procedures, to refuse to permit evaluation or change in educational placement, to be informed of the results of evaluation, to obtain independent evaluation from a person on a list provided by the SD or a person agreed upon by both parties, to request an impartial hearing, to appeal a hearing officer's decision, and to give consent to deny access to others to the child's educational record.

Sec. 14.30.357. Due process hearing. This is the same language as provided for in the special education section.

Sec. 14.30.358. Teacher qualifications; substitutes. Teachers of gifted children must possess valid teacher certificate and any training the department requires. The employment of a person otherwise qualified as a substitute teacher is not prohibited from serving as a substitute for gifted children.

Sec. 14.30.359. Definitions. Definitions given for appropriate education, due process hearing, educational records, gifted children, gifted education, informed consent, and school district.

AS 14.30.640. Eligibility for service.

Sec. 36: "Exceptional children" changed to "children with disabilities."

AS 29.60 Oil and Hazardous Substance Municipal Impact Assistance

Sec. 37: Definition of school district under AS 29.60.599(7) changed to be in conformity to definition of school district in previous sections of this bill.

AS 47.80 Persons with Disabilities

Sec. 38: Article 2 (Governor's Council on Disabilities and Special Education), AS 47.80.090 (Responsibilities), subsection (9), "exceptional children" is changed to "children with disabilities", and gifted children are included in the duty of the council to provide information and guidance for the development of special education programs and services.

Sec. 39: Article 6 (General Provisions), AS 47.80-900, subsection (6), the definition of "person with a handicap" is changed to include children with disabilities instead of exceptional children.

REPEALERS

Sec. 40: The following are repealed:

AS 14.30.186(b) (Education for Exceptional Children, Coverage): REAA board shall provide special education services in a school in the area for exceptional children residing in the area served by the school. (NOTE: this can be removed because it has been included in subsection (a).

AS 14.30.193(b) (Education for Exceptional Children, School district hearings): Parent may request a hearing if they disagree with the school district's intended placement of a child. (NOTE: this is a mistake in the bill. AS 14.30.193 was already repealed and reenacted).

AS 14.30.195 (Education for Exceptional Children, Hearings): This can be repealed because it has been included in the due process section (AS 14, 30.193).

AS 14.30.315(b) (Education for Exceptional Children, State support of programs for gifted children): Nothing in this section prohibits the department from requiring approval of programs of special education and related services for other categories of exceptional children. This can be repealed because "other categories of exceptional children" have been separated.

AS 14.30.350(3) (Education for Exceptional Children, Definitions): Definition of consent. This can be repealed because the definition of informed consent is added.

AS 14.30.350(5) (Education for Exceptional Children, Definitions): Definition of exceptional children. I wouldn't repeal this if they're going to include special education children and gifted children under this section (14.30) entitled "Education for Exceptional Children," even though that might be the only place the term is used.

AS 14.30.350(6) (Education for Exceptional Children, Definitions): Definition of gifted children. The rationale for repealing this is only included in the rationale for repealing the above. The only reason you would need this defined in this section of the statute would be to define the above.

AS 14.30.350(7) (Education for Exceptional Children, Definitions): Definition of individualized education program team. The need for this definition is removed with the rewording of the section on individualized education programs.

UNCODIFIED LAW

Sec. 41: New section added to uncodified law: REVISOR'S INSTRUCTIONS. The revisor of statutes is requested to change the heading of AS 14.30.193 from "Education For Exceptional Children" to "Education For Children With Disabilities," change the heading of AS 14.30.193 from "School district hearings" to "Due process hearings," and change the heading of

AS 14.30.285 from "Transfers of exceptional children" to "Transfers of children with disabilities."

Sec. 42: Add a new section: TRANSITION: REGULATIONS.

(a) The state Board of Education may adopt regulations necessary to implement the changes made by this Act before the effective date of this Act.

(b) Regulations adopted by the Board of Education in effect on July 1, 2001 continue in effect until amended or repealed if they are not inconsistent with the statutory changes.

EFFECTIVE DATES

Sec. 43: Section 42(a) takes effect immediately.

Sec. 44: All other sections take effect July 1, 2001.

Report faults school funds

■ **\$42 MILLION:** Panel says more money needed to meet standards.

By **ROSEMARY SHINOHARA**
Anchorage Daily News

A governor's task force of business and civic leaders released a report Monday saying Alaska schools have lost purchasing power and are underfunded. The report proposes that the state spend an additional \$42.4 million the first year of a five-year plan to help schools improve for a total of \$100 million by 2006.

That's beyond any money needed for higher enrollment.

"If anything this proposal is conservative," said Roger Chan, chief financial officer for Veco Corp. and a member of the task force.

The task force report said a "general loss of purchasing power" has left schools with inadequate funding, and as a result, many students haven't had the opportunity to meet state academic standards and pass new tests required for graduation.

It did not identify where any additional money should come from, but considered whether there's enough now and how much more might make a difference.

The group tied its proposal to estimates for correcting a half-dozen weaknesses in the school systems:

- Schools lack up-to-date textbooks. Books copyrighted in the 1970s and 1980s are common, and many students must share. At \$40 per textbook, with 135,000 Alaska public school students, \$5.4 million would buy one new book a year for each student.

- Curriculum in most districts doesn't match what's covered on the new state tests. To redo the coursework, the task force allocated \$500,000 for each of two years.

- The state now adds 20 percent to each district's funding for teaching students with disabilities, gifted students and students who don't speak English well. It isn't enough, the task force said, because the number of disabled and bilingual students is growing too rapidly.

The group recommended \$5.3 million more be spent annually for special and bilingual education.

- Districts need money to offer remedial classes to kids who fail the state tests. The task force estimated districts might offer summer school for a third of all students — 44,000 — at an average cost of \$40,000 per program in each of 250 schools. That equals \$10 million.

- Schools are falling behind in maintenance; \$4 million is proposed for the first year.

■ **UNIVERSITY:**
UA President Mark Hamilton praises lawmakers in annual request for cash.
B-1

SCHOOLS: Governor's task force finds state classrooms are underfunded

NDN 2-6-2001

- Alaska teacher salaries are not as competitive as they once were. The task force recommends spending \$9.4 million more each year, cumulatively, to give districts the opportunity to raise teacher salaries by 2 percent. It also suggests forgiving student loans for teachers who teach in Alaska, for \$800,000 the first year, and improving the teacher retirement plan at an unknown cost.

The group recommends another \$7 million the first year to conduct research, to provide rewards for successful schools and to offer help to low-performing ones.

The proposals add up to \$42.4 million more for next year, on top of about \$600 million the state spends annually on schools.

Although the task force identified common needs of Alaska schools, most of the money would go to districts as part of their regular state entitlement. The districts would have the final say on how to spend it.

The task force says state money eventually ought to be tied to gains in achievement, said Bob Weinstein, mayor of Ketchikan and chairman of the task force. Exactly how that would work isn't clear in the task force report.

Under a 1997 state law, high school students must pass state tests in reading, writing and math to earn diplomas beginning in 2002. And in 2003, the state will begin identifying which schools are "distinguished" and which are deficient, based mostly on student achievement.

Sen. Gary Wilken, R-Fairbanks, who has proposed a smaller increase to education funding, said the task force's rationale for increased spending impressed him, though the amount "certainly raised the bar."

"It's definitely got a gulp factor to it," Wilken said. "Once you swallow that, and look at where the number comes from, you say this isn't a number plucked from the sky. There's a reason for it."

Judging by the response to his own bill, which calls for spending \$20 million more on education for the upcoming year, Wilken said he thinks legislators are open to funding increases.

"In kind of a left-handed way, the discussion this year on the competency test highlights the fact that this is a pretty big deal, and our schools better be ready for it," Wilken said.

The task force, organized by Gov. Tony Knowles, included a roster of presidents and directors from oil and Native corporations and education organizations, plus a mayor and an assemblywoman. It held three days of meetings and produced its report in about a month's time.

The task force report now goes to the Alaska Board of Education, which plans a public hearing next Tuesday over the Legislative Teleconference Network.

- Alaska Department of -
EDUCATION
& EARLY DEVELOPMENT

Highlights of HB 71/SB 40

"An Act Relating to the Education of Children with Disabilities and Gifted Children"

Purpose:

1. To update state special education statutes to conform with the federal Individuals with Disabilities Education Act, as amended in 1997 (IDEA 97). IDEA 97 contains a number of policy amendments and emphasizes the importance of parental rights and parental participation in identifying and serving children with disabilities.
2. To delineate the federal and state requirements for providing educational services to children with disabilities, and the state requirements for providing educational services to gifted children.
3. To ensure that Alaska continues to qualify for federal special education funds.
4. To define Alaska's special education policy in areas where federal requirements provide states with discretion.

Revisions to Current State Law

Changes to the current state law include the following:

- The term "exceptional children" is replaced by the terms "child with a disability" and "gifted child". The statutory sections that pertain to children with disabilities have been separated from those that pertain to gifted children.
- Under current state law, the school district of a student's residence must provide special education and related services for a child with a disability. ~~The revised statute requires state boarding schools and statewide correspondence schools that enroll children with disabilities from outside their districts to provide special education and related services to these students.~~
- The due process hearing procedure is changed, ~~requiring the department rather than the school district to assign hearing officers.~~ Appeals of hearing officer decisions will be made to ~~superior court rather than the department.~~ Similar hearing procedures will be used for both special education and gifted education.
- Mediation, a voluntary dispute resolution process for school districts and parents of children with disabilities, is added to the state statute in conformance with IDEA 97.
- *with
does* Currently, children with disabilities enrolled in private schools are entitled to a full range of special education services from their public school district of residence. The revised statute limits district responsibility for providing special education services to children voluntarily enrolled in private schools to match the requirements contained in IDEA 97.

- Districts are required to serve only gifted children enrolled in the school district and attending public school.
- Districts are no longer required to provide related services, such as individualized transportation services, to gifted children.
- Significant changes to definitions include the following:
 - "serious emotional disturbance" is changed to "emotional disturbance" to reflect the federal definition;
 - "preschool developmental delay" is changed to "early childhood developmental delay" to reflect current terminology;
 - "parent" is changed to:
 1. specify that the state cannot serve as the child's guardian in educational matters; and,
 2. include a person with legal responsibility for a child's welfare who is acting in place of a child's natural or adoptive parent;
 - "related services" is changed to incorporate the federal IDEA 97 definition;
 - "school district" is changed to add state boarding schools and the state centralized correspondence study program;
 - "special education" is changed to incorporate the federal IDEA 97 definition;
 - "due process hearing" is added and defined according to AS 14.30.193;
 - "informed consent" is added to provide more specific guidance regarding what informed parental consent constitutes;
 - "gifted education" is added to distinguish gifted education from special education; and,
 - "Individualized gifted education program" is added to distinguish gifted program plans from special education program plans.

Budget Considerations

The department has the responsibility for administering the state's gifted education program under the current law, but has not had the resources to address due process hearings, training, and technical assistance for parents and school districts.

The department has requested an increment of \$177,700 in general funds in the FY 2002 budget to cover the costs for administering this program, since federal special education funds cannot be used for this purpose.

TONY KNOWLES
GOVERNOR
governor@gov.state.ak.us

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

P.O. Box 10000
Juneau, Alaska 99811-0000
(907) 465-3500
Fax (907) 465-3532
www.gov.state.ak.us

AL-46

January 15, 2001

The Honorable Rick Halford
President of the Senate
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear President Halford:

Alaska's responsibility for providing quality educational services for our children extends to all children, including those with unique educational needs. I transmit today a bill clarifying the state's role in the education of our exceptional children.

In 1997, Congress authorized amendments to the Individuals with Disabilities Education Act (IDEA). The subsequent federal regulations related to the IDEA took effect in May 1999. This bill amends inconsistent components of our state statutes to bring Alaska into compliance with these current federal special education mandates, including emphasizing the participation of parents in making decisions relating to special education eligibility and services.

An important protection provided to both school districts and children with disabilities is the due process hearing. This bill clarifies the procedures for requesting a due process hearing and streamlines the process for selecting a hearing officer by having the Department of Education and Early Development (department) randomly assign officers from a list maintained by the department. These procedures will help due process hearings be completed in a fair and timely fashion.

Alaska law presently requires that a school district provide special education services to children with disabilities who reside in the district. State law also exempts children from attending public school if children are enrolled in an alternative education program. This has resulted in confusion regarding which school district or other educational agency is responsible for providing special education services when children are enrolled in

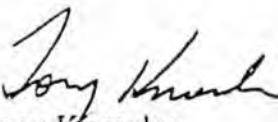
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alternate programs. This bill addresses this problem by providing for allocation of the responsibilities and coordination of the provision of special education services among the various educational agencies.

Present state law provides a combined program of services for gifted children and for children with disabilities. The detailed requirements of the federal IDEA and the federal program financing apply only to the state's educational programs for children with disabilities; federal money for the IDEA may not be used for programs for gifted children. To be consistent with federal requirements, this bill separates statutes regarding special education requirements for children with disabilities from those regarding requirements for gifted children. However, the bill maintains procedural safeguards for both programs.

As part of Alaska's commitment to quality education for all children, including children with disabilities and gifted children, I urge your prompt and favorable action on this bill.

Sincerely,


Tony Knowles
Governor