

# HB

# 102

<TARGET><BILL>HB 102</BILL><SUBJECT>HB  
102</SUBJECT><COMM>HFIN29</COMM></TARGET>

# Alaska House of Representatives

**Rep. Wes Keller, Chair**  
Alaska State Capitol, Room 403  
Juneau, AK 99801



Rep. Lora Reinbold  
Rep. Jim Colver  
Rep. Paul Seaton  
Rep. Liz Vazquez  
Rep. Harriet Drummond  
Rep. Ivy Spohnholz

## House Education Committee Sponsor Statement HB102

**“An Act providing for funding of educational services for students in residential psychiatric treatment centers.”**

HB 102 addresses a gap in the current way we provide education services to children admitted to residential psychiatric treatment centers (RPTCs).

Currently, the local school district where the licensed psychiatric treatment center is located is responsible for providing educational services. However, the education being provided in these facilities falls short of what districts provide in the school house. This is true for traditional students and especially for special education students who have individualized educational plans (IEP). Many times, RPTC students fail to receive the correct number of course hours to remain at grade level. Often the only instruction they receive are on-line only coursework with no personal, direct instruction. Students are falling further behind in school compounding their emotional and behavioral challenges. Districts without RPTCs receive these students back and bear the extra expense of these students repeating grade.

This bill recognizes that most students in this situation have their treatment paid by the state, it is in Alaska’s best interest to solve this problem.

Under the bill each child at a licensed residential psychiatric treatment center, the school district pays the center a prorated amount based upon the number of days the student receives educational services by the center.

The goal of this bill is to allow children to fulfill their potential.

If passed, this legislation will interconnect the state’s mental health and educational services delivery model improving student and state outcome measures.

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## House Education Committee

### EXPLANATION OF CHANGES

HB 102 deals with how a public school students' education is funded who is also a patient of a residential psychiatric treatment center.

The A version of HB 102 had the following main features:

- For students admitted in a residential psychiatric treatment center the school district would pay the treatment center the amount of money the student generated under the public student funding formula, prorated for the amount of time the student is in treatment at the center.

The current version differs in the following ways:

- Instead of the treatment center receiving what the funding formula produces, the school district and the center agree on the education funding for the student and enter into a contract memorializing the agreement.
- The bill's contract feature starts with the school district administration and uses permissive language: "A school district 'may' enter into a contract . . . ."
- If the administration and the center are unable to come to agreement, the bill mandates the district school board to enter into a contract: "A school board 'shall' enter into a contract . . . ."
- The bill sets out the terms the contract must include.
- If a school board approves a contract under the mandatory provisions, the board forwards the contract to the State Board of Education for final review and approval.
- If the school board rejects the contract, the bill creates an appeal option for the treatment center.
  - The appeal is decided by the Commissioner of Education and Early Development.
    - If the Commissioner finds for the treatment center, the contract as decided by the Commissioner is forwarded to the State Board for review and approval.
    - If the Commissioner rejects the treatment center's appeal, the center may appeal that decision to the State Board of Education and Early Development.

The bill establishes the appeal procedures for both the appeal to the Commissioner and the appeal to the State Board

Dear Representative Thompson,

March 25, 2016

I am reaching out to you today about a bill that has serious implications for districts and the State of Alaska. HB 102, an act providing for funding for residential treatment centers, is scheduled to come before House Finance on April 2. The Anchorage School District has consistently expressed concerns about HB 102 because we understand that the impacts of this bill go far beyond our district.

ASD believes that this bill is not premised upon a need of students; but rather, upon a desire of certain private treatment centers to take over educational services at public expense. Districts will not maintain control over the quality of education delivered by the Residential Psychiatric Treatment Center. However, the home district will retain the responsibility for accountability under IDEA, including IEPs – a highly litigious area.

A fundamental flaw of HB 102, is that it abrogates the local control of school boards to determine the need for educational programs and circumvents school board authority and discretion in approving contracts. A district like ASD that has been effectively serving residentially-placed students for decades must cede its right to do so upon a simple demand by a private provider that is accompanied by a compliant contract. No demonstration of actual need for that provider to provide the educational services, or demonstration of benefit to students in doing so, is required.

The Anchorage School District enjoys strong partnerships with Providence Hospital, Alaska Psychiatric Institute, Alaska Child and Family, Volunteers of America and Office of Children Services to name a few. Through cooperative engagement with clinical care providers, we have continued to increase our educational services and supports for our children with the most complex mental health and behavioral needs.

Anchorage School District is providing a supportive educational program for students with acute challenges at North Star Behavioral Health System Anchorage location. ASD disagrees with the premise that a treatment center is able to provide more effective educational services to a student than a school district can provide. School districts are in the best position to provide high quality public educational services. For decades, ASD has met the general education and special education needs of Alaskan students in need of residential psychiatric treatment and intends to continue doing so.

I urge the House Finance Committee to examine written comments and prior testimony from other Alaska districts that have expressed similar concerns with this legislation. Mandatory contracting requirements imposed on school boards do not represent a good investment of Alaska's education dollars, especially where private residential treatment centers are not proven to provide more effective educational services.

Ed Graff

Superintendent  
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# Alaska House of Representatives

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The bill establishes the appeal procedures for both the appeal to the Commissioner and the appeal to the State Board

Senator Cathy Giessel  
Representative Wes Keller  
House Education Committee Members  
Senator Lesil McGuire  
Senate Judiciary Committee Members  
State Capitol  
Juneau, Alaska 99801

Date: March 21, 2016

Dear Legislators:

This is in response to the Anchorage School District (ASD) letter dated March 17, 2016 to the House Education Committee. That letter contains important mischaracterizations of the current educational situation at North Star Behavioral Health.

We are grateful for the limited progress that the ASD has made in relation to instructing this unique population of students during the 2015-2016 school year. It was not until after the last session, that ASD made a concentrated effort to remedy the educational deficiencies they themselves identified.

In the letter ASD listed 16 areas of improvement. Of those, 11 are improvement areas that deal with administration responsibilities and not direct student instruction. We are looking for more than a supportive educational system for this population of kids as described in their letter. We are seeking educational accountability and equity for children in treatment facilities.

There are still many important areas needing assistance which ASD has not remedied. These areas include:

- Establishing the level of onsite services provided by principal to ensure access for stakeholders, parents, teachers, and students. *ASD stated there was enhanced communication with parents/guardians and resident school. However, to date we do not know how or when those calls are happening as we have schools and families that continue to struggle daily with identifying who to speak to or when they are available for communication.*
- Lack of student course schedules listing actual courses students are registered in for each semester
- Lack of clear transcript alignment with neighborhood school
- Lack of full student registration to the APEX course system
- Lack of completion of each students ILP
- Lack of further technology assessment and plan

- Lack of identification of Outcome Measures
- Lack of curriculum assessment and plan
- Slow and cumbersome enrollment process
- Lack of Admission, course registration and Transition Policies and Procedures  
*ASD stated they have a new streamlined process for registration however; there has not been a change in process only updated forms for the current school year.*
- Lack of AIMS web testing

The Anchorage School District voiced concerns over the quality of education delivered to students in treatment facilities if HB102 was passed. This is ironic and disingenuous since North Star has pleaded with ASD for 6 years to step up and fulfill its obligations to this class of students. ASD has failed to do so. Only this year, after HB 102 was moving, has this district taken any interest in correcting the lack of education for these students.

The bill addresses how quality education will be addressed by North Star on page 3, starting on line 16, "the following provisions will be included in the contract:

- Teacher to student ratio;
- A description of the educational program and how it aligns with state content standards;
- A description of student assessments provided in the educational program and an agreement that the center will administer those assessments required by the state;
- Written objectives for student achievement;
- The center's plan for providing special education, vocational education, gifted education and bilingual education; an educational program and calendar;
- A description of staff development activities;
- Documentation that a teacher possesses a valid teacher certificate issued by the department and meets training requirements as outlined in AS 14.30.250".

ASD also expresses concern over IDEA laws and Special Education. The bill openly discusses this on page 3, line 30: the RPTC must include "(10) documentation that a person who possesses a valid administrative certificate issued by the department under AS 14.30.255 will administer special education services;" and again on page 4, line 6, (12) "the center will follow procedures established by the department to comply with federal law, including 20 U.S.C. 1400-1482 IDEA."

This is a three year pilot project with a sunset date in 2020. The option for a pilot project was taken so treatment facilities could collect data and show outcomes of their educational program to all stakeholders involved. The goal is to have clear, concrete, best practice decisions made as we move forward with educating this unique population.

Thank you for the opportunity to address the continued educational issues students face while receiving mental health treatment. If you have questions I am always available by phone 907-903-5081 or call Ray Gillespie at 907-230-8843.

Respectfully,

Evelyn Alsup

Evelyn Alsup

Director of Education

North Star Behavioral Health

## Helen Phillips

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**From:** Linda Wynalda <lwaldo@gci.net>  
**Sent:** Saturday, April 02, 2016 12:40 AM  
**To:** House Finance Legislation  
**Cc:** Jane Pierson; Rep. Charisse Millett  
**Subject:** Vote No on HB 102

Hello, My name is Linda Wynalda. I have provided special education services to students in the Lower Yukon School District, as well as special education services in the Anchorage School District. I have also taught in general education classes for ten years in Mears Middle School. In the past nine years, I have worked in the ASD classrooms of North Star Hospital, Booth and AK Child and Family. I currently work on the Jesse Lee campus.

It is my understanding this committee is determining if education funds should be paid to residential psychiatric treatment agencies. The agencies would use the funds to provide an appropriate education for their clients through district contracts or charter schools. I believe this bill is unnecessary, and I ask that you do not pass this bill. I believe the Anchorage School District already provides an appropriate education and adapts for the mental health needs of each student in the classroom. I am writing to tell you what occurs in the treatment program I work with and what changes have taken place in the last year in the Special Schools Department of the Anchorage School District.

There are two classrooms on the Jesse Lee campus. Upon admittance to the treatment program, the agency team determines if the student will attend classes on campus or at the neighborhood school. ASD has no input into this decision.

The student is enrolled. Depending on the students' needs, classes are scheduled and academic content is usually delivered via the computer. This year, ASD has hired a fulltime counselor to ensure students in treatment are enrolled in the correct classes, and she transcribes out-of-district credits into ASD credits. There are 91 courses high school students have available to them through our APEX curriculum. Students are scheduled in the core classes required for graduation first. Elective classes are available if the core requirements have been met. The goal for each student is to earn at least three credits per semester; some students may even earn additional credits. Three credits per semester is the expectation of all high school students in any ASD school. At my facility, AK Child and Family staff teach the physical education and health classes. I teach, facilitate and coach students through the required academic content delivered via computer. The agency provides one staff person in the classroom for behavior support.

Since I work with high school students, I also have students use the Alaska Career Information System (AKCIS). They take the inventories, map out a plan for their future goals, and explore colleges or training programs. This resource is particularly helpful to remind students treatment is a stepping stone for a healthy future.

Students who have a current IEP receive the services indicated on the IEP unless those services conflict with the treatment program. I have had one student who received speech and language services. A district speech therapist came once per week to deliver the services indicated on the IEP. Accommodations, direct instruction or alternate assignments may be needed for some of the students receiving special education services. Quarterly progress reports, annual reviews and if needed, three-year reevaluations are all part of the special education process in the treatment facility. Occasionally, the agency has testing results ASD may use with parent

permission and a signed release of information to help develop an IEP if the student has shown a history of learning difficulties.

I have never had more than 13 students in my classroom. I get to know my students very well and individualize for anyone who needs additional help or enrichment whether they have an IEP or not.

In the past nine years, education in the residential or acute care facility has always been secondary to treatment. Some of the examples that treatment has come first are these:

School hours are determined by the facility

Consultation with the agency staff before any consequences/rewards for behavior are given

Students do not go on educational field trips

Homework is not part of the daily schedule

Medical appointments are scheduled during school hours

Books and magazines are censored or vetted before students may read them

Family Therapy pullouts during school hours

Div. of Voc. rehab services have been deferred/denied due to treatment constraints.

This year, additional teachers, a full time counselor, an accessible office and new computers are all contributing to a strong education program in the treatment centers. I hope the finance committee recognizes the Anchorage School District is committed to educating every student appropriately. I have given you a glimpse of what ASD provides to students in the residential treatment programs I've worked in. Please let us continue to build on the foundation started this year.

Do not pass HB 102 Thanks for your time. Linda Wynalda, ASD Special Education Teacher



# Anchorage School District

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## Education Center

5530 E. Northern Lights Blvd. • Anchorage, AK 99504 • 907-742-4000 • www.asdk12.org

April 1, 2016

House Finance Committee  
State Capitol, Room 519  
Juneau, AK 99801-1182

Honorable Members of House Finance:

The Anchorage School District does not support HB 102, Residential Psychiatric Treatment Center Funding, over which we have consistently expressed concern. We understand this legislation will have far-reaching impacts on districts across Alaska, many of whom may be unaware of the requirements it imposes on local school boards. District feedback on such impactful legislation and its associated implications on schools should be weighted heavily.

ASD has provided testimony and written comments about both HB 102 and the Senate version of the bill, SB 103, on a number of occasions. We maintain our major concerns with the legislation:

- HB 102 allows for the expenditure of public funds for the direct benefit of a private educational institution, prohibited under the Alaska Constitution;
- HB 102 would not allow districts to maintain control over the quality of education delivered at RPTCs;
- HB 102 opens the door to potential conflict and legal liability over accountability under IDEA – a highly litigious area;
- HB 102 strips local school boards of the authority to determine the need for educational programs and circumvents school board authority and discretion in approving contracts.

ASD respectfully requests your consideration of the written comments and public testimony submitted by our district, other Alaska districts, and the Governor's Council on Disabilities and Special Education.

HB 102 is unnecessary legislation. The issues referenced by North Star Behavioral Health System can and should be handled outside of the legislative process. ASD has enclosed a 16-point list of specific improvements as part of our collaboration with

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*Educating All Students for Success in Life*

**Anchorage School Board** Kameron Perez-Verdia, President

Kathleen Plunkett, Vice President

Tam Agosti-Gisler, Clerk

Bettye Davis, Treasurer

Eric Croft

Pat Higgins

Elisa Snelling

Superintendent Ed Graff

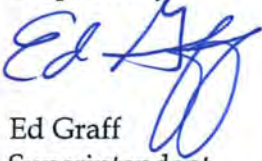
North Star Behavior Health Systems. The list encompasses significant, measurable, and meaningful accomplishments. We recognize that more work needs to be done in the spirit of mutual cooperation and partnership on our part and on the part of North Star.

ASD believes that a strong working relationship with treatment centers is critical so that the corresponding needs of students for education and treatment can be accomplished. A strong working relationship is predicated upon the willingness of both parties to move forward cooperatively, to strive for open communication and sharing of timely information, and to be committed to the mutual goal of meeting the needs of students.

Our district enjoys strong partnerships with Providence Hospital, Alaska Psychiatric Institute, Alaska Child and Family, Volunteers of America, and the Office of Children's Services, to name a few. Through cooperative engagement with clinical care providers, we have continued to increase our educational services and supports for our children with the most complex mental health and behavioral needs.

In conclusion, Anchorage School District does not support HB 102, which impacts all districts in the State of Alaska and makes fundamental changes that will not be in the best interest of our students or our state. ASD is very concerned about the implications passage of this bill will have on Special Education students and our associated responsibilities to them under IDEA, responsibilities that cannot be delegated to another entity. Mandatory contracting requirements imposed on school boards do not represent a good investment of Alaska's education dollars. ASD appreciates your consideration of the aforementioned concerns and consideration of withdrawing the legislation in favor of handling remaining issues outside of the legislative process.

Respectfully,



Ed Graff  
Superintendent

Enclosure

In order to support students in psychiatric treatment and provide educational services at North Star Behavioral Health System (NSBHS) in Anchorage, ongoing conversations with the local Educational Director and the Vice President of Specialty Education of United Health Services of Delaware, Inc. have occurred and resulted in the following improvements:

1. Updated registration process with current ASD enrollment packet;
2. Enhanced communication with parents of students in psychiatric treatment at enrollment, including personal calls by the transitional counselor to ensure appropriate course placement, IEP goals are addressed, and accurate contact information is shared;
3. Facilitated communication with parent or guardian and the receiving school to discuss transition plans upon student discharge;
4. Scheduled weekly meeting between ASD Counselor and NSBHS clinicians;
5. Purchased and installed technology upgrades by ASD for NSBHS facility:
  - a. 92 new computers;
  - b. 10 Radio controllers;
  - c. Complete reinstallation of an Anchorage School District wireless network;
6. Increased staffing:
  - a. Sue Doherty was recently named as Principal of Special Schools upon the death of Jerry Koetje in December. Ms. Doherty has 30 years of special education experience as a resource teacher, transition specialist, department chair, supervisor of special education, and school administrator. Most recently, she served as an assistant principal at a comprehensive high school transitioning students from residential treatment facilities back to their neighborhood school programs.
  - b. Transition Counselor position increased from .5 FTE (half time) to 1.0 FTE (full time)
  - c. Teacher positions increased from 6 FTE to 10 FTE;
7. Created Special Schools Office in ASD Education Center as home base for ASD Special Schools Principal and non-teaching staff;
8. Scheduled and conducted monthly staff meetings with Special Schools personnel;
9. Conducted daily site visits to NSBHS by the principal, counselor or special education department chair;
10. Increased communications between ASD Special Schools principal and the hospital staff;
11. Established weekly meeting between the NSBHS Education Director and ASD Special Schools principal;
12. Affirmed all teachers are "Highly Qualified" in relevant core areas of instruction;

April 1, 2016

House Education Committee

Anchorage School District Enclosure, Page 2

13. Increased instructional day for acute care students from a half-day to full-day program at the request of the NSBHS Director;
14. Established regular progress meetings with NSBHS staff Mike Lyons and Evelyn Alsup, and ASD staff Mike Henry, Executive Director of Secondary Education, and Sue Doherty, Special Schools Principal;
15. Scheduled quarterly progress meetings with NSBHS staff Mike Lyons and Evelyn Alsup, and ASD staff Mike Graham, Chief Academic Officer, Linda Carlson, Assistant Superintendent for Instructional Support, Mike Henry, Executive Director, Secondary Education, and Sue Doherty, Special Schools Principal;
16. Addressed reported staff shortages experienced by North Star Behavioral Health System that result in relocation of classrooms and increased class sizes, without prior notice and on any given day, by remaining flexible and committed to serving our students.



THE STATE  
of **ALASKA**  
GOVERNOR BILL WALKER

**Department of  
Health and Social Services**

GOVERNOR'S COUNCIL ON DISABILITIES  
& SPECIAL EDUCATION  
Patrick Reinhart, Executive Director

3601 C Street, Suite 740  
Anchorage, Alaska 99503-5924  
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Toll Free: 1.888.269.8990  
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March 29, 2016

**RE: HB 102 and SB 103 An Act Relating to Education in Residential Psychiatric Treatment Centers**

The Governor's Council on Disabilities and Special Education (the Council) is the Special Education Advisory Panel (SEAP) for Alaska as required under Part B of the Individuals with Disabilities Education Act (IDEA). Our role is to involve stakeholders to advise and assist the state on special education and related services. Members are former special education students, parents of students with disabilities, disability rights legal advocates, special education teachers and paraprofessionals, school administrators, staff from the Department of Education & Early Development (EED), and other state agencies including child care, Title I and the Office of Children's Services, and others involved in the early intervention and education of students with disabilities.

We are writing to express our concern and opposition to HB 102/SB 103. We first became aware of this bill in 2014 when Evelyn Alsup brought a draft for our review. The SEAP was very sympathetic to the concerns she voiced; several of our members had personal experience with NorthStar Behavioral Health System, from both the parent and the educator perspective. This legislation was allegedly developed to address legitimate concerns regarding the Anchorage School District (ASD) educational program at NorthStar in Anchorage relating to parental involvement, alignment of curriculum with the student's current course of study, delivery of educational services, and communication between ASD and the student's school district. We have already seen a detailed plan of correction implemented by the Anchorage School District, but we did not see these changes being welcomed by NorthStar and that has raised a lot of questions.

**Can the issue be solved without legislation?**

Our first question was, if this legislation was a solution to the ASD/NorthStar problem, why had the draft legislation arrived in Alaska already written and with no sponsors? When we asked Ms. Alsup, Director of Education at NorthStar about this, she informed us that United Health Services (UHS), the Fortune 500 parent company that owns NorthStar had brought forward similar bills in several other states. We assumed that the legislation would bring to light what we primarily saw as a communication problem and that ASD and NorthStar would then need to work together to correct and improve the situation, and then the bill would not be necessary. While we have seen a detailed plan of correction implemented by ASD, we did not see these changes being welcomed by NorthStar and that further concerned us.

ASD has developed and is implementing a very comprehensive, collaborative 16 point plan to address these concerns. They have created a "Special Schools" department with significantly increased highly qualified teaching, counseling, transition, and administrative staff. They have increased the number of computers and reinstalled the ASD wireless network, as well as increasing the school day, at NorthStar's request. Specific procedures were implemented to better involve the student's parents/guardians and home school district. The design is for communication between team members to be on-going. Preceding a student's discharge date, a counselor contacts the parent/guardian and school to schedule a transition meeting. There are procedures for monitoring for compliance and potential improvements.

Critical to this plan is open and transparent communication and collaboration between all parties involved. This seems like a very workable locally developed and implemented improvement plan. After reviewing the ASD plan and reviewing testimony and comments, several other important questions have jumped out at us that we feel need to be answered.

#### **Is an RPTC better at delivering educational services than a school district?**

The Council only had to look at how UHS is providing education in RPTCs in other states that have passed their legislation. UHS has struggled to be able to employ enough qualified staff, and there have been several court cases and citations involving understaffing and underqualified staff in UHS educational settings. Most notably, in California, the parents of a former student with autism, along with teachers and administrators sued UHS. The three year-long lawsuit grew to include other UHS schools and California school districts. The suit alleged that UHS employed several teachers who were either inappropriately credentialed or not credentialed at all. The plaintiffs alleged that the company's practice was to "warehouse" students with any available salaried or hourly employee and then invoice the respective school districts as though the contracted services had been properly performed. They alleged that UHS falsely attested to its compliance with the contract terms, created false records, and submitted false claims to the California State Department of Education for reimbursement. In 2012, UHS entered a settlement agreement of \$4.25 million to settle the case. Similar violations of understaffing have occurred in Virginia, where UHS was also cited for billing Medicaid for therapy during school hours and for not sending students' periodic review of IEP goals to their parents.

#### **Will this legislation restrict parental access to their children?**

The complaints about the ASD/NorthStar relationship have come from NorthStar, not from parent's groups or parent legal advocates. There have been instances that parents in Alaska have been denied access to their children and unable to obtain information about them while in RPTCs because of a misuse/misunderstanding of Health Insurance Portability and Accountability Act (HIPAA). We know of an Alaskan family who was only able to access information about their child while in a RPTC through the public school program she was attending while in treatment. They were unable to get information about their child from the RPTC until they hired an attorney, but they were able to get information about her health and wellbeing from the school, since by law, educational records are available to a parent/guardian anytime from a public school district. The loss of this additional check-and-balance is devastating to families.

#### **Is this legislation legal under our state constitution and under Federal IDEA?**

This legislation may not even be legal under IDEA, where it is stated that only a school district can be responsible for developing and implementing an Individualized Educational Program (IEP). The IDEA states that school districts cannot delegate that responsibility to another entity. The Council consulted with attorneys familiar with both educational and disability law as well as Special Education Administrators. Under IDEA only a school district can be responsible for developing and implementing an IEP and they can't delegate that responsibility to anyone else. We at the Council ask, what happens if an RPTC does not deliver the IEP services and supports?

In Section 1 Finding (1) it states that students who are admitted to RPTCs are a "special class of students," which is concerning to the Council. To separate one group as a "special class" implies that something unique can be done with regard to their rights. Many children are educated in alternative settings; students who are medically fragile and are homebound or in a hospital, those enrolled in special education day schools, or who are in juvenile detention, or in prisons. While all these students' needs are affected by the constraints of their respective educational settings, their rights are consistent across settings. These students are protected by a long-standing and well-developed body of law, which describes in detail what services school districts are obligated to provide in alternate settings. To create a so-called "special class" of students in a private RPTC is to create a distinction that serves no other purpose besides

requiring their home districts and school boards to enter into contracts to be privately served with public education dollars. RPTCs would be able to argue that as a "special class" with unique needs, these students' IEPs and their daily services must primarily serve the institutional therapeutic purpose, which may not be necessarily aligned with the existing legal guarantee of a Free and Appropriate Public Education (FAPE) in the Least Restrictive Environment (LRE) as guaranteed by IDEA.

### **Is misuse of terminology in this legislation misleading and damaging?**

In Section 1 Finding (4) it is erroneously stated that "students admitted to RPTCs are entitled to FAPE comparable to the education received by other students enrolled in public schools." FAPE is not an entitlement of all students in public education; "free appropriate public education" is a legal term used to describe unique sets of rights which are defined by the IDEA, federal regulations, federal case law, state statutes, and administrative agency decisions which are due to students who are eligible for special education. Other students who experience disabilities that require reasonable accommodation, but who don't require specialized instruction in order to get benefit from their education, are also entitled to a FAPE under Section 504 of the Rehabilitation Act of 1973. There are students in RPTCs that are not eligible for a FAPE, under either of the two federal laws described. By confusing these terms, the proposed finding blurs important distinctions between the equal access rights of students with disabilities and the educational rights of the general education population.

This use of special education terms applied to the entire public education population exposes an important problem with HB 102/SB 103. In IDEA and its implementing regulations, the federal government has created a comprehensive scheme to protect rights, and define legal relationships and obligations among parties. IDEA is very clear that the development, review, implementation, reporting, and revision of an IEP are the responsibility of the Local Education Agency (LEA). This responsibility cannot be reassigned to another agency. CFR 300.325(c) specifically states that "even if a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the public agency and the LEA" [Local Education Agency]. This is of tremendous concern to Special Education Administrators across the state. They know that if NorthStar is not able to implement the requirements of a student's IEP, that the LEA will be held accountable because it is the responsible party under the law. These services include evaluation and re-evaluation, timely IEP development and progress reports, specialized instruction and curriculum, specific staff/student ratios, and related services including occupational therapy, speech, audiology, physical therapy, modified physical education, post-secondary transition, interpreting including sign language, orientation and mobility, and medical services. If NorthStar cannot provide these services, the district is liable. The \$4.25 million dollar case in California started out as a parent filing due process against their son's school district for not having highly qualified teachers as stated in his IEP.

### **Will this legislation have a disproportionately negative impact on rural Alaska?**

And this brings us to the actual special circumstances in Alaska. HB 102/SB 103 will potentially have a disproportionately negative impact on rural Alaskan school districts. Most school boards in Alaska are not aware of this legislation and the requirement for them to enter into a binding contract with a for-profit company, like UHS. According to the draft legislation, the districts must enter into a contract and the only appeals granted are for the RPTC, not for our cash-strapped rural school districts. It is interesting to note that NorthStar appears to be stepping around the Alaska constitutional prohibition of using public education dollars for private schools by claiming they are "contracted services," yet give themselves the appeal process of public charter schools. Smaller Alaskan school districts work with a tight budget and the impact of one child going to a residential facility and being billed at any time of the year for educational services creates a high degree of financial uncertainty. We foresee that rural districts may dis-enroll students once they enter into NorthStar, placing the contractual obligation for that child squarely on the shoulders of the Anchorage School

District. Not only do we see this as a tremendous disconnect from a student's home, community, and school, we also wonder if this legislation would result in state overreach and run counter to Alaska's commitment to educational planning in the hands of local school districts and school boards.

**Conclusion**

In conclusion, the Council urges the legislature not to pass HB 102/SB 103 because the current communication issue between ASD and NorthStar can be solved without legislation that takes educational programming out of the hands of the school districts, who are legally required to provide it. These RPTC facilities are likely not better suited to provide such education, as demonstrated by several lawsuits in other states and an overall shortage in the qualified Alaskan workforce. Such governmental overreach is likely to be met with public outcry, as parental access could be restricted to their children's education in such facilities. Not only is this legislation likely illegal under both state and federal law, but it will have a disproportionately negative affect our small rural schools.

Thank you for your time and the opportunity to provide feedback on this legislation.

Sincerely,

A handwritten signature in black ink, appearing to read 'David Kohler', written in a cursive style.

David Kohler, Chair  
Education Committee  
Governor's Council on Disabilities & Special Education



WRITTEN TESTIMONY OF THE DISABILITY LAW CENTER OF ALASKA  
HOUSE FINANCE COMMITTEE  
APRIL 2, 2016

RE: HB 102 An Act Relating to Education in Residential Psychiatric Treatment Centers

Good Morning Chairman Neuman, Chairman Thompson, and Members of the House Finance Committee.

ANCHORAGE

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The Disability Law Center of Alaska thanks you for the opportunity to comment on HB 102, proposed legislation that seeks to improve the educational programming for students in residential psychiatric treatment centers in Alaska. In general, any considered effort that seeks to improve educational programming for students is a worthy effort. Unfortunately, based on our collective experience and a preliminary review of the facts and the law, HB 102 is not likely to have the intended effect of improving educational programming for students in residential psychiatric treatment centers.

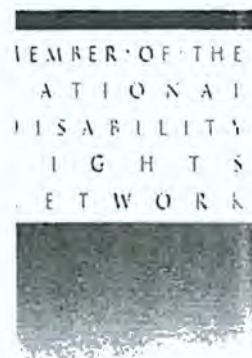
The Disability Law Center is the State's designated Protection and Advocacy system for people who experience a disability. Incorporated in 1977, our mission is to vigorously enforce and advance the rights and interests of people with disabilities.

PROBLEMS WITH HB 102

*The Facts*

Perhaps the most troubling aspect of this legislation is the absence of a well-defined problem. HB 102 proposes to redirect scarce public education funding from local school districts to private institutions to solve a problem that has been almost exclusively defined by those who stand to gain or lose financially from the passage of this bill. Can the delivery of educational services to students in residential settings be improved? Without question. Is this current problem so dire that the only solution is the drastic redirection of public funding into private hands? No.

Every year the Disability Law Center of Alaska (DLC) assists approximately two hundred students and parents from across the state in securing appropriate educational programming as mandated by the Individuals with Disabilities Education Act (IDEA). Many if not most of these requests for assistance involve students whose behavioral health problems are interfering with their education. Generally, the relief sought by the student/parent is to maintain their placement in the least restrictive environment with appropriate supports and services. Events



triggering contact with us include the restraint or seclusion of the student in school, the suspension or expulsion of the student, the harassment of the student by peers or staff, or a district's referral of a student to a special school or institutional care. Over the course of the last several years, not a single parent has contacted us to complain about educational program deficiencies in a residential psychiatric treatment center.

Also informative in this regard is that DLC staff regularly works with agencies that, as part of their responsibilities, receive public complaints about problems with educational programming, such as the Governor's Council on Disabilities and Special Education, the Department of Education and Early Development, Stone Soup Group, and LINKS. Looking back through our records, none of these groups have identified educational programming in residential psychiatric treatment centers as a systemic issue or even as a significant issue within any particular center. In fact, the last such complaint filed with the Department of Education and Early Development was recorded in 2006 and it was filed by DLC.

Notwithstanding the fact that educational programming in residential psychiatric facilities can be improved, the dearth of complaints about educational services is not surprising. In 2004, in response to parent and guardian complaints, DLC contracted with an outside expert to conduct a review of treatment practices in North Star's acute care facility. The complaints we received focused on over medication, the use of restraints and seclusion, inappropriate discharge planning, allegations of abuse and neglect, and the provision of a safe treatment environment for patients. When questioned by DLC staff about parent/guardian concerns over educational programming, the expert noted that parents were not concerned about education services, rather were more focused on medication and treatment issues.

The concerns of parents/guardians from over a decade ago are echoed today in the calls we receive from parents and guardians of children in residential psychiatric treatment centers. Over the last several years, the dozen or so complaints received by DLC have focused on inadequate medical care, inappropriate touching by staff, and threats by staff to report parents/guardians to Office of Children Services. Our database shows no record of a parent or guardian contacting DLC to complain about the educational services in a residential psychiatric treatment center.

It is also instructive to note that DLC staff met with a North Star administrator in January of 2015. While a variety of topics were covered during this conversation, the issue of inadequate educational programming within their centers never came up.

It is against this backdrop of simply no parental/guardian complaints about educational services to any of the several agencies responsible to receive and act on those complaints that we view this current legislation. If parents, guardians and students are not complaining about the educational services in residential psychiatric treatment centers, then what problem(s) is this legislation supposed to resolve? Before thousands, if not hundreds of thousands of public dollars allocated for education are transferred to private institutions, there should be an effort to better understand the problem this legislation is supposed to address. Without this critical knowledge, how is it possible to conclude that a center can succeed where the local district is purportedly failing. Presently, in the absence of facts describing an education problem,

preferably from the perspectives of students and parents and including assessment data. HB 102 would appear to be no more than a transfer public funds to private hands with no discernable benefit to students.

### *The Law*

In addition to our concerns over the absence of a clearly defined problem is the legal confusion created by HB 102. Our review of the proposed legislation within the context of Federal and State education law, primarily with respect to those laws governing the provision of special education to students with disabilities, is ongoing. Although the review continues, several initial questions became apparent.

- Why does HB 102 create a right to a free appropriate public education (FAPE) to students who are otherwise not eligible for special education? What educational purpose would that serve? FAPE is a right guaranteed under federal and state law to students eligible for special education and is term of art in special education law. And it should be noted that not all students in a residential psychiatric treatment centers are eligible for special education services. Regular education students do not need, nor are they entitled to, specialized instruction, modified curriculum, or individualized educational plans that address obstacles caused by disability; why would the state require those services for a student simply because they are admitted to a residential psychiatric facility?
- If the state will be establishing a new entitlement to FAPE for students not otherwise eligible for special education services, where will the funds come from to support those enhanced services? What procedural mechanisms will a parent follow to enforce this new right to FAPE for a non-special education student?
- Why does HB 102 align educational goals with therapeutic goals? Would that mean that a residential psychiatric facility could bill districts for therapy that is described by the center-based educational team as being integral to education? If residential psychiatric treatment centers are getting Medicaid dollars to provide clinical behavior/social skills therapy, and are also including behavior and social skills goals as part of an Individualized Educational Plan for which they are getting district funding, does that facilitate the billing of two sources for the same services? What protection or assurances would parents have that their student is getting the maximum cumulative benefit of both Medicaid and district education resources?
- Currently, several residential psychiatric treatment centers have residential students who are not in an acute crisis that attend public schools during the school day and return to the center after school is over. In the Individuals with Disabilities Education Act (IDEA), districts have an obligation to provide a FAPE in the least restrictive environment (LRE). The LRE is a term of law which means the setting (location) and placement (services) in which the student would be educated, but for the disability. It is defined more by the proximity to nondisabled peers, than by what we might

commonly think of as "restrictiveness". If this legislation were enacted, would residential psychiatric treatment centers have a financial incentive to keep a student in the center's educational program longer than is appropriate? Would a residential student who was not in an acute crisis be retained in the residential educational program, and so be denied of the right to placement in the LRE as guaranteed by the IDEA?

- The IDEA has specific timelines for providing parents with educational records, and the consequences for preventing parents from fully participating in the IEP process by not providing records are significant. Parents have the right to work samples and data collection sheets and progress notes, in advance of any meeting at which services will be discussed. Our office has had difficulty getting copies of treatment records from some centers in a timely manner. It is especially important that parents have complete information from the center because the student is not readily available for the parent to observe and communicate with. How will centers ensure that parents have access to the records and data that allow their full participation in the IEP development process that is anticipated by the IDEA?
- Under this HB 102, a school board must enter into a contract with a residential psychiatric treatment center if a student from the district is admitted there. If the center fails to provide services as described under the contract, for example, by not complying with the IDEA, the school board must continue to contract with that facility and the only recourse for the district's board would be a lawsuit on the contract. Is a parent a third party beneficiary to that contract? If the student remains enrolled in their home district, as proposed, the family must file a due process hearing complaint against their home district for relief under the IDEA. In that scenario, all of the information regarding the alleged violations would be in the control of the residential psychiatric facility, who is not a party to the due process action. Would the hearing officer be able to compel the center employees to testify in a due process hearing? Would the hearing officer have authority to compel production of therapeutic clinical records (not educational records) if the district intended to rely on them in the hearing? Would parents have the right to prevent those records from being accessed? If there was simultaneous parallel litigation in civil court on the contract, would the parent's right to a due process hearing be compromised by the fight between the district and the facility? Congress intended dispute resolution to be a parent-friendly process. Will HB 102 effectively require parents to hire a lawyer for every special education dispute, if only to navigate their third-party rights and whether administrative exhaustion is required? Does HB 102 create unnecessary uncertainty about legal relationships that are currently established under the IDEA?
- Alaska is a local control state. In Alaska, districts may adopt the state's content and performance standards or may create their own that align with the state education standards. District educators develop their own curriculum plans based in part on

local cultural and local natural environments, and with consideration of the diverse needs of their student population. Does HB 102 run counter to the state's policy of preserving local control over education by granting the Commissioner of Education and the state board of education authority to determine whether the detailed provisions of the contract --regarding local education -- that are listed in proposed subsection AS 14.30.800(c) are valid? Under HB 102, a rejection by the school board of a contract with a residential psychiatric treatment center could be appealed first to the Commissioner, and then to the state board of education. The questions on appeal at both levels are whether the detailed provisions of the contract provide fairly specific services. This allows two levels of the state department of education to substitute their judgment for the judgment of local school district educators and local school boards. The Commissioner may not have any special expertise about the details that are to be evaluated, such as "written objectives for student achievement", or "plans for providing special education, vocational education, gifted education, and bilingual education". If the rejection of the contract by the school board is based on disagreement about the content and substance of plans for education, the Commissioner would be required to make a decision about a matter that currently is left to the local school boards and districts to determine.

There are also broader legal questions that remain outstanding, such as the Legislative Counsel's analysis on whether HB 102 violates Article VII, section 1 of the Constitution of the State of Alaska. And what if the residential psychiatric treatment center is part of a religious institution? Finally, could the laws regulating charter schools, which have been tried and tested, be modified so that residential psychiatric treatment centers could open a school under that regulatory structure?

## CONCLUSION

Could school districts and residential psychiatric treatment centers work better together to ensure that students temporarily residing in residential centers receive better educational services? Most certainly. However, we remain unconvinced that this 'nuclear option' - the transfer of increasingly scarce public education funds to a private entity with no history of providing educational services to students - is sufficiently justified by the facts in evidence and the confusion it creates in the law.

Thank you.