

**SB**

**103**

<TARGET><BILL>SB 103</BILL><SUBJECT>SB  
103</SUBJECT><COMM>SJUD29</COMM></TARGET>

# SENATE COMMITTEE REPORT

DATE: 3/2/16

FURTHER:

DATE TURNED IN TO OFFICE: 3/31/16

**Judiciary Committee** considered SPONSOR SUBSTITUTE FOR SENATE BILL NO. 103

## SB 103-RESIDENTIAL PSYCHIATRIC EDUCATION FUNDING

"An Act relating to school boards; relating to approval of educational programs at residential psychiatric treatment centers; providing for funding of educational services for students in residential psychiatric treatment centers; and providing for an effective date."

and recommends:

- be replaced with <sup>SS</sup> CS SB 103 (JUD) [ ] Same Title [  ] New Title
- [ ] adopt previous CS \_\_\_\_\_ (\_\_\_\_\_) [ ] Same Title [ ] New Title
- [ ] attached amendment(s)
- [ ] adopt \_\_\_\_\_ Letter of Intent
- [ ] further referral to \_\_\_\_\_ Committee

Dept Abbr.	
ADM	LWF
CED	LAW
COR	LEG
EED	MVA
DEC	DNR
DFG	DPS
GOV	REV
DHS	DOT
AJS	UA

NEW FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #

PREVIOUS FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
DHS			<input checked="" type="checkbox"/>	1

[ ] APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	Do PASS	Do NOT PASS	No REC	AMEND
	W. elechowski		<input checked="" type="checkbox"/>		
	COSTELLO			<input checked="" type="checkbox"/>	
	Cochran	<input checked="" type="checkbox"/>			
	McCARTY	<input checked="" type="checkbox"/>			
CHAIR:	Bestman	<input checked="" type="checkbox"/>			

## 29<sup>TH</sup> ALASKA STATE LEGISLATURE

INTERIM CONTACT  
716 W. 4<sup>TH</sup> AVE. SUITE 515  
ANCHORAGE, ALASKA 99501  
(907) 269-0250



SESSION CONTACT  
STATE CAPITOL, ROOM 121  
JUNEAU, ALASKA 99801  
(907) 465-6443

SENATOR LESIL MCGUIRE

### **Explanation of Changes Version I to G**

#### **SB 103 "Residential Psychiatric Education Funding"**

A new subsection was added to the bill on page 2 line 18, this was at the request of a Residential Psychiatric Treatment Center (RPTC) in Fairbanks. The section allows a school district and a RPTC to enter into a contract for education services before January 1st preceding that school year. This is to allow RPTCs that currently have a good working relationship contracting with local school districts to continue to use their contracting method that is currently working and allows RPTCs that are being denied the ability to contract with local school districts to have an alternative method to seek a contract for educational services with the local school districts.

The sunset date of the pilot program was changed to July 1, 2020 in order to allow the program to run for a full 3 years.

Date April 5, 2016  
Senator Giessel  
Members of the Alaska State Senate  
Representative Keller  
Members of the Alaska House of Representatives

***"In these days it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education."~ Brown v. Board of Education, 347 U.S. 483(1954)~***

This information is in response to the letter sent out by the Governor's Council on Disabilities dated March 29, 2016 and the letter from the Disability Law Center dated April 4, 2016.

Unfortunately, some of the most recent testimony regarding HB 102 & SB 103 has served as a distraction to the core issue surrounding how educational services are being delivered to children and adolescents residing in an RPTC. The intention of this legislation is to insure that children and adolescents that have a diagnosed mental illness and who reside in a Residential Psychiatric Treatment Center (RPTC) receive a fair, equitable and high quality education that will allow them to successfully transition back to their traditional school. Too often in education everyone thinks there has to be an "agenda". The only "agenda" with this legislation is to shine a bright light in a dark place in order to improve the educational services for children with mental illness. Although it is helpful that stakeholders are voicing their opinion to this bill, it is imperative that the facts take precedent.

On December 10, 2015, President Obama signed into law the Every Student Succeeds Act (ESSA). This bipartisan measure reauthorizes the 50-year-old Elementary and Secondary Education Act (ESEA), the nation's national education law and longstanding commitment to equal opportunity for all students.

The Statement of Purpose is the most important section in the Every Student Succeeds Act because it describes the overall purpose of the law: ***"to provide all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps."***

Factual and historic information identified that students residing at North Star Behavioral Health were not receiving a fair, equitable and high quality education. In fact, students residing at North Star have historically been counted and assigned under the District's Special Education Program named the Whaley Center. Under the previous ESEA (No Child Left Behind Act), the Whaley Center NEVER made Adequately Yearly Progress (AYP) as reported to the Alaska Department of Education and Early Development and the District never offered parents any other school choice options as prescribed in the Act. This was brought to ASD's attention several times as well as the findings of the Education Subcommittee in the fall of 2015. By ASD's own admission, there are many areas that need to be addressed.

For the past six years, representatives from North Star appealed to three different Anchorage Superintendents, the Commissioner of Education, the School Board Chairman and countless other stakeholders to no avail. In April of 2015, the House Education Committee set up an Education Subcommittee to study this issue further and report back to the legislature. On September 16<sup>th</sup>, 2015 representatives from the House Education Subcommittee including Rep Vazquez, Rep Talerico and Rep

Drummond visited the facility and witnessed first-hand the lack of services being provided to these students. Although there was a collegial and collaborative spirit between ASD and North Star, everyone witnessed some very serious issues that showed students were not receiving a fair, equitable and high quality education.

In fact, the Education Subcommittee heard first hand from an Anchorage School District IT representative that the IT infrastructure was inadequate and there were less than 20 functioning computers to deliver the District's on-line curriculum. How could the District ever say that it was delivering a fair and equitable education when there weren't computers or the bandwidth for students to access the APEX on-line curriculum they said they were delivering? Students also didn't have course schedules that were aligned to the classes they were supposed to be taking, Individualized Learning Plans (ILP) were not completed and all special education students were unilaterally placed into a consultative placement. It was also touted that ASD increased the Transition Coordinator from a .5 FTE last year to a full 1.0 FTE this current school year. The problem with that statement is that the .5 FTE they are touting never worked with any students at North Star, their families and the facility, nor did this unfounded person ever visit North Star. It is this lack of transparency and delivery that North Star has been forced to advocate so passionately for these students.

During the legislative tour of North Star in September, ASD's Acting Principal stated that he had been granted immediate permission to purchase 64 computers and he had a temporary bandwidth solution so that students could start accessing the on-line curriculum. Everyone left the meeting encouraged that finally someone had listened. Tragically, the problem grew worse over the next two months and on November 6, 2015, North Star reported to ASD its frustration that the promised computers were still not delivered, bandwidth was not increased and students still did not have access to the on-line APEX system that students were supposed to be taking classes in. When questioned, the Acting Principal stated that the District had "tabled the plan". How could this be allowed to continue? Sensing North Star's shock and disappointment, ASD delivered 60 computers that same afternoon and commissioned the IT Department to begin upgrading the bandwidth in order to allow students to participate in their classes on-line. Would this ever be accepted at another school? Did it look like children with mental illness were not being provided a fair, equitable and high quality education? Why did this class of children have to be denied access to their education for another semester?

There has also been testimony on record regarding that a Free and Appropriate Public Education (FAPE) is not an entitlement of all students in public education. Congress enacted Public Law 94-142 in 1975. The last revision enacted by Congress on November 19, 2004 is known as the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004). Although this Act predominately speaks to protecting the rights of students with disabilities, this Act in addition to the Every Student Succeeds Act, Section 504 of the Rehabilitation Act of 1973 (Section 504) and the Americans with Disabilities Act Amendments Act of 2008 (Amendments Act) offers many students residing in an RPTC with additional protections and services.

The Statement of Purpose of IDEA 2004 is the most important statute because it is the mission statement. The Purpose of IDEA 2004 is: ***...to ensure that all children with disabilities have available to them a free and appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living.....and to ensure that the rights of children with disabilities and parents of such children are protected.....***

As stated in previous public testimony by ASD, all special education students residing at North Star are unilaterally transitioned to "consultative services". IDEA 2004 frowns on a one size fits all program that

does not take into account the individual needs of each student. Students in RPTCs who qualify are entitled to all of the provisions as found within IDEA 2004, Section 504 and the Americans with Disabilities Act Amendments Act of 2008.

As found within the Department of Education's Question and Answer Technical Assistance Paper, "The Amendments Act emphasizes that the definition of "disability" in Section 504 and the ADA should be interpreted to allow for broad coverage. Students who, in the past, may not have been determined to have a disability under Section 504 and Title II may now in fact be found to have a disability under those laws. A student whom a school district did not believe had a disability, and therefore did not receive, as described in the Section 504 regulation, special education or related services before passage of the Amendments Act, must now be considered under these new legal standards. The school district would have to evaluate the student, as described in the Section 504 regulation, to determine if he or she has a disability and, if so, the district would have to determine whether, because of the disability, the student needs special education or related services. 34 C.F.R. §§ 104.3(l), 104.33.

Section 504 and the ADA define disability as (1) a physical or mental impairment that substantially limits a major life activity; (2) a record of such an impairment; or (3) being regarded as having such an impairment. 29 U.S.C. § 705(9)(B); 42 U.S.C. § 12102(1). The Amendments Act does not alter these three elements of the definition of disability in the ADA and Section 504. But it significantly changes how the term "disability" is to be interpreted.

Specifically, Congress directed that the definition of disability shall be construed broadly and that the determination of whether an individual has a disability should not demand extensive analysis. 42 U.S.C. § 12102 note. Among other changes, the Amendments Act specifies that:

An impairment need not prevent or severely or significantly restrict a major life activity to be considered substantially limiting. *Id.*

In the phrase "a physical or mental impairment that substantially limits a major life activity," the term "substantially limits" shall be interpreted without regard to the ameliorative effects of mitigating measures, other than ordinary eyeglasses or contact lenses. Amendments Act § 4(a) (codified as amended at 42 U.S.C. § 12102). Mitigating measures are things like medications, prosthetic devices, assistive devices, or learned behavioral or adaptive neurological modifications that an individual may use to eliminate or reduce the effects of impairment. These measures cannot be considered when determining whether a person has a substantially limiting impairment. Therefore, impairments that may not have previously been considered to be disabilities because of the ameliorative effects of mitigating measures might now meet the Section 504 and ADA definition of disability. For example, a student who has an allergy and requires allergy shots to manage that condition would be covered under Section 504 and Title II if, without the shots, the allergy would substantially limit a major life activity. (See also discussion of evaluation requirements at Q7-9, 11-14 below.)

An impairment that is episodic or in remission is a disability if, when in an active phase, it would substantially limit a major life activity, Amendments Act § 4(a) (codified as amended at 42 U.S.C. § 12102). For example, a student with bipolar disorder would be covered if, during manic or depressive episodes, the student is substantially limited in a major life activity (e.g., thinking, concentrating, neurological function, or brain function).

For the "regarded as" prong of the disability definition, if an individual can establish that he or she has been subjected to an act prohibited by Title II or Section 504 (e.g., refused admission or expelled or

denied equal access to educational programs) because of an actual or perceived physical or mental impairment, then he or she is entitled to protection under these laws. The Amendments Act clarifies that the statutory protections apply whether or not the individual actually has the impairment, and also whether or not the impairment is perceived to be a substantial limitation on a major life activity.<sup>7</sup> See Amendments Act § 4(a) (codified as amended at 42 U.S.C. § 12102). For example, consider a nondisabled student whose mother is a well-known AIDS activist in the community. After the student transfers schools at mid-year, he is harassed by other students based on their mistaken assumption that he has AIDS. This student, who is regarded as having an impairment, would be protected by the ADA and Section 504.<sup>8</sup>

An individual will not be "regarded as" a person with a disability if the impairment is both transitory (meaning that it has an actual or expected duration of six months or less) and minor, Amendments Act § 4(a) (codified as amended at 42 U.S.C. § 12102).

An entity need not provide a reasonable modification of policies, practices, or procedures to individuals who meet the definition of disability solely because they are "regarded as" having a physical or mental impairment. See Amendments Act § 6(a) (codified as amended at 42 U.S.C. § 12201(h)). As described above, however, such individuals would be entitled to protection from discrimination, including but not limited to protection from retaliation and harassment on the basis of disability.

In most cases, application of these rules should quickly shift the inquiry away from the question whether a student has a disability (and thus is protected by the ADA and Section 504), and toward the school district's actions and obligations to ensure equal educational opportunities. While there are no per se disabilities under Section 504 and Title II, the nature of many impairments is such that, in virtually every case, a determination in favor of disability will be made. Thus, for example, a school district should not need or require extensive documentation or analysis to determine that a child with diabetes, epilepsy, bipolar disorder, or autism has a disability under Section 504 and Title II."

In the days ahead, we hope that all stakeholders can admit that there is much work to be done serving children who have a mental illness and reside in an RPTC. We have exhausted all other remedies and it is time another option be granted so that students can receive a fair, equitable and high quality education. Because this is a three year pilot program, there will be tangible outcome data reported back to the legislature to compare its effectiveness to the current model being provided. We respectfully ask for your support of this legislation.

Sincerely,

*Evelyn Alsup*

Evelyn Alsup  
Director of Education  
North Star Behavioral Health

**CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 103(JUD)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:  
Referred:

Sponsor(s): SENATORS GIESSEL, Ellis, Costello

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to school districts; relating to school boards; relating to approval of  
2 educational programs at residential psychiatric treatment centers; providing for  
3 funding of educational services for students in residential psychiatric treatment centers;  
4 and providing for an effective date."

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

6 \* **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section  
7 to read:

8 **LEGISLATIVE FINDINGS AND INTENT.** The legislature finds that

9 (1) students who are admitted to residential psychiatric treatment centers are a  
10 special class of students because they are confined to residential psychiatric treatment centers  
11 for mental health treatment and must be provided with educational services at the centers  
12 rather than in traditional schools;

13 (2) because of the unique educational and mental health treatment needs of  
14 those students, school districts are sometimes challenged to meet the educational needs of

1 students admitted to residential psychiatric treatment centers;

2 (3) in some instances, a residential psychiatric treatment center is able to  
3 provide more effective educational and treatment services to an admitted student than a school  
4 district can provide to the student;

5 (4) students admitted to residential psychiatric treatment centers are entitled to  
6 a free and appropriate public education comparable to the education received by other  
7 students enrolled in public schools;

8 (5) the educational opportunities of students admitted to residential psychiatric  
9 treatment centers should not be compromised while the students are admitted for treatment;  
10 and

11 (6) a free and appropriate public education is an integral part of providing a  
12 successful treatment outcome for a student admitted to a residential psychiatric treatment  
13 center.

14 \* **Sec. 2.** AS 14.30 is amended by adding new sections to read:

15 **Article 14. Educational Programs Provided by Residential Psychiatric Treatment**  
16 **Centers.**

17 **Sec. 14.30.800. Contracts for educational programs at residential**  
18 **psychiatric treatment centers.** (a) A school district may enter into a contract to  
19 provide payments to a residential psychiatric treatment center that provides an  
20 educational program for a student admitted to the center. If a school district and a  
21 residential psychiatric treatment center are unable to agree on a proposed contract on  
22 or before January 1 immediately preceding the first school year for which the  
23 residential psychiatric treatment center is seeking funding, the school board where a  
24 student who is admitted to the center is enrolled shall enter into a contract with the  
25 center as provided in (b) of this section.

26 (b) A school board shall enter into a contract to provide payments to a  
27 residential psychiatric treatment center that provides an educational program for a  
28 student admitted to the center if

29 (1) the center

30 (A) is licensed under AS 47.32; and

31 (B) submits to the school board a proposed contract that

1 includes, at a minimum, the information described under (c) of this section not  
2 less than 60 days before the beginning of the school year;

3 (2) the student is enrolled in the school district;

4 (3) the student is admitted to the center

5 (A) under a court order;

6 (B) by the Department of Health and Social Services under  
7 AS 47.10.087 or AS 47.12.255; or

8 (C) by private placement under the written orders of a licensed  
9 physician or mental health professional finding that the placement is medically  
10 necessary; and

11 (4) the school board finds that the reimbursement rate proposed by the  
12 center under (c)(21) of this section is reasonable.

13 (c) A contract between a school board and a residential psychiatric treatment  
14 center must include the following provisions:

15 (1) the center's admission policies and procedures;

16 (2) the teacher-to-student ratio, including projected enrollment;

17 (3) a description of the educational program and how the program  
18 aligns with state content and performance standards;

19 (4) a description of student assessments provided in the educational  
20 program and an agreement that the center will administer student assessments required  
21 by the state;

22 (5) written objectives for student achievement;

23 (6) the center's plans for providing special education, vocational  
24 education, gifted education, and bilingual education for students, as applicable;

25 (7) an educational program schedule and calendar;

26 (8) a description of staff development activities;

27 (9) documentation that a teacher who possesses a valid teacher  
28 certificate issued by the department and meets additional training requirements under  
29 AS 14.30.250 will provide the educational services;

30 (10) documentation that a person who possesses a valid administrative  
31 certificate issued by the department and meets other training requirements under

1 AS 14.30.255 will administer the special education services;

2 (11) assurances that the center has adopted a certificated employee  
3 evaluation system based on professional performance standards for evaluation and  
4 improvement of the performance of the center's teachers and educational services  
5 administrators;

6 (12) assurances that the center will follow procedures established by  
7 the department to comply with federal law, including 20 U.S.C. 1400 - 1482  
8 (Individuals with Disabilities Education Act);

9 (13) a summary of the center's budget and financial plan;

10 (14) the method by which the center will account for receipts and  
11 expenditures;

12 (15) assurances that the center will comply with all state and federal  
13 requirements for receipt and use of public funds;

14 (16) proof that the center is approved by the Department of Health and  
15 Social Services;

16 (17) a written plan to collaborate with the school district to coordinate  
17 an individual course of study to allow the student to transition successfully back to the  
18 school district;

19 (18) a commitment that, as a condition of funding, the center shall only  
20 expend funds received under (b) of this section for educational services provided at the  
21 center;

22 (19) an agreement that, as a condition of funding, the center shall allow  
23 audit and inspection of records by state and federal agencies and shall return  
24 overpayments;

25 (20) the term of the contract; the term of the contract may not exceed  
26 three years; and

27 (21) the reimbursement rate to be provided by the school district for  
28 educational services provided by the center.

29 (d) A school board shall issue a written decision approving or rejecting a  
30 contract under (b) of this section within 30 days after the center submits the contract to  
31 the school board. The school board's decision must include all relevant findings of fact

1 and conclusions of law.

2 (e) If a school board approves a contract under this section, the school board  
3 shall forward the application to the state Board of Education and Early Development  
4 for review and approval.

5 (f) If a school board rejects a contract under (b) of this section, the center may  
6 appeal the rejection to the commissioner. The center shall file the appeal not later than  
7 60 days after the school board issues a written decision of rejection. The commissioner  
8 shall review the local school board's decision to determine whether the findings of fact  
9 are supported by substantial evidence and whether the decision is contrary to law. The  
10 center may appeal a decision of the commissioner upholding a school board's rejection  
11 of a contract to the state Board of Education and Early Development within 30 days  
12 after the commissioner issues a written decision.

13 (g) If the commissioner approves a contract, the commissioner shall forward  
14 the application to the state Board of Education and Early Development for review and  
15 approval. The commissioner shall forward the contract not later than 30 days after the  
16 commissioner issues a written decision. The state board shall exercise independent  
17 judgment in evaluating the contract.

18 (h) A school board that rejected a contract that is approved by the state board  
19 on appeal shall enter into the contract and honor the terms of the contract.

20 **Sec. 14.30.810. Appeal of application for funding.** (a) In an appeal to the  
21 commissioner under AS 14.30.800(f) or (g), the commissioner shall review the record  
22 before the school board to determine whether the proposed contract meets the  
23 requirements under AS 14.30.800(c) and whether the proposed reimbursement rate is  
24 reasonable. The commissioner may request written supplementation of the record from  
25 the residential psychiatric treatment center or the school board. The commissioner  
26 may

27 (1) remand the appeal to the school board for further review;

28 (2) approve the contract and forward the contract to the state Board of  
29 Education and Early Development; or

30 (3) uphold the decision rejecting the contract; if the commissioner  
31 upholds a school board's decision to reject the contract and the center appeals to the

1 state Board of Education and Early Development, the commissioner shall immediately  
2 forward the contract and record to the state board.

3 (b) In an appeal to the state Board of Education and Early Development of a  
4 rejection of a contract under (a)(3) of this section, the state board shall determine,  
5 based on the record, whether the commissioner's findings are supported by substantial  
6 evidence and whether the decision is contrary to laws. The state board shall issue a  
7 written decision within 90 days after an appeal.

8 **Sec. 14.30.820. Definitions.** In AS 14.30.800 - 14.30.820,

9 (1) "residential psychiatric treatment center" or "center" means a  
10 secure or semi-secure facility, or an inpatient program in another facility, that  
11 provides, under the direction of a physician, psychiatric diagnostic, evaluation, and  
12 treatment services on a 24-hour-a-day basis to an individual with severe emotional or  
13 behavioral disorders;

14 (2) "school district" has the meaning given in AS 14.30.350.

15 \* **Sec. 3.** AS 14.30.800, 14.30.810, and 14.30.820 are repealed July 1, 2020.

16 \* **Sec. 4.** This Act takes effect immediately under AS 01.10.070(c).

**SPONSOR SUBSTITUTE FOR SENATE BILL NO. 103**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-NINTH LEGISLATURE - SECOND SESSION**

**BY SENATORS GIESSEL, Ellis, Costello**

**Introduced: 2/17/16**

**Referred:**

**A BILL**  
**FOR AN ACT ENTITLED**

1 **"An Act relating to school boards; relating to approval of educational programs at**  
2 **residential psychiatric treatment centers; providing for funding of educational services**  
3 **for students in residential psychiatric treatment centers; and providing for an effective**  
4 **date."**

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

6 \* **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section  
7 to read:

8 **LEGISLATIVE FINDINGS AND INTENT.** The legislature finds that

9 (1) students who are admitted to residential psychiatric treatment centers are a  
10 special class of students because they are confined to residential psychiatric treatment centers  
11 for mental health treatment and must be provided with educational services at the centers  
12 rather than in traditional schools;

13 (2) because of the unique educational and mental health treatment needs of  
14 those students, school districts are sometimes challenged to meet the educational needs of

1 students admitted to residential psychiatric treatment centers;

2 (3) in some instances, a residential psychiatric treatment center is able to  
3 provide more effective educational and treatment services to an admitted student than a school  
4 district can provide to the student;

5 (4) students admitted to residential psychiatric treatment centers are entitled to  
6 a free and appropriate public education comparable to the education received by other  
7 students enrolled in public schools;

8 (5) the educational opportunities of students admitted to residential psychiatric  
9 treatment centers should not be compromised while the students are admitted for treatment;

10 (6) a free and appropriate public education is an integral part of providing a  
11 successful treatment outcome for a student admitted to a residential psychiatric treatment  
12 center; and

13 (7) there is a demonstrated need to provide uniform requirements to allow  
14 school boards to enter into contracts to authorize residential psychiatric treatment centers to  
15 serve as educational service providers for admitted students.

16 \* **Sec. 2.** AS 14.30 is amended by adding new sections to read:

17 **Article 14. Educational Programs Provided by Residential Psychiatric Treatment**  
18 **Centers.**

19 **Sec. 14.30.800. Contracts for educational programs at residential**  
20 **psychiatric treatment centers.** (a) A school board shall enter into a contract to  
21 provide payments to a residential psychiatric treatment center that provides an  
22 educational program for a student admitted to the center if

23 (1) the center

24 (A) is licensed under AS 47.32; and

25 (B) submits to the school board a proposed contract that  
26 includes, at a minimum, the information described under (b) of this section not  
27 less than 60 days before the beginning of the school year;

28 (2) the student is enrolled in the school district;

29 (3) the student is admitted to the center

30 (A) under a court order;

31 (B) by the Department of Health and Social Services under

1 AS 47.10.087 or AS 47.12.255; or

2 (C) by private placement under the written orders of a licensed  
3 physician or mental health professional finding that the placement is medically  
4 necessary; and

5 (4) the school board finds that the reimbursement rate proposed by the  
6 center under (b)(21) of this section is reasonable.

7 (b) A contract between a school board and a residential psychiatric treatment  
8 center must include the following provisions:

9 (1) the center's admission policies and procedures;

10 (2) the teacher-to-student ratio, including projected enrollment;

11 (3) a description of the educational program and how the program  
12 aligns with state content and performance standards;

13 (4) a description of student assessments provided in the educational  
14 program and an agreement that the center will administer student assessments required  
15 by the state;

16 (5) written objectives for student achievement;

17 (6) the center's plans for providing special education, vocational  
18 education, gifted education, and bilingual education for students, as applicable;

19 (7) an educational program schedule and calendar;

20 (8) a description of staff development activities;

21 (9) documentation that a teacher who possesses a valid teacher  
22 certificate issued by the department and meets additional training requirements under  
23 AS 14.30.250 will provide the educational services;

24 (10) documentation that a person who possesses a valid administrative  
25 certificate issued by the department and meets other training requirements under  
26 AS 14.30.255 will administer the special education services;

27 (11) assurances that the center has adopted a certificated employee  
28 evaluation system based on professional performance standards for evaluation and  
29 improvement of the performance of the center's teachers and educational services  
30 administrators;

31 (12) assurances that the center will follow procedures established by

1 the department to comply with federal law, including 20 U.S.C. 1400 - 1482  
2 (Individuals with Disabilities Education Act);

3 (13) a summary of the center's budget and financial plan;

4 (14) the method by which the center will account for receipts and  
5 expenditures;

6 (15) assurances that the center will comply with all state and federal  
7 requirements for receipt and use of public funds;

8 (16) proof that the center is approved by the Department of Health and  
9 Social Services;

10 (17) a written plan to collaborate with the school district to coordinate  
11 an individual course of study to allow the student to transition successfully back to the  
12 school district;

13 (18) a commitment that, as a condition of funding, the center shall only  
14 expend funds received under (a) of this section for educational services provided at the  
15 center;

16 (19) an agreement that, as a condition of funding, the center shall allow  
17 audit and inspection of records by state and federal agencies and shall return  
18 overpayments;

19 (20) the term of the contract; the term of the contract may not exceed  
20 three years; and

21 (21) the reimbursement rate to be provided by the school district for  
22 educational services provided by the center.

23 (c) A school board shall issue a written decision approving or rejecting a  
24 contract under (a) of this section within 30 days after the center submits the contract to  
25 the school board. The school board's decision must include all relevant findings of fact  
26 and conclusions of law.

27 (d) If a school board approves a contract under this section, the school board  
28 shall forward the application to the state Board of Education and Early Development  
29 for review and approval.

30 (e) If a school board rejects a contract under (a) of this section, the center may  
31 appeal the rejection to the commissioner. The center shall file the appeal not later than

1 60 days after the school board issues a written decision of rejection. The commissioner  
2 shall review the local school board's decision to determine whether the findings of fact  
3 are supported by substantial evidence and whether the decision is contrary to law. The  
4 center may appeal a decision of the commissioner upholding a school board's rejection  
5 of a contract to the state Board of Education and Early Development within 30 days  
6 after the commissioner issues a written decision.

7 (f) If the commissioner approves a contract, the commissioner shall forward  
8 the application to the state Board of Education and Early Development for review and  
9 approval. The commissioner shall forward the contract not later than 30 days after the  
10 commissioner issues a written decision. The state board shall exercise independent  
11 judgment in evaluating the contract.

12 (g) A school board that rejected a contract that is approved by the state board  
13 on appeal shall enter into the contract and honor the terms of the contract.

14 **Sec. 14.30.810. Appeal of application for funding.** (a) In an appeal to the  
15 commissioner under AS 14.30.800, the commissioner shall review the record before  
16 the school board to determine whether the proposed contract meets the requirements  
17 under AS 14.30.800(b) and whether the proposed reimbursement rate is reasonable.  
18 The commissioner may request written supplementation of the record from the  
19 residential psychiatric treatment center or the school board. The commissioner may

20 (1) remand the appeal to the school board for further review;

21 (2) approve the contract and forward the contract to the state Board of  
22 Education and Early Development; or

23 (3) uphold the decision rejecting the contract; if the commissioner  
24 upholds a school board's decision to reject the contract and the center appeals to the  
25 state Board of Education and Early Development, the commissioner shall immediately  
26 forward the contract and record to the state board.

27 (b) In an appeal to the state Board of Education and Early Development of a  
28 rejection of a contract under (a)(3) of this section, the state board shall determine,  
29 based on the record, whether the commissioner's findings are supported by substantial  
30 evidence and whether the decision is contrary to laws. The state board shall issue a  
31 written decision within 90 days after an appeal.

1                   **Sec. 14.30.820. Definitions.** In AS 14.30.800 - 14.30.820,

2                   (1) "residential psychiatric treatment center" or "center" means a  
3                   secure or semi-secure facility, or an inpatient program in another facility, that  
4                   provides, under the direction of a physician, psychiatric diagnostic, evaluation, and  
5                   treatment services on a 24-hour-a-day basis to an individual with severe emotional or  
6                   behavioral disorders;

7                   (2) "school district" has the meaning given in AS 14.30.350.

8                   \* **Sec. 3.** AS 14.30.800, 14.30.810, and 14.30.820 are repealed July 1, 2019.

9                   \* **Sec. 4.** This Act takes effect immediately under AS 01.10.070(c).

# ALASKA STATE LEGISLATURE

716 W 4<sup>th</sup> Avenue  
Anchorage AK 99501-2133  
907-269-0181



State Capitol  
Juneau AK 99801-1182  
907-465-4843  
800-892-4843

North to the Future

## Senator Cathy Giessel

Senate District N

### Sponsor Statement

#### **SB 103 “Residential Psychiatric Education Funding”**

Senate Bill 103 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 schools. 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 or 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 a grade.

This bill would create a three-year pilot program allowing RPTCs to contract with school districts to provide educational services for the patients/children seeking treatment for serious mental illness. Since most students in this situation have their treatment paid for by the state, it is in Alaska’s best interest to solve this problem.

The goal of this bill is to allow children to fulfill their full potential by providing stable environment and an adequate education.

I urge you to support this bill keeping children on their educational path while seeking treatment for a serious mental illness.

Chair Senate Resources Committee | Vice-Chair Health & Social Services | Vice-Chair Labor & Commerce

[Senator.Cathy.Giessel@akleg.gov](mailto:Senator.Cathy.Giessel@akleg.gov)

# ALASKA STATE LEGISLATURE

716 W 4<sup>th</sup> Avenue  
Anchorage AK 99501-2133  
907-269-0181  
Fax: 907-269-0184



State Capitol  
Juneau AK 99801-1182  
907-465-4843  
Fax: 907-465-3871

North to the Future

**Senator Cathy Giessel**  
Senate District N

## Sectional Analysis

### SSSB 103 “Residential Psychiatric Education Funding”

(version I)

**Section 1:** Legislative findings and intent

**Section 2:** Adds a new section AS 14.30.800-820:

**AS 14.30.800 Educational Programs Provided by Residential Psychiatric Treatment Centers**

This section provides for contracts between local school districts and a center for education services for children confined by court order or medical order to a center for mental health treatment and specifies the conditions for a contract.

**AS 14.30.810 Appeal of application for funding**

This section provides for an appeal process from the local board to the Commissioner of the Department of Education and the State Board of Education.

**AS 14.30. 820**

Definitions of “residential psychiatric treatment center” and “school district”

**Section 3:** Repeals the legislation on July 1, 2019 making this a 3-year pilot project.

**Section 4:** Immediate effective date

Chair Senate Resources Committee | Vice-Chair Health & Social Services | Vice-Chair Labor & Commerce

[Senator.Cathy.Giessel@akleg.gov](mailto:Senator.Cathy.Giessel@akleg.gov)

# Fiscal Note

State of Alaska  
2016 Legislative Session

Bill Version: SB 103  
Fiscal Note Number: \_\_\_\_\_  
( ) Publish Date: \_\_\_\_\_

Identifier: SB103SS-EED-SS-2-19-16  
Title: RESIDENTIAL PSYCHIATRIC EDUCATION  
FUNDING  
Sponsor: GIESSEL  
Requester: Senate Education Committee

Department: Department of Education and Early Development  
Appropriation: K-12 Support  
Allocation: Special Schools  
OMB Component Number: 2735

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2017 Appropriation Requested	Included in Governor's FY2017 Request	Out-Year Cost Estimates					
			FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
<b>Total Operating</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Fund Source (Operating Only)**

None								
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Positions**

Full-time								
Part-time								
Temporary								

<b>Change in Revenues</b>								
---------------------------	--	--	--	--	--	--	--	--

**Estimated SUPPLEMENTAL (FY2016) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2017) cost:** 0.0 *(separate capital appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
If yes, by what date are the regulations to be adopted, amended or repealed?

**Why this fiscal note differs from previous version:**

This version changes the requirement that the department adopt regulations and approve applications for residential psychiatric treatment centers to the requirement that school districts enter into contracts with residential psychiatric treatment centers and the requirement that the State Board of Education review and approve the contracts. This version also provides for an appeal process if funding is denied.

Prepared By: Elizabeth Nudelman, Director  
Division: School Finance & Facilities  
Approved By: Commissioner Mike Hanley  
Agency: Dept of Education & Early Development

Phone: (907)465-8679  
Date: 02/19/2016 04:00 PM  
Date: 02/19/16

FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2016 LEGISLATIVE SESSION

BILL NO. SB 103

**Analysis**

This bill adds a new section, AS 14.30.800, Contracts for educational programs at residential psychiatric treatment centers. Under this sponsor substitute, a school district must enter into a contract to provide funding to a residential psychiatric treatment center for educational services provided to students that meet the four criteria listed under (a).

The bill adds a new section, AS 14.30.810, Appeal of application for funding. This section provides a center with the opportunity for an appeal to the commissioner if the local school board denies funding and to the State Board of Education if the commissioner denies the funding.

This bill adds a new section, AS 14.30.820, Definitions. This section defines "residential psychiatric treatment center" and "school district."

The fiscal effect is at the school district level.

There is no known fiscal impact for Senate Bill 103 on the public school funding formula under AS 14.17.

The bill repeals the new sections on July 1, 2019.

The Act takes effect immediately.

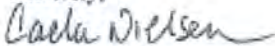
Dear House Education Committee Members,

I am writing this letter in support of HB 102. My name is Caela Nielsen and I am the parent of a child who has received mental health treatment in both the long term and short term facilities at North Star. The stress created in a family and a child when they enter treatment is great and can often exacerbate the already pre-existing conditions requiring treatment. This is multiplied many times over when your child does not receive education that is equivalent to the education he would receive in his regular school setting. My child has fallen behind in his schooling and struggles to reintegrate into the public school system due to this. Can you imagine being a child who just received help for a serious mental health problem and then being told you are now one year behind in high school? This causes even more stress to the family when trying to convince the child to continue their education rather than drop out.

My family received the appropriate transition material for my child to return to the community, however the struggle was in getting the educational records needed for him to transition back into school. Many of the classes he took while in treatment did not align with classes being offered at his high school. The treatment facilities are in need of support in order to properly meet the educational goals of all children. My son has often times wanted to give up, but I have advocated for him and he will return to school however, it took a full week after we left North Star to transition back into the public education system, so he will now have even more educational material he has missed.

The current system for educating this population does not work. I believe by passing HB102 the education and school transitions for children receiving mental health treatment in Alaska will greatly improve. North Star has the ability to incorporate education with mental health, and when working through the treatment team process create a sound, supportive educational and transition plan for each child. Please support this population of children and pass this bill to support their educational undertakings.

Sincerely,



Caela Nielsen


Senator Dunleavy,

My name is Melanie Nelson and I am the Administrator of the Coastal Trail and Williwaw programs at North Star Behavioral Health. I am writing this letter in support of SB103. Families should not have to struggle between receiving mental health treatment for their child or their child's education. Educational services in the program right now do not serve the child or family in a way that allows for the child to stay current with school and move forward in their education while receiving treatment for mental health issues. Too often students leave the program further behind in their educational endeavors than before they entered. This is a concern as education and school can often be the one positive thing in a child's life and is definitely an area that can help them become productive members of the community.

SB103 would allow school districts to contract with facilities to provide education for youth residing in their programs. Mental health and education would be intermingled and clear transitions and educational plans developed that would go back to resident school districts. This bill would allow for clear measurable key educational indicators to be identified and outcomes tracked for stakeholders, allow for a comprehensive continuum of care that encompasses treatment and educational planning, and increase the educational opportunities of child.

I ask for your support for SB103 as it will greatly increase the educational opportunities for children receiving mental health treatment in Alaska.

Sincerely,

A handwritten signature in cursive script that reads "Melanie Nelson".

Melanie Nelson

Dear Senators,

This letter is in support of SB103.

My daughter has been undergoing treatment for depression for nearly 8 months at a treatment facility in Anchorage. We have experienced many challenges in regards to her schooling. Some of these include: little or no contact with teachers and school staff, incorrect placement in courses (she's an honor student placed in basic courses), lack of a direct connection between counselors/administrators and students.

I have come to understand that my daughter's situation is not unique. Coming from Fairbanks to Anchorage and living in a residential treatment facility has required that she use the Anchorage School District Program. If SB103 were to pass it would allow the treatment facilities to work directly with students home districts and keep them on track to rejoin their respective school upon completion of their treatment. SB103 would also improve the connection of parents and students to school staff and student progress. I believe in-house teaching staff could better monitor student's mental health and adjust workloads in conjunction with guidance from a student's therapist.

SB103 seems like it would benefit students who are going through other important struggles in their life and I encourage your support.

Thank you,

Brian Charlton

**Alaska Mental Health Board  
Advisory Board on Alcoholism and Drug Abuse  
431 N. Franklin St. Suite 200  
Juneau, Alaska, 99801**



February 19, 2016

Senator Cathy Giessel  
Alaska Capitol Room 427  
Juneau, Alaska 99801

Re: SB 103 – Education in Residential Psychiatric Treatment Centers

Dear Senator Giessel,

The Alaska Mental Health Board and Advisory Board on Alcoholism and Drug Abuse have followed the discussion related to the quality, accessibility, and appropriateness of the education being provided to youth admitted to residential psychiatric treatment. We are extremely concerned that students with such severe disabilities are apparently not receiving the education to which they are entitled under the Alaska Constitution and federal law. We support finding a solution to address this situation as quickly as possible, with the primary focus being on the educational needs of our young constituents.

It is our understanding that the educational experience of students receiving residential psychiatric care varies from school district to school district. Given that youth experiencing severe mental health disorders must go to an urban center (Juneau, Anchorage, Fairbanks) for residential treatment, it is imperative that parents, students, and school districts be able to rely on consistent expectations and obligations statewide – especially for youth who will eventually transition back to their home school district after treatment. SB 103 provides that consistency.

Providing a mechanism by which access to equal educational opportunities, regardless of disability, is guaranteed for all Alaska children is imperative. We appreciate your sponsoring a bill to help resolve this disparity, and look forward to an ongoing conversation about how best to provide for the educational needs of disabled students statewide.

Sincerely,

J. Kate Burkhart  
Executive Director

**Alaska Mental Health Board  
Advisory Board on Alcoholism and Drug Abuse  
431 N. Franklin St. Suite 200  
Juneau, Alaska, 99801**



February 19, 2016

Representative Wes Keller  
Alaska Capitol Room 403  
Juneau, Alaska 99801

Re: HB 102 – Education in Residential Psychiatric Treatment Centers

Dear Representative Keller,

The Alaska Mental Health Board and Advisory Board on Alcoholism and Drug Abuse have followed the discussion related to the quality, accessibility, and appropriateness of the education being provided to youth admitted to residential psychiatric treatment. We are extremely concerned that students with such severe disabilities are apparently not receiving the education to which they are entitled under the Alaska Constitution and federal law. We support finding a solution to address this situation as quickly as possible, with the primary focus being on the educational needs of our young constituents.

It is our understanding that the educational experience of students receiving residential psychiatric care varies from school district to school district. Given that youth experiencing severe mental health disorders must go to an urban center (Juneau, Anchorage, Fairbanks) for residential treatment, it is imperative that parents, students, and school districts be able to rely on consistent expectations and obligations statewide – especially for youth who will eventually transition back to their home school district after treatment. HB 102 provides that consistency.

Providing a mechanism by which access to equal educational opportunities, regardless of disability, is guaranteed for all Alaska children is imperative. We appreciate the House Education Committee sponsoring a bill to help resolve this disparity, and look forward to an ongoing conversation about how best to provide for the educational needs of disabled students statewide.

Sincerely,

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

J. Kate Burkhart  
Executive Director



1120 E. Huffman Road  
Suite 24-543  
Anchorage, AK 99515

advanc-ed.org  
888.413.3669, ext. 5775

February 4, 2016

To Whom It May Concern:

My name is Tim Cline and I am the Alaska AdvancED Director. AdvancED is the accrediting agency for all education school in Alaska. Today I am writing this letter in support of HB 102 that if passed would provide educational funding for students in residential psychiatric treatment centers.

This year marks my thirty-sixth year in education in Alaska. In that time I have been an educator in three different rural school districts (Yukon-Koyukuk S.D., North Slope Borough S.D., and Galena City S.D). During my tenure I experienced what happens when a child is in crisis and needing care away from their home. I recall times that students left our school only to return at a later date after receiving some necessary care. We did our best to pick up educationally where we left off and continue on but never knew what, if any, education took place while they were away. I was always grateful to have our students back safe and sound but wondered why there was so little communication regarding their academics while away. I simply wrote off the results as if there was nothing that could be done given the circumstances.

In more recent years, I have seen what can happen when a child's education is included in their recovery plan and that education is managed in the residing facility. The success is undeniable and far exceeds any traditional education model being used in these facilities today. All indicators point to allowing the Residential Psychiatric Treatment Centers to take the lead. Teachable moments can become a part of a child's therapy and positively impact their recovery. At a time when a child is most in need of extraordinary care, they can to get it in Alaska, and I believe without sacrificing their education should this bill be passed.

I urge our legislators to pass HB 102 so our children receive the kind of support on the ground that we know can make the difference. These hospital settings are quite unique and the student turnover is often great. Regardless, this bill would put the ownership of educational progress in the hands of those who work with the children in this challenging setting. Let them customize a program for this setting. As a long time educator in Alaska, I know it will make the difference for these children.

It is also worth noting that I have already been approached by several organizations seeking to accredit their organization should this bill pass. You can be assured that those who become accredited will be delivering quality education to their students.

Thank you in advance for your support.

A handwritten signature in black ink that reads "K. Timothy Cline".

K. Timothy Cline  
Alaska AdvancED Director

Senator Mike Dunleavy  
State Capitol, Room 11  
Juneau, AK 99801

February 23, 2016

Dear Senator Dunleavy,

My name is Michelle Hook and I am the Chief Nursing Officer (CNO) of North Star Behavioral Health System. Three of our facilities are dedicated to serving up to 160 children at a time in acute care and residential programs. Many of these patients have the most extreme behavioral health needs in Alaska and our facilities provide the only inpatient behavioral health beds in the entire state for children under the age of 12. Our services support families in crisis here in Alaska, so that their children are not sent for treatment out of state. We routinely receive admissions from all areas in Alaska and work with local and remote medical providers to deliver care for their patients.

I am writing to request your support for Education Funding Equality for Children with Mental Illness (SB103). This very important legislation will support children who are receiving intensive mental health treatment, by providing them with comparable and equitable educational services.

I would like to be on record in support of this legislation. My 18 years of caring for mentally ill patients as a psychiatric nurse inform my opinion that this legislation will:

- Reduce stress among patients and their families regarding a disruption or delay in their educational progress. Parents will not have to choose between getting medical help for their children or keeping them in school
- Help "normalize" the experience of suffering through mental illness. Being able to continue one's education while receiving mental health treatment can help reduce the negative impact mental illness can have and strengthen self esteem
- Provide financial accountability by requiring school districts to send a portion of any funding that would normally be part of the funding formula from their public school at home for the specific days of school attendance
- Support licensed facilities in delivering appropriate educational services provided by licensed teachers while the student is also receiving essential mental health services which provides more seamless continuity of care

I have been so pleased to see the children move throughout their day attending school classes here in the hospital as well as receiving mental health care. I believe each of these activities can complement each other so effectively. I stopped by a classroom here at the hospital the week after the most recent earthquake and the teacher was explaining earthquakes in a scientific way. It was the perfect opportunity to educate the children while also helping reduce their anxiety.

Senator Mike Dunleavy  
State Capitol, Room 11  
Juneau, AK 99801

If the Senate and House Education Funding Equality for Children with Mental Illness Bill were passed by the legislature and signed into law by the Governor, this would strongly support mentally ill children and their families in obtaining much needed mental health services while minimizing the impact to their education. Being mentally ill should not also mean a child must fall behind in school.

I respectfully request you to support the Education Funding Equality for Children with Mental Illness Senate Bill as it will greatly improve the ability of children with severe mental illness to concurrently receive educational services and mental health care.

With Kind Regards,

Michelle Hook MSN, BA, RN  
Chief Nursing Officer  
North Star Behavioral Health System  
2530 DeBarr Road  
Anchorage, Alaska 99508

Office: 907-264-3510  
Cell: 907-312-6772  
Email: [Michelle.Hook2@uhsinc.com](mailto:Michelle.Hook2@uhsinc.com)

# *Juneau Youth Services, Inc.*

907.789.7610  
907.789.2106 Fax

P.O. Box 32839  
Juneau, AK 99803

February 18, 2015

Representative Wes Keller  
120 4<sup>th</sup> Street, Room 403  
Juneau, AK 99801-1182

Dear Representative Keller,


I am writing to request your support for HB 102, Education Funding Equality for Children with Mental Illness. This important piece of mental health and education legislation will assist children with severe emotional or behavioral disorders by giving them the opportunity to receive an equitable and comparable education while they receive intensive mental health treatment.

I would like to go on record as supporting this legislation since it will:

- Increase the educational opportunities and measurable outcomes for children with mental illness so that they can successfully transition back to their traditional school after receiving intensive and sometimes lifesaving mental health treatment;
- Allow the licensed facility to deliver appropriate educational and related services provided to the student by licensed teachers and credentialed service providers while the student is present in the facility;
- Allow for a more comprehensive continuum of care by individualizing each student's academic plan to complement their therapeutic treatment goals;
- Provide the state real time data that will assist with meeting the needs of other special populations such as students residing in rural villages; and
- Increase the length of time students spend in school learning, and track measurable outcomes to be reviewed by state stakeholders.

I ask you to support HB102 as it will improve the provision of educational services to children in Alaska with severe mental illnesses and emotional disorders.

Sincerely,



Walter Majoros  
JYS Executive Director

# *Juneau Youth Services, Inc.*

---

907.789.7610  
907.789.2106 Fax

P.O. Box 32839  
Juneau, AK 99803

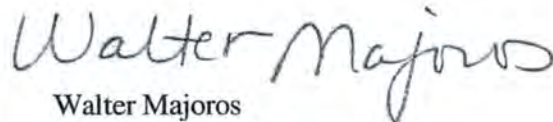
February 15, 2016

Representative Wes Keller  
120 4<sup>th</sup> Street, Room 403  
Juneau, AK 99801-1182

Dear Representative Keller,

I am writing to express my support for CSHB 102 Work Draft I dated January 29, 2016. I have reviewed this draft and support the contracts for educational services in residential treatment programs as stipulated in this version of the legislation. I have also attached my letter of support for the original version of the legislation. Thank you for your consideration.

Sincerely,



Walter Majoros  
JYS Executive Director

February 23, 2016

Senator Dunleavy  
Alaska Capitol Room 11  
Juneau, Alaska 99801

Re: SB 103 – Education in Residential Psychiatric Treatment Centers

Dear Senator Dunleavy,

The Alaska Mental Health Trust Authority, by statute, works to improve the lives of Trust beneficiaries – which include young Alaskans with severe emotional disturbances. For some time now, the Trust has been extremely concerned that students with severe disabilities have apparently not been receiving the education to which they are entitled under the Alaska Constitution and federal law. The Trust unequivocally supports finding a solution to address this situation as quickly as possible. SB 103 is a step in the right direction by funding educational services for students in residential psychiatric treatment facilities.

It is imperative that students, parents, and school districts be able to rely on consistent expectations and obligations statewide – especially for youth who will eventually transition back to their home school district after treatment.

We appreciate the Senate Education Committee sponsoring a bill to help resolve this disparity, and look forward to an ongoing conversation about how best to provide for the educational needs of disabled students statewide. Providing a mechanism by which access to equal educational opportunities, regardless of disability, is guaranteed for all Alaska children is imperative.

Sincerely,



Jeff Jessee  
Chief Executive Officer



## AKCHILD & FAMILY

Senator Mike Dunleavy  
State Capitol, Room 11  
Juneau, AK 99801

February 22, 2016

RE: Support of Changes to SB 103

Dear Senator Dunleavy:

I am writing in support of SB 103, and the changes to this bill that have occurred since the last time I wrote you back in February of 2015. As I noted last year, AK Child & Family serves approximately 150 of Alaska's most troubled children per day in a variety of mental health services in the Anchorage area. These services include psychiatric residential treatment services, treatment foster care, individual, group and family outpatient psychotherapy, and wrap-around treatment services for children and families who we can treat in their homes to prevent the need for out of the home services.

I am once again writing to request your support for Education Funding Equality for Children with Mental Illness, SB103. This important piece of mental health and education legislation will give children with severe mental health disorders the opportunity to receive an equitable and comparable education while they receive intensive mental health treatment. These are Alaskan children in a secure or semi-secure facility licensed by the Department of Health and Social Services (DHSS) that provides, under the direction of a physician, psychiatric treatment services on a 24-hour-a-day basis.

Once again this year I want to go on record as supporting this legislation as I believe it will:

- Increase the educational opportunities and measurable outcomes for children with mental illness so that they can successfully transition back to their traditional school after receiving intensive and sometimes lifesaving mental health treatment.

- Allow the licensed facility, in conjunction with the school district, to deliver appropriate educational and related services provided by licensed teachers and credentialed service providers to the student while the student is admitted to the facility.
- Allow for a more comprehensive continuum of care by individualizing each student's academic plan to complement their therapeutic treatment goals.
- Provide the state real time data that will assist the state with meeting the needs of other special populations such as students residing in rural villages.
- Increase the length of time students spend in school learning and track measurable outcomes to be reviewed by state stakeholders.

If SB 103 were passed by the legislature and signed into law by our Governor, this would give my semi-secure psychiatric treatment center, in conjunction with the school district, a chance to develop a full day school program for those students who cannot attend public schools due to the severity of their mental illness. This full day school would help keep these students on track to graduate with their classmates and prevent them from taking an unnecessary hit on their otherwise fragile self image. I ask you to support SB 103 as it will improve the provision of educational services to children with severe mental illness.

Sincerely,



Denis McCarville  
President and CEO  
AK Child & Family

**THE ANCHORAGE SCHOOL DISTRICT  
AND  
FRONTLINE HOSPITAL, LLC dba NORTH STAR HOSPITAL**

This contract is entered into by and between **ANCHORAGE SCHOOL DISTRICT**, whose address is 5530 E. Northern Lights Blvd. Anchorage, AK 99504, hereafter referred to as “the District” and **FRONTLINE HOSPITAL, LLC., d/b/a North Star Hospital**, 2530 DeBarr Road & 1500 DeBarr Circle, Anchorage AK 99508, hereinafter referred to as “the Provider”.

WHEREAS, the Provider is a psychiatric residential treatment facility approved and qualified to provide behavioral health and educational services to children and adolescents in Alaska; and

WHEREAS, the Provider and the District wish to enter into a contractual arrangement, as further described herein, with respect providing general education, special education and related services to residents admitted under a physician’s order due to meeting medical necessity for a diagnosed mental illness.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and intending to be legally bound, the parties hereto agree as follows.

1. **Incorporation of Recitals:** The matters recited above are hereby incorporated into and made a part of this Agreement.
2. **Term of Agreement:** The term of this Agreement will be for a period commencing with the Effective Date and ending on June 30, 2019.
3. **Termination:** This contract may be terminated by the District for Provider’s failure to meet educational achievement goals or fiscal management standards, for a default in any material provision of this agreement or for other good cause related to nonperformance. The District shall provide 90 days written notice to Provider of its intent to terminate this contract and the reason thereof. If the Provider fails to remedy the cause for termination in a reasonable amount of time provided by the District, this contract shall automatically terminate at the end of the stated time. In the event this Agreement is terminated, all monies due shall be paid according to the terms of the Agreement for services provided through the effective date of termination. Any unused funds and all properties remaining shall immediately be returned to the District upon such termination.
4. **Facility:** The Provider shall provide educational services at North Star Behavioral Health facilities.
5. **Modification:** This agreement may be altered or modified at any time by mutual written agreement between the parties.
6. **Admission Policy:** Any school aged resident of the Provider admitted under a physician’s order due to meeting medical necessity for a diagnosed mental illness that is otherwise eligible to attend school may apply for admission to the academic program. The Provider agrees that it shall not discriminate against applicants based upon any of the protected classes, and that it shall provide equal access to

its facilities to all residents in compliance with state and federal law. The Provider shall be nonsectarian, and shall not be affiliated in any respect with any sectarian institution.

7. **Services Description:** The following expresses the parties' mutual understanding with regard to the commitment, cooperation and collaboration involved in this Agreement. The parties shall timely confer on any issues that may affect the delivery of services hereunder and use all reasonable efforts to address and resolve such issues. With regards to the Educational Services ("Services") which will be provided at the Facility:

**The Provider Agrees:**

1. Abide by the Family Education Rights & Privacy Act (FERPA) for confidentiality, and maintenance of educational records;
2. Provide proof that the Provider is approved by the Department of Health and Social Services and licensed under AS 47.32;
3. Provide Alaska licensed Special Education personnel and licensed teachers under AS 14.30.250;
4. Supervise the initiation, amendment and implementation of new and existing IEP's, ILP's and evaluation plans. Administrator will possess a valid administrative certificate under AS 14.30.255
5. Provide academic instruction and related services to the students as referenced in the student's IEP. Provider shall comply with federal law including 20 U.S.C. 1400-1482 (Individuals with Disabilities Education Act);
6. Retain a copy of the student's educational file, including but not limited to, transcript, IEPs, evaluations, disciplinary reports, and awards and commendations for a period of at least one year;
7. Comply with the requirements of the District, including:
  - a. telephone and written notification to the parent/legal guardian and District of any student suspension;
  - b. convening a student's IEP Team to determine if the suspendable behavior is a manifestation of the student's disability;
  - c. except as authorized by the IDEA and the Alaska regulations, not suspending a student for more than ten (10) school days, consecutive or cumulative, without reconvening the IEP team to hold an evaluation to determine whether there has been a significant change in placement;
  - d. providing school information and data to educational and behavioral components for an evaluation, and interim IEP, to the District;
7. Maintain an individual education file for each student which will include meeting notices, re-evaluations, IEPs, progress reports, access to records form, destruction of records forms, and any other pertinent school records;
8. Coordinate with the District re-evaluations and IEP meetings occurring at Provider, and make classroom teachers available for meetings in accordance with the law;
9. Conduct psycho-educational and academic evaluations as determined by the Evaluation & Planning Team;
10. Provide current information for IEP development;
11. Participate in all noticed IEP and re-evaluation meetings;
12. Chair/co-chair with District all IEP and re-evaluation meetings using District forms such as those from the District's Zangle System. Ensure that copies of completed documents are mailed to participants postmarked within ten (10) working days from the date of the meeting;
13. Ensure curriculum alignment with the State of Alaska Content and Performance Standards;

14. Ensure participation in state and federally mandated English Language assessments by ELL students;
15. Advertise, interview, hire, and supervise licensed Alaska teachers, aides, educational interpreters;
16. Maintain monthly communication with the District;
17. Implement the student's IEP to reasonably assure that the IEP goals and objectives are implemented;
18. Assist District in developing transition and reintegration plans;
19. Identify and designate an academic case manager for each student;
20. Measure resident performance through a variety of means; but not limited to progress reports, report cards, progress monitoring assessments, and test requirements in compliance with DEED and District; Provider shall ensure participation in all state and/or district assessments;
21. Notify the District of any student who is truant or who is planning to withdraw from school, and will collaborate with District and parents/guardians/guardians to maintain the student in school or find other educational alternatives;
22. Prepare and send quarterly progress reports to the parents/guardians and the District;
23. Notify the District promptly if a Special Education student appears to be at risk of failure; if the IEP as written appears not to be meeting the student's needs; or if any other problem of significance to the student arises;
24. Provide services based on the traditional District calendar including any extended school year services as outlined in an IEP.

**The District agrees to:**

1. Provide access to all student records, including copies of current health records, most recent IEP, evaluation records including the most recent re-evaluation, behavioral evaluations, student disciplinary reports, and any other relevant school records and information;
2. Assume financial responsibility for reimbursement and additional IEP related services including employment of individual aides for students with behavioral, medical, or special communication needs, as determined by the IEP;
3. Participate in all noticed IEP and re-evaluation meetings as the District representative. If District cancellation occurs, participation of District representative will be held through telephone conference, or by another member of the IEP team appointed by the District to be the District representative during the meeting;
4. Have shared responsibility for procedural requirements including responding to a complaint in meeting the Individuals with Disabilities Education Act (IDEA) and the Alaska Department of Education Regulations. District acts as the local education agency (LEA) to ensure the delivery of a free and appropriate public education (FAPE);
5. Provide a school calendar.
8. **Compensation:** In full consideration of the performance of the Provider's obligations under this Agreement, the District agrees to pay the Provider \_\_\_\_\_ less administrative costs for local education agency coordination. The Provider will invoice the District on a monthly basis during the school year. Invoices are due and payable within thirty (30) days of receipt by the District. The provider shall only expend funds received under this section for educational services provided by the Provider. The Provider shall allow audit and inspection of records by state and federal agencies and shall return overpayments.

9. **Receipts and Expenditures:** The Provider shall account for receipts and expenditures by using and complying with the Districts chart of accounts. Provider agrees that it shall comply with all state and federal requirements for receipt of public money.
10. **Liability of Officers:** No officer, member, official, employee or agent of the District or Provider shall be individually or personally liable in connection with this Agreement. Nothing contained in this Agreement is a waiver by either party of governmental and/or qualified immunity provided by law.
11. **Provider's Liability Insurance:** Provider shall maintain, at its own cost, general liability insurance and professional liability insurance during the term of this Agreement in an amount of \$1,000,000.00 per occurrence/\$3,000,000.00 aggregate per year. Such coverage shall be effective to cover all services rendered by Provider on behalf of the District whether the claim arises (i) while Provider is still covered by such policy or thereafter, or (ii) after the termination of Provider relationship with District. Upon request, Provider will provide a certificate of insurance to the District. Provider shall advise the District in writing at least ten (10) days in advance of the cancellation or non-renewal of any insurance policy referred to above. Upon termination of this Agreement, Provider shall continue such coverage or shall obtain "tail" coverage to protect the Provider and the District in connection with all actions taken by Provider pursuant to this Agreement.
12. **District Liability Insurance.** The District shall maintain, at its own cost, general liability insurance and professional liability insurance during the term of this Agreement in an amount of \$1,000,000.00 per occurrence/\$3,000,000.00 aggregate per year. Such coverage shall be effective to cover all services rendered by the District whether the claim arises (i) while the District is still covered by such policy or thereafter, or (ii) after the termination of the District's relationship with Provider. Upon request, the District will provide a certificate of insurance to Provider. The District shall advise Provider in writing at least ten (10) days in advance of the cancellation or non-renewal of any insurance policy referred to above. Upon termination of this Agreement, the District shall continue such coverage or shall obtain "tail" coverage to protect the District and Provider in connection with all actions taken by the District pursuant to this Agreement.
13. **Notices:** All notices required under this Agreement shall be in writing and sent to the addresses and persons set forth below, or to such other addresses as may be designated by a party in writing. All notices shall be deemed received when (i) delivered personally, or (ii) sent by confirmed facsimile (followed by the actual document), or (iii) one day after deposit with a commercial express courier specifying next day delivery, with written verification of receipt. Refusal to accept delivery has the same effect as receipt.

**To the District:**

**Superintendent  
Anchorage School District  
5530 E. Northern Lights Blvd.  
Anchorage, AK 99504**

To Provider:

CEO or Designee  
North Star Hospital  
2530 DeBarr Road  
Anchorage, AK 99508

14. **Right of Entry:** Any of the District's officers, employees, subcontractors or agents, providing Services hereunder shall be permitted with reasonable notice to enter upon Provider property in connection with the performance of the Services hereunder, subject to the terms and conditions contained herein and those rules established by Provider. Consent to enter upon Provider shall not create, nor be deemed to imply, the creation of any additional responsibilities on the part of Provider. The District shall use, and shall cause each of its officers, employees and agents to use, the highest degree of care when entering upon Provider in connection with the Services. Any and all claims, suits or judgments, costs, or expenses, including reasonable attorney fees, arising from, by reason of, or in connection with any such entries shall be treated in accordance with the applicable terms and conditions of this Agreement, including without limitation, the insurance provisions contained in this Agreement.
15. **Counterparts and Facsimiles:** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one instrument. A signature delivered by facsimile or electronic means shall be considered binding for both parties.
16. **Assignment:** This Agreement may not be assigned, delegated or transferred by either party.
17. **No Rights of Third Parties:** Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties to it and their respective successors, legal representatives, nor is anything in this Agreement intended to relieve or discharge the obligations or liability of any third persons to any party to this Agreement, nor shall any provisions give any third person any right of subrogation or action over or against any party to this Agreement.
18. **Entire Agreement:** This Agreement contains the entire understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings, inducements or conditions, express or implied, oral or written, except as herein contained. The express terms hereof control and supersede any course of performance and/or usage of the trade inconsistent other than by an agreement in writing, duly signed by all parties. This Agreement may not be modified or amended other than by an agreement in writing, duly signed by all parties.
19. **Waiver:** The waiver by either party to this Agreement of any one or more defaults, if any, on the part of the other, shall not be construed to operate as a waiver of any other future defaults, either under the same or different terms, conditions, or covenants contained in this Agreement, in its Exhibits, or in written notice hereunder.
20. **Independent Contractor Relationship:**

- (A) **Engagement of Provider:** The District engages the Provider as an independent contractor, and not as an employee, to perform the services set forth below, and the Provider hereby accepts such engagement as an independent contractor upon the terms and conditions hereinafter set forth.
- (B) **Independent Contractor Status:** It is mutually understood and agreed that the Provider and the District are at all times acting and performing as independent contractors. The Provider shall be solely responsible for the payment of unemployment compensation, worker's compensation and any income, occupational, F.I.C.A. or other taxes, assessments, interest or penalty of any kind whatsoever assessed by any governmental agency or entity which may pertain to any monies earned, collected, paid or charged by or to the District or any of its employees or agents, pursuant to this Agreement. Provider may accrue worker's compensation and human resources reserves. In addition, the Provider and its employees shall have no claim under this Agreement or otherwise against the District for any employee benefits of any kind. No relationship, other than independent contractor, is created between the parties. Neither party has any rights as agents, employee, joint venture or partner in the business of the other.

21. **Confidentiality, HIPAA and MHPA:**

- (A) **Confidentiality:** The District and Provider acknowledge both parties will have access to certain proprietary and confidential information of the other party including, but not limited to, curriculum, student data, and other information physically in the parties' possession, hereinafter referred to as ("Confidential Information"). The District and Provider agree not to use, disclose or divulge, directly or indirectly, any Confidential Information belonging to the other party during the term of this Agreement or at any time thereafter other than in connection with performing services under this Agreement. Each party (the "Disclosing Party") may, in the course of the relationship established by this Agreement, disclose to the other party in confidence non-public information concerning utilization management procedures, patient treatment and/or finances, and such party's earnings, volume of business, methods, systems, practices, plans and other Proprietary Information (collectively, "Confidential Information"). Each party acknowledges that the Disclosing Party shall at all times be and remain the owner of all Confidential Information disclosed by such party, and that the party to which Confidential Information is disclosed shall be use its best efforts, consistent with the manner in which is protects its own Confidential Information, to preserve the confidentiality of any Confidential Information which such party knows or reasonably shall know that the Disclosing Party deems to be Confidential Information. Neither party shall use for its own benefit or disclose to third parties any Confidential Information of the other party without such other party's written consent subject to state and federal laws.
- (B) **HIPAA and the Mental Health Procedures Act:** The Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), a federal law, and the Mental Health Procedures Act ("MHPA"), a state law, require mental health facilities, like the Provider, to take specific steps to protect the confidential mental health information and records created and/or obtained during the course of providing services to patients. To the extent Provider creates records and obtains information concerning District students that is protected by HIPAA and the MHPA, that confidential information will only be disclosed to the

District upon valid authorization. Valid consent must be obtained from the student, parents and/or guardians. Provider will take reasonable steps to obtain authorization for release of information protected by HIPAA and the MHPA.

22. **Entire Agreement:** This Agreement contains the entire understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings, inducements or conditions, express or implied, oral or written, except as herein contained. The express terms hereof control and supersede any course of performance and/or usage of the trade inconsistent other than by an agreement in writing, duly signed by all parties. This Agreement may not be modified or amended other than by an agreement in writing, duly signed by all parties.
23. **Binding Effects:** This Agreement shall be binding upon and shall insure to the benefit of the parties hereto and their successors.
24. **Severability:** The parties agree that in the event any provision of this Agreement shall or become invalid or unenforceable in whole or in part for any reason whatsoever, the remaining provisions shall, nevertheless, be valid and binding as if such invalid or unenforceable provision had not been contained in this Agreement.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date set forth below.

**Authorized Signatures**

\_\_\_\_\_  
Signature of District Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name of District Representative

\_\_\_\_\_  
Position

\_\_\_\_\_  
Signature of Provider Representative

\_\_\_\_\_  
Date

Printed Name of Provider Representative

Position

**AMENDMENT**

OFFERED IN THE SENATE  
TO: SSSB 103

BY SENATOR COGHILL

1 Page 6, following line 8:

2 Insert a new section to read:

3 **"\* Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to  
4 read:

5 APPLICABILITY. AS 14.30.800 - 14.30.820, added by sec. 2 of this Act, apply to  
6 contracts that provide funding for educational services provided to students admitted to  
7 residential psychiatric treatment centers that take effect on or after the effective date of this  
8 Act."

9

10 Renumber the following bill section accordingly.

# Alaska State Legislature

Senate Majority Leader

Joint Armed Services Committee  
Co-Chairman  
Judiciary Committee  
Vice-Chairman  
Resources Committee  
State Affairs Committee  
Legislative Council  
Rules Committee



Senator John Coghill

Session Address:  
State Capitol, Room 119  
Juneau, AK 99801-1182  
(907) 465-3719  
Fax (907-465-3258

Interim Address:  
1292 Sadler Way, Suite 340  
Fairbanks, AK 99701  
(907) 451-2997  
Fax (907) 451-3526  
877-465-3719

[www.aksenate.org](http://www.aksenate.org)

## MEMORANDUM

Date: March 29, 2016

To: Leg Legal

From: Rynnieva Moss, Legislative Aide *RyMoss*

Re: LS0733 SB 103

---

Please prepare an amendment for SB 103 that Inserts the following language on page 2, line 20, after "(a)":

"A school district may enter into a contract to provide payments to a residential psychiatric treatment center that provides an educational program for a student admitted to the center. If a school district and a residential psychiatric treatment center are unable to agree on a proposed contract on or before January 1 immediately preceding the first school year for which the residential psychiatric treatment center is seeking funding, the school board where a student who is admitted to the center is enrolled shall enter into a contract with the center as provided in (b) of this section.

(b)"

The bill is scheduled to be heard in Senate Judiciary tomorrow.

29-LS0733\I.3  
Glover  
3/29/16

**AMENDMENT**

OFFERED IN THE SENATE  
TO: SSSB 103

BY SENATOR COGHILL

- 1 Page 6, line 8:
- 2 Delete "2019"
- 3 Insert "2020"

AMENDMENT

OFFERED IN THE SENATE  
TO: SSSB 103

BY SENATOR COGHILL

- 1 Page 1, line 1, following "Act":  
2       Insert "**relating to school districts**;"  
3  
4 Page 2, line 9, following "treatment;":  
5       Insert "and"  
6  
7 Page 2, line 12:  
8       Delete "; and"  
9       Insert "."  
10  
11 Page 2, lines 13 - 15:  
12       Delete all material.  
13  
14 Page 2, line 20, following "(a)":  
15       Insert "A school district may enter into a contract to provide payments to a residential  
16 psychiatric treatment center that provides an educational program for a student admitted to the  
17 center. If a school district and a residential psychiatric treatment center are unable to agree on  
18 a proposed contract on or before January 1 immediately preceding the first school year for  
19 which the residential psychiatric treatment center is seeking funding, the school board where a  
20 student who is admitted to the center is enrolled shall enter into a contract with the center as  
21 provided in (b) of this section.  
22               (b)"  
23

1 Reletter the following subsections accordingly.

2

3 Page 2, line 26:

4 Delete "(b)"

5 Insert "(c)"

6

7 Page 3, line 6:

8 Delete "(b)(21)"

9 Insert "(c)(21)"

10

11 Page 4, line 14:

12 Delete "(a)"

13 Insert "(b)"

14

15 Page 4, line 24:

16 Delete "(a)"

17 Insert "(b)"

18

19 Page 4, line 30:

20 Delete "(a)"

21 Insert "(b)"

22

23 Page 5, line 15:

24 Delete "AS 14.30.800"

25 Insert "AS 14.30.800(f) - (g)"

26

27 Page 5, line 17:

28 Delete "AS 14.30.800(b)"

29 Insert "AS 14.30.800(c)"

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101


State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

March 29, 2016

**SUBJECT:** School district contracts  
(SSSB 103; Work Order No. 29-LS0733\I.2)

**TO:** Senator John Coghill  
Vice-Chair of the Senate Judiciary Committee  
Attn: Rynniva Moss

**FROM:** Kate S. Glover   
Legislative Counsel

The amendment you requested is attached. I am providing you with this memorandum to alert you to a potential equal protection issue raised by the amendment.

The amendment allows school districts to contract with treatment centers under any terms the district and the center deem acceptable, but, if no agreement is reached, requires school boards to enter into contracts if certain requirements are met. It is not clear why a treatment center is not required to meet any standards if it can reach agreement on a contract before a certain date, but the same treatment center would have to meet standards if it does not reach agreement on a contract before that date. There may be situations where this raises legal issues. If, for example, students admitted to treatment centers that enter into contracts with school districts (contracts that are exempt from the requirements for school board contracts under the bill) receive lower quality educational services, those students may be able to challenge the bill (if it is enacted) on equal protection grounds.

The equal protection clause of art. I, sec. 1 of the Constitution of the State of Alaska requires the state to show, at a minimum, that the legislation is supported by a legitimate state interest and that there is a substantial relationship between the means chosen and the interest the legislation serves.<sup>1</sup> At the higher end of the scale, the state must demonstrate a compelling interest and show that the interest cannot be furthered through less restrictive means. For that reason, I encourage you to provide explanations on the record of the state interest the different contract requirements serve and how they are necessary to further that interest.

---

<sup>1</sup> *Matanuska-Susitna Borough Sch. Dist. v. State*, 931 P.2d 391, 396 (Alaska 1997) (quoting *Alaska Pacific Assur. Co. v. Brown*, 687 P.2d 264, 269 – 70 (Alaska 1984)).

Senator John Coghill  
March 29, 2016  
Page 2

If the committee's intent is to grandfather in existing agreements, an alternative approach is to establish a date for which school districts who do not have an existing contract must enter into a contract as provided in sec. 14.30.800(b).<sup>2</sup>

If I may be of further assistance, please advise.

KSG:dla:lem  
16-286.lem

Attachment

---

<sup>2</sup> As explained in previous memoranda to your office, either approach raises the potential of violating art. VII, sec. 1 of the Constitution of the State of Alaska if a court finds that the treatment center is an educational institution.

# ALASKA STATE LEGISLATURE

716 W 4<sup>th</sup> Avenue  
Anchorage AK 99501-2133  
907-269-0181



State Capitol  
Juneau AK 99801-1182  
907-465-4843  
800-892-4843


North to the Future

**Senator Cathy Giessel**  
Senate District N

## MEMORANDUM

**DATE:** March 2, 2016

**TO:** Senator Lesil McGuire  
Chair, Senate Judiciary Committee

**FROM:** Senator Cathy Giessel 

**RE:** Request for Committee Hearing, Senate Bill 103, Residential Psychiatric Education Funding

---

I respectfully request that **Senate Bill 103** "Residential Psychiatric Education Funding" be scheduled for a hearing before the Senate Judiciary Committee at your earliest convenience.

Senate Bill 103 seeks ensure that children admitted into a residential psychiatric treatment center do not fall behind in their education while getting treatment. The bill seeks to establish a pilot program to allow residential treatment centers to contract with local school districts in order to provide education services to their patients and ensure those patients continue on their education path.

Attached you will find:

1. SSSB 103 version I
2. SB 103 Sponsor Statement
3. SB 103 Sectional Analysis version I
4. SB 103 Fiscal Note version I
5. SB 103 Backup Documents
6. SB 103 Letters of Support

Please contact Kari Nore, 465-4843, in my office if you need any further information.

Chair Senate Resources Committee | Vice-Chair Health & Social Services | Vice-Chair Labor & Commerce

[Senator.Cathy.Giessel@akleg.gov](mailto:Senator.Cathy.Giessel@akleg.gov)



# Anchorage School District

## Education Center

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

March 9, 2016

Senate Judiciary Committee  
State Capitol, Beltz 105 (TSBldg)  
Juneau, AK 99801-3004

Honorable Members of Senate Judiciary:

Thank you for the opportunity to provide information to the Senate Judiciary Committee that has not yet been presented in your review of SB 103, Residential Psychiatric Education Funding.

The Anchorage School District agrees with most of the legislative findings set forth at Section 1 of this bill. Students admitted to residential treatment facilities are entitled to educational services and those services should not be compromised by virtue of the fact that a student needs psychiatric treatment.

Where ASD disagrees is with paragraph (3) of Section 1, which provides that a treatment center, in some instances, is able to provide more effective educational services to a student than a school district can provide. Additionally, ASD disagrees with paragraph (7) that there is a demonstrated need to provide uniform requirements to allow school boards to enter into contracts for treatment centers to provide educational services.

School districts exist to meet the educational needs of students. That is their primary role. ASD is unaware of any statistics or anecdotal information supporting the premise that psychiatric treatment centers are more able to provide educational services to students than the public school district.

ASD believes that a strong working relationship with these treatment centers is critical so that the corresponding needs of students for education and treatment can be accomplished. However, ASD also 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. For this reason and others, ASD does not support SB 103.

The Anchorage School District has several psychiatric treatment facilities within its geographical boundaries. Under current law, ASD is obligated to and does serve all students who are admitted to these treatment facilities, regardless of whether they are ASD students or students from other Alaska school districts. These current laws include both state law (AS 14.30.186, AS 14.30.340, and AS 14.14.090) and federal law (34 CFR 300.323).

*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

Because of the presence of treatment facilities in Anchorage, ASD serves a large number of Alaskan students who are in need of residential psychiatric treatment. For decades, ASD has met the general education and special education needs of these Alaskan students and intends to continue doing so. ASD provides direct instructional support to students through qualified teachers, administrators, and support personnel. In Anchorage, where most students are served, there is not a need for residential treatment centers to provide educational services, nor does ASD agree that such a center can provide more “effective” educational services.

SB 103 has been compared to the charter school laws. The “contract” provided for in SB 103 is comparable to the charter school application required to be submitted by charter school applicants. There is an important difference, however. Charter schools are *public schools*. They are not private treatment centers.

Additionally, the charter school laws allow public school districts to carefully consider the need for an educational program like that proposed by the charter school applicant. Under the law, the School Board has broad authority and discretion to approve or deny a charter school contract. Unlike the charter school laws, SB 103 removes all discretion from school boards because it *requires* a school district to execute a contract so long as the contract meets the requirements of the law. (“A school board *shall* enter into a contract to provide payments to a residential psychiatric treatment center...” SB 103, Section 2)

ASD believes that SB 103 is unconstitutional. Article VII of the Alaska Constitution prohibits the expenditure of public funds for the direct benefit of a private educational institution. The Alaska Supreme Court has stated that “the direct benefit prohibition involves government aid to *education* conducted outside the public schools.” *Sheldon Jackson v. State*, 599 P.2d 127, 130 (Alaska 1979). SB 103 does exactly what *Sheldon Jackson v. State* prohibits – it establishes a system of education to be provided by a private organization.

The fact that the private entities at issue also provide treatment services does not mean that the educational services they provide can be supported with public funds. There's been some testimony that by providing ancillary services these treatment centers may not run afoul of the Constitution. This is not accurate. Even if non-educational services are provided, these private treatment centers would still be accepting public funds for providing educational services. The “contract” requirements of SB 103 are designed to ensure that the educational services comply with the same requirements in existence for public schools.

The Alaska Supreme Court has also found that even indirect support of private schools (such as providing bus transportation to students) violates Alaska’s constitutional prohibition of using public funds for private education. *Matthews v. Quinton*, 362 P.2d 932 (Alaska 1961). Here, SB 103 provides for direct payment of a local school district’s educational funds to a private

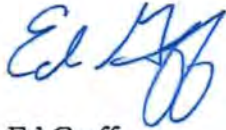
March 9, 2016  
Senate Judiciary Committee  
Page Three

treatment center for the sole purpose of allowing that private center to provide educational services to students.

Finally, ASD believes the appeal process provided for in SB 103 is inappropriate. The proposed law provides a private vendor with a statutory right to appeal the district's decision to the Commissioner and the State Board of Education. No other private vendor is afforded this type of appeal in Alaska's system of public education. This represents yet another example of how public funds will be expended to support private institutions.

Thank you to members of the committee for your consideration of our written comments about SB 103. We would welcome and appreciate an opportunity to address the committee and describe in further detail our program to support students in treatment facilities, our record of success meeting these students where they are and keeping them on track to meet their educational goals, and our commitment to serving these students now and into the future.

Respectfully,



Ed Graff  
Superintendent

cc: Anchorage School Board  
Michael Graham, Chief Academic Officer  
Linda Carlson, Assistant Superintendent for Instructional Services  
Sue Doherty, Principal for Special Schools

AMENDMENT

OFFERED IN THE SENATE  
TO: SSSB 103

BY SENATOR COGHILL

1 Page 6, following line 8:

2 Insert a new section to read:

3 **"\* Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to  
4 read:

5 APPLICABILITY. AS 14.30.800 - 14.30.820, added by sec. 2 of this Act, apply to  
6 contracts that provide funding for educational services provided to students admitted to  
7 residential psychiatric treatment centers that take effect on or after the effective date of this  
8 Act."

9

10 Renumber the following bill section accordingly.

**SPONSOR SUBSTITUTE FOR SENATE BILL NO. 103**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - SECOND SESSION

BY SENATORS GIESSEL, Ellis, Costello

Introduced: 2/17/16

Referred:

*w/ a medments*

**A BILL**

**FOR AN ACT ENTITLED**

*relating to school districts*

1 "An Act relating to school boards; relating to approval of educational programs at  
2 residential psychiatric treatment centers; providing for funding of educational services  
3 for students in residential psychiatric treatment centers; and providing for an effective  
4 date."

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

6 \* **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section  
7 to read:

8 **LEGISLATIVE FINDINGS AND INTENT.** The legislature finds that

9 (1) students who are admitted to residential psychiatric treatment centers are a  
10 special class of students because they are confined to residential psychiatric treatment centers  
11 for mental health treatment and must be provided with educational services at the centers  
12 rather than in traditional schools;

13 (2) because of the unique educational and mental health treatment needs of  
14 those students, school districts are sometimes challenged to meet the educational needs of

1 students admitted to residential psychiatric treatment centers;

2 (3) in some instances, a residential psychiatric treatment center is able to  
3 provide more effective educational and treatment services to an admitted student than a school  
4 district can provide to the student;

5 (4) students admitted to residential psychiatric treatment centers are entitled to  
6 a free and appropriate public education comparable to the education received by other  
7 students enrolled in public schools;

8 (5) the educational opportunities of students admitted to residential psychiatric  
9 treatment centers should not be compromised while the students are admitted for treatment; *and*

10 (6) a free and appropriate public education is an integral part of providing a  
11 successful treatment outcome for a student admitted to a residential psychiatric treatment  
12 center; *and, "*

13 ~~(7) there is a demonstrated need to provide uniform requirements to allow~~  
14 ~~school boards to enter into contracts to authorize residential psychiatric treatment centers to~~  
15 ~~serve as educational service providers for admitted students.~~

16 \* **Sec. 2.** AS 14.30 is amended by adding new sections to read:

17 **Article 14. Educational Programs Provided by Residential Psychiatric Treatment**

18 **Centers.**

19 **Sec. 14.30.800. Contracts for educational programs at residential**  
20 **psychiatric treatment centers.** (a) A school board shall enter into a contract to  
21 provide payments to a residential psychiatric treatment center that provides an  
22 educational program for a student admitted to the center if

23 (1) the center

24 (A) is licensed under AS 47.32; and

25 (B) submits to the school board a proposed contract that  
26 includes, at a minimum, the information described under ~~(b)~~ <sup>C</sup> of this section not  
27 less than 60 days before the beginning of the school year;

28 (2) the student is enrolled in the school district;

29 (3) the student is admitted to the center

30 (A) under a court order;

31 (B) by the Department of Health and Social Services under

1 AS 47.10.087 or AS 47.12.255; or

2 (C) by private placement under the written orders of a licensed  
3 physician or mental health professional finding that the placement is medically  
4 necessary; and

5 (4) the school board finds that the reimbursement rate proposed by the  
6 center under (b)(21) of this section is reasonable.

7 (b) A contract between a school board and a residential psychiatric treatment  
8 center must include the following provisions:

9 (1) the center's admission policies and procedures;

10 (2) the teacher-to-student ratio, including projected enrollment;

11 (3) a description of the educational program and how the program  
12 aligns with state content and performance standards;

13 (4) a description of student assessments provided in the educational  
14 program and an agreement that the center will administer student assessments required  
15 by the state;

16 (5) written objectives for student achievement;

17 (6) the center's plans for providing special education, vocational  
18 education, gifted education, and bilingual education for students, as applicable;

19 (7) an educational program schedule and calendar;

20 (8) a description of staff development activities;

21 (9) documentation that a teacher who possesses a valid teacher  
22 certificate issued by the department and meets additional training requirements under  
23 AS 14.30.250 will provide the educational services;

24 (10) documentation that a person who possesses a valid administrative  
25 certificate issued by the department and meets other training requirements under  
26 AS 14.30.255 will administer the special education services;

27 (11) assurances that the center has adopted a certificated employee  
28 evaluation system based on professional performance standards for evaluation and  
29 improvement of the performance of the center's teachers and educational services  
30 administrators;

31 (12) assurances that the center will follow procedures established by

1 the department to comply with federal law, including 20 U.S.C. 1400 - 1482  
2 (Individuals with Disabilities Education Act);

3 (13) a summary of the center's budget and financial plan;

4 (14) the method by which the center will account for receipts and  
5 expenditures;

6 (15) assurances that the center will comply with all state and federal  
7 requirements for receipt and use of public funds;

8 (16) proof that the center is approved by the Department of Health and  
9 Social Services;

10 (17) a written plan to collaborate with the school district to coordinate  
11 an individual course of study to allow the student to transition successfully back to the  
12 school district;

13 (18) a commitment that, as a condition of funding, the center shall only  
14 expend funds received under ~~(a)~~<sup>b</sup> of this section for educational services provided at the  
15 center;

16 (19) an agreement that, as a condition of funding, the center shall allow  
17 audit and inspection of records by state and federal agencies and shall return  
18 overpayments;

19 (20) the term of the contract; the term of the contract may not exceed  
20 three years; and

21 (21) the reimbursement rate to be provided by the school district for  
22 educational services provided by the center.

23 (c) A school board shall issue a written decision approving or rejecting a  
24 contract under ~~(a)~~<sup>b</sup> of this section within 30 days after the center submits the contract to  
25 the school board. The school board's decision must include all relevant findings of fact  
26 and conclusions of law.

27 (d) If a school board approves a contract under this section, the school board  
28 shall forward the application to the state Board of Education and Early Development  
29 for review and approval.

30 (e) If a school board rejects a contract under ~~(a)~~<sup>b</sup> of this section, the center may  
31 appeal the rejection to the commissioner. The center shall file the appeal not later than

1 60 days after the school board issues a written decision of rejection. The commissioner  
 2 shall review the local school board's decision to determine whether the findings of fact  
 3 are supported by substantial evidence and whether the decision is contrary to law. The  
 4 center may appeal a decision of the commissioner upholding a school board's rejection  
 5 of a contract to the state Board of Education and Early Development within 30 days  
 6 after the commissioner issues a written decision.

7 (f) If the commissioner approves a contract, the commissioner shall forward  
 8 the application to the state Board of Education and Early Development for review and  
 9 approval. The commissioner shall forward the contract not later than 30 days after the  
 10 commissioner issues a written decision. The state board shall exercise independent  
 11 judgment in evaluating the contract.

12 (g) A school board that rejected a contract that is approved by the state board  
 13 on appeal shall enter into the contract and honor the terms of the contract.

14 **Sec. 14.30.810. Appeal of application for funding.** (a) In an appeal to the  
 15 commissioner under AS 14.30.800, the commissioner shall review the record before  
 16 the school board to determine whether the proposed contract meets the requirements  
 17 under AS 14.30.800<sup>(b)</sup> and whether the proposed reimbursement rate is reasonable.  
 18 The commissioner may request written supplementation of the record from the  
 19 residential psychiatric treatment center or the school board. The commissioner may

20 (1) remand the appeal to the school board for further review;

21 (2) approve the contract and forward the contract to the state Board of  
 22 Education and Early Development; or

23 (3) uphold the decision rejecting the contract; if the commissioner  
 24 upholds a school board's decision to reject the contract and the center appeals to the  
 25 state Board of Education and Early Development, the commissioner shall immediately  
 26 forward the contract and record to the state board.

27 (b) In an appeal to the state Board of Education and Early Development of a  
 28 rejection of a contract under (a)(3) of this section, the state board shall determine,  
 29 based on the record, whether the commissioner's findings are supported by substantial  
 30 evidence and whether the decision is contrary to laws. The state board shall issue a  
 31 written decision within 90 days after an appeal.

1                   **Sec. 14.30.820. Definitions.** In AS 14.30.800 - 14.30.820,

2                   (1) "residential psychiatric treatment center" or "center" means a  
3                   secure or semi-secure facility, or an inpatient program in another facility, that  
4                   provides, under the direction of a physician, psychiatric diagnostic, evaluation, and  
5                   treatment services on a 24-hour-a-day basis to an individual with severe emotional or  
6                   behavioral disorders;

7                   (2) "school district" has the meaning given in AS 14.30.350.

8                   \* **Sec. 3.** AS 14.30.800, 14.30.810, and 14.30.820 are repealed July 1, 2019.

9                   \* **Sec. 4.** This Act takes effect immediately under AS 01.10.070(c).

2020

# ALASKA STATE LEGISLATURE

716 W 4<sup>th</sup> Avenue  
Anchorage AK 99501-2133  
907-269-0181



State Capitol  
Juneau AK 99801-1182  
907-465-4843  
800-892-4843

North to the Future

**Senator Cathy Giessel**  
Senate District N

## **Sponsor Statement**

### **SB 103 “Residential Psychiatric Education Funding”**

Senate Bill 103 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 schools. 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 or 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 a grade.

This bill would create a three-year pilot program allowing RPTCs to contract with school districts to provide educational services for the patients/children seeking treatment for serious mental illness. Since most students in this situation have their treatment paid for by the state, it is in Alaska’s best interest to solve this problem.

The goal of this bill is to allow children to fulfill their full potential by providing stable environment and an adequate education.

I urge you to support this bill keeping children on their educational path while seeking treatment for a serious mental illness.

Chair Senate Resources Committee | Vice-Chair Health & Social Services | Vice-Chair Labor & Commerce

[Senator.Cathy.Giessel@akleg.gov](mailto:Senator.Cathy.Giessel@akleg.gov)

# ALASKA STATE LEGISLATURE



716 W 4<sup>th</sup> Avenue  
Anchorage AK 99501-2133  
907-269-0181  
Fax: 907-269-0184

State Capitol  
Juneau AK 99801-1182  
907-465-4843  
Fax: 907-465-3871

North to the Future

**Senator Cathy Giessel**  
Senate District N

## Sectional Analysis

### **SB 103 “Residential Psychiatric Education Funding”**

(version I)

**Section 1:** Legislative findings and intent

**Section 2:** Adds a new section AS 14.30.800-820:

#### **AS 14.30.800 Educational Programs Provided by Residential Psychiatric Treatment Centers**

This section provides for contracts between local school districts and a center for education services for children confined by court order or medical order to a center for mental health treatment and specifies the conditions for a contract.

#### **AS 14.30.810 Appeal of application for funding**

This section provides for an appeal process from the local board to the Commissioner of the Department of Education and the State Board of Education.

#### **AS 14.30. 820**

Definitions of “residential psychiatric treatment center” and “school district”

**Section 3:** Repeals the legislation on July 1, 2019 making this a 3-year pilot project.

**Section 4:** Immediate effective date

Chair Senate Resources Committee | Vice-Chair Health & Social Services | Vice-Chair Labor & Commerce

[Senator.Cathy.Giessel@akleg.gov](mailto:Senator.Cathy.Giessel@akleg.gov)



# Anchorage School District

## Education Center

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

March 2, 2016

Senator Mike Dunleavy, Chair  
Members of the Senate Education Committee  
State Capitol  
Juneau, AK 99801

Dear Senator Dunleavy and members of the committee,

The Anchorage School District appreciates the opportunity to provide written testimony on SB103 "An Act relating to school boards; providing for approval of educational programs at residential psychiatric treatment centers; and providing for funding of educational services for students in residential psychiatric treatment centers."

The Anchorage School District is committed to working collaboratively with other organizations for the benefit of our students. We have enjoyed 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 collaboration 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 an effort to provide educational services and support students in psychiatric treatment at North Star Behavior 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 receiving school to discuss transition plans upon student discharge;  
Scheduled weekly meeting between ASD Counselor and North Star Behavioral Health (NSBHS) clinicians;
4. 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;

*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

5. Increased staffing:
  - a. Sue Doherty recently named as Special Schools Principal upon the passing 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 an 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;
6. Created Special Schools Office in ASD Ed Center as home base for ASD Special Schools Principal and non-teaching staff;
7. Scheduled and conducted monthly staff meetings with Special Schools personnel;
8. Conducted daily site visits to NSBHS by the principal, counselor or special education department chair;
9. Increased communications between ASD Special Schools principal and the hospital staff;
10. Established weekly meeting between the NSBHS education director and ASD Special Schools Principal;
11. Ensured all teachers are "Highly Qualified" in relevant core areas of instruction;
12. Increased instructional day for acute care students from a half-day to full day program at the request of the NSBHS director;
13. Established regular progress meetings with NSBHS staff Mike Lyons and Evelyn Alsup, and ASD staff Mike Henry, Executive Director, Secondary Education and Sue Doherty, Special Schools Principal;
14. Scheduled quarterly progress meetings with 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;
15. 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.

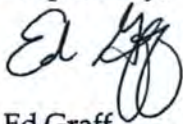
Given all that has been accomplished in providing comparable general and special educational services to students in psychiatric treatment, we believe this bill, which in essence diverts public school funding to the residential treatment facilities operated by an outside for profit corporation, is unnecessary legislation and could negatively impact the school district's ability to support our special needs students.

March 2, 2016  
Senator Mike Dunleavy, Chair  
Senate Education Committee  
Page Three

We believe we are providing a supportive educational program for these students with acute challenges. Because we are committed to serving all students and enhancing our services through communication and collaboration with community providers, we have accommodated every request made by North Star Behavioral Health System through United Health Services of Delaware, Inc. Finally, while there still exist concerns regarding best practices for psychiatric treatment and educational services for this unique population of students, we believe that school districts are in the best position to provide high quality public educational services.

Again, we appreciate the opportunity to share these accomplishments and express our concern relative to SB 103.

Respectfully,

A handwritten signature in black ink, appearing to read 'Ed Graff', written over a faint, illegible typed name.

Ed Graff  
Superintendent

Michael T. Graham  
Chief Academic Officer

Linda Carlson  
Assistant Superintendent for Instructional Support

Sue Doherty  
Principal for Special Schools



**STUDENT SUPPORT SERVICES**

March 8, 2016

**Testimony re SSSB 103**

Thank you for the opportunity to speak with you today. My name is Lucy Hope, I am director of the Mat-Su Borough School District Student Support Services department. I am speaking today representing the school district.

Five years ago, our school district was approached by representatives from NorthStar Hospital asking us to set up and provide a school program for the 30 residents of NorthStar Residential Treatment Center. NorthStar Residential Treatment Center is a Level 5 Residential Treatment facility for boys, ages 11-18 located in Palmer, Alaska. Previously, NorthStar residents would sometimes enroll in Mat-Su Central, however, we were asked to provide direct instruction and offer courses that would assist these students to pass from grade to grade, and to earn credits towards a diploma. We responded by developing a Memorandum of Agreement, and have been providing education for the past five school years. We are working closely and effectively with NorthStar Palmer Residential Treatment Center facility. We have provided one fulltime teacher and two teaching assistants, and all curriculum materials for the thirty students enrolled and attending school at the facility. Recently we have purchased and supported 15 new computers for students, a network printer to be onsite, and provided extensive IT support. Students are participating in blended learning courses for four hours per day, and are engaged in therapeutic activities with Residential Treatment Center staff for the other portion of the school day. For the period of time students are engaged in therapeutic activities with Residential Treatment Center staff, they are earning credit for required high school classes such as Physical Education, and electives such as Human Relations.

We work well together to transition students living at the residential center back to school; either to a school in our district, or another school in our state. Often, there will be a step down process. It might be that a student attends Palmer High, while living at the Residential Treatment Center before returning to their home elsewhere in Alaska and back to community's school.

In an effort to offer the best education possible and work together on transitions back to home schools, we review our MOA every year, and we include the Residential Treatment Center facility director in the teacher interviews for this position.

We have worked hard and worked together with NorthStar Residential Treatment Center to provide a quality education to these students. I acknowledge there have been challenges. Any agreement that serves students with complex needs is by nature, challenging.

In review of the current proposed legislation for this pilot program, we seek some clarification regarding where the student will be enrolled, how fees will be determined and how those fees will be transmitted, and who retains legal authority regarding the implementation of Individual Education Programs.

**Regarding enrollment:** Will the students be enrolled in the district where their guardian resides, or in the district where the RPTC is located? For example, if a student from Mat-Su enters a NorthStar facility in Anchorage, would that student remain enrolled in Mat-Su, or in Anchorage? Conversely, if a student from NorthWest Arctic is residing at the Palmer Residential Treatment Center, would that student be enrolled in NorthWest Arctic Borough School District or in the Mat-Su Borough School District?

**Regarding contracting for fees to be determined and transmitted:** The system being proposed to transfer funds is not as simple as it sounds in this proposed legislation. Although there are only 30 residents at a time at the Palmer Residential Treatment Center, over the first three school years we had a total of 137 students enrolled for a period of time who have resided at the Residential Treatment Center. Their length of stay has varied, and we estimate that about 1/3 are from the Mat-Su Borough, about 1/3 are from Anchorage, and 1/3 are from around Alaska. Some of these students were not enrolled anywhere during our "20 day count period" in October of that given school year. According to the process outlined in SSSB 103, the Residential Psychiatric Treatment Center would submit to the school district a detailed contract outlining, among other things, a reimbursement rate to be provided by the school district to the facility. This contract would be submitted 60 days before the beginning of the school year, and School Boards would respond in writing within 30 days. This timeline would indicate the process begin about the middle of May for the following school year, prior to any student being enrolled for that year. During testimony, we heard that there is an intent that these contracts will include the fees be pro-rated for the time a student is receiving educational services.

We are seeking clarification regarding this transfer of funds. Currently there is not a mechanism to transfer ADM funds to a private school facility, nor a day-to-day accounting process for determining pro-rated fees. There will be a cost to the school district to set up this prorated system, and we are very concerned about any additional costs for processes such as this.

What kind of system is envisioned to accomplish this determination of pro-rated fees? Where would the fees for Residential Psychiatric Treatment Centers come from if the student had not been enrolled during the 20 day count period in October?



**Legal responsibility:** About half of the residents of the Palmer Residential Treatment Center have IEPs. Under federal law, IDEA, it is the responsibility of the school district where a private school is located to provide special education services to students enrolled. In this bill, it states that all funds are transferred to the Residential Psychiatric Treatment Center, and all education responsibilities would be that facility's to provide. While there is a regulation that allows a district to contract with another entity to provide educational services, those are services individually determined by an IEP team. The process described here does not reference the IEP team, nor parents, who are important members of the team.

I do not believe that a district can give away its responsibilities under this federal law to a private entity without the recommendation of an IEP team. Our School Board is concerned with being responsible for adherence to federal and state special education laws, while contracting with Residential Psychiatric Treatment Centers to implement such programs, on a whole-facility basis, prior to students even enrolling.

Is it the intent of the Bill that the Residential Psychiatric Treatment Center receiving these funds will be responsible, both educationally and legally, to provide all educational services to students who are residing at the facility?

Thank you for your time and consideration of these comments made on behalf of the Mat-Su Borough School District.

Sincerely,



Lucy Hope  
Director of Student Support Services



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

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

March 15, 2016

**SUBJECT:** Constitutionality of SB 103 (Work Order No. 29-LS0733I)

**TO:** Senator John Coghill  
Attn: Rynniva Moss

**FROM:** Kate S. Glover *KG*  
Legislative Counsel

Ms. Moss provided me with a memorandum from the Anchorage School District taking the position that SB 103 violates art. VII, sec. 1 of the Constitution of the State of Alaska. You have requested a legal opinion on this issue. Under SB 103, state funding would be used to pay for educational services provided to students at residential psychiatric treatment centers. As previously advised, although the bill does raise an issue under the education clause, it is difficult to predict how a court would rule on the issue if the bill is enacted and challenged.<sup>1</sup>

Art. VII, sec. 1 of the Constitution of the State of Alaska provides: "No money shall be paid from public funds for the direct benefit of any religious or other private educational institution." The treatment facilities SB 103 applies to are largely private institutions, so the bill could trigger a constitutional concern.

Art. VII, sec. 1 of the Constitution of the State of Alaska was adopted to ensure that public education dollars would not go to private educational institutions and leave the public system underfunded. In this case, a major question raised by the bill is whether residential psychiatric treatment centers are "educational institutions" within the meaning of the state constitution. In *Sheldon Jackson College v. State*, the Alaska Supreme Court came to the firm conclusion that this clause applies to "all private educational institutions."<sup>2</sup> The facilities at issue in this case, however, are psychiatric treatment centers, not schools. Their primary mission is to provide mental and emotional healthcare. Given this fact, a court could find that the facilities are not educational

---

<sup>1</sup> Memorandum to Jordan Shilling from this office dated April 15, 2015.

<sup>2</sup> 599 P.2d 127, 132 & n.33 (Alaska 1979) ("The convention delegates were informed by the chairperson of the authoring committee that the committee intended the phrase 'other private educational institutions' to include 'any educational institution that is not run by the state'").

institutions within the meaning of the state constitution. A court may, however, find it relevant that the Anchorage school district, according to the superintendent's letter can and does provide educational services to students admitted to treatment centers. This could suggest that the educational program in a treatment center function as schools, rather than filling a need the schools are unable to provide.<sup>3</sup>

---

<sup>3</sup> The debates of the Constitutional Convention can provide persuasive evidence as to the scope of the provisions of the state constitution. In discussing the public education clause, the delegates to the convention focused their debates on whether the prohibition on funding private schools should be limited to "direct benefits" or should include both direct and indirect benefits. They rejected a proposal to include indirect benefits because they were concerned that "indirect benefits" could "reach out into infinity practically" and prevent the state from providing even basic welfare services to private school students. Const. Conv. Minutes day 48 (Jan. 9, 1956) (statement of Awes). In this context, the delegates briefly considered whether a prohibition on "indirect benefits" would affect foster homes that provide some education. *Id.* (statements of White, Coghill, Armstrong).

The question whether aid to these institutions would be prohibited is never explicitly answered, but Delegate Buckalew, responding to these concerns, clearly expressed his view that "indirect" benefits should not be prohibited because such a prohibition "will, for example, eliminate the free lunch, eliminate bus transportation, eliminate, for example, if we had a school or an institution where they had a school, it would eliminate the state giving any support to the child because that would be indirect support to the institution." Although this does not explicitly address the situation here -- providing funding for *education*, rather than welfare programs -- at a foster home or other institution caring for children, it illustrates the delegates' desire to insure that the state retain its ability to help children wherever they are located. One justice of the Alaska Supreme Court has taken note of this discussion to conclude: "It is abundantly clear that those who formed the constitution did not wish to stop the payment of public monies directly to a religious or private institution that cared for needy children, even though the Institution also furnished education for those children." *Matthews v. Quinton*, 362 P.2d 932, 951 (Alaska 1961) (Dimond, J. dissenting) (the continuing validity of this decision was called into question in *Sheldon Jackson*).

It seems clear that the delegates did not wish to prohibit *any* public aid from reaching private institutions that offer some educational services, but the minutes of the constitutional convention leave open the question at hand -- whether it is appropriate for the state to fund *education* at an institution whose primary focus is not education, but social services. It may also be relevant that, in this case, the children at the treatment centers may not all be "needy children" receiving services that are not otherwise available to them.

If the facilities are considered educational institutions, the funding is permissible only if it does not provide a direct benefit to the institutions. In *Sheldon Jackson*, the Alaska Supreme Court set out four factors that it will consider when analyzing a challenge under art. VII, sec. 1: the class benefitted, the nature of the use to which the public funds will be put, the magnitude of the benefit, and the form of the benefit. *Sheldon Jackson*, 599 P.2d at 130. In that case, the state was providing tuition grants to students attending private colleges to equalize the cost between public and private post-secondary education. In its analysis of the four factors, the Court found that, first, the program was not neutral as it benefitted only private colleges and their students, creating an incentive to enroll in private colleges. *Id.* at 131. Second, the public funds implicated the core concern of the constitution, because the funds "constitute nothing less than a subsidy of the education received by the student at his or her private college . . ." *Id.* Third, the funds bestowed a substantial benefit on the private institutions, as the termination of the program resulted in "a reduction of students, faculty, income and curriculum offerings." *Id.* at 132. Finally, in considering the form of the benefit, the Court concluded that, although the grants were paid to the students, "the student here is merely a conduit for the transmission of state funds to private colleges" and therefore the effect was still to confer a direct benefit on the colleges. *Id.*

It is difficult to determine how a court would weigh these factors with respect to educational service funding for residential psychiatric treatment centers. With respect to the first factor, the language of the draft is neutral and the funding may benefit public or private institutions. As a factual matter, the treatment centers are mostly, if not entirely, private institutions. The people who benefit most would be the students while they reside at the center. Some of these students are likely public school students who are receiving treatment for a short time and will ultimately return to a public school. They may even be enrolled in public school while they are at the treatment center. In that regard, this case may be distinguishable from *Sheldon Jackson*, because the students and institutions who benefitted from the tuition grants in *Sheldon Jackson* were exclusively students who chose private schools and the private schools they attended. In this case, the proposed statute is neutral, and the class benefitted has a mixed character. It includes private institutions, and students who are temporarily placed at a private treatment center.

Under the second factor, however, the funding implicates the core concern of the state constitution's prohibition against direct benefits for private schools -- it is direct funding for education coming out of a school district's budget. A court would likely find this fact troubling, particularly if it is true that public schools are able to provide these educational services. On the other hand, the educational services may be provided now as part of the state medical assistance program or other health insurance funding.<sup>4</sup> A shift in funding source may confer no added benefit to the center.

---

<sup>4</sup> Under AS 47.07.030(b), the Department of Health and Social Services is authorized to provide medical assistance coverage for inpatient psychiatric facility services for individuals under 21 years of age.

Senator John Coghill  
March 15, 2016  
Page 4

The third factor, the magnitude of the benefit, is purely a factual question and more information is necessary to weigh this factor. It is unclear whether the education dollars would provide a substantial benefit for these facilities. Because education is not their primary focus, the money may only provide a small part of their budgets or be paid from another source and may not substantially affect operations. I do not have the facts to assess this.

Finally, with respect to the fourth factor, the form of the benefit, here, the funding goes directly from the school district to the facility, possibly operating as a direct subsidy. This is more direct than the situation in *Sheldon Jackson*, where funding was funneled through students.

In summary, the program funds education, the core concern behind art. VII, sec. 1. As discussed above, however, a court may not consider these treatment centers to be "educational institutions" in the first instance, in which case the direct benefits analysis would not apply at all.

If I may be of further assistance, please advise.

KSG:lem:dla  
16-282.dla

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

February 17, 2015

**SUBJECT:** Education funding for North Star Behavioral Health  
(Work Order No. 29-LS0600)

**TO:** Senator Berta Gardner  
Attn: Katie Bruggeman

**FROM:** Kate S. Glover  
Legislative Counsel

You have asked for an opinion regarding the legality of using state funding to pay for educational services provided by North Star Behavioral Health. My understanding is that North Star Behavioral Health: (1) is a private organization that offers residential psychiatric treatment services for youth, (2) provides education as a part of the treatment program, and (3) currently receives some funding from the state for those education services.<sup>1</sup> The funding is not equivalent to the full amount of per-student funding a school would receive for educating the students, and North Star has approached your office with a draft bill, Work Order No. 29-LS0121\W, that would provide the full amount of per-student funding for the education services it provides. You would like to know whether it is permissible, under art. VII, sec. 1 of the Constitution of the State of Alaska, to use state money to fund educational services provided by a private institution.<sup>2</sup> Because only a few judicial decisions have interpreted this section of the state constitution, there is no clear answer to your question. Treatment facilities like those that North Star operates, however, would probably not be considered educational institutions

---

<sup>1</sup> According to the *Alaska Association of Homes for Children Members' Directory 2010/2011*, North Star Behavioral Health provides level V and VI psychiatric treatment services for youth. Level V services are secure or semi-secure residential psychiatric treatment center services. The directory does not include a definition for Level VI services. [http://dhss.alaska.gov/ocs/Documents/ResidentialCare/docs/aaahc\\_membersdirectory.pdf](http://dhss.alaska.gov/ocs/Documents/ResidentialCare/docs/aaahc_membersdirectory.pdf) (pp. 1, 5, 20).

<sup>2</sup> Ms. Bruggeman explained that North Star provided your office with a draft bill, Work Order No. 29-LS0121\W. For purposes of analysis, I will assume that funding would be provided to all organizations that provide educational services to youth in psychiatric residential treatment centers, as it would be under that draft bill. Providing funding to only one treatment provider, and not to other similarly-situated providers, could raise issues under the equal protection clauses of the state and federal constitutions.

under the terms of the state constitution. Therefore, it may be permissible to provide state funding for educational services at these institutions.

Article VII, sec. 1 of the Constitution of the State of Alaska states:

The legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions. Schools and institutions so established shall be free from sectarian control. No money shall be paid from public funds for the direct benefit of any religious or other private educational institution.

A few terms are important in understanding the scope of the final sentence of this section. Funding is prohibited only if it provides a "direct benefit" to a private "educational institution." In the case of funding for organizations like North Star, an important question is whether the organization is an "educational institution" within the meaning of the state constitution.

In *Sheldon Jackson College v. State*, the Alaska Supreme Court came to the firm conclusion that art. VII, sec. 1 applies to "all private educational institutions." 599 P.2d 127, 132 & n.33 (Alaska 1979) ("The convention delegates were informed by the chairperson of the authoring committee that the committee intended the phrase 'other private educational institutions' to include 'any educational institution that is not run by the state'"). The facilities at issue in this case are psychiatric treatment centers, not schools. Their primary mission is to provide mental and emotional healthcare. Education is provided at the facilities only because it cannot be provided at a public school.<sup>3</sup> Given these facts, a court could find that the facilities are not educational institutions within the meaning of the state constitution.<sup>4</sup>

---

<sup>3</sup> When it becomes possible to educate these students outside of the treatment center, agency regulations express a preference to do so: "As part of the resident's transition toward discharge from the facility, the residential psychiatric treatment center may arrange for the resident to attend school outside the facility." 7 AAC 50.885.

<sup>4</sup> The debates of the Constitutional Convention can provide persuasive evidence as to the scope of the provisions of the state constitution. In discussing the public education clause, the delegates to the convention focused their debates on whether the prohibition on funding private schools should be limited to "direct benefits" or should include both direct and indirect benefits. They rejected a proposal to include indirect benefits because they were concerned that "indirect benefits" could "reach out into infinity practically" and prevent the state from providing even basic welfare services to private school students. Const. Conv. Minutes day 48 (Jan. 9, 1956) (statement of Awes). In this context, the delegates briefly considered whether a prohibition on "indirect benefits" would affect foster homes that provide some education. *Id.* (statements of White, Coghill, Armstrong).

If the facilities are considered educational institutions, the funding is permissible only if it does not provide a direct benefit to the institutions. In *Sheldon Jackson*, the Alaska Supreme Court set out four factors that it will consider when analyzing a challenge under art. VII, sec. 1: the class benefitted, the nature of the use to which the public funds will be put, the magnitude of the benefit, and the form of the benefit. *Sheldon Jackson*, 599 P.2d at 130. In that case, the state was providing tuition grants to students attending private colleges to equalize the cost between public and private post-secondary education. In its analysis of the four factors, the Court found that, first, the program was not neutral as it benefitted only private colleges and their students, creating an incentive to enroll in private colleges. *Id.* at 131. Second, the public funds implicated the core concern of the constitution, because the funds "constitute nothing less than a subsidy of the education received by the student at his or her private college . . . ." *Id.* Third, the funds bestowed a substantial benefit on the private institutions, as the termination of the program resulted in "a reduction of students, faculty, income and curriculum offerings." *Id.* at 132. Finally, in considering the form of the benefit, the Court concluded that, although the grants were paid to the students, "the student here is merely a conduit for the transmission of state funds to private colleges" and therefore the effect was still to confer a direct benefit on the colleges. *Id.*

---

The question whether aid to these institutions would be prohibited is never explicitly answered, but Delegate Buckalew, responding to these concerns, clearly expressed his view that "indirect" benefits should not be prohibited because such a prohibition "will, for example, eliminate the free lunch, eliminate bus transportation, eliminate, for example, if we had a school or an institution where they had a school, it would eliminate the state giving any support to the child because that would be indirect support to the institution." Although this does not explicitly address the situation here -- providing funding for *education*, rather than welfare programs -- at a foster home or other institution caring for children, it illustrates the delegates' desire to insure that the state retain its ability to help children wherever they are located. One justice of the Alaska Supreme Court has taken note of this discussion to conclude: "It is abundantly clear that those who formed the constitution did not wish to stop the payment of public monies directly to a religious or private institution that cared for needy children, even though the Institution also furnished education for those children." *Matthews v. Quinton*, 362 P.2d 932, 951 (Alaska 1961) (Dimond, J. dissenting) (the continuing validity of this decision was called into question in *Sheldon Jackson*).

It seems clear that the delegates did not wish to prohibit *any* public aid from reaching private institutions that offer some educational services, but the minutes of the Constitutional Convention leave open the question at hand -- whether it is appropriate for the state to fund *education* at an institution whose primary focus is not education, but social services.

It is difficult to determine how a court would weigh these factors with respect to educational service funding for residential psychiatric treatment centers. With respect to the first factor, the treatment centers that North Star operates are private institutions, and it is my understanding that most, if not all residential psychiatric treatment centers in the state are private institutions. But, the people who benefit most would be the students while they reside at the center. Some of these students are likely public school students who are receiving treatment for a short time and will ultimately return to a public school. They may even be enrolled in public school while they are at the treatment center. In that regard, this case may be distinguishable from *Sheldon Jackson*, because the students and institutions who benefitted from the tuition grants in *Sheldon Jackson* were exclusively students who chose private schools and the private schools they attended. In this case, the class benefitted has a mixed character. It includes private institutions, and public school students who are temporarily placed at private treatment centers.

Under the second factor, however, the funding implicates the core concern of the state constitution's prohibition against direct benefits for private schools -- it is direct funding for education coming out of a school district's budget. A court would likely find this fact troubling. On the other hand, funding for educational services may be provided now as part of Medicaid or other health insurance funding. A shift in funding source may confer no benefit to the center.

The third factor, the magnitude of the benefit, is purely a factual question and more information is necessary to weigh this factor. It is unclear whether the education dollars would provide a substantial benefit for facilities like those operated by North Star. Because education is not their primary focus, the money may only fund a small part of the institutions' budgets. As noted above, the money could also be available from other sources. In either case, the funding may not substantially affect operations. I do not have the facts to assess this.

Finally, with respect to the fourth factor, the form of the benefit, Ms. Bruggeman explained that the funding would follow the student. The funding would flow from the school district directly to the facility, possibly operating as a direct subsidy. This is more direct than the situation in *Sheldon Jackson*, where funding was funneled through students.

It is difficult to predict how a court would weigh these factors. The funding in question is direct funding for education, the core concern behind art. VII, sec. 1, but the class of beneficiaries includes public school students and the funding arrangement essentially fills a temporary gap that the public schools may not be able to cover. More facts may be helpful in this analysis. As discussed above, however, a court may not consider these treatment centers to be "educational institutions" in the first instance, in which case the direct benefits analysis would not apply at all.

I cannot tell from North Star's website what type of organization it is. It is my understanding, however, that some of the residential psychiatric treatment centers are

operated by religious organizations. If that is true, funding education at these facilities implicates a separate concern related to the guarantee of religious freedom found in the First Amendment to the United States Constitution and in art. I, sec. 4 of the Constitution of the State of Alaska.

The United States Supreme Court considers two factors in determining whether a statute violates the constitution's prohibition against making laws "respecting the establishment of religion . . ." First, the Court will look to "whether the program administers aid in a neutral fashion, without differentiation based on the religious status of beneficiaries or providers of services; second, and more importantly, whether beneficiaries of indirect aid have a genuine choice among religious and nonreligious organizations when determining the organization to which they will direct that aid." *Zelman v. Harris*, 563 U.S. 639, 649 (2002) (O'Connor, J. concurring).

In this case, if funding for education services is provided to all residential psychiatric treatment facilities regardless of a religious affiliation, then the funding program is neutral with respect to religion. Funding would be provided based on neutral factors -- the number of children housed at the facility and how long they receive educational services from the facility. Such a funding program would also be likely to pass the second inquiry, as the funding program provides no incentives for parents or children to choose a religious treatment center over a secular treatment center. As a factual matter, the children or parents may not have much choice where they are admitted, but the funding program does not create any skewed incentives to choose one institution over another, and therefore probably does not create an issue with respect to the First Amendment.

If I may be of further assistance, please advise.

KSG:lem  
15-093.lem



ALASKA STATE HOSPITAL &  
NURSING HOME ASSOCIATION

March 3, 2016

Senator Lesil McGuire  
State Capitol, Room 121  
Juneau, Alaska 99801

Re: SB 103– Education in Residential Psychiatric Treatment Centers

Dear Senator McGuire,

The Alaska State Hospital and Nursing Home Association (ASHNHA) is writing this letter in support of SB 103 – Education in Residential Psychiatric Treatment Centers. ASHNHA represents more than 65 hospitals, nursing homes, and other health care organizations who employ over 10,000 Alaskans. Our membership includes Residential Psychiatric Treatment Centers (RPTCs). For over 60 years, ASHNHA members have worked to improve health care in Alaska.

RPTCs are finding that local districts sometimes fail to provide adequate educational services to children in acute and RPTCs who suffer from serious mental illness. Health and education are both critically important to the success of children with challenging conditions. In order to provide the best level of education to our most vulnerable children, we support this legislation.

We would like to thank the Senate Judiciary Committee for hearing this bill that will ensure equitable education is being provided to students who require acute and residential psychiatric treatment. We believe children in acute and RPTCs deserve an appropriate and comparable educational experience.

Sincerely,

Becky Hultberg  
President/CEO

Senator Dunleavy and members of the committee,

We firmly believe that education is the civil rights issue of our time and that every child, including children with mental illness deserve an equal opportunity to succeed in school. State and federal law is clear - that no matter where children live, ALL children are entitled to a free and appropriate public education that is comparable, equitable and adequate. For the past six years, my colleagues and I have dedicated ourselves to bring awareness of how some of the State's most vulnerable children have been receiving substandard educational services while seeking in some cases life-saving mental health treatment. In addition to bringing awareness, we continue to put forth solutions that will dramatically improve the educational services for a class of children who so desperately need a voice.

In order to give you a broader understanding of why we believe SB 103 is a needed solution and to address ASD written testimony, I would like to share with you some of the most recent events since last April and our efforts to work collaboratively with the Anchorage School District (ASD).

In April of 2015, representatives from North Star and ASD began meeting to discuss program needs, best practices, measurable outcomes, service delivery and ways to work more collaboratively with one another. The first two meetings were attended by the Commissioner of Education who helped set the framework for future discussions. Meeting participants from ASD included several high level district administrators and Mr. Jerry Koetje who was appointed Acting Principal of Special Schools in July. Sadly and unexpectedly, Mr. Koetje passed away in December. Mr. Koetje was a lifelong educator who helped hundreds if not thousands of children throughout his tenure and he hit the ground running upon coming to North Star. Mr. Koetje will be dearly missed by so many and we truly appreciated all of his efforts while working for the children at North Star.

The spirit of the meetings between ASD and North Star has been very collegial with a strong focus on program enhancement, accountability and communication. Both organizations recognize that communication and collaboration is critical to addressing issues and the overall success of the program. As of January, 2016 there have been over twenty meetings between the two organizations.

In all meetings North Star has asked if ASD could bring the District's plan for addressing the following areas:

1. A Communication Plan that will outline strategies for strengthening the collaboration and information sharing between ASD, North Star, parents, students, resident school districts and other stakeholders
2. The 2015-2016 Staffing Plan including teacher certification areas
3. The Curriculum Model including a Master Schedule reflecting the amount of time for direct instruction and on-line instruction
4. The Administrative Supervision Plan with a schedule for providing on-site management and communication with families, treatment team, resident school districts and students
5. Policies and Procedures for admissions, Individualized Education Plans (IEP) and transitions
6. A list of Outcome Measures that will be tracked to be shared with stakeholders through the School Improvement Plan (SIP)

7. A program Budget including allocations for materials, resources and equipment

All of these areas are usually considered standard operating items that all schools should have in place and served a good starting point for ASD and North Star to evaluate the current operating system and steer our future conversations. Recognizing that the school's Master Schedule, Staffing Plan and Curriculum Model needed intense focus and would require the District to assign additional resources, North Star knew it was critical to get further clarification on how the district was going to address each of these areas last April. Throughout our discussions heading into the late spring and early summer, we never received concrete information to the requests just mentioned. We strongly believed that without the above items in place, it was going to be very challenging to start the new school year and the students' education was going to be compromised.

As the 2015-2016 school year evolved, it was important to us to recognize where progress was being made. We have been very complimentary and grateful to ASD for areas that have been improved upon. However, with that said and although well intended, ASD's most recent efforts have not been proactively implemented without constant prodding and follow up from North Star. I would like to take this opportunity to share with you some of the areas of progress emerging from the collaboration to date:

- ASD hired an Acting Principal separate from the Whaley Center to oversee the District's Special Schools.
- The Transition Counselor position was filled as of September 11<sup>th</sup>. As you may recall, we learned about this position being allocated to North Star last year through a FOIA request but the allocated position previously never served the students of North Star
- Four new teachers hired, two new teacher assistants hired
- A new Individualized Learning Plan (ILP) was authored by ASD to set the course of each student's educational experience
- 95 new laptop computers were ordered and the internet bandwidth was increased to accommodate the on-line learning platform
- Instructional hours were increased through the expanded Master Schedule

Throughout the first semester, we also shared with ASD our continued list of ongoing concerns that should have been addressed prior to the school year beginning and still need immediate attention:

- Establishing the level of onsite services provided by the Acting Principal assigned to all Special Purpose Schools and the access for parents, students, teachers and stakeholders
- Student course schedules listing the actual courses students are registered in
- Full student registration to the on-line APEX course system
- Completion of each student's ILP
- Further technology assessment and plan
- Identification of Outcome Measures
- Curriculum assessment and plan
- Streamlining of Enrollment Process
- Intake, Course Registration and Transition Policies and Procedures
- AIMS Web Testing

The goal has always been and will continue to be to serve every student with excellence as the standard; education is a universal right and a student's education should never be compromised. Although progress has been made in some areas, many students did not receive an appropriate, comparable and adequate educational experience the first semester. In fact, it was disheartening that this class of children did not have the resources they should have in a timely manner.

Specifically, from the onset North Star described the lack of technology that was not available to students in order to participate in the District's Apex On-line Learning Program. During the Education Subcommittee's tour of North Star on September 16, 2015, they heard first hand from a District IT representative that the infrastructure was inadequate and there were less than 20 functioning computers. By this time, one month of school had already passed and not only did students not have access, they didn't have course schedules nor were any of the Individualized Learning Plans (ILPs) completed. In the spirit of collaboration, both organizations continued to move forward in hopes that the situation would be rectified immediately.

The problem grew worse over the next two months and on November 6, 2015, North Star reported to ASD its frustration that the promised computers were still not delivered, bandwidth was not increased and students still did not have access to the on-line APEX system that they were supposed to be taking classes in. When questioned, the Acting Principal stated that the District had "tabled the plan". Sensing North Star's shock and disappointment, ASD delivered 60 computers that same afternoon and commissioned the IT Department to begin upgrading the bandwidth in order to allow students to participate in their classes on-line.

Sadly, this class of children did not receive appropriate, equitable and adequate educational services the first semester. North Star respectfully raised concerns regarding students not having course schedules and that their transcripts were not reviewed nor aligned to their previous placement. Furthermore, North Star sought help in understanding why only 5 ILPs were completed to date and the District's procedure to move all special education IEPs to a "consultative" model. These concerns and Priority Needs were shared in full transparency with ASD's Board Chairman, the Commissioner of Education and ASD Administration

After reviewing the course of events the past several years, it appears to be a logical next step is to allow a three year pilot project for RPTCs to become an Educational Service Provider. This proposal was presented to the Commissioner of Education for his review and input. Under this legislation, a participating RPTC would be required to comply with over eighteen accountability standards including a comprehensive financial audit. The RPTC would also be required to report back to the Legislature its Outcome Measures each school year and we think this will dramatically improve services to children and increase academic accountability.

In closing, we would appreciate your support and respectfully ask for the passage of SB 103.  
Sincerely,

Mike Lyons, Vice President Specialty Education UHS  
Evelyn Alsup, Educational Director North Star Behavioral Health

TALKING POINTS EXPLAINING HB 102 WORK DRAFT (\S) (3-year pilot project)

SB ~~102~~ 103

103

- Residential Psychiatric Treatment Centers (RPTC) are finding that local districts are sometimes fail to provide adequate educational services to children suffering from serious mental illness who have been confined, by Doctor's or court order, to an RPTC for treatment (usually form 30 days to 1 year in duration)
- This version of the bill amends AS 14.03.083, **Contracting for Services**, to authorize a 3 year pilot project for school districts to contract with RPTCs to provide educational services to patients/children confined to the facility by court or doctor's orders for treatment of serious mental illnesses.
- Work Draft G for HB 102 calls for an RPTC to submit a proposed contract to the local district which meets 21 rigorous educational standards and accountability measures found in Section 14.30.800, Article 14. In addition, the proposed contract must include a proposed reimbursement rate.
- The local board then must issue a decision within 30 days including findings of fact and conclusions of law. The RPTC can appeal an adverse decision to the Commissioner of Education then to the State Board of Education similar to the appeal process for Charter Schools.
- This approach streamlines and simplifies the process from the earlier versions of HB 102.
- There are a total of about 12 RPTC statewide which could choose to education the patients/students (covering about 200 +-patients). We expect only a few of the larger facilities will choose to take advantage of this legislation. see attached.
- This is PILOT PROJECT which sunsets in 3 years after which there would be available educational outcomes for evaluation and comparison.
- The Fairbanks School District already has such a contract with the Boys and Girls Home of Alaska which is working very well for its 24 patient/students.