

**ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672**

**8285 SENATE HEALTH EDUCATION & SOCIAL SERVICES**



Anchorage Youth Court

P.O. Box 102735

Anchorage, Alaska 99510

Phone: (907) 274-5986 • Fax: (907) 272-0491

**ASSENT AND WAIVER**

(Please use ink.)

I, \_\_\_\_\_, as the parent/guardian of  
(printed name of parent/guardian)

\_\_\_\_\_, hereby agree to allow him/her to participate in  
(printed name of registering student)

the Anchorage Youth Court Program. I acknowledge that he/she is a volunteer of the program, and agree to the fullest extent allowable under the laws of Alaska that I absolve of all liability and waive all claims against Anchorage Youth Court, Inc. or any of its directors, officers, executive director, or volunteers for any reason that may arise in any way from his/her participation in the Anchorage Youth Court events or meetings.

Dated this \_\_\_\_\_ day of 199\_\_

(Parent or Guardian Signature): \_\_\_\_\_

(Print Name): \_\_\_\_\_

(Daytime Telephone Number): \_\_\_\_\_

Please list two emergency contacts below:

\_\_\_\_\_  
(Name) (address) (phone)

\_\_\_\_\_  
(Name) (address) (phone)



Anchorage Youth Court  
P.O. Box 102735  
Anchorage, Alaska 99510  
Phone: (907) 274-5986 • Fax: (907) 272-0491

September 12, 1992

Dear \_\_\_\_\_:

Congratulations and welcome to Anchorage Youth Court. Your class will begin \_\_\_\_\_  
\_\_\_\_\_. It will meet at \_\_\_\_\_ in room \_\_\_\_\_  
from \_\_\_\_\_ to \_\_\_\_\_. Your teacher(s) will be \_\_\_\_\_  
\_\_\_\_\_.

YOUR ASSENT FORM MUST BE SIGNED IN INK BY YOUR PARENT OR GUARDIAN BEFORE YOU MAY  
ATTEND CLASS. YOU MAY BRING IT WITH YOU TO THE FIRST CLASS.

Your class materials will be supplied by Anchorage Youth Court. Take good care of them,  
because only the first set is free. It will be your responsibility to bring your materials,  
homework and a pen or pencil with you to each class.

We look forward to working with you this year.

Sincerely

**ANCHORAGE YOUTH COURT**

**BAR ASSOCIATION MEMBERS**

## GENERAL STUDENT INSTRUCTIONS

### CLASS REQUIREMENTS:

1. Each week every student is expected to bring to class the student packet. Please bring a paper and a writing instrument to take notes with. Additionally, students should have a 3 ring binder or peechee type note book to keep notes, handouts and the student packet in.
2. Students are expected to read and familiarize themselves with the Anchorage Youth Court Constitution prior to coming to the first class.
3. Turn in your completed "Assent and Waiver" form at your first class.
4. To take the AYC bar exam you must first:
  - A. Have a signed "Assent and Waiver" form on file in the AYC office.
  - B. Attend at least 7 classes before November 22. Attendance will be taken weekly.
  - C. Do the assigned homework.
  - D. Actively participate in the class mock trial.

### AYC MEMBERSHIP REQUIREMENTS:

1. Pass the AYC bar exam.
2. Be sworn into Anchorage Youth Court.
3. Once sworn in, members are required to attend two of every three AYC Bar Association Meetings. These are held at the Loussac Library the fourth Wednesday of each month from 6:30 to 8:00 or 8:30 P.M.

# ANCHORAGE YOUTH COURT CONSTITUTION

\* (As Revised Spring, 1991)

## Preamble

Municipality of Anchorage youths, recognizing the importance of respect for the law, and firmly believing that acceptance of responsibility is essential toward being conscientious citizens, hereby establish the Anchorage Youth Court as a practical application of their responsibility to themselves and their community.

## Statement of Purpose

Anchorage Youth Court is intended to provide benefits of citizenship to the youth of the Municipality of Anchorage. It shall do so by providing an alternate adjudication and sentencing procedure for young offenders. It shall offer an opportunity for those who make mistakes early in their lives to constructively pay their debt to society without incurring a criminal record. It shall foster an atmosphere of respect for the law through the principle of judgement by peers and restitution for wrongs committed.

The Anchorage Youth Court will emulate adult proceedings so as to provide an opportunity for youths to learn about criminal justice. Unless an action or procedure is specifically addressed by this constitution, the general principles of court proceedings shall apply as far as practicable.

## Article I: Organization

Section 1. The Anchorage Youth Court is not recognized as a court of original or appellate jurisdiction by the laws of the State of Alaska. All cases tried must be referred to the Anchorage Youth Court by a Referring Authority as defined in Section 2, below, (hereinafter "Referring Authority"), and all referrals will be made solely at the discretion of the appropriate Referring Authority. The Anchorage Youth Court's findings and recommendations in a case shall be returned to the Referring Authority before final disposition.

Section 2. For purposes of the Anchorage Youth Court, a Referring Authority shall include but is not limited to the Department of Health and Social Services and all recognized courts within the State of Alaska.

Section 3. The Anchorage Youth Court shall have only such power to enforce a sentence as is delegated by the Referring Authority. A person tried by the Anchorage Youth Court is not discharged from the jurisdiction of the Referring Authority until a recommendation of discharge of the case has been made by the Anchorage Youth Court to the Referring Authority, and the individual is discharged. Failure to comply with the sentence imposed by the Anchorage Youth Court will result in an automatic return of the case to the Referring Authority.

Section 4. The Anchorage Youth Court shall have jurisdiction over only those individuals who are charged with delinquent conduct occurring in the Municipality of Anchorage and are enrolled in grades 7 through 12 and/or are 12 to 18 years of age. Younger

defendants may be considered upon special agreement and with the understanding that the defendant will be adjudicated by 7 - 12 graders.

Section 5. Anchorage Youth Court shall consist of one or more organized courts.

## Article II: Administrative Board

Section 1. Composition. The Administrative Board shall consist of residents of the Municipality of Anchorage. An equal number of members shall represent the youth community and the adult community, each to serve for a term of one year. Nomination of Board members shall be made by a nominating committee comprised of the existing Administrative Board (except that the first nominating committee shall be the establishing constitutional committee). Any member of the Anchorage Youth Court Bar Association may nominate a member for a position on the Administrative Board, and that nomination must be given to the nomination committee within ten (10) days of the due date of nominations. The nominating committee shall be formed no less than 30 days prior to the due date of the list of nominees.

Youth nominees shall be selected from and represent one from each school which has students participating in Anchorage Youth Court. Youth nominees must maintain active status and attend Executive Board Meetings. Adult nominees may be selected from and represent the following:

- 1) the judiciary;
- 2) juvenile probation;
- 3) the field of law enforcement;
- 4) the field of education;
- 5) the Anchorage Bar Association
- 6) the adult community at large; or
- 7) parents of youths over whom the Anchorage Youth Court has jurisdiction.

The list of nominees shall be given to the Anchorage Youth Court Coordinator who shall provide a written notice of the appointees within 15 days of receiving the list of nominees.

Section 2. Duties. The Administrative Board shall promote the purpose of this constitution. The duties of the board shall include, but are not limited to fiscal matters, appointing staff members, maintaining liaisons between the Anchorage Youth Court and law enforcement agencies of the State of Alaska and the Municipality of Anchorage, as well as general supervision of the Anchorage Youth Court. The Administrative Board may adopt any lawful resolution necessary to further the purposes of the Anchorage Youth Court not in conflict with the Anchorage Youth Court Constitution.

Section 3. Meetings. The Administrative Board shall meet at least once each semester with advance notice.

## Article III: Advisory Staff

Section 1. The advisory staff of the Anchorage Youth Court shall be appointed by the Administrative Board and shall consist of a Coordinator and a Legal Advisor, and such other staff deemed necessary. The advisory staff shall report to the Administrative Board. The term of service for an advisory staff member shall be one year.

Section 2. In selecting a Coordinator, special consideration shall be given to applicants with some interest, experience, or education in law. It shall be the responsibility of the Coordinator to review and approve, together with the Legal Advisor, referrals to the Anchorage Youth Court; to establish, oversee, and direct such procedures and perform such duties as are required to ensure the smooth and proper operation of the Anchorage Youth Court network; to maintain accurate, current records of costs and expenses of the Anchorage Youth Court; and to act as liaison between the Anchorage Youth Court Bar Association and membership, and the Administrative Board and the Anchorage court system at large. In so far as elected positions are concerned, the Coordinator shall be responsible for receiving nominations, preparing and distributing ballots, and publishing election results.

Section 3. Legal Advisor. The Legal Advisor preferably should be an attorney. The duties and responsibilities of the Legal Advisor shall be to review and approve, together with the Coordinator, referrals to the Anchorage Youth Court; and to generally confer with, advise, and direct Anchorage Youth Court staff and members as requested, required, or needed.

#### Article IV: Membership and Positions

Section 1. Membership. To qualify as a member of the Anchorage Youth Court, a person must be enrolled in a grade between 7 and 12 in a public or private school in the Municipality of Anchorage, and must successfully complete a training course and pass an Anchorage Youth Court Bar examination. In order to qualify as an active member, a member must have attended a majority of Anchorage Youth Court Bar Association meetings held within the last three months. A member may avoid inactive status, when necessary, by making prior arrangement with the coordinator for pending absence. Upon return, the member may re-establish his or her standing by participating in a Youth Court function. All members are subject to the rules and guidelines established by the ethics committee.

Section 2. Nomination. The Administrative Board shall be responsible for appointing nominating committees from time to time. A nominating committee shall be responsible for compiling a list of nominees for positions of the administrative board and for obtaining written confirmation from those nominees of their willingness to serve. Except as provided in Article II, Section 1, and Section 5, below (Special Elections), a nominating committee shall be formed in a reasonable time prior to the due date of a final list of nominees. The final list of nominees shall be due no later than three weeks prior to the election and shall be given to the Coordinator. Nomination for candidacy for elected office shall be made verbally at the Bar Association meeting prior to the meeting at which elections are held. In order to become a candidate for office, one must be an active Bar Association member and within two (2) weeks of nomination submit a written letter of intent outlining expected duties, responsibilities, and level of commitment if elected.

Section 3. Election. Members of the Anchorage Youth Court shall elect from among members nominated pursuant to Article IV, Section 2, one Chief Judge, one Assistant Chief Judge, a pool of at least six Associate Judges, one Clerk, one Anchorage Youth Court Bar Association President, one Vice President, one Treasurer, and one Secretary. The term of each of these offices shall be one year. Elections shall be held annually in February at a meeting announced two weeks in advance in writing to all Anchorage Youth Court Bar Association members. A simple majority of those present and

voting shall be required for election to any office. Officers will assume positions the first of April, following election.

No one shall hold more than one elected position at any time. A vacancy of an elected position may be filled by the appointment of any active bar member, including members holding elected positions at the time. To assume the appointed position on a permanent and elected basis as outlined in Section 5 below, the said officer must resign his first position. If any member elected to a position is unable to fill that position, a new vote must be taken as soon as practicable.

Voting shall be by secret, written ballot. Each voter may cast one vote for each position to be elected. All ballots shall be placed by the voter in a sealed ballot box. At the conclusion of voting, the ballot boxes shall be delivered to the graduating seniors, who shall count and tally all ballots under the supervision of the Coordinator and report the results to the membership.

Section 4. Removal. Any person elected may be removed from office by a two-thirds majority of the votes cast by the members of Anchorage Youth Court, but only after the grounds therefor have been presented to the person in writing and the person has had an opportunity for a hearing before the Anchorage Youth Court Bar Association membership at a meeting set for that purpose.

Section 5. Vacancies. In the event of a vacancy in an elected position, the officers of the Anchorage Youth Court Bar Association (i.e., Bar Association President, Bar Association Vice President, Bar Association Secretary) shall have the authority to appoint a temporary replacement, if necessary, until an election can be held to fill the position. But no appointment shall be for more than 45 days, and an appointment shall end immediately upon election of a person to fill the position. Elections shall be held in the same manner as provided in Sections 2 and 3, above.

Section 6. Anchorage Youth Court Bar Association President. Any attorney who is at least 16 years old or at least a junior in high school is eligible to hold the office of Bar President. The Anchorage Youth Court Bar Association President shall chair all meetings of the Anchorage Youth Court Bar Association, assign attorneys to Youth Court cases, supervise all other business of the Bar Association with the assistance of the Coordinator, and serve as the student representative of the Anchorage Youth Court to the community. The Anchorage Youth Court President is authorized to create and fill any position he or she deems necessary. The Anchorage Youth Court Bar Association may remove appointees by 2/3 vote of the members present. The President shall preside over the executive board, which will consist of officers or their representatives, appointees and representatives from each active committee. This board will meet with the coordinator at a regularly scheduled time.

Section 7. Anchorage Youth Court Bar Association Vice President. Any attorney who is at least 16 years old or is a junior in high school is eligible to hold the office of Bar Association Vice President. The Anchorage Youth Court Bar Association Vice President shall serve in the absence of or at the request of the Anchorage Youth Court President, and in that event shall serve in place of and with the same power and authority of the Anchorage Youth Court Bar Association President.

Section 8. Secretary. Any member who is at least 16 years old or is at least a junior in high school is eligible to hold the office of Secretary. The Secretary shall take minutes and keep recordings of all Anchorage Youth Court Bar Meetings, maintain all

current membership records and attendance records, and assist the Anchorage Youth Court Bar Association President. The Secretary shall publish the minutes of all Anchorage Youth Court Bar Association Meetings and keep Anchorage Youth Court Bar Association members informed of the time and date of upcoming meetings.

Section 9. Treasurer. Any member who is at least 16 years old or is at least a junior in high school is eligible to hold the position of Treasurer. Duties of the Treasurer are, but not limited to; control of student funds, maintain and keep current records, provide treasurer's reports at all Anchorage Youth Court Bar Association meetings.

Section 10. Judges. All judges must be enrolled in grades 10, 11, or 12, and must have served at least two times as prosecuting attorney and at least two times as defense attorney, unless candidates with these qualifications are not available. In case the above qualifications cannot be met, the nominee must have been involved in at least one case. Three Associate Judge positions must be filled by students with fall enrollment in grades 10 or 11.

To qualify for the position of Chief Judge or Assistant Chief Judge, a person must have been an Associate Judge at least once.

The Assistant Chief Judge shall serve in the absence of or at the request of the Chief Judge, and in that event shall serve in place of and with the same power and authority as the Chief Judge.

Section 11. Clerk. Any member in grade 7-12 may be elected to the position of Clerk. Under the supervision of the coordinator, the Clerk shall set the Anchorage Youth Court calendar, and send out timely court notices to the Referring Authority and defendants as required. The Clerk of the Anchorage Youth Court shall be responsible for tape-recording all court proceedings, maintaining the tape library of the Anchorage Youth Court, keeping the records of all the Anchorage Youth Court proceedings, maintaining defendant files, and generally assisting the Chief Judge. The Clerk may appoint such assistants, not to exceed three (3), as the Clerk deems necessary.

Section 12. Baliff. Any member in grade 7-12 may be appointed to the position of Baliff. Baliff shall be appointed by the Bar President on a case-by-case basis. The Baliff shall swear-in witnesses, assist in setting up the courtroom, and assist the Chief Judge in maintaining order and decorum in the courtroom.

Section 13. Attorneys. Any member in grade 9-12 may be appointed as an Attorney. Under special circumstances and/or exceptional evaluations, and after consultation with the Chief Judge, the Coordinator may approve the appointment of an Attorney who is in grade 7 or 8.

The selection of attorneys to serve on cases that are referred to the Anchorage Youth Court shall be made by the Bar Association President on a rotating, case-by-case basis. Attorneys shall zealously represent their client to the best of their ability in accordance with the Alaska State Court and American Bar Association rules.

Section 14. Jurors. All youth in grades 7 through 12 and enrolled in a public or private school in the Municipality of Anchorage are eligible to serve as jurors, including any Anchorage Youth Court member.

The method for selecting jurors shall be established by the Administrative Board. The Coordinator shall be responsible for maintaining a list of available jurors.

Jurors are bound to maintain the confidentiality of the defendant and all court proceedings.

#### Article V: Referral Procedure

Section 1. After a preliminary investigation, the Referring Authority may refer a case to the Anchorage Youth Court. The Referring Authority will meet with the defendant and his/her custodial parent or guardian and explain the purpose of Anchorage Youth Court and its procedures, including sentencing. After an opportunity to confer with counsel, the defendant will be given the choice of proceeding to Anchorage Youth Court or being handled through regular channels, which may include a formal court hearing and a record.

Section 2. If the defendant and his/her custodial parent or guardian agrees to proceed with Anchorage Youth Court, they will sign a voluntary agreement, with the understanding their case will be held open for one hundred twenty (120) days to complete the process. This voluntary agreement will also state that failure to comply with Anchorage Youth Court and other established conditions, once agreed to, may result in having their case handled in formal court proceedings.

Section 3. Anchorage Youth Court proceedings will begin with the referral from the Referring Authority. The Coordinator will receive a copy of the signed voluntary agreement to participate in Anchorage Youth Court, available arrest reports and other related documents. If the case is not accepted by Anchorage Youth Court, the case will be returned to the Referring Authority, together with all documents relating to the case.

#### Article VI: Anchorage Youth Court Procedure

Section 1. Proceedings in Anchorage Youth Court shall be conducted as far as practicable in substantial conformity with rules and statutes governing adult proceedings in the Alaska court system. The rules and statutes shall be applied and modified as necessary to promote the prompt and just resolution of cases and legal education.

Section 2. At all times, Anchorage Youth Court proceedings will be conducted to ensure that the defendants' rights guaranteed by the Alaska and United States constitutions are protected, including but not limited to the following:

1. the right to be represented by an Anchorage Youth Court attorney;
2. the right to trial by jury;
3. the right to call and cross-examine witnesses;
4. the right against self-incrimination; and
5. the right to appeal.

At all times, Anchorage Youth Court proceedings will be conducted to ensure confidentiality.

Section 3. The Chief Judge or his appointee shall preside over all courtroom proceedings of the Anchorage Youth Court, with the assistance of two associate judges.

Section 4. If after an Anchorage Youth Court court proceeding, the defendant pleads guilty or is found guilty at trial, the judges will determine an appropriate sentence at a sentencing hearing to be held within five (5) days of the verdict or plea. Sentencing shall be in accordance with the informal sentencing guidelines established by the Referring Authority and the Anchorage Youth Court Judges.

Section 5. The Chief Judge shall submit to the Coordinator the findings, recommendations, and sentence of the Anchorage Youth Court. The Coordinator shall submit the findings, recommendations, and sentence to the Referring Authority before final disposition of the case.

Section 6. If the defendant chooses to exercise his right to appeal either a verdict or a sentence, he shall submit a written statement, including reasons for appeal, to the Chief Judge within three (3) days of the sentence. The Chief Judge shall appoint a three-member appeals panel.

There are seven grounds for appeal:

1. verdict not in conformity with Alaska Constitution, statutes or rules;
2. verdict not supported by the evidence;
3. sentence not supported by the evidence;
4. improper legal procedure;
5. inadequate legal representation;
6. new evidence discovered which substantially affects the case; and
7. plea not voluntarily given.

If the appeals panel finds for the defendant, the case shall be remanded for a new trial.

Section 7. The Coordinator shall oversee the defendant's compliance with the Anchorage Youth Court sentencing order (s) and provide status reports to the Referring Authority as required.

#### Article VII: Voting and Adoption of Rules

Section 1. All members of the Anchorage Youth Court may vote concerning Anchorage Youth Court matters.

Section 2. All matters put to a vote shall be decided by a simple majority of those present unless otherwise specified in this constitution.

Section 3. The Anchorage Youth Court Bar Association may pass rules deemed necessary to its proper functioning, as long as such rules do not conflict with this constitution or the bylaws.

## Article VII: Amendments and Ratification

Section 1. In order to ratify and amend this constitution, a constitution committee shall publicize the proposed constitution or the proposed revisions or amendments and provide notice of the voting date and place in a reasonable manner best calculated to reach the largest number of qualified voters as defined below.

Section 2. A qualified voter, for the purpose of ratification and amendment of this constitution, shall be any active member of Anchorage Youth Court Bar Association.

Section 3. The constitutional committee shall have the responsibility of preparing and distributing ballots for voting. Each qualified voter may cast one secret, written ballot for each proposal. The constitution committee will be responsible for counting and tallying of all ballots.

Section 4. A majority of all persons in grades 7 through 12 voting on the proposal (s) shall be required for ratification and amendment.

Section 5. The constitution committee shall promptly announce the outcome of the vote.

\* Amendments passed March and April, 1991 in bold type.

1993 Village Participation Conference

Resolution # 93-13

ENTITLED: URGE THE ALASKA LEGISLATORS TO SUPPORT THE FUNDS FOR YOUTH PROGRAMS AND TEEN CENTERS.

WHEREAS, the Alaska Villages lack funds for youth programs and teen centers; and

WHEREAS, the youth get into alcohol and drug abuse and have no place to hang out; and

WHEREAS, alcohol and drug abuse prevention has been introduced in schools, but is not effective enough; and

WHEREAS, the youth are depressed and committing suicide.

Now, therefore, be it

RESOLVED: that the 1993 Village Participation Conference hereby urges the Alaska Legislators to support the funds for youth programs and teen centers in every Alaska Village.

ADOPTED this 26th day of February, 1993 by the Village Participation Conference in Juneau, Alaska.

Dewey Skan  
Dewey Skan, Chairman  
1993 Village Participation Conference

**HB**

**214**

# SENATE COMMITTEE REPORT

DATE: 4/16/93

FURTHER: JUDICIARY

DATE TURNED INTO OFFICE: 1/19/94

HES Committee considered CS HB 214(JUD)

Allowing the parent or legal guardian of a minor to disclose information about the minor to certain state officials and state employees; prohibiting further disclosure of the information to unauthorized persons; amending Alaska Child in Need of Aid Rule 22; efd.

and recommends:

- replace with \_\_\_\_\_ CS \_\_\_\_\_ ( )
- or  adopt previous \_\_\_\_\_ CS \_\_\_\_\_ ( )
- attaches amendment(s)

- same title
- new title
- technical title change (HB only)

adopts \_\_\_\_\_ Letter of Intent

further referral to the \_\_\_\_\_

do pass

do not pass

no recommendation

individual recommendations

### NEW FISCAL NOTES

Department	Date	Zero	Fiscal
LAW	12/14/93	✓	
HSS	1/18/94	✓	

### PREVIOUS FISCAL NOTES

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

### DO PASS:

Mike Miller

Jim...

Bob...

Judy...

Renee...

### OTHER RECOMMENDATIONS:

J. Miller's no rec.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Steve... Do Pass

Chair: Signature and Recommendation



State of Alaska  
**ombudsman**

Duncan C. Fowler

MEMORANDUM

DATE: April 1, 1993  
 TO: Representative Brian Porter, Chair  
 House Judiciary Committee  
 FROM: Duncan C. Fowler, Ombudsman  
 SUBJ: Ombudsman's Position  
 Committee Substitute for House [REDACTED]

Reply to:

- P.O. Box 102638  
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(800) 478-2624
- P.O. Box 113000  
Juneau, AK 99811-3000  
(907) 485-4970  
(800) 478-4970
- P.O. Box 74368  
Fairbanks, AK 99707-4358  
(907) 452-4001  
(800) 478-3257

**BACKGROUND**

This bill attempts to resolve problems with judicial interpretation of AS 47.10.090 which came to light last year. That statute by its terms restricts access to court records and prohibits disclosure of information and records which are prepared by federal, state or city agencies when those records pertain to a minor.

This statute has been interpreted by a superior court judge to prohibit a parent involved in a Child In Need of Aid (CINA) proceeding from providing specific information on the matter to their legislator, other elected officials or the ombudsman. While the court's order was eventually modified to allow the parent to provide information to the ombudsman, the limitations on discussions with elected officials remained in place.

This matter is being appealed to the Alaska Superior Court by the mother involved in the CINA case. The Legislative Council did authorize the submission of an Amicus brief supporting a parent's right to contact their elected officials in such matters

**EFFECT OF PROPOSED LEGISLATION**

This committee substitute provides parents or guardians an affirmative right to provide information about state actions involving a minor to elected officials or other selected state officials who would be in a position to correct any allegedly inappropriate acts by the state agencies involved. The substitute prohibits re-disclosure of confidential information by these officials.

It is broad enough to overcome any disclosure prohibitions in other state statutes, regulations and court rules such as CINA Rule 22 and Delinquency Rule 27 which, along with AS 47.10.090, also prohibit disclosure of information.

While it stops short of affirmatively exempting parents and guardians from coverage of disclosure restrictions or specifically allowing parents to disclose information not obtained from agency records to persons other than state officials, it clarifies that it should not be interpreted to limit existing parental rights by implication.

Representative Porter

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April 1, 1993

**OMBUDSMAN'S POSITION**

The ombudsman supports the position that parents should be allowed to contact state officials to seek relief from agency actions that have such a significant impact on their personal lives. That cannot be done effectively unless parents are allowed to share information with those officials.

The ombudsman believes this committee substitute is preferable to the original bill. It provides an affirmative right and, unlike the original bill, it does not limit existing rights by implication, i.e. that parents and guardians may only provide information to selected state officials, even if that information was obtained from non-confidential sources

# Alaska State Legislature



Official Business

**Speaker of the House of Representatives**

State Capitol  
Juneau, Alaska 99801-1182  
(907) 465-3720

**Representative Ramona Barnes**

## POSITION PAPER

HB 214

HB 214 amends AS 47.10 which will allow a parent or legal guardian of a minor who has a complaint against DFYS to voice this complaint to the Commissioners of H&SS, Administration, Public Safety, the Ombudsman, the Attorney General, their legislators, the Governor and Lt. Governor who may review this information in their official capacity. These public officials will still be prohibited from disclosing information to anyone not authorized to receive said information.

This bill was introduced to eliminate a problem that came to light in 1991. At the request of a constituent I questioned the way DFYS was taking care of two children placed under their authority. The guardian ad litem in this case went to court and was granted a gag order preventing my constituent, the parent of these children, from talking to me about her concerns regarding the care her children were receiving in foster care. At no time were any confidential documents involved in her complaint.

This "gag order" violated my constituent's right to freedom of speech and her right to convey her displeasure with a state agency to me, her elected representative, and the Governor and Lt. Governor. My constituent's attorney has filed an appeal with the Alaska Supreme Court, and Legislative Council has agreed to participate in this appeal by filing an amicus brief which has been accepted by the court.

I ask for your support of HB 214 to aid in maintaining open lines of communication between our constituents and their elected representatives.

FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. CSHB 214 (JUD)

Revision Date: December 14, 1993  
 Title: "...allowing the parent or legal guardian of a minor to disclose certain records and information about the minor..."  
 Sponsor: House Rules/Reg. of Legislative Council  
 Requestor: Governor's Office

Department Affected: Department of Law  
 BRU: Legal Services  
 Component: Operations  
 COMPONENT SERIAL NO. 0093

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING:

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

*Richard I. Peques*

Prepared by: Richard I. Peques, Director  
 Division: Administrative Services Division  
 Approved by Commissioner: Charles E. Cole, Attorney General  
 Agency: Department of Law

Phone: 465-3672  
 Date: December 14, 1993  
 Date: December 14, 1993

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FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. CSHB 214 (JUD)

ANALYSIS CONTINUATION:

The Judiciary Committee Substitute for HB 214 amends the state statute providing for the confidentiality of juvenile records, AS 47.10.090, to permit the parent or legal guardian of a minor to disclose records or other information about the minor to certain state officers for review or use in their official capacity. Under the bill, the person to whom disclosure is made would be prohibited from disclosing the confidential or privileged information to anyone about the minor who is not authorized to receive the information. A person who violates this safeguarding provision would be guilty of a misdemeanor, and upon conviction could be punished by a fine of not more than \$500 or by imprisonment for not more than one year, or both. The bill would also amend Alaska Child in Need of Aid Rule 22, by providing an exception to the confidentiality of information pertaining to a minor who is subject of Child in Need of Aid proceedings. The Department of Law would not usually be involved in this process and, consequently, there should not be a fiscal impact for the department.

# FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. CS HB214 (JUD)

Revision Date: 01/18/94 Dept. Affected: Health and Social Services  
 Title: An Act allowing the parent or legal guardian of a minor to disclose certain records and information... BRU: Family & Youth Services  
 Sponsor: House Rules Committee Component: Southeast, Southcentral, Northern & Central Office  
 Requestor: Senate HES COMPONENT SERIAL NO. 0258,0254,0255,0259

**Expenditures/Revenues:**

(Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
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>CAPITAL EXPENDITURES</b>						
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<b>CHANGES IN REVENUES</b>						
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**FUND SOURCE**

(Thousands of Dollars)

FUND SOURCE	FY95	FY96	FY97	FY98	FY99	FY00
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1008 GF/MHTIA						
Other						
<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>

**POSITIONS**

POSITION TYPE	FY95	FY96	FY97	FY98	FY99	FY00
FULL - TIME						
PART - TIME						
TEMPORARY						

Estimate of current year (FY94) impact: None

**ANALYSIS:** (Attach a separate page if necessary)

There would be no fiscal impact to the department if this bill were to become law. The department would not be required to provide any additional administrative or line services as a result of this bill.

Prepared by: Deborah R. Wing, Director *Deborah R. Wing* Phone: 465-3191  
 Division: Division of Family & Youth Services Date: 01/18/94  
 Approved by Commissioner: Margaret R. Lowe, M.Ed., Ed. S. *Margaret R. Lowe* Date: 01/18/94  
 Agency: Department of Health & Social Services

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**HB**

**217**



## SPONSOR STATEMENT

HB 217

Representative Eileen P. MacLean

---

The purpose of HB 217 is to require Native corporation's under the Alaska Native Claims Settlement Act (ANCSA) to hold a minor's dividends in an interest bearing account while the minor is in custody of the state.

With the passage of ANCSA on December 18, 1971, unique Native regional corporations were established and every Alaska Native became eligible to receive 100 shares of a regional corporation stock. Under the original act, the stock was inalienable and could not be sold or otherwise transferred, (except by inheritance), until December 18, 1991. Stock was limited to living Natives as of December 18, 1971. Those born after that date, "afterborns", could only acquire stock by inheritance.

The creation of ANCSA corporations resulted in a new class of minor's who were similarly situated in that they were eligible for 100 shares of Native corporation stock. In an effort to insure protection of dividend funds for minors in state custody the state filed a class action suit to assure that dividends were protected and spent for the child's benefit while in state custody. Because the stock was issued only to Alaska Natives living on December 18, 1971 and the restrictions on stock ownership were set to expire on December 18, 1991, the issue of protecting dividends of minors in state custody was temporary.

In 1987, Congress amended ANCSA and extended the alienability of Native corporation stock indefinitely. The federal amendments to ANCSA have brought back the issue of dividend protection for children in state custody and raised the need for a permanent solution. As a result, the Department of Health and Social Services and Native corporations have requested this legislation.

HB 217 adds a new section to corporations organized under the Alaska Native Claims Settlement Act requiring the corporation to set up interest bearing accounts for minors held in state custody under the child-in-need-of-aid category. The bill prohibits the corporation from using the property in the account unless approved by a court and specifies when corporations can distribute property.

Sponsor Statement

HB 217

page 2

HB 217 exempts the retention and distribution of dividends and distributions under this legislation from the Uniform Transfers to Minors Act (UTMA). UTMA sets out requirements for custodians of Native corporation stock. HB 217 does not affect the procedure or requirements for custodians of Native corporation stock, it requires Native corporations to hold dividends in an interest bearing account while a minor is in state custody.

The Department of Health and Social Services is in support of the bill. HB 217 has a zero fiscal note.

**DIVISION OF LEGAL SERVICES**

**LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA**

**COPY**

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

130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

**MEMORANDUM**

March 10, 1993

**SUBJECT:** Sectional Summary of HB 217

**TO:** Representative Eileen MacLean  
Attn: Rena

**FROM:** Theresa L. Bannister *TB*  
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

**Section 1.** Adds a new section to the chapter on for-profit corporations.

Sec. 10.06.961(a) requires a Native corporation organized under AS 10.06 and under the Alaska Native Claims Settlement Act (ANSCA) to retain a minor's dividends and other distributions in an interest-bearing account while the minor is in the custody of the state under AS 47.10.010(a)(2) (child-in-need-of-aid category).

Sec. 10.06.961(b) prohibits the corporation from using the property in the account unless the use is approved by a court.

Sec. 10.06.961(c) tells the corporation when it can distribute the property in the account.

Sec. 10.06.961(d) states that the retention and distribution of dividends and distributions under this section is not subject to the Alaska Uniform Transfers to Minors Act (AS 13.46).

Sec. 10.06.961(e) defines "minor" for the section.

**Section 2.** Is a transition provision for sec. 1. States that sec. 1 doesn't apply to dividends paid, or distributions made by the corporation before sec. 1 takes effect.

TLB:gc  
93-219.glc

## POSITION PAPER

CSHB 217 (JUD)

For An Act Entitled: "An Act relating to Native corporation dividends and other distributions due to minors in custody."

### Background

When the Alaska Native Claims Settlement Act (ANCSA) became law on December 18, 1971 every living Alaska Native was entitled to 100 shares of stock in a regional native corporation and depending on the residence location to become a shareholder in a village corporation as well. Alaska Natives born after December 18, 1971 ("afterborns") could become shareholders only by inheritance.

With very limited exceptions, corporate stock in regional and village corporations could not be sold or otherwise disposed of until December 18, 1991. On that date the stock in regional and village corporations was to be canceled and new shares issued. The new stock was to be with out the restrictions or alienation that was required originally issued under ANCSA. Congress amended ANCSA prior to December 18, 1991 and retained the alienability of native corporation stock. This action holds the stock to the original restrictions under the act.

A class action suit was brought on behalf of children in the custody of the department (Ak. v Ahtna) to assure that stock dividends were protected from irresponsible expenditure by the minor's parent(s). Trust accounts were established at Alaska banks on behalf of those children in custody of the department and notice was given to the trust officer by the department when a child entered or left state custody. This process ended when the original dividend holders reached the age of majority and protection of their assets was no longer a fiduciary issue.

Now the issue of "after born" dividend holders has brought back the need for protection of dividend funds for minors that are in the department's custody.

Analysis/Program Impact

The department recognizes the need for protection of dividends paid to minors in the department's custody. Failure to establish these protections exposes children to exploitation by irresponsible parents or guardians.

The department believes that the native corporations are best able to protect dividends that are issued to "after born" children. This belief supports self determination for Alaska Native children by enabling the corporations to act in the best interests of the child by ensuring that the child is the ultimate benefactor of the dividend.

The department would work with corporations to identify children enrolled in corporations distributing dividends when those children enter and leave custody. When custody orders are entered for a Alaska Native youth enrolled in an ANCSA corporation the department will provide the information to the corporation so that the proper account for the funds may be established.

DEPARTMENTS POSITION

The department strongly supports this bill as it would protect the dividends of the "after born" children entering or leaving state custody. It supports the underpinnings of the department's mission to act in the best interests of the child while at the same time supporting self determination by enabling the corporation to act as the child's fiduciary.

Recommended: Deborah R. Wing Date: 4/13/93

Deborah R. Wing, Director  
Division of Family and Youth Services

Approved: Theodore A. Mala Date: 4/13/93

Theodore A. Mala, MD, MPH  
Commissioner  
Department of Health and Social Services

# FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. CSHB 217 (JUD)

Revision Date: April 13, 1993 Dept. Affected: Health and Social Services  
 Title: An Act relating to Native corporation BRU: Family and Youth Services  
dividends and other distributions due to minors in state.." Component: Southeast, Southcentral, Northern, & Central Office  
 Sponsor: REPRESENTATIVE MACLEAN  
 Requestor: Senate HESS Committee COMPONENT SERIAL NO. 0258 0254 0255 0259

**Expenditures/Revenues:**

(Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
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>

CAPITAL						
---------	--	--	--	--	--	--

REVENUE FUND SOURCE						
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**FUNDING:**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<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>

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: NONE

**ANALYSIS:** (Attach a separate page if necessary)

There would be no fiscal impact to the department if this bill were to become law. Any additional administrative support or line staff services needed would be absorbed by already existing resources.

Prepared by: Deborah R. Wing, Director  
 Division: Department of Health & Social Services

Phone: 465-3191  
 Date: 04/13/93

Approved by Commissioner: Theodore A. Mala, MD, MPH  
 Agency: Department of Health & Social Services

Date: 4/13/93

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FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

Bill Version: CSHB 217 (JUD)  
(H) Publish Date: 4/7/93

Revision Date: \_\_\_\_\_

Title: Relating to Native corporation dividends

Sponsor: Representative MacLean

Requestor: \_\_\_\_\_

Department Affected: Commerce and Economic Development

BRU: Banking, Securities and Corporations

Component: \_\_\_\_\_

COMPONENT SERIAL NO. 1233

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY 93) impact: 0

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Willis F. Kimpatrick, Director

Division: Banking, Securities and Corporations

Phone: 465-2522

Date: \_\_\_\_\_

Approved by Commissioner: Paul Fuhs

Agency: Commerce and Economic Development

Date: 3-24-93

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Page \_\_\_ of \_\_\_

# Alaska Federation of Natives, Inc.

April 2, 1993

Representative Eileen MacLean  
Alaska State Legislature  
State Capitol, MS 3100  
Juneau, Alaska 99801-1182

**RE: HOUSE BILL 217, "An Act relating to Native Corporation dividends and other distributions due to minors in state custody".**

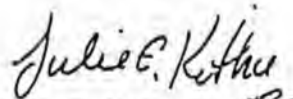
Dear Representative MacLean:

Please accept this letter as written support from the Alaska Federation of Natives for House Bill 217. The bill as currently before House Judiciary Committee will be a major step in resolving a situation which endangers the interests of minor shareholders placed in the custody of the state.

In addition to current language in House Bill 217, I would encourage you to address minor shareholders placed in the custody of states other than Alaska. Many ANCSA shareholders reside outside Alaska and thus the current situation is extended beyond Alaska boundaries.

House Bill 217 has undergone extensive review by the Federation's corporate membership. I am pleased that I can forward this letter of support on behalf of the Alaska Federation of Natives.

Sincerely,



Julie E. Kitka  
President

March 23, 1993

Eileen MacLean  
House of Representatives  
State Capitol  
Room 507  
Juneau, AK 99801-1182

Re: House Bill No. 217, "An Act relating to Native corporation dividends and other distributions due to minors in state custody"

Dear Representative MacLean:

CIRI strongly supports House Bill No. 217 as an attempt to close a gap in the law that endangers the interests of minor shareholders who have been placed in the custody of the state as children in need of aid.

The Alaska Uniform Transfers to Minors Act ("AUTMA") requires Native corporations such as CIRI to make distributions on behalf of a minor shareholder to the adult who has been appointed custodian for that minor's stock pursuant to the AUTMA. That requirement creates a troubling situation when the State has removed physical custody of the child from that adult, who nevertheless remains custodian of the stock presumably until the special provisions of the AUTMA for terminating stock custodianships have been invoked. House Bill No. 217 should remedy that situation and help protect the minor shareholder's dividends from misuse.

I do have two comments regarding the legislation as currently drafted. First, I note that it applies only to minors in the custody of the State of Alaska and not to those in the custody of other states. CIRI (and, we believe, many other Native corporations) typically has several minor shareholders at any given time who are in the custody of states other than Alaska. The Alaska Statutes (A.S. 13.16.705(e)) make Alaska the situs of ANCSA stock regardless of where the shareholder lives, thus affording all Alaska Natives—residents of Alaska and non-residents alike—uniform and consistent rules regarding their ANCSA stock. The AUTMA itself purports to apply to all custodianships of ANCSA stock, again without regard to the residence of either the transferee or transferor shareholder. I suggest that House Bill No. 217 be broadened to extend the same protection to minors in the custody of other states, since in all other aspects their situation is the same as that of children in need of aid in Alaska.

Eileen MacLean  
March 23, 1993  
Page 2

Second, the draft legislation provides for the distribution to the legal guardian of the minor of all monies held in state custody terminates while the minor is under eighteen. I note this potential problem: Unless the original stock custodian has been removed by court order in accordance with the AUTMA, and a new custodian appointed, the question will arise whether subsequent distributions must still be delivered to the original stock custodian, even if physical and legal custody of the child himself has been removed from that person.

On behalf of CIRI, I am gratified that efforts are being made to fill a gap in the statutes to resolve a problem that seriously affects certain of our shareholders.

Very truly yours,

COOK INLET REGION, INC.



Barbara A. Donatelli  
Vice President, Administration

cc: Roy Huhndorf  
Carl Marrs

*Flora*



March 12, 1993

Representative Eileen MacLean  
House of Representatives  
Alaska State Legislature  
P.O. Box V  
Juneau, Alaska 99811

Dear Eileen:

This letter is being sent in support of HB 217 which will give native corporations authority to create dividend accounts for minor shareholders under state custody.

Arctic Slope Regional Corporation has received requests from shareholders for the Board of Directors to authorize the establishment of accounts for minors under State custody to insure that the minors' benefits are protected, so the passage of HB 217 will be of benefit for our shareholders.

HB 217 will help give ASRC authority to create dividend accounts and save the dividends of the minor shareholders so that these dividends can be used on their behalf or dividends can be held in that account until the minor reaches the age of 18 years.

ASRC has minor shareholders under the care of immediate family members because natural parents are incarcerated but custodianship is still under the natural parents and they are not willing to relinquish custodianship. Unless there is a court order terminating parental rights and legal guardianship appointed dividends have to be issued to the custodian of record.

I have asked our legal counsel to review this proposal further to see if there are additional matters we would like to see addressed in this Bill and will advise you as soon as possible if there are such additional matters.

Arctic Slope Regional Corporation highly recommends the passage of HB 217 so that the rights of minor shareholders can be protected.

Quyanakpak, Eileen!

Sincerely,

A handwritten signature in cursive script that reads "Flossie Chrestman".

Flossie Chrestman  
Corporate Secretary

Date: March 11, 1993

To: The Board of Directors of Arctic Slope Regional Corporation  
P.O. Box 129  
Barrow, Alaska 99723

Dear: Members of the Board:

Hello, my name is Bertha E Akpik, Akootchook, I am a shareholder of Arctic Slope Regional Corporation. On behalf of the minor children involved, I would like to take time to put in writing my concern which has been on my mind for quite some time now, and because I believe that it is a very sensitive issue which may affect and address some shareholders and their children of this corporation, I feel it is best and appropriate for me to put it into writing for the record instead of addressing it to the general public so that I may unintentionally direct it to anyone who may fall under this category.

As you all may know, my younger sister, Nellie Ruth Akpik Itta died of an untimely death as a result of domestic violence, and because of the nature of her death the children have been pretty much left as orphan's since their father, by law; has been granted an order not to have any contact with the minor children.

Since the tragedy, the immediate family of Nellie R Itta has taken on the responsibility of raising these four children.

Leonard and I have been granted physical custody of Nora Marie and Robert Thomas Jr., Mr. and Mrs. Max Akpik of Wainwright have been granted the physical custody of Ellis Mathew, and my mother Mrs. Marjorie Akpik and Miss Theresa Akpik have been granted dual physical custody of the youngest child, Ellen Joyce.

By State law, Division of Family and Youth Services have obtained legal custody of the minor children of Robert and Nellie Itta (deceased). But according to the Arctic Slope Regional Corporation Stock records, these children are still in the under the legal guardianship of Robert Allen Itta, Sr,. As we know, A.S.R.C. dividends were distributed in December of 1992. and since the stock records show that Robert Itta, Sr. is still the legal guardian of the minor children involved; we, the PHYSICAL CUSTODIANS were unable to retrieve the dividends for these children. I have unsuccessfully requested from Robert Itta Sr to sign an ASRC "Waiver" of Custodianship and turn over the legal guardianship regarding ASRC shares over to the members of the family but have only received negative response from him. That is why I am requesting your support to consider awarding those dividends which are still being held at A.S.R.C. to the children to be used for the benefit of the children. I would also like to thank Michael Stotts and his staff for their efforts to assist me.

In closing , I highly recommend that the Board of Directors establish an account program similar to the Alaska Permanent Dividend Fund application to insure that the rightful gaurdian receives the dividend on behalf of the minor child who is living with them, whether he or she is, or isn't in State Custody. i.e: aunt, uncle, grandparents., and, or establish a trust fund account for other children who are in long-term legal custody of the state.

Thank you for your time in voicing my concern. If you have any questions you can reach me at 852-5590.

Sincerely,

*Bertha E. Akootchook*

Bertha E Akootchook  
P.O. Box 251  
Barrow, Alaska 99723

cc: Dept of H.S.S.

**HB**

**234**

# SENATE COMMITTEE REPORT

DATE: 4/27/94

FURTHER: Finance

DATE TURNED INTO OFFICE: 5/2/94

HESS Committee considered HOUSE BILL NO. 234

"An Act relating to endowments and donations of the University of Alaska and the University of Alaska endowment trust fund; and providing for an effective date."

and recommends:

- replace with \_\_\_\_\_ CS \_\_\_\_\_ ( )
- or  adopt previous \_\_\_\_\_ CS \_\_\_\_\_ ( )
- attaches amendment(s)

- same title
- new title
- technical title change (HB only)

adopts \_\_\_\_\_ Letter of Intent

further referral to the \_\_\_\_\_

do pass

do not pass

no recommendation

individual recommendations

**NEW FISCAL NOTES**

Department	Date	Zero	Fiscal

**PREVIOUS FISCAL NOTES**

Department	Date	Zero	Fiscal
Univ	3/4/94	✓	
Revenue	3/8/94		22.5

Appropriation No Fiscal Note

**DO PASS:**

Mike Miller  
John Ely  
Brian D. Lemmon  
John D. E. S. SA

**OTHER RECOMMENDATIONS:**

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Steve Miller Do Pass  
 Chair: Signature and Recommendation

# University of Alaska

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## Statewide System

### HB 234 Management of UA Endowment Trust Funds

SPONSORS: DAVIES, Martin, Phillips, Bunde, Ulmer

The congressional acts in 1915 and 1929 granted the Territory of Alaska approximately 113,000 acres of land for the exclusive use and benefit of the University of Alaska as the successor institution to the Agricultural College and School of Mines. All earnings from the sale, lease, and use of these lands has been deposited into a trust fund established under AS 14.40.400. From 1917 through June 30, 1993, the fund has grown to approximately \$20.3 million. Based primarily on more active management of its lands by the University, the fund has doubled in size from \$10.0 million in 1983 to the current \$23.9 million.

All investment earnings from the fund are transferred to the University on a quarterly basis. In accordance with the Board of Regents' policy, these earnings are utilized to inflation-proof the principal of the fund, to pay the costs associated with maintenance of the University's lands, and to fund projects and programs primarily in support of agriculture, fisheries, natural resource management, marketing, and education. The funds are intended to provide a margin of support over and above that which would otherwise be possible through other state and federal funding.

During the previous five years, the Department of Revenue has invested the funds with moderate to good investment results, with an average rate of return of approximately 11.5 percent. In FY93, the Department of Revenue initiated an assessment against the earning of the fund for trustee services in connection with administration of the fund. During the current year, this assessment totals \$50,000.

The Board of Regents and the president of the University believe that the University can manage these funds at a comparable or better return without incurring the annual assessment for trustee services. The

---

**contact:**

Wendy Redman  
University Relations  
463-3086/474-7582

University intends to coordinate management of the investments with that of its other endowments to lower the cost of administration of both funds and maximize the earnings potential.

A comparison of the investment results for the University Trust Fund held by the Department of Revenue and earnings of the University of Alaska Foundation endowment funds managed by Sirach Capital Management and the Common Fund is attached. Assuming continued growth of the fund, if earnings of the fund can be improved by an additional 2 percent, approximately \$2.5 million of additional funds will be available to support critical University projects over the next five years.

In summary, the University is requesting the transfer of the University Trust Funds to the University of Alaska. These funds are adequately protected by law from any expenditure of principal by the University. The University has demonstrated a sound investment history in relation to the University of Alaska Foundation endowment funds, and this same enterprise will be extended to the Natural Resource Endowment.

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

Revision Date:  
Title: "An Act relating to endowments and donations of the University of Alaska endowment trust fund..."  
Sponsor: Rep. Davies  
Requestor: Rep. Davies

Department Affected: University of Alaska  
BRU:  
Component:

COMPONENT SERIAL NO.

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE FD SOURCE						
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FUNDING: (Thousands of Dollars)	FY95	FY96	FY97	FY98	FY99	FY00
GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL FUNDING	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:	FY95	FY96	FY97	FY98	FY99	FY00
FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS:(Attach a separate page if necessary) There is no fiscal impact.  
The university currently has its endowments administered by fund managers such as those which the Department of Revenue has managing the land grant trust fund. Investment results to the university are net of management fees, just as they are under the existing arrangement with the Department of Revenue. The costs are anticipated to remain the same. The inherent advantage of university management of the land grant trust fund in addition to its management of its endowments is the coordination of asset allocation decisions and decisions regarding interest rate risks.

Prepared by: Alison Elgee, Director Phone: 474-7593  
Statewide Budget Office: Alison Elgee, Director  
Approved by: Brian Rogers, Vice President for Finance Date: 3/4/94  
Agency: University of Alaska

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

# DIVISION OF LEGAL SERVICES

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FAX (907) 465-2029  
Mail Stop 3101

130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

### MEMORANDUM

March 22, 1993

**SUBJECT:** Sectional Summary of HB 234

**TO:** Representative John Davies

**FROM:** Michael F. Ford  
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

#### Section 1. Findings.

Section 2. Provides that endowments and donations made to the University of Alaska shall be held and managed by the university.

Section 3. Requires the University of Alaska to establish an endowment trust fund in which certain income from land sales and in which endowments, donations or gifts are held.

Section 4. Provides that the President of the University of Alaska is the fiduciary of the trust fund established under AS 14.40.400(a).

Section 5. Repeals a provision requiring the commissioner of revenue to report to the legislature.

Section 6. A transition section providing that contracts, liabilities, or obligations are not affected by changes made in secs. 2 - 5 of the Act. Also requires the Department of Revenue to transfer assets and liabilities to the university.

Section 7. Effective date.

MFF:gc  
93-250.glc

#### HB234- University vs. Revenue investment performance

In a report prepared by Callan Associates, Inc. for the Department of Revenue, the Department's investment performance for the University land grant trust fund was ranked against all other university endowment and trust funds in the nation. With 1 being the best and 100 being the worst, the performance for the Department of Revenue ranked 99 over the past 5 years (performance in the bottom 1%, nationwide).

The University investment of the University Endowment Fund was ranked 3 for the same five year period. ( In the top 3%, nationwide).

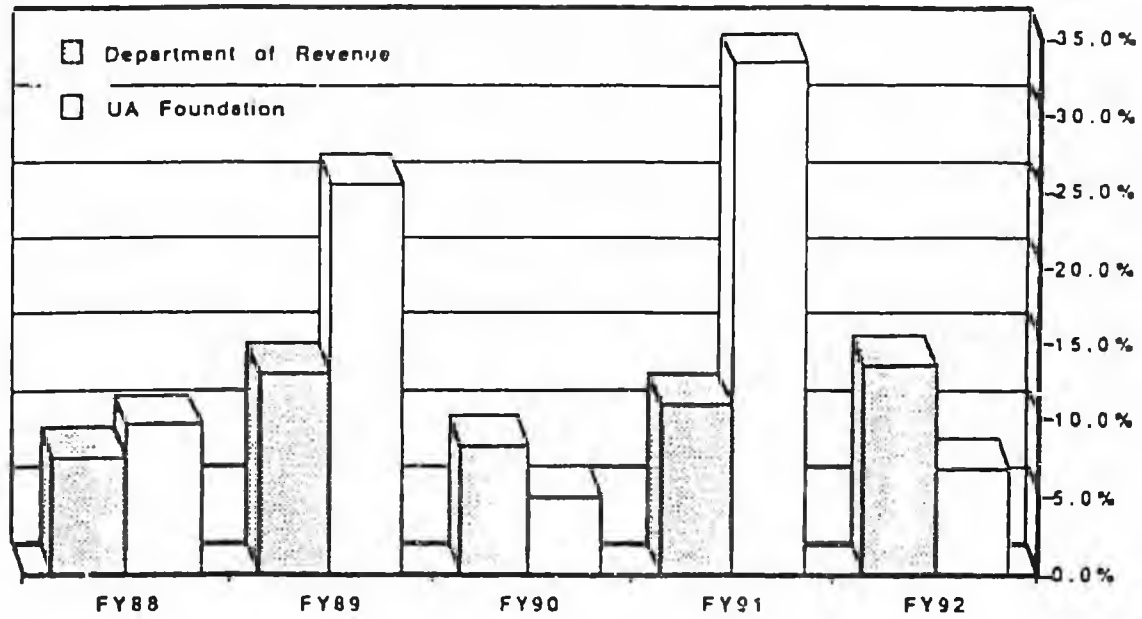
The annual average return for the University endowment fund for the five year period was 14.7%, while the annual average return for the Department of Revenue over the same five year period for the land grant trust fund was 11.73%.

**UNIVERSITY OF ALASKA EDUCATIONAL ENDOWMENT TRUST FUND  
PERFORMANCE TO DATE**

Periods Ended December 31, 1993	Last Quarter	Last Year	Last 2 Years	Last 3 Years	Last 5 Years
<b>University Endowment Fund</b>					
Equity	2.39%	10.06%	9.36%	15.17%	11.68%
Fixed-Income	(0.57)	11.95	9.83	11.66	11.51
Total Fund	(0.02)	11.51	9.72	12.34	11.73
<b>Market Indicators</b>	<i>UA Fdn 0.4</i>	<i>13.2</i>	<i>9.7</i>	<i>15.9</i>	<i>14.7</i>
Standard & Poor's 500	2.24%	9.91%	8.79%	15.61%	14.49%
Callan Broad Market Index	2.03	10.44	9.52	17.00	14.60
Lehman Brothers Aggregate	0.06	9.75	8.57	10.99	11.28
Lehman Brothers Govt/Corp	(0.29)	11.03	9.30	11.53	11.40
Treasury Bills	0.78	3.11	3.36	4.17	5.82
Consumer Price Index	0.49	2.50	2.68	2.72	3.75
<b>Median Rates of Return</b>					
Total Equity Database	2.63%	12.51%	10.54%	17.26%	14.56%
Total Fixed-Income Database	0.16	10.58	9.16	11.54	11.43
Endowment Foundation Funds Database	1.50	12.14	10.37	15.28	12.85
<b>Ranking (1=Best, 100=Worst)</b>					
<b>vs. Total Equity Database</b>					
University Endowment Fund	<i>SIRACH 89</i>	44	57	23	16
Equity	56	66	60	77	92
<b>vs. Total Fixed-Income Database</b>					
University Endowment Fund	<i>SIRACH 75</i>	49	52	63	71
Fixed-Income	92	26	32	46	48
<b>vs. Endowment Foundation Funds Database</b>					
University Endowment Fund					
Total Fund	98	78	70	100	99
	<i>vs UA Fdn 90</i>	31	77	22	3
	<i>SIRACH 94</i>	41	60	29	21

For explanation of market indicators and comparable funds see end of report.  
Rates of return for periods over one year are annualized.

## University of Alaska Trust Fund Comparison of Earnings Rates



	<u>Dept. of Revenue</u>	<u>UA Foundation</u>
<b>Annualized returns:</b>		
One year	7.2%	6.7%
Two years	12.0%	19.3%
Three years	10.7%	14.3%
Four years	11.2%	17.0%
Five years	10.5%	15.5%

**Performance Comparison:  
State of Alaska UA Trust Fund and UA Foundation Pooled Endowment Fund**

	Last Quarter 4/1-6/30/93	Last Year FY93	Last 2 Years FY92-93	Last 3 Years FY91-93	Last 5 Years FY89-93
<b>UA Intermed. Cash</b>	2.10%	9.10%	10.40%	-	-
Index: Merrill Lynch 1-3 Yr. Treasury	1.10%	6.60%	8.50%	9.10%	8.80%
Index: Treasury Bills	0.75%	3.15%	3.91%	4.93%	6.28%
<b>State Equity</b>	0.50%	13.63%	13.52%	9.04%	-
<b>UA Equity</b>	1.60%	24.90%	21.40%	17.10%	18.50%
Index: S&P 500	0.53%	13.58%	13.52%	11.44%	14.19%
Index: State's Total Equity Database	1.02%	15.39%	14.66%	12.03%	13.47%
<b>State Fixed Income</b>	3.06%	14.30%	14.23%	12.69%	11.84%
<b>UA Fixed Income</b>	3.00%	13.20%	13.30%	12.50%	10.90%
Index: Lehman Bros. Govt/Corp	3.00%	13.15%	13.66%	12.50%	11.37%
Index: Total Fixed Income Database	2.77%	12.39%	13.62%	12.55%	11.42%
<b>UA Global Bond</b>	3.40%	14.60%	14.40%	-	-
Index: Salomon Bros. World Bond Index	3.60%	15.20%	18.40%	15.70%	13.10%
<b>UA Int'l Equity</b>	6.70%	8.50%	8.00%	-	-
<b>UA Emerging Markets</b>	6.90%	-	-	-	-
Index: MCSI EAFE Index	10.20%	21.10%	10.10%	2.60%	-0.30%
<b>State Total Fund</b>	2.52%	14.17%	14.01%	12.63%	11.98%
<b>UA Total Fund</b>	2.40%	16.10%	16.00%	13.50%	14.00%
Index: State's Endowment Foundation Database	1.31%	13.66%	14.25%	11.38%	12.11%
Index: UA's Policy Index	1.90%	12.30%	12.70%	11.60%	12.00%
<b>Average Trust Fund Balance</b>	\$20,444,087	\$19,760,522	\$18,375,055	\$17,258,273	\$15,452,005
<b>Yield @ State Performance</b>	\$515,191	\$2,800,066	\$2,574,345	\$2,179,720	\$1,851,150
<b>Yield @ UA Performance</b>	\$490,658	\$3,181,444	\$2,940,009	\$2,329,867	\$2,163,281
<b>Benefit (Cost) of State Management</b>	\$24,533	(\$381,378)	(\$365,664)	(\$150,147)	(\$312,130)

Period Ending 6/30/93

**HB**

**235**

# FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. HB 235

Revision Date: \_\_\_\_\_  
Title: An Act relating to educational programs and services for children with disabilities and other exceptional children  
Sponsor: Representative Con Bunde  
Requestor: Representative Con Bunde

Department Affected: Education  
BRU: Educational Program Support  
Component: Special and Supplemental Services

COMPONENT SERIAL NO. \_\_\_\_\_ 166

**Expenditures/Revenues:**

(Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE FUND SOURCE:						
----------------------	--	--	--	--	--	--

**FUNDING:**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	0	0	0	0	0	0

**POSITIONS:**

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: \$ \_\_\_\_\_

**ANALYSIS:** (Attach a separate page if necessary.) At present, Alaska's State Plan for fiscal years FY 92-94 under Part B of the Individuals with Disabilities Education Act has conditional approval by the U.S. Department of Education and is contingent upon federal acceptance of changes to Alaska statutes and regulations making them consistent with Part B requirements. HB 235 provides for federal acceptance. If HB 235 fails to become law, the state may lose \$8,344,517 in federal funds. See attached sheets for additional information

Prepared by: Mike Maner  
Division: Commissioner's Office

Phone: 465-2803  
Date: 3/19/93

Approved by Commissioner:   
Agency: Education

Jerry Covey  
Date: 3-19-93

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House Bill 235 provides for compliance with federal statutes under Part B of the Individuals with Disabilities Education Act by amending Alaska statutes to make them consistent with Part B requirements. Failure to pass HB 235 could result in the loss of both dollars and services provided by the department and the school districts to educate children with disabilities.

If Alaska does not meet the terms of the conditional approval of its State Plan, the Federal Office of Special Education Programs could withhold our Part B funds and PL 89-313 funds in the amount of 8.3 million dollars. This would result in the loss of 3.8 FTE special education program managers at the department which now has 4.0 FTE. It also would result in the loss of 1.0 FTE Clerk Typist III and 1.3 FTE Grant Managers in special education which now has 1.0 FTE Clerk Typist III and 2.0 FTE Grant Managers.

In addition, there would be no money to pay for department-sponsored special education state-wide professional training opportunities, technical assistance to school districts, and special projects such as preparation and printing of the Alaska Special Education Handbook and booklets regarding parent rights.

Failure to pass HB 235 could result in the loss of 6.9 million dollars, of the 8.3 million dollars Alaska receives, in direct grants to school districts based on submitted child counts of children with disabilities. The following three pages show how the federal dollars would be allocated for FY 94 based on the December 1992 child count and the FY 93 per pupil amount.

Title VI-B		
5,148,324	Total Allocation From USDOE	
1,235,598	Administrative funds for DOE and discretionary projects	
3,912,726	Total Allocation to LEAs based on formula (child count)	
280.582735	Per Pupil Amount	
	Dec . 92	Projected
	Child	FY 94
	Count	Allocation
056 Aleutian East	62	17,396
005 Anchorage	6,021	1,689,389
012 Cordova	72	20,202
000 Denali	10	2,806
015 Dillingham	75	21,044
016 Fairbanks	1,713	480,638
022 Juneau	781	219,135
024 Kenai	1,490	418,068
025 Ketchikan	318	89,225
028 Kodiak	401	112,514
030 Lake & Pen	43	12,065
033 Matsu	1,426	400,111
035 Norne	100	28,058
036 North Slope	163	45,735
037 NW Arctic	289	81,088
039 Petersburg	106	29,742
042 Sitka	219	61,448
048 Valdez	95	26,655
049 Wrangell	81	22,727
<b>Subtotal</b>	<b>13,485</b>	<b>3,778,047</b>
017 Galena	20	5,612
034 Nenana	34	9,540
053 Tanana	20	5,612
<b>Subtotal</b>	<b>74</b>	<b>20,763</b>
008 Bristol Bay	41	11,504
013 Craig	55	15,432
018 Haines	45	12,626
019 Hoonah	55	15,432
020 Hydaburg	15	4,209
023 Kake	45	12,626
027 Klawock	42	11,784
038 Pelican	13	3,648
046 St. Marys	24	6,734
043 Skagway	11	3,088
047 Unalaska	32	8,979
050 Yakutat	28	7,856
<b>155 SERRC</b>	<b>406</b>	<b>113,917</b>
<b>Total</b>	<b>13,945</b>	<b>3,912,726</b>

Pre School		
1,043,491 Total Allocation from USDOE		
208,698 Administrative funds for DOE and discretionary projects		
834,793 Total Allocation to LEAs based on formula (child count)		
560.2636 Per pupil allocation		
	<b>Dec-92</b>	<b>Projected</b>
	<b>Child</b>	<b>FY94</b>
	<b>Count</b>	<b>Allocation</b>
005 Anchorage	623	349,044
016 Fairbanks	205	114,854
022 Juneau	104	58,267
024 Kenai	131	73,395
025 Ketchikan	49	27,453
028 Kodiak	40	22,411
030 Lake & Pen	14	7,844
033 Mat Su	140	78,437
000 Nenana	2	1,121
036 North Slope	14	7,844
037 NW Arctic		10,085
038 Pelican		0
042 Sitka	35	19,609
<b>Subtotal</b>	<b>1,375</b>	<b>770,362</b>
039 Petersburg	7	3,922
048 Valdez	15	8,404
<b>Subtotal</b>	<b>22</b>	<b>12,326</b>
056 Aleutian East	5	2,801
008 Bristol Bay	0	0
012 Cordova	12	6,723
013 Craig	8	4,482
015 Dillingham	13	7,283
017 Galena	1	560
018 Haines	6	3,362
019 Hoonah	10	5,603
020 Hydaburg	0	0
023 Kake	7	3,922
027 Klawock	4	2,241
035 Nome	1	560
046 St. Marys	2	1,121
043 Skagway	1	560
053 Tanana	3	1,681
047 Unalaska	2	1,121
049 Wrangell	10	5,603
050 Yakutat	8	4,482
<b>155 SERRC</b>	<b>93</b>	<b>52,105</b>
<b>Total</b>	<b>1,490</b>	<b>834,793</b>

P.L. 89-313 DISTRICT		
PROJECT APPLICATIONS		
FY 94 ESTIMATE	\$2,152,702	State total
	\$629.08	per child
		FY 94 Allocation
	Count 12/92	Estimate
REAA		
Adak	80	\$50,326
Alaska gateway	78	\$49,068
Aleutian	7	\$4,404
Anchorage OnBase	245	\$154,124
Annette Island	77	\$48,439
Bering St.	268	\$168,593
Chatham	62	\$39,003
Chugach	13	\$8,178
Copper River	76	\$47,810
Delta	152	\$95,620
Fairbanks OnBase	255	\$160,415
Hess	558	\$351,025
Iditarod	70	\$44,035
Kashunamuit	30	\$18,872
Kuspuk	93	\$58,504
Lake & Pen	0	\$0
Lower Kuskokwim	429	\$269,874
Lower Yukon	254	\$159,786
Pribof	34	\$21,389
Raiet	0	\$0
Southeast Is	66	\$41,519
Southwest Region	82	\$51,584
Yukon Flats	50	\$31,454
Yukon Koyukuk	118	\$74,231
Yupik	79	\$49,597
Mt Edgecumbe	5	\$3,145
total	3181	\$2,001,094
LEA		
Aleutian East	2	\$1,258
Denali	32	\$20,130
Fairbanks, LEA	80	\$50,359
Haines	7	\$4,404
Lake & Peninsula	42	\$26,421
Mat-Su	48	\$30,193
Nome	21	\$13,211
NW Arctic	0	\$0
Petersburg	0	\$0
Wrangell	1	\$629
total	241	\$151,006
GRAND TOTAL	3422	\$2,152,702
NOTE: Based on FY 93 Allocation and FY 94 Child Count		

# STATE OF ALASKA

## DEPARTMENT OF EDUCATION

### OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

GOLDBELT PLACE  
801 WEST 10TH STREET, SUITE 200  
JUNEAU, ALASKA 99801-1894

April 20, 1993

The Honorable Steve Rieger  
Senate HESS Committee, Chair  
State Capitol, Room 516  
Juneau, AK 99801

Dear Senator Rieger:

Thank you very much for scheduling a hearing before the Senate HESS Committee to consider HB 235, "An Act relating to education programs and services for children with disabilities and other exceptional children and to persons with a handicap."

This legislation amends existing statutes relating to the education programs for exceptional children. As you know, educational programs for children with disabilities receive substantial money from the federal government. Receipt of federal money is contingent upon compliance with the federal requirements. Five statutory changes in this bill are necessary to keep Alaska in compliance with the recent changes to the federal requirements.

**The following sections of HB 235 address the changes required by the U.S. Department of Education:**

**Section 8.** Alaska statutes presently allow a school district to initiate a due process hearing only to prove that its evaluation of a child is correct. Federal statutes permit a school district or a parent to initiate a hearing on all hearable topics. This section will allow a school district to initiate a hearing for the same reasons a parent initiates a hearing.

**Section 11 and Section 20.** The U.S. Department of Education has specified that the definition of consent must contain the required federal components as presented in these sections.

**Section 22.** The re-authorization of P.L. 94-142, now named Individuals with Disabilities Education Act (*IDEA*), includes rehabilitation counseling as a related service.

**Section 24.** Two new categories of children with disabilities were mandated by *IDEA*, autism and traumatic brain injury. The definition of "educational records" listed in this section is also required by the U.S. Department of Education.

Letter, Senator Rieger  
April 20, 1993  
Page 2

At present, Alaska's State Plan for FY 1992-94 under Part B of *IDEA* has conditional approval by the U.S. Department of Education and is contingent upon federal acceptance of changes to Alaska statutes. If Alaska does not meet the terms of the conditional approval, the Federal Office of Special Education has indicated that it is highly probable that Part B and PL 89-313 funds in the amount of \$8,344,517 for FY 94 will be withheld. This would result in the loss of \$1,444,296 in administrative and discretionary funds, and \$6,900,221 in direct grants to school districts.

Loss of the administrative and discretionary funds will eliminate the Department of Education's ability to provide statewide leadership to and supervision of programs for children with disabilities throughout the state. It also will eliminate funds for program development activities, technical assistance to districts and training and support for parents.

Loss of direct grants to the school districts will seriously limit a district's ability to provide a variety of special education and related services such as speech therapy, occupational and physical therapy to children, diagnostic services, staff development and parent training and support.

Passage of HB 235 will address the compliance issue raised by the Federal Office of Special Education and will ensure additional resources to meet the needs of Alaska's children with disabilities. Thank you very much for your support on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jerry Covey". The signature is stylized with large, sweeping loops and a long, thin tail extending downwards and to the right.

Jerry Covey  
Commissioner

cc: Representative Con Bunde

**Senate CS for CS for House Bill No. 235 (STA)**  
**Sectional Analysis**

**"An Act relating to educational programs and services for children with disabilities and other exceptional children and to persons with a handicap; and providing for an effective date."**

- Sec. 1. Indicates that AS 14.30.180 - 14.30.350 are intended to allow procedures and actions necessary to comply with the requirements of federal law, Individuals with Disabilities Education Act (IDEA).
- Sec. 2. Clarifies that an exceptional child has the right to special education services. An exceptional child educated under AS 14.30.010(b) may not be compelled to receive special education services.
- Sec. 3. Deletes the term "guardian" as this word is included in the definition of a parent, AS 14.30.350 (11).
- Sec. 4. Deletes the term "guardian" as this word is included in the definition of a parent, AS 14.30.350 (11).
- Sec. 5. Deletes the term "guardian" as this word is included in the definition of a parent, AS 14.30.350 (11).
- Sec. 6. Outlines that a parent may obtain an independent education evaluation by a person of the parent's choosing or by a person selected by agreement between the parent and the school district.
- Sec. 7. Deletes the term "guardian" as this word is included in the definition of a parent, AS 14.30.350 (11).
- Sec. 8. Clarifies two separate hearing processes -- an informal or formal due process hearing involving a parent and a school district and an appeal hearing to the department.

A school district may appoint an impartial hearing officer to conduct a hearing to determine whether a child should receive special education services if a parent refuses to consent or does not respond in 30 days. Also, if a parent disagrees with the district's placement or program for a child, a parent may request a hearing.

A hearing officer must be approved in writing by the parent unless the parent has been offered and has rejected three different hearing officers.

The appointed hearing officer shall conduct an informal prehearing settlement conference and attempt to resolve the disagreement between the parent and the school district.

A hearing officer's decision is binding, unless the decision is appealed. A parent or a school district may appeal a hearing officer's decision under this section to the Department of Education.

A child may not be compelled to receive special education services until the appeal process is completed.

The department shall maintain a list of qualified hearing officers who have been qualified for a period not to exceed five years through a training program.

- Sec. 9. Clarifies that appeal hearings shall be based on the record of the impartial hearing officer's decisions and that the hearings shall comply with all requirements necessary for participation in federal grant-in-aid programs.
- Sec. 10. After the department renders its decision, a parent or the school district may appeal the decision to the appropriate court. A parent who appeals to the court and who is an "indigent person" may be provided with a court appoint attorney at public expense.
- Sec. 11. Clarifies that consent granted by a parent may be withdrawn.
- Sec. 12. Clarifies the school district's responsibility to inform the parent of the right to appeal a hearing officer's decision.
- Sec. 13. Grants the department the authority to establish, by regulations, impartial procedures for a school district to follow for hearings under AS 14.30.193.
- Sec. 14. Deletes the term "guardian" as this word is included in the definition of a parent, AS 14.30.350 (11).
- Sec. 15. Adds a new subsection to clarify that each school district shall develop an individualized education program for every exceptional child who receives services under AS 14.30.180 - 14.30.350.
- Sec. 16. States clearly that the district must obtain consent from the child's parent before a child may be transferred to a school outside the district in which the child resides.
- Sec. 17. Deletes the term "guardian" as this word is included in the definition of a parent, AS 14.30.350 (11).
- Sec. 18. Requires the school district to make available special education and related services to an exceptional child even if the child is taught at home, at a private school, or in a hospital. This section reflects current practice.

- Sec. 19. Replaces the phrase "handicaps" with "disabilities" to match federal terminology.
- Sec. 20. Conforms the definition of "consent" to the required federal components. Consent means the parent has been fully informed and voluntarily agrees.
- Sec. 21. Simplifies the definition of "exceptional children".
- Sec. 22. Includes "rehabilitation counseling" as a related service provided under special education as mandated by the federal re-authorization of PL 94-142.
- Sec. 23. Replaces the term "handicapped child" with the defined term "exceptional children".
- Sec. 24. Defines "children with disabilities", "educational records", gifted children", "individualized education program team" and "parent".

Two new disability categories are included - autism and traumatic brain injury. The definition of "educational records" is required by the U.S. Department of Education. Actual current practice is mirrored in the phrase "individualized education program team".

- Sec. 25. Establishes June 30, 1993, as the effective date of the legislation.



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

**DRAFT**

Ms. Myra Howe  
Director  
Office of Special and Supplemental  
Services  
Office of Special Education  
Alaska Department of education  
801 West 10th Street, Suite 200  
Juneau, Alaska 99801-1894

Dear Ms. Howe:

This is in response to your conversation with Chuck Laster during the week of February 14, 1993, at which time you posed questions regarding the Alaska Department of Education's (AKDE) conditional approval of its 1992-1994 State Plan. It is the understanding of the Office of Special Education Programs (OSEP) that AKDE has continued to have difficulty in completing the statutory and regulatory changes that were required as a condition of OSEP's approval of AKDE's 1992 State Plan.

In a letter from former AKDE State Director of the Office and Special and Supplemental Services, Jim Rich, to former OSEP Director, Judy Schrag, on June 1, 1992, Alaska House Bill 419 and Senate Bill 371 were tabled by the legislature. Mr. Rich assured OSEP that the legislation would be resubmitted when the legislature resumed in January of 1993. According to the information you shared with Mr. Laster in February, you are concerned that these Bills may again be tabled.

Although OSEP commends AKDE for its efforts to ensure that the required statutory and regulatory requirements be amended and included in its State Plan, OSEP must advise you that AKDE's upcoming 1994 grant award cannot be released until the required revisions to its 1992 State Plan have been completed. (See OSEP Memo 93-13, page 2, item B., dated March 12, 1993, copy attached.)

Please note the following excerpt from OSEP's letter of September 11, 1992 to Commissioner Gerald Covey:

As soon as possible, but not later than July 1, 1993, your agency must provide OSEP with copies of all amended State Plan documents, including the revised regulations that have been adopted by the State Board of Education, the revised statute that has been enacted by the State Legislature, and the required documents to the monitoring system.

Page 2 - Ms. Myra Howe

In addition, OSEP advised AKDE that:

Your State's Part B grant award for 1994 (i.e., the grant period beginning July 1, 1993) will be issued as funds become available for obligation at the Federal level, and if, in addition to meeting the conditions noted above, the following criteria are met:

- (1) The State meets the conditions of eligibility required under section 612 of the Act, including having in effect an approved Part B State Plan for the period of the FY 1994 award;
- (2) Your agency submits amendments to the Part B State Plan to conform to the changes required by P.L. 101-476 and P.L. 102-119 and those amendments are approved by OSEP; and
- (3) Your agency provides OSEP with copies of (a) all required certifications, including ED Form 80-0013, and (b) all required reports, including the Annual Data Report and Annual Performance Report.

I hope that this letter is responsive to your request for information regarding your 1994 grant award. Thank you for your continuing efforts to ensure the provision of quality educational services to children and youth with disabilities.

Sincerely,

Patricia J. Guard  
Acting Director  
Office of Special Education  
Programs

cc. Honorable Gerald Covey



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

March 12, 1993

Contact Person:  
Thomas B. Irvin  
Telephone: (202) 205-8825

OSEP 93-13

OSEP MEMORANDUM

TO : State Directors of Special Education

FROM : Patricia J. Guard, *Patricia J. Guard*  
Acting Director  
Office of Special Education Programs

SUBJECT: Reminder About Grant Requirements Under IDEA-Part B and  
the Preschool Grants Program for FY 1994 (i.e., the  
Grant Period Beginning July 1, 1993)

This memorandum is a brief follow-up to OSEP Memo 93-3, dated November 9, 1992 -- which set out the requirements your State must meet to receive grant awards for Fiscal Year (FY) 1994 under Part B of the Individuals with Disabilities Education Act (Act; Part B), and the Preschool Grants Program under section 619 of the Act. The purposes of the memorandum are (1) to remind you about the requirements in OSEP 93-3, and (2) to ask that you inform us, as appropriate, of the dates(s) on which you will be submitting the various State Plan documents to the Office of Special Education Programs (OSEP).

A. New State Plan Requirements -- APPLICABLE TO ALL STATES

In order for your State to receive a grant under Part B for FY 1994, the State must (1) submit information demonstrating that it is meeting the new State Plan requirements that were added by the September 29, 1992, final Part B regulations, and (2) meet any other applicable provisions -- including the public participation requirements -- that apply. (See OSEP Memo 93-3 for specific information about the grant requirements for FY 1994.)

In meeting the new State Plan requirements, please follow the appropriate procedures, below, that apply to your State.

1. States Submitting New 3-year State Plans (i.e., Group I States).<sup>1</sup> If your State is submitting an FY 1994-96 State Plan, please address the new requirements added by the 9-29-92 final Part B regulations -- by incorporating the new material into each specific State Plan section that is covered by those requirements.
2. All Other States (i.e., those whose current Part B Plans remain in effect throughout FY 1994). If your State is in this category, please provide OSEP with ONLY the changes in your State Plan that have been made as a result of the 9-29-92 final Part B regulations.<sup>2</sup> Please do not re-submit the entire State Plan.

These changes may be typed on a single document -- with specific headings to identify the precise section of the plan that is being amended. Alternatively, each change may be included on a separate page(s), with specific identifying information to correspond to the specific section of the Plan that is being amended;

B. States with Conditionally Approved Plans

In addition to meeting the new requirements added by the September 29, 1992, final Part B regulations, any State that currently has a State Plan that was conditionally approved last year must also submit information demonstrating that it has met the conditions in its FY 1993 conditional approval letter. (As you know, a State's Part B grant award for FY 1994 cannot be issued until documentation is received that those conditions are met.)

C. Certification Forms and other Requirements

Please be sure to submit a signed copy of ED Form 80-0013 ("Certifications Regarding Lobbying; Debarment, Suspension and other Responsibility Matters; and Drug-Free Workplace

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<sup>1</sup> Group I States include AR, CA, DE, GA, HI, IN, KS, KY, LA, MD, MA, MN, NV, OH, OK, RJ, SC, TX, WV, and CNMI, Guam, and Palau.

<sup>2</sup> If you have made any other changes in your State Plan since it was last approved, those changes also must be submitted to OSEP, and would be subject to public comment.

Requirements") with your State Plan documents. Also, if you have not already done so, please submit your State's Annual Data Report and Annual Performance Report.

D. Preschool Grants Application with Your State Plan Documents

If your State is submitting an FY 1994-96 State Plan, please submit your State's 3-year Preschool Grants Application with the State Plan documents identified above.

E. Public Participation Requirements

Please note that all States are required to meet the public participation requirements under Part B and General Education Provisions Act (GEPA) -- for any changes in State Plans required by the new Part B regulations, and for relevant changes that the State makes on its own. (See OSEP Memo 93-3, pages 2-3). Group I States that are submitting Preschool Grants Applications also must meet applicable public participation requirements.

F. Timelines

Your agency may submit the materials discussed above as soon as possible after the documents are final and the public participation requirements are met. However, in order to facilitate timely review, these materials must be received no later than Monday, May 3, 1993. If you will not be able to meet the above timeline, please let us know by Friday, April 2, 1993, the date that you will be submitting the State Plan materials from your State.

We look forward to receiving the information that is requested in this memorandum. In the meantime, if you have comments or questions about the memorandum, or if we can be helpful in meeting the various State Plan requirements in your State, please call your OSEP/DAS State contact.

# MEMORANDUM

State of Alaska

Department of Law

TO Sheil Peterson  
Legislative Liaison  
Department of Education

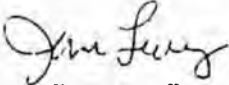
DATE March 22, 1993

FILE NO

TEL NO 465-3603

SUBJECT HB 235

FROM

  
Jan Gregg Levy  
Assistant Attorney General  
Human Services-Juneau

You have asked us whether we read 34 C.F.R. §§ 300.504 - 506 to require the state to provide for a district-initiated hearing procedure when a parent refuses to consent to evaluation of a child for special education. HB 235 would provide such a procedure in section 8. It is our opinion that a procedure must be provided.

The regulations deal with two types of states: those that require consent before a handicapped child is evaluated and those that do not require consent. Alaska law requires that a district "obtain the consent of the child's parent or guardian before an initial evaluation or placement in a program of special education and related services." AS 14.30.191. Thus, we deal with the portions of the regulations addressing our type of state.

34 C.F.R. § 300.506 states "[a] parent or a public educational agency may initiate a hearing on any of the matters described in § 300.504(a)(1) and (2)." (Emphasis added.) The matters described therein include initiation of evaluation and educational placement. Thus, the law clearly permits the state to initiate a hearing on the issue of whether an evaluation should take place. An administrative law judge (ALJ) came to the same conclusion in an Iowa case involving parental refusal to consent to a district's request to evaluate a student. The ALJ held that "[t]he authority to grant to educational agencies through hearings, over the objection of parents, permission to conduct individual education evaluations is established clearly by federal regulations." 16 EHLR 1166 (1990).

Section 300.504(c) addresses what procedures are to be used for the hearings. Where, as in Alaska, parental consent is required before evaluation, the regulation establishes that "[s]tate procedures govern the public agency in overriding a parent's refusal to consent." (Where parental consent is not required and a state agency wishes to initiate a hearing, the hearing procedures set out in the regulations govern.)

Sheila Peterson  
Department of Education

March 22, 1993  
Page 2

The problem, of course, is that currently there are no state procedures for a district-initiated hearing, although there is a procedure for a parent-initiated hearing. It is our view that the regulations as a whole clearly contemplate that states provide such a procedure. Without the procedure, § 300.506, permitting a public educational agency to initiate a hearing, would be meaningless.

HB 235, section 8, operates to fill the void that currently exists. It is not the only procedure that would satisfy the regulations, but it is a procedure that is consistent with the procedures for other administrative hearings in the state, and appears to provide safeguards to all parties involved, including a right of appeal.

I am attaching a copy of the July 1, 1991, regulations, as the copy you faxed us was from an earlier edition. The comment to § 300.506 mentions that a number of states have found mediation a successful step to have available prior to a formal hearing. Formal hearings tend to set up adversarial relationships that make it difficult for parties to work with each other in the future. To the extent that such tension can be avoided, it probably serves the educational interests of the child. I bring it to your attention as a possible compromise in the event that the differing views on this section necessitate a reworking of the bill as proposed.

Please feel free to call if we can be of further assistance.

JGL:jal:bap

Attachment

(2) May be presented as evidence at a hearing under this subpart regarding that child.

(d) *Requests for evaluations by hearing officers.* If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

(e) *Agency criteria.* Whenever an independent evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the public agency uses when it initiates an evaluation.

(Authority: 20 U.S.C. 1415(b)(1)(A))

**§ 300.504 Prior notice; parent consent.**

(a) *Notice.* Written notice that meets the requirements of § 300.505 must be given to the parents of a child with a disability a reasonable time before the public agency—

(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or

(2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

(b) *Consent; procedures if a parent refuses consent.* (1) Parental consent must be obtained before—

(i) Conducting a preplacement evaluation; and

(ii) Initial placement of a child with a disability in a program providing special education and related services.

(2) If State law requires parental consent before a child with a disability is evaluated or initially provided special education and related services, State procedures govern the public agency in overriding a parent's refusal to consent.

(3) If there is no State law requiring consent before a child with a disability is evaluated or initially provided special education and related services, the public agency may use the hearing procedures in §§ 300.506–300.508 to determine if the child may be evaluated or initially provided special education and related services without parental consent. If it does so and the hearing officer upholds the agency, the agency may evaluate or initially provide special education and related services to the child without the parent's consent, subject to the parent's rights under §§ 300.510–300.513.

(c) *Additional State consent requirements.* In addition to the parental consent requirements described in paragraph (b) of this section, a State may require parental consent for other

services and activities under this part if it ensures that each public agency in the State establishes and implements effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the child with FAPE.

(d) *Limitation.* A public agency may not require parental consent as a condition of any benefit to the parent or the child except for the service or activity for which consent is required under paragraphs (b) or (c) of this section.

(Authority: 20 U.S.C. 1415(b)(1)(C), (D); 1412(2), (6))

*Note 1:* Any changes in a child's special education program after the initial placement are not subject to the parental consent requirements in paragraph (b)(1) of this section, but are subject to the prior notice requirement in paragraph (a) of this section and the IEP requirements of §§ 300.340–300.350.

*Note 2:* Paragraph (b)(2) of this section means that if State law requires parental consent before evaluation or before special education and related services are initially provided, and the parent refuses (or otherwise withholds) consent, State procedures, such as obtaining a court order authorizing the public agency to conduct the evaluation or provide the education and related services, must be followed.

If, however, there is no legal requirement for consent outside of these regulations, the public agency may use the due process procedures of §§ 300.506–300.508 to obtain a decision to allow the evaluation or services without parental consent. The agency must notify the parent of its actions, and the parent has appeal rights as well as rights at the hearing itself.

*Note 3:* If a State adopts a consent requirement in addition to those described in paragraph (b) of this section and consent is refused, paragraph (d) of this section requires that the public agency must nevertheless provide the services and activities that are not in dispute. For example, if a State requires parental consent to the provision of all services identified in an IEP and the parent refuses to consent to physical therapy services included in the IEP, the agency is not relieved of its obligation to implement those portions of the IEP to which the parent consents.

If the parent refuses to consent and the public agency determines that the service or activity in dispute is necessary to provide FAPE to the child, paragraph (c) of this section requires that the agency must implement its procedures to override the refusal. This section does not preclude the agency from reconsidering its proposal if it believes that circumstances warrant.

**§ 300.505 Content of notice.**

(a) The notice under § 300.504 must include—

(1) A full explanation of all of the procedural safeguards available to the

parents under § 300.500, §§ 300.502–300.515, and §§ 300.562–300.569;

(2) A description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered and the reasons why those options were rejected;

(3) A description of each evaluation procedure, test, record, or report the agency uses as a basis for the proposal or refusal; and

(4) A description of any other factors that are relevant to the agency's proposal or refusal.

(b) The notice must be—

(1) Written in language understandable to the general public; and

(2) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(c) If the native language or other mode of communication of the parent is not a written language, the SEA or LEA shall take steps to ensure—

(1) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

(2) That the parent understands the content of the notice; and

(3) That there is written evidence that the requirements in paragraphs (c)(1) and (2) of this section have been met.

(Authority: 20 U.S.C. 1415(b)(1)(D))

**§ 300.506 Impartial due process hearing.**

(a) A parent or a public educational agency may initiate a hearing on any of the matters described in § 300.504(a)(1) and (2).

(b) The hearing must be conducted by the SEA or the public agency directly responsible for the education of the child, as determined under State statute, State regulation, or a written policy of the SEA.

(c) The public agency shall inform the parent of any free or low-cost legal and other relevant services available in the area if—

(1) The parent requests the information; or

(2) The parent or the agency initiates a hearing under this section.

(Authority: 20 U.S.C. 1415(b)(2))

*Note:* Many States have pointed to the success of using mediation as an intervening step prior to conducting a formal due process hearing. Although the process of mediation is not required by the statute or these regulations, an agency may wish to suggest mediation in disputes concerning the identification, evaluation, and educational placement of children with disabilities, and

the provision of FAPE to those children. Mediations have been conducted by members of SEAs or LEA personnel who were not previously involved in the particular case. In many cases, mediation leads to resolution of differences between parents and agencies without the development of an adversarial relationship and with minimal emotional stress. However, mediation may not be used to deny or delay a parent's rights under §§ 300.500-300.515.

**§ 300.507 Impartial hearing officer.**

(a) A hearing may not be conducted—

(1) By a person who is an employee of a public agency that is involved in the education or care of the child; or

(2) By any person having a personal or professional interest that would conflict with his or her objectivity in the hearing.

(b) A person who otherwise qualifies to conduct a hearing under paragraph (a) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.

(c) Each public agency shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

(Authority: 20 U.S.C. 1414(b)(2))

**§ 300.508 Hearing rights.**

(a) Any party to a hearing has the right to:

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities.

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses.

(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five days before the hearing.

(4) Obtain a written or electronic verbatim record of the hearing.

(5) Obtain written findings of fact and decisions. The public agency, after deleting any personally identifiable information, shall—

(i) Transmit those findings and decisions to the State advisory panel established under § 300.850; and

(ii) Make those findings and decisions available to the public.

(b) Parents involved in hearings must be given the right to—

(1) Have the child who is the subject of the hearing present; and

(2) Open the hearing to the public.

(Authority: 20 U.S.C. 1415(d))

**§ 300.509 Hearing decision; appeal.**

A decision made in a hearing conducted under § 300.508 is final,

unless a party to the hearing appeals the decision under § 300.510 or § 300.511.

(Authority: 20 U.S.C. 1415(c))

**§ 300.510 Administrative appeal; impartial review.**

(a) If the hearing is conducted by a public agency other than the SEA, any party aggrieved by the findings and decision in the hearing may appeal to the SEA.

(b) If there is an appeal, the SEA shall conduct an impartial review of the hearing. The official conducting the review shall:

(1) Examine the entire hearing record.

(2) Ensure that the procedures at the hearing were consistent with the requirements of due process.

(3) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in 300.508 apply.

(4) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official.

(5) Make an independent decision on completion of the review.

(6) Give a copy of written findings and the decision to the parties.

(c) The SEA, after deleting any personally identifiable information, shall—

(1) Transmit the findings and decisions referred to in paragraph (b)(6) of this section to the State advisory panel established under § 300.850; and

(2) Make those findings and decisions available to the public.

(d) The decision made by the reviewing official is final unless a party brings a civil action under § 300.511.

(Authority: 20 U.S.C. 1415(c), (d); H. R. Rep. No. 94-864, at p. 49 (1975))

**Note 1:** The SEA may conduct its review either directly or through another State agency acting on its behalf. However, the SEA remains responsible for the final decision on review.

**Note 2:** All parties have the right to continue to be represented by counsel at the State administrative review level, whether or not the reviewing official determines that a further hearing is necessary. If the reviewing official decides to hold a hearing to receive additional evidence, the other rights in § 300.508 relating to hearings also apply.

**§ 300.511 Civil action.**

Any party aggrieved by the findings and decision made in a hearing who does not have the right to appeal under § 300.510, and any party aggrieved by the decision of a reviewing officer under § 300.510, has the right to bring a civil action under section 815(e)(2) of the Act.

(Authority: 20 U.S.C. 1415)

**§ 300.512 Timelines and convenience of hearings and reviews.**

(a) The public agency shall ensure that not later than 45 days after the receipt of a request for a hearing—

(1) A final decision is reached in the hearing; and

(2) A copy of the decision is mailed to each of the parties.

(b) The SEA shall ensure that not later than 30 days after the receipt of a request for a review—

(1) A final decision is reached in the review; and

(2) A copy of the decision is mailed to each of the parties.

(c) A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party.

(d) Each hearing and each review involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.

(Authority: 20 U.S.C. 1415)

**§ 300.513 Child's status during proceedings.**

(a) During the pendency of any administrative or judicial proceeding regarding a complaint, unless the public agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her present educational placement.

(b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school program until the completion of all the proceedings.

(Authority: 20 U.S.C. 1415(e)(3))

**Note:** Section 300.513 does not permit a child's placement to be changed during a complaint proceeding, unless the parents and agency agree otherwise. While the placement may not be changed, this does not preclude the agency from using its normal procedures for dealing with children who are endangering themselves or others.

**§ 300.514 Surrogate parents**

(a) *General.* Each public agency shall ensure that the rights of a child are protected when—

(1) No parent (as defined in § 300.13) can be identified;

(2) The public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or

(3) The child is a ward of the State under the laws of that State.

(b) *Duty of public agency.* The duty of a public agency under paragraph (a) of this section includes the assignment of an individual to act as a surrogate for

## MEMORANDUM

State of Alaska  
Department of Law

TO: Sheila Peterson  
Legislative Liaison  
Department of Education

DATE: March 23, 1993

FILE NO:

TEL. NO: 465-3603

SUBJECT: HB 235

FROM:

*Jan Gregg Levy*  
Jan Gregg Levy  
Assistant Attorney General  
Human Services-Juneau

You have asked whether the children in need of aid statute, AS 47.10.010, provides a procedure for a district initiated hearing as authorized by 34 C.F.R. § 300.506(a). As I understand the question, a member of the public has advanced the view that the existence of the statute obviates the need for section 8 of HB 235. In our opinion, AS 47.10.010 does not provide the procedure required by the federal regulations.

34 C.F.R. § 300.506(a) provides that "[a] parent or a public educational agency may initiate a hearing on any of the matters described in § 300.504(a)(1) and (2)." Those sections include proposals and refusals to initiate an evaluation of a child. The law thus grants the right to a hearing. Section 8 of HB 235 sets out a procedure for such a hearing.

AS 47.10.010 is simply not a functional substitute for a hearing. It would be extremely unlikely that failure to consent to an evaluation would ever be enough to invoke the statute. Thus, the statute does not permit a district to exercise its right to a hearing as provided by federal regulation. The statute provides for a state court proceeding relating to minors who are found to be in need of aid. Examples of situations that qualify children being in need of the state's aid are those where the children have violated criminal laws, are absent from the home or physically abandoned, have suffered substantial physical harm, and have or are in danger of being sexually abused. AS 47.10.010(a)(2)(B) is the only paragraph that could even arguably be broad enough to bring failure to consent to a special education evaluation within its language. It applies where the child is in need of aid as a result of

the child being in need of medical treatment to cure, alleviate, or prevent substantial physical harm, or in need of treatment for mental harm as evidenced by failure to thrive, severe anxiety, depression, withdrawal, or untoward aggressive behavior or hostility toward others, and the

Sheila Peterson  
 Department of Education  
 HB 235

March 23, 1993  
 Page 2

child's parent, guardian, or custodian has knowingly failed to provide the treatment[.]

Id. Even this language, however, requires a finding that the parents are withholding certain treatment. Failure to consent to an evaluation is not failure to provide treatment. Thus, this statute cannot be invoked to remedy failure to consent to a special education evaluation.

Even if the statute could be construed to cover such a case, it still would not operate to provide the hearing authorized by federal regulation. Federal regulation states that the "hearing must be conducted by the State educational agency or the public agency directly responsible for the education of the child." 34 C.F.R. § 300.506(b). Any hearing under AS 47.10.010 will be in state court, and not conducted by a public educational agency.

Finally, the usual remedy under the children in need of aid statute is additic al evidence that this statute should not be invoked when parents refuse to consent to evaluation: the most common remedy is assumption of custody by the court -- removal of the child from the home. It is highly unlikely that such a result would be desired by any of the parties, and underscores why this state court proceeding is not a suitable vehicle for providing the hearing authorized by 34 C.F.R. § 300.506(a).

Thus, we are unpersuaded that the children in need of aid statute provides a hearing procedure that satisfies 34 C.F.R. § 300.506.

JGL/bap

Post-It™ brand fax transmittal memo 7071		# of pages 2	
To Sheila Peterson	From Jan Levy		
On	On		
Dept. DoE	Phone #		
Fax # 4156	Fax #		

# FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. SCSCS HB 235 (STA)

Revision Date: \_\_\_\_\_ Dept. Affected: Administration  
 Title: "An Act relating to educational programs and services for children with disabilities..." BRU: Office of Public Advocacy  
 Component: Office of Public Advocacy  
 Sponsor: Blonde  
 Requestor: Senate State Affairs COMPONENT SERIAL NO. 43

**Expenditures/Revenues: (Thousands of Dollars)**

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
<b>TOTAL OPERATING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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**FUNDING:**

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MI-TIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**POSITIONS**

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY93) impact: \$ None

ANALYSIS: (attach a separate page if necessary.)

Prepared By: Brant McGee, Public Advocate Phone: 274-1684  
 Division: Office of Public Advocacy Date: \_\_\_\_\_

Approved by Commissioner: Nancy Bear Usura Date: 4/20/93  
 Agency: Department of Administration

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AMENDMENT

TO: SCS CSHB 235 (STA)

Page 9, line 3.

Add a new section as follows:

\* Sec. 25. AS 44.21.410(a) is amended by adding a new paragraph to read:

(10) provide legal representation to indigent parents under AS 14.30.195.

Renumber subsequent sections accordingly.

14.21.320

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1987;

§ 44.21.410

STATE GOVERNMENT

§ 44.21.410

Effect of amendments. -- The 1990 for "annual report" in the 'ence  
amendment substituted "biennial report" in subsection (e).

Article 7. Office of Public Advocacy.

Section  
410. Powers and duties

Sec. 44.21.410. Powers and duties. (a) The office of public advoca-  
cacy shall

(1) perform the duties of the public guardian under AS 13.26.360 —  
13.26.410;

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

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

(4) provide legal representation in guardianship proceedings to re-  
spondents who are financially unable to employ attorneys under AS  
13.26.106(b), to indigent parties in cases involving child custody in  
which the opposing party is represented by counsel provided by a  
public agency, to indigent parents or guardians of a minor respondent  
in a commitment proceeding concerning the minor under AS  
47.30.775;

(5) provide legal representation and guardian ad litem services un-  
der AS 25.24.310; in cases arising under AS 47.15 (Uniform Interstate  
Compact on Juveniles); in cases involving petitions to adopt a minor  
under AS 25.23.125(b) or petitions for the termination of parental  
rights on grounds set out in AS 25.23.180(c)(3); in cases involving  
petitions to remove the disabilities of a minor under AS 09.55.590; in  
children's proceedings under AS 47.10.050(a); and in cases involving  
indigent persons who are entitled to representation under AS  
18.85.100 and who cannot be represented by the public defender  
agency because of a conflict of interests;

(6) develop and coordinate a program to recruit, select, train, as-  
sign, and supervise volunteer guardians ad litem from local communi-  
ties to aid in delivering services in cases in which the office of public  
advocacy is appointed as guardian ad litem;

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

(8) establish a fee schedule and collect fees for services provided by  
the office, except as provided in AS 18.85.120 or when imposition or  
collection of a fee is not in the public interest as defined under regula-  
tions adopted by the commissioner of administration;

(9) provide visitors and guardians ad litem in proceedings under AS 47.30.839.

(b) The commissioner of administration may

(1) adopt regulations that the commissioner considers necessary to implement AS 44.21.400 — 44.21.470;

(2) report on the operation of the office of public advocacy when requested by the governor or legislature or when required by law;

(3) solicit and accept grants of funds from governments and from persons, and allocate or restrict the use of those funds as required by the grantor.

(c) *[Repealed, § 28 ch 90 SLA 1991.]* (§ 1 ch 55 SLA 1984; am § 21 ch 140 SLA 1986; am § 16 ch 50 SLA 1987; am §§ 1, 2 ch 5 SLA 1988; am § 3 ch 92 SLA 1988; am § 28 ch 90 SLA 1991; am § 1 ch 109 SLA 1992; am § 28 ch 2 FSSLA 1992)

**Revisor's notes.** — Paragraph (a)(7) was enacted as (a)(6); renumbered in 1988. Paragraph (a)(9) was enacted as (a)(8); renumbered in 1992.

**Effect of amendments.** — The 1991 amendment, effective July 3, 1991, repealed subsection (c).

The first 1992 amendment, effective September 20, 1992, added paragraph (a)(9).

The second 1992 amendment, effective July 1, 1992, added paragraph (a)(8) and made a related stylistic change.

NOTES TO DECISIONS

**Disposition phase of delinquency proceedings.** — Office of public advocacy was required to represent a minor's indigent parents at the disposition phase of delinquency proceedings, where the state

actively sought to remove the minor from his parents' custody. *Office of Pub. Advocacy v. Superior Court*, 779 P.2d 809 (Alaska Ct. App. 1989).

Article 8. Office of Equal Employment Opportunity.

**Section**  
 500. Office established  
 501. Powers and duties of the office  
 502. Administrative regulations  
 503. Affirmative action plan  
 504. Compliance with affirmative action plan

**Section**  
 505. Employment discrimination complaints  
 506. Retaliation prohibited  
 507. Access to confidential records  
 508. Definitions

**Cross references.** — For transitional provisions relating to the transfer of the office of equal employment opportunity to the Department of Administration by E.O. 78, see § 5, E.O. 75, in the Executive Orders pamphlet.

**Effective date of article.** — Section 6, E.O. No. 78, (1991) makes this article effective March 23, 1991.

Dennis Wetherell  
P.O. Box 876862  
Wasilla, AK 99687  
April 19, 1993

Sen. Loren Leman  
State Capitol  
Juneau, AK 99801-1182

Dear Sen. Leman:

Thank you for the responsiveness you and the members of your staff have shown with respect to concerns raised by members of the public about HB235. I support this bill as amended and hope it is passed by the legislature.

I appreciate the open forum of the teleconferences your committee has hosted on this bill. This conveyed a sense that public input was important and that the committee was willing to listen and entertain reasonable discussion. This contrasts with other committees where the public has been made to feel that their testimony was unimportant, that testimony was being taken only because it was a requirement and not from any desire of legislators to listen to constituents. In other committees, testimony was often rushed and the public was not allowed to ask questions or provide rebuttal to conflicting testimony.

Throughout this process, I have had the sense that you really cared and wanted to accommodate the wishes of the public where possible and appropriate. Thanks again for your responsiveness and for the courtesy and professionalism of your staff.

Sincerely,

*Dennis G. Wetherell*

Dennis G. Wetherell

P.S. Could you please fax me a copy of the bill as amended and as it will be received by the Senate HESS committee? Thanks (265-6928 Fax)

