

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8488 SENATE STATE AFFAIRS

extent that [the University's] inclusion is inconsistent with the provisions of AS 14.40."⁴ AS 44.62.330(a)(45); McGrath, 813 P.2d at 1372. As we noted in McGrath, "[u]ltimately, if [d]efendant seeks to be exempted from the workings of the APA, it must seek such remedy from the [l]egislature, not this [c]ourt." Id. at 1375 (quoting Aden).

The University argues that the plain language of the APA should not be used to determine how it applies to intra-agency personnel decisions. Although the procedural protection of the APA may be applied to personnel actions, the APA was not drafted with these actions in mind. Accordingly, the University contends that applying the plain language of the APA to personnel actions is "a very suspect enterprise."

We disagree. Where the language of the statute is clear, "[w]e see no reason to suspect that [it] does not mean exactly what it appears to mean." Kodiak Elec. Ass'n v. Delaval Turbine, Inc., 694 P.2d 150, 155 (Alaska 1984) (quoting Vest v. First Nat'l Bank of Fairbanks, 659 P.2d 1233, 1234 (Alaska 1983)).

The University further argues that Odum was sufficiently protected by existing procedures. Although the pre-termination

4. The University does not argue that AS 14.40 precludes the APA from applying to it. Under AS 14.40.170(b)(1), the Board of Regents may "adopt reasonable rules, orders, and plans . . . for the good government of the university" However, the procedures used in Odum's hearing were not adopted by the Board of Regents. Furthermore, this court has held that "the APA hearing procedure which is designed to guarantee due process to persons adversely affected by administrative action, such as adverse employment or personnel action" is consistent with the provisions of AS 14.40. McGrath, 813 P.2d at 1372 (quoting Aden v. University of Alaska, No. 3AN-85-17179 Civil (Alaska Super., Feb. 2, 1987)).

hearing afforded Odum "did not incorporate all the procedural provisions of the APA," the University notes that she was entitled to grieve the outcome of this hearing. The grievance process includes a hearing which complies with the APA. Thus the University argues in the alternative that the pre-termination hearing already provided Odum, and the opportunity for a post-termination hearing which complies with the APA, taken together satisfy due process requirements and the APA.

Again, we disagree. A post-termination hearing which complies with the requirements of the APA does not cure the failure of a pre-termination hearing to comply with the APA. The procedural protections the APA provides are most important before termination.

III. CONCLUSION

The parties agree that Odum is entitled to a pre-termination hearing under state and federal guarantees of due process of law. Since the APA governs the procedures to be employed by the University in the conduct of hearings, the pre-termination hearing to which Odum is entitled must be conducted pursuant to the APA. The APA provides that parties may be represented by counsel.⁵ Counsel's participation may not be

5. Alaska Statute 44.62.420(b) provides in part:

The notice to respondent must be substantially in the following form but may include other information:

(continued...)

limited to giving advice only, rather, counsel must be permitted to question witnesses and make arguments on behalf of the parties. Since the statute does not limit counsel's traditional role as an advocate in an adversarial proceeding, Odum has the right to be represented by counsel who is permitted to question witnesses and make arguments.⁶

The case is REMANDED to the superior court for further proceedings consistent with this opinion.

5. (...continued)

. . . You may be present at the hearing, may be but need not be represented by counsel, may present any relevant evidence, and will be given full opportunity to cross-examine all witnesses testifying against you.

6. Since the APA resolves the issue in Odum's favor, we do not address whether the due process clauses of the United States or Alaska Constitutions require that legal counsel be allowed to participate in the pre-termination hearing of a tenured professor.

HB

153

STATE OF ALASKA
1994 LEGISLATIVE SESSION

FISCAL NOTE

No. 2
Bill Version: CSHB 153(JUD)
(H) Publish Date: 4/8/94

Revision Date: _____ Dept. Affected: Corrections
Title: Special good time reductions for prisoners BRU: Statewide Operations
Sponsor: House Judiciary Committee Component: Pt. MacKenzie
Requestor: Representative Barnes Component Serial #: 1884

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXP.	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 EXP	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGES IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1006 GF/MITLA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY94) cost \$ 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

ANALYSIS: Please see the attached explanation.

Prepared by: Diane Schenker, Special Assistant *Diane Schenker* **COMMITTEE COPY** Phone: 465-4643/786-2147
Division: Office of the Commissioner Date: 4/7/94
Approved by: J. Frank Prewitt, Jr., Commissioner *J. Frank Prewitt, Jr.* Date: 4/7/94
Agency: Department of Corrections Page 1 of 4

The bill would allow prisoners who voluntarily serve time at the Pt. MacKenzie Rehabilitation Project to receive three days of "special good time" for each month of satisfactory participation. The good time would be awarded during the month after it was earned, and would be awarded only for a full month of participation. The good time would be forfeited in whole or in part if the prisoner is involuntarily removed from the Project due to inappropriate behavior. The Department would be required to describe and post or distribute a description of appropriate and inappropriate behavior. The Commissioner would be authorized to proceed with adoption of regulations to implement the bill immediately, and the provisions of the bill and the regulations would go into effect July 1, 1994.

Assumptions

1. It is assumed that the award of special good time will serve as an incentive for more prisoners to volunteer to go to Pt. MacKenzie, enabling the Department to make better utilization of the Project, and thus helping to relieve emergency overcrowding in correctional institutions.
2. Availability of a special privilege (reduction in sentence) may necessitate offering this opportunity to female prisoners to avoid discrimination litigation. Staffing patterns will have to be reviewed to determine if adequate staff exist on site to properly supervise a mixed gender population. If inadequate staffing exists, the probability of security problems increases, such as sexual contact between male and female inmates, and may lead to medical expenses (pregnancies, sexually transmitted diseases, etc.)
3. Removal of a prisoner from a rehabilitative program requires due process, i.e., notice, a hearing, and opportunity for the prisoner to comment, etc., Ferguson v. State, 1816 P. 2d 134, (Alaska 1991). The demand for due process hearings is expected to increase when loss of a privilege, such as reduction in sentence, is tied to program removal. It is assumed that the staff time required for hearings can be absorbed by existing staff at Pt. MacKenzie and other institutions. If not, and hearings are not accomplished due to lack of staff time, increased litigation will result.
4. Policies and procedures governing time accounting would be revised. Policies will need to clarify the bill's reference to acceptable and unacceptable behavior; program removal procedures, etc. Regulations could not be completed prior to the effective date of the bill, but would be developed after policies and procedures are in place. The department plans to contract for policy and procedure and regulation coordination in FY95; if funding for these functions is cut these duties will have to be absorbed by Pt. MacKenzie staff. If adequate policies and procedures and regulations are not developed in a timely manner, errors in implementing the bill are likelier to occur, resulting in a higher probability of litigation.

5. Award of good time, on a monthly basis after the fact, would require an individual entry on the time accounting sheet in each prisoner record at the Project every month, followed by an individual computer entry into the OBSCIS system revising each prisoner's release date each month. It is estimated that the time accounting function for 100-150 prisoners will require approximately two full days of staff time, which will have to be absorbed by existing staff at Pt. MacKenzie. If staffing or training in time accounting is inadequate, the following issues will become further complicated:

Good time earned during the final month would not be awarded until after the prisoner is released, so it would only benefit a prisoner whose probation or parole is revoked, who would receive a credit towards the next period of incarceration. Equal protection issues may be raised by prisoners who satisfactorily complete 30 days or more in the program, but whose time straddles two calendar months, and who do not receive the special good time credit awarded to prisoners who complete a calendar month. Since the release dates of Pt. MacKenzie participants will change every month, notification of victims, police, furlough review, and other pre-release requirements which hinge on the final release date will become more complex.

6. A list of prisoners serving time at the Project on April 6, 1994 (Attachment A) reveals 52 prisoners with a total of 428 full calendar months remaining between July 1, 1994 and their release dates. If each prisoner earned the full "special good time" credit of three days per full month, a total of 1,248 inmate days (or 3.5 inmate-years) would be saved between July 1, 1994 and May 1998 when the latest release date for this population occurs, or slightly less than 1 inmate-year (1 bed) per year. Since the population at Pt. MacKenzie is expected to double this year, it is assumed that a savings of 2 inmate-years or 2 beds would result.

7. It is assumed that some prisoners would eventually move from Pt. MacKenzie to a CRC on furlough status, so that not all of the remaining sentence length would result in the full reduction of special good time. However, because untreated sex offenders are ineligible for prerelease furloughs at this time, and comprise over a third of the Pt. MacKenzie population, a substantial number would be likely to remain at the Project for the duration of sentence, earning the maximum award of special good time. (However, a prisoner who fails to participate in a court-ordered rehabilitation program which was made available to the prisoner is subject to losing all earned good time through a parole revocation hearing, under AS 33.16.220. The number of prisoners at Pt. MacKenzie to whom this provision applies cannot be determined without individual file reviews.)

Attachment A
(page 4 of 4)

OFFENSE	DESCRIPTION	RELEASE-DATE	MONTHS
06100	053010	WS-OFFENSE	
06200	00000457	PROBATION VIOLATION	9 mo.
06300	00000421	PAROLE VIOLATION	13 mo.
06400	00000766	PAROLE VIOLATION	33
06500	00000579	DMVI - ALCOHOL	0
06600	00000612	DMVI - ALCOHOL	0
06700	00000709	CRIMINAL MISCHIEF - 4TH	2
06800	00012159	BURGLARY - 1ST	33
06900	00012201	DMVI - ALCOHOL	3
07000	00026560	ROBBERY - 2ND	26
07100	00022740	SEX ABUSE MINOR-2ND	1
07200	00030661	SEX ABUSE MINOR-2ND	0
07300	00030289	DMVI - ALCOHOL	8
07400	00030574	SEX ABUSE MINOR-2ND	10
07500	00040872	SEXUAL ASSAULT - 2ND	0
07600	00055677	UNTRD SUBSTANCES- 3RD	0
07700	00061002	PROBATION VIOLATION	3
07800	00063455	PAROLE VIOLATION	1
07900	00065799	SEX ABUSE MINOR-2ND	11
08000	00072562	DMVI - ALCOHOL	0
08100	00074710	ATTEMPT TO COMMIT FELONY	2
08200	00081726	KIDNAPPING	18
08300	00082479	SEX ABUSE MINOR-2ND	3
08400	00087317	ASSAULT - 4TH	3
08500	00112001	SEX ABUSE MINOR-3RD	5
08600	00121609	PROBATION VIOLATION	0
08700	00134574	PROBATION VIOLATION	9
08800	00142000	PAROLE VIOLATION	2
08900	00142512	PROBATION VIOLATION	24
09000	00145207	SEX ABUSE MINOR-1ST	23
09100	00170600	SEXUAL ASSAULT - 1ST	0
09200	00176591	PROP. TEN VIOLATION	0
09300	00184999	CRIMINAL MISCHIEF - 3RD	0
09400	00187002	SEX ABUSE MINOR-1ST	29
09500	00206726	TRESPASS - 1ST	1
09600	00227016	SEX ABUSE MINOR-1ST	18
09700	00227562	SEXUAL ASSAULT - 1ST	29
09800	00252104	PROBATION VIOLATION	0
09900	00252411	SEXUAL ASSAULT - 2ND	5
10000	00257000	PAROLE VIOLATION	5
10100	00258910	SEX ABUSE MINOR-1ST	46
10200	00262930	ROBBERY - 1ST	1
10300	00263020	SEX ABUSE MINOR-2ND	2
10400	00267390	PROBATION VIOLATION	7
10500	00271776	ASSAULT - 3RD	1
10600	00271670	DMVI - ALCOHOL	0
10700	00281027	SEX ABUSE MINOR-2ND	0
10800	00280749	SEX ABUSE MINOR-2ND	2
10900	00287916	PROBATION VIOLATION	0
11000	00297751	OBSESSION	4
11100	00294299	ASSAULT - 3RD	9
11200	00294570	SEX ABUSE MINOR-2ND	10
11300	00295040	ATTEMPT TO COMMIT FELONY	1
11400	00304140	BURGLARY - 2ND	6
11500	4/06/94 12.50.00	EASYTRIEVE PLUS - 6.00	

428 months

Alaska State Legislature



House of Representatives
House Judiciary Committee

State Capitol, Room 120
Juneau, Alaska 99801-1182
(907) 465-4990

SPONSOR STATEMENT

CSHB 153 (JUD)

"An Act related to the awarding of special good time deductions for prisoners participating in the Point MacKenzie Rehabilitation Project; and providing for an effective date."

The Department of Corrections is currently experiencing a problem with overcrowding in our institutions. Committee Substitute for House Bill 153 (Judiciary) is introduced to address two issues. First, it will help alleviate the overcrowding problem and second, it will help attract volunteers for the Point MacKenzie Rehabilitation Project. Presently, inmates appear concerned that the "benefits" at Point MacKenzie are fewer than those in the conventional institutions, consequently, they are hesitant to volunteer. This proposed legislation will provide an incentive for inmates to participate in the program. By implementing a Special Good Time statute, we believe inmates will volunteer to serve their time at the Point MacKenzie Rehabilitation Project instead of in one of the conventional institutions.

At Point MacKenzie there are no fences, other than for the reindeer; there are no lock down facilities; and, all inmates must be minimum custody level or lower. Presently there are over 550 inmates in our system that are classified appropriately for placement at Point MacKenzie but some form of incentive is needed to entice volunteers.

Under this legislation, each inmate who participates in the Point MacKenzie Rehabilitation Project will be entitled to 3 days of Special Good Time for each full month served at Point MacKenzie. This good time will be irrevocable once credited against the inmates sentence unless the inmate is involuntarily removed from the project for inappropriate behavior. The inmate's record will be reviewed by the Project Manager to determine if a recommendation is forwarded to the Commissioner for crediting of the Good Time against the inmate's sentence.

Not all inmates who volunteer will be selected. Each inmate will be thoroughly screened by the Chief of Security at Point MacKenzie or his/her designee. If the Chief of Security feels that an inmate would not be a suitable candidate, the inmate will not be selected for placement at Point MacKenzie.

**ACTIVE INMATE
PROFILES**

**DEPARTMENT OF CORRECTIONS
MARCH 28, 1994**

ADMIN SERVICES
465-3376

ALL INSTITUTIONS
ACTIVE INMATES BY OFFENSE CODE

OFFENSE CODE AND DESCRIPTION	#INMATES	PERCENTAGE
A-01 DMVI - ALCOHOL	135	4.814
A-02 DMVI - DRUGS	1	0.035
A-04 ILLEGAL LIQ - MAKE,POSS,SELL	2	0.071
A-07 FURNISHING	1	0.035
A-09 MINOR CONSUMING	3	0.106
A-12 REFUSE CHEMICAL TEST	2	0.071
A-13 IMPORTATION OF ALCOHOL	3	0.106
A-99 ALCOHOL - OTHER	1	0.035
CCO CONTEMPT OF COURT	17	0.606
CUSTOM INTERSTATE CUSTODY COMPACT	- 1	0.035
ERASED COURT-ORDERED ERASURE	1	0.035
FED FEDERAL OFFENSE	41	1.462
FSJ FAILURE SATISFY JUDGEMENT	23	0.820
FTA FAILURE TO APPEAR	51	1.818
FTC FAILURE TO COMPLY	8	0.285
FUGITIVE FUGITIVE FROM JUSTICE	11	0.392
NONCRIM NON CRIMINAL BOOKING	2	0.071
OTHER NOT CT-FED-MIL-COMP BUT OTHERS	1	0.035
PAROLE PAROLE VIOLATION	206	7.346
PROB PROBATION VIOLATION	264	9.415
T-01 HIT AND RUN	2	0.071
T-02 RECKLESS DRIVING	3	0.106
T-04 DRIVING WHILE SUSP/REVKD	29	1.034
T-99 TRAFFIC-OTHER	4	0.142
T70-15.010 MURDER - 1ST DEGREE	17	0.606
T70-15.030 MURDER - 2ND DEGREE	8	0.285
T70-15.120 RAPE	1	0.035
T70-15.150 SHOOT,STAB OR CUT WITH INTENT	1	0.035
T70-15.260 KIDNAPPING	2	0.071
T70-30.090 ESCAPE	1	0.035
T92-61.200 MISCOND W WEAPNS - 1ST	1	0.035
12.30.060 VIOLATION OF CONDITIONS	2	0.071
28.35.060 FAILURE TO STOP & RENDER AID	1	0.035
31.100 ATTMPT TO COMMIT MISD	4	0.142
31.105 ATTMPT TO COMMIT FELONY	56	1.997
31.110 SOLICIT TO COMMIT CRIME	4	0.142
41.100 MURDER - 1ST	173	6.169
41.110 MURDER - 2ND	101	3.601
41.120 MANSLAUGHTER	33	1.176
41.130 CRIM NEGLIGENT HOMICIDE	5	0.178
41.135 MULTIPLE DEATHS	1	0.035
41.200 ASSAULT - 1ST	50	1.783
41.210 ASSAULT - 2ND	44	1.569
41.220 ASSAULT - 3RD	87	3.102
41.230 ASSAULT - 4TH	111	3.958
41.250 RECKLESS ENDANGERMENT	3	0.106
41.260 STALKING 1ST DEGREE	2	0.071
41.270 STALKING 2ND DEGREE	1	0.035
41.300 KIDNAPPING	30	1.069
41.320 CUSTODIAL INTERFER -1ST	1	0.035
41.410 SEXUAL ASSAULT - 1ST	161	5.741
41.420 SEXUAL ASSAULT - 2ND	50	1.783

ADMIN SERVICES
465-3376

ALL INSTITUTIONS
ACTIVE INMATES BY OFFENSE CODE

OFFENSE CODE AND DESCRIPTION	#INMATES	PERCENTAGE
41.405 SEXUAL ASSAULT - 3RD	4	0.142
41.434 SEX ABUSE MINOR-1ST	136	4.850
41.436 SEX ABUSE MINOR-2ND	142	5.064
41.438 SEX ABUSE MINOR-3RD	12	0.427
41.440 SEX ABUSE MINOR-4TH	3	0.106
41.450 INCEST	2	0.071
41.460 INDECENT EXPOSURE	4	0.142
41.500 ROBBERY - 1ST	101	3.501
41.510 ROBBERY - 2ND	29	1.034
41.520 COERCION	3	0.106
46.120 THEFT - 1ST	6	0.213
46.130 THEFT - 2ND	65	2.318
46.140 THEFT - 3RD	19	0.677
46.150 THEFT - 4TH	7	0.249
46.190 THEFT BY RECEIVING	1	0.035
46.210 FAILURE TO MAKE DISPO OF FUNDS	1	0.035
46.220 CONCEALMENT OF MERCHANDISE	17	0.606
46.230 ISSUING BAD CHECK	3	0.106
46.240 FRAUDULENT USE OF CREDIT CARD	3	0.106
46.310 BURGLARY - 1ST	63	2.346
46.310 BURGLARY - 2ND	56	1.997
46.320 TRESPASS - 1ST	15	0.534
46.330 TRESPASS - 2ND	12	0.427
46.400 ARSON - 1ST	5	0.178
46.410 ARSON - 2ND	4	0.142
46.430 NEGLIGENT BURNING	1	0.035
46.482 CRIMINAL MISCHIEF - 2ND	22	0.784
46.484 CRIMINAL MISCHIEF - 3RD	8	0.285
46.486 CRIMINAL MISCHIEF - 4TH	6	0.213
46.500 FORGERY - 1ST	3	0.106
46.505 FORGERY - 2ND	33	1.176
46.510 FORGERY - 3RD	2	0.071
46.600 SCHEME TO DEFRAUD	3	0.106
46.730 DEFRAUDING CREDITORS	1	0.035
56.200 PERJURY	1	0.035
56.300 ESCAPE 1ST DEGREE	1	0.035
56.310 ESCAPE - 2ND DEGREE	10	0.356
56.330 ESCAPE - 4TH DEGREE	3	0.106
56.340 UNLAWFUL EVASION - 1ST	6	0.213
56.375 PROMOTE CONTRABAND - 1ST	2	0.071
56.380 PROMOTE CONTRABAND - 2ND	2	0.071
56.510 INTERFER OFFICIAL PROCEEDINGS	2	0.071
56.540 TAMPERING WITH WITNESS-1ST	1	0.035
56.700 RESISTING/INTERFERING WITH ARR	4	0.142
56.740 VIOLATE DOM.VIO. RESTRAIN ORDR	4	0.142
56.800 MAKING FALSE REPORT	2	0.071
61.110 DISORDERLY CONDUCT	6	0.213
61.120 HARRASSMENT	1	0.035
61.190 MISCOND W WEAPNS - 1ST	14	0.499
61.195 MISCOND W WEAPNS - 2ND	3	0.106
61.200 MISCOND W WEAPNS - 3RD	19	0.677
61.210 MISCOND W WEAPNS - 4TH	2	0.071

ADMIN SERVICES
965-3376

ALL INSTITUTIONS
ACTIVE INMATES BY OFFENSE CODE

OFFENSE CODE AND DESCRIPTION	#INMATES	PERCENTAGE
61.220 MISCOND W WEAPNS - 5TH	2	0.071
66.100 PROSTITUTION	3	0.106
71.010 CNTRLD SUBSTNCS- 1ST	6	0.213
71.020 CNTRLD SUBSTNCS- 2ND	19	0.677
71.030 CNTRLD SUBSTNCS- 3RD	89	3.174
71.040 CNTRLD SUBSTNCS- 4TH	43	1.533
71.050 CNTRLD SUBSTNCS- 5TH	1	0.035
71.060 CNTRLD SUBSTNCS- 6TH	2	0.071
????????? UNKNOWN OFFENSE CODE	1	0.035
TOTAL INMATES / PERCENTAGES	2.804	99.933

AVE SENTENCE LENGTH-SENTENCED FELONS 24.2 YEARS

***AVERAGE LENGTH OF SENTENCE CALCULATED FROM DATA ENTERED ON THE OBSCIS SYSTEM

ADMIN SERVICES
465-3376

ALL INSTITUTIONS

VIOLATIONS/MISDEMEANORS/FELONS

CODE AND DESCRIPTION	#INMATES	PERCENTAGE
V VIOLATIONS	2	0.071
M MISDEMEANORS	514	18.330
F FELONIES	2,287	81.562
UNKNOWN OFFENSE CATEGORIES	1	0.135
TOTAL INMATES / PERCENTAGES	2,804	100.000

SENTENCED AND UNSENTENCED

CODE AND DESCRIPTION	#INMATES	PERCENTAGE
S SENTENCED	2,048	73.038
U UNSENTENCED	755	26.925
UNKNOWN	1	0.035
TOTAL INMATES / PERCENTAGES	2,804	99.999

MALES AND FEMALES

CODE AND DESCRIPTION	#INMATES	PERCENTAGE
M MALE	2,543	90.728
F FEMALE	161	5.741
UNKNOWN	0	0.000
TOTAL INMATES / PERCENTAGES	2,804	99.999

CITY, STATE, OR FEDERAL CHARGE

CODE AND DESCRIPTION	#INMATES	PERCENTAGE
C CITY	174	6.205
S STATE	2,582	92.082
F FEDERAL	47	1.676
UNKNOWN	1	0.035
TOTAL INMATES / PERCENTAGES	2,804	99.999

ALL INSTITUTIONS

CUSTODY LEVEL

CODE AND DESCRIPTION	#INMATES	PERCENTAGE
MA MAXIMUM	44	1.569
CL CLOSE	765	27.282
ME MEDIUM	934	33.309
MI MINIMUM	481	17.154
CM COMMUNITY	96	3.423
UN UNCLASSIFIED	484	17.261
UNKNOWN	0	0.000
TOTAL INMATES / PERCENTAGES	2,804	99.999

AGES

CODE AND DESCRIPTION	#INMATES	PERCENTAGE
18 - 20	132	4.707
21 - 25	489	17.439
26 - 30	521	18.580
31 - 35	619	22.075
36 - 40	420	14.978
41 - 50	430	15.335
51 - 60	135	4.814
61 - 70	50	1.783
GREATER THAN 70	0	0.000
AGE OTHER THAN ABOVE	8	0.285
TOTAL INMATES / PERCENTAGES	2,804	99.999
AVERAGE AGE - ALL INMATES	33.8	
AVERAGE AGE - SENT FELONS	34.9	

ETHNIC BACKGROUND

CODE AND DESCRIPTION	#INMATES	PERCENTAGE
A ASIAN/PACIFIC ISLANDER	33	1.176
B BLACK/NON-HISPANIC	357	12.731
H HISPANIC	69	2.460
I INDIAN	89	3.174
N ALASKAN NATIVE	823	29.350
W WHITE/NON-HISPANIC	1,433	51.105
OTHERS	0	0.000
UNKNOWN	0	0.000
TOTAL INMATES / PERCENTAGES	2,804	99.999

ALL INSTITUTIONS

MARITAL STATUS

CODE AND DESCRIPTION	#INMATES	PERCENTAGE
2 COHABITATING	9	0.320
0 DIVORCED	239	8.523
- SEPARATED/LIVING APART	31	1.105
M MARRIED	503	17.938
3 SINGLE	1,718	61.269
W WIDOW/WIDOWER	27	0.962
UNKNOWN	277	9.878
TOTAL INMATES / PERCENTAGES	2,804	99.999

LAST GRADE COMPLETED

CODE AND DESCRIPTION	#INMATES	PERCENTAGE
21 G.E.D.	47	1.676
COMPLETED HIGH SCHOOL	1,073	38.266
LESS THAN HIGH SCHOOL	1,262	45.007
FOUR YEAR COLLEGE DEGREE	8	0.285
LESS THAN 4 YR COLLEGE DEGREE	266	9.486
MORE THAN 4 YR COLLEGE DEGREE	13	0.463
UNKNOWN	135	4.814
TOTAL INMATES / PERCENTAGES	2,804	99.999

AVERAGE EDUCATIONAL LEVEL - ALL INMATES : 8.8

AVERAGE EDUCATIONAL LEVEL - SENT FELONS : 9.5

CRIME CATEGORY

CODE AND DESCRIPTION	#INMATES	PERCENTAGE
V CRIMES OF VIOLENCE	1,414	50.427
P CRIMES AGAINST PROPERTY	283	10.052
S CRIMES OF SUBSTANCE ABUSE	314	11.198
O CRIMES OF OTHER CATEGORIES	793	28.281
TOTAL INMATES / PERCENTAGES	2,804	99.999

CRIME CLASS

CODE AND DESCRIPTION	#INMATES	PERCENTAGE
UNCLASSIFIED FELONY	627	22.360
A CLASS A FELONY	224	7.988
B CLASS B FELONY	482	17.189
C CLASS C FELONY	325	11.590
1 CLASS A MISDEMEANOR	319	11.376
2 CLASS B MISDEMEANOR	39	1.390
V VIOLATION	2	0.071
U UNKNOWN CRIME CLASS	786	28.031
TOTAL INMATES & PERCENTAGES	2,804	99.999

*** AVERAGES CALCULATED FROM DATA ENTERED ON THE OBSCIS SYSTEM ***

MEMORANDUM

State of Alaska

TO: Robert Spinde
Chief of Classification
Division of Institutions

DATE: February 25, 1994

THRU:

FILE NO:

PHONE NO:

FROM: Ken Brown *KEB*
Superintendent
Wildwood Correctional Center

SUBJ: Inmate Transfer to Pt.
MacKenzie

I am responding to your recent request that we attempt to identify reasons that inmates are giving for declining the opportunity to volunteer for transfer to the Pt. MacKenzie farm rehabilitation program. Listed below are the various reasons that the probation officers have heard. By far the most frequent reason given, when any is given, is that they are more interested in furlough to a CRC. Many are awaiting bed space and others foresee being eligible in the relatively near future:

1. More interested in furlough, either now or later.
2. Too far away from friends and family. wouldn't get visits.
3. No substance abuse treatment.
4. More interested in educational programs.
5. Learning more in industries.
6. No programming activities such as library, gym, and hobbycraft.

If the Department would like to provide any additional information about the farm rehabilitation program, we would be happy to pass it along to the inmates for their consideration. We have made them aware of the criteria for acceptance as identified in your memo of February 10, 1994. If I may be of further help in this matter please contact me.

B

HOUSE COMMITTEE REPORT

4/8/94

(7)

Date Referred: March 1, 1993

FURTHER REFERRALS:

Finance

Date of Committee Action: 6 April 94

The JUDICIARY Committee considered:

HB 153

HOUSE BILL NO. 153

REDUCTION OF PRESUMPTIVE SENTENCES

"An Act related to sentencing."

RECOMMENDATIONS:

be replaced with CS HB 153 (dup) the same title a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact _____

fiscal note(s) _____

zero fiscal note Corrections
in Court System

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>[Signature]</i> Green	<input checked="" type="checkbox"/>				
<i>[Signature]</i> Kott	<input checked="" type="checkbox"/>				
<i>[Signature]</i> JAMES	<input checked="" type="checkbox"/>				
<i>[Signature]</i> Porter	<input checked="" type="checkbox"/>				
<i>[Signature]</i> Phillips	<input checked="" type="checkbox"/>				
<i>[Signature]</i> Nordlund	<input checked="" type="checkbox"/>				
		<i>[Signature]</i> Davidson		<input checked="" type="checkbox"/>	
	(6)			(1)	

[Signature] Porter
CHAIRMAN'S SIGNATURE

HB

1966

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(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 SSHB 196 (State employment preference for veterans and prisoners of war)

TO: Representative Pete Kott

FROM: Teresa B. Cramer 
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 is not considered an authoritative interpretation of the bill. The bill itself is the best statement of its contents.

Section 1 amends the existing state employment preference for veterans and prisoners of war to permit its use more frequently.

Sec. 2 repeals a subsection of the existing state employment preference for veterans to conform to the changes made in sec. 1.

TBC:gc
93-221.glc



VETERANS OF FOREIGN WARS OF THE U.S.
DEPARTMENT OF ALASKA
P.O. Box 141988
Anchorage, Alaska 99514

March 23, 1993

TO: All State Senators and Representatives

The Veterans of Foreign Wars, Department of Alaska, is in full support of Sponsor Substitute for House Bill No. 196. Former prisoners of war and veterans have already paid a high price in service to our country. An act relating to the state employment preference for veterans and prisoners of war is justified.

The Veterans of Foreign Wars, Department of Alaska, appreciates your consideration and assistance in passing Sponsor Substitute for House Bill No. 196.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Larry Patch', written in dark ink.

Larry Patch
VFW State Commander

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SSHB 196

Revision Date: _____
 Title: State employment preference for veterans and prisoners of war.
 Sponsor: Representative Kott
 Requestor: House Special Committee on Military and Veterans Affairs.

Department Affected: Administration
 BRU: Personnel/OEEO
 Component: Personnel/OEEO
 COMPONENT SERIAL NO. 56

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

REVENUE FUND SOURCE:	0	0	0	0	0	0
----------------------	---	---	---	---	---	---

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 (FY93) impact: None

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Kevin Ritchie, Director
 Division: Personnel/OEEO

Phone: 465-4429
 Date: _____

Approved by Commissioner: Nancy Bear Usara
 Agency: Administration

Date: 3/12/93

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SSHB 196

Revision Date: _____ Dept. Affected: DMVA
 Title: State employment preference for BRU: NA
veterans and prisoners of war Component: _____
 Sponsor: Rep. Kott
 Requestor: Rep. Kott COMPONENT SERIAL NO. _____

Expenditures/Revenues: (Thousands of Dollars)

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

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: \$ - 0 -

ANALYSIS: (Attach a separate page if necessary)

Zero fiscal impact

Prepared by: Jeff Morrison, Director Phone: 465-4730
 Division: Administrative Support & Services Date: 15 Mar 93
 Approved by Commissioner: Hugh L. Cox III Date: 3/15/93
 Agency: Military & Veterans Affairs

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Alaska State Legislature
House of Representatives

COMMITTEES:
HEALTH, EDUCATION
& SOCIAL SERVICES
JUDICIARY
STATE AFFAIRS

SPECIAL COMMITTEES:
MILITARY & VETERANS AFFAIRS
OIL & GAS




HOME:
9843 CHICHAGOF LOOP
EAGLE RIVER, AK 99577
PHONE (907) 694-7943

DURING SESSION:
STATE CAPITOL
JUNEAU, AK 99811
PHONE (907) 465-3777

Representative Pete Kott

DATE:: April 21, 1993

TO: Senator Loren Lemam
Chairman
Senate State Affairs Committee

FROM: Representative Pete 

RE: Sponsor Substitute House Bill 196

SS HB 196 is scheduled to be heard by the Senate State Affairs Committee on April 23, 1993. Thank you very much for the extremely prompt scheduling of this bill.

Please find enclosed herewith the following, to be included in the bill packets:

Sponsor Substitute House Bill 196
Sponsor Statement
Fiscal Notes:
Administration
Military and Veterans Affairs
Sectional Analysis
VFW Letter dated March 23, 1993

Thank you again for your very kind assistance in this matter.



SPONSOR STATEMENT

AS 39.25.159 currently establishes an employment preference for veterans. This preference, however, is limited by specific statutory language, as follows: "Except as provided in (c) of this section, a person who has been appointed, after receiving preference points under this subsection, to a permanent position in the classified service is not entitled to a further hiring preference under this subsection." SSHB 196 would eliminate this limitation.

Hiring preferences traditionally are justifiable as conducive to the achievement of several important state goals. Among those goals may be included the following:

- (a) Encouraging qualified men and women to volunteer for military duty;
- (b) Rewarding those men and women who, either as a result of enlistment or through conscription, sacrificed their time, effort, and sometimes their health, to protect those liberties and freedoms which Alaskans and all Americans hold dear;
- (c) Assisting veterans into making the oftentimes difficult transition from military to civilian status; and,
- (d) Securing for the State the services of men and women of proven discipline and integrity.

See Personnel Administrator of Massachusetts v. Feeney, 442 U.S. 256 (1979) for a discussion of the traditional goals of veterans preferences statutes.

It respectfully is submitted that the above articulated goals are desirable and proper for the State of Alaska. SSHB196 enhances Alaska's ability to achieve these important goals.

Alaska is facing uncertain economic times and a projected decline in revenues. Any given civil service position may be of very short duration. A veteran who uses his or her one-time preference in securing a position may quickly be without that position. When that occurs, the above mentioned state goals are not significantly advanced. These goals can not be achieved if the veteran, having once asserted the preference, is thereafter foreclosed from utilizing it again to secure employment. To more fully achieve state goals it therefore is necessary to remove the limitation now contained in the statute and permit veterans to re-assert their preference rights in

securing employment. SSHB 196 endeavors to accomplish that end,
and it is heartily commended to you for your consideration.

HB

2006

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. CSHB 206 (STA) am

Revision Date: _____ Dept. Affected: Administration
 Title: "An Act amending provisions of Alaska Elections Code . . ." BRU: Alaska Public Offices Commission
 Code . . . " _____ Component: Alaska Public Offices Commission
 Sponsor: Representative Mulder
 Requestor: _____ COMPONENT SERIAL NO. 70

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	13	13	13	13	13	13
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	.6	.5	.5	.5	.5	.5
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	1.9	1.8	1.8	1.8	1.8	1.8

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE FUND SOURCE:	0	0	0	0	0	0
----------------------	---	---	---	---	---	---

FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	1.9	1.8	1.8	1.8	1.8	1.8
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	1.9	1.8	1.8	1.8	1.8	1.8

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.)

See attached.

Prepared By: Karen Boorman, Director Phone: 276-4176
 Division: Alaska Public Offices Commission Date: _____
 Approved by Commissioner: Nancy Bear Usara Date: 4/21/93
 Agency: Department of Administration

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. CSHB 206 (STA) am

This bill would require candidates for an electrical or telephone cooperative's board of directors to comply with the Campaign Disclosure Law, AS 15.13, if the cooperative serviced at least 10,000 customers. Any group that took action to support or oppose these candidates would also be required to file reports and otherwise comply with AS 15.13. According to information from the Alaska Public Utilities Commission, there are 5 electrical cooperatives and one telephone cooperative that meet these criteria. All have annual meetings in March, April or May at which time newly elected board members would take office.

The commission has not had experience with non-governmental entities before so this is a new area. The closest analogy is in the regulation of municipal campaigns, candidates and groups. The commission has a policy that allows municipal candidates to file exemption forms if they do not intend to receive contributions exceeding \$1000 or make expenditures exceeding \$1000 during their campaign. If they do exceed this amount reporting requirements must be met. Groups taking action in support or opposition to these candidates must report at any monetary level. It is likely that the Commission will extend this \$1000 exemption policy to candidates for cooperative boards.

AS 15.13 will be more difficult to administer, at least initially, than it is to do so with municipalities for several reasons. No one entity regulates electrical and telephone cooperatives, these candidates are not accustomed to being regulated by the Alaska Public Utilities Commission and a municipality, usually the municipal clerk, has responsibility under APOC regulations 2 AAC 50.360 to provide a list of candidates and mailing addresses within seven days after the deadline for filing. A similar provision placed in statute for electrical and telephone cooperatives would certainly make administration easier.

The Commission anticipates it will incur start up costs in connection with administering and enforcing the new provisions. Staff must revise forms, manuals and prepare training materials. The Commission will receive many questions and requests for written and oral advice. Procedures will have to be established with the cooperatives, candidates and APOC to insure that all regulated candidates are notified of the requirements each year. Provisions for monitoring or determining the number of customers will have to be arranged to insure that candidates for cooperative boards servicing at least 10,000 customers are included. Training will have to be emphasized in the first few years to educate cooperative boards, candidates and groups active in cooperative elections. It is expected that at least one complaint will be filed each year alleging violations of the campaign disclosure laws.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. CSHB 206 (STA) am

ANALYSIS: (continued)

This comes at a time when Alaska Public Offices Commission staff and other resources are stretched thin and funding is at a maintenance level. Although an additional staff person is not necessary to accommodate these provisions, funds for printing of forms and manuals, conducting training, as well as overtime funds for staff to provide compliance assistance, training, to revise the manual and forms, draft advisory opinions and investigate complaints are needed. An estimated \$600 is allocated for the first year for printing, training, and materials and \$500 each year thereafter. An estimated \$1,300, or 65 hours at \$20 per hour, is allocated for overtime.

Sponsor Statement
Representative Eldon Mulder

CS HB206(STA) am

House Bill 206 relates to the Alaska Public Offices Commission regulating elections by electrical and telephone cooperatives. The bill has been introduced as a measure to ensure greater accountability to the public.

The scope of these elections has changed in recent years. While in the past they were often low budget and simple in nature, today these elections often cost many thousands of dollars, yet the public presently has no way of knowing where the money is coming from. It is only appropriate for members of the public to know how these campaigns are being financed.

House Bill 206 would require candidates running for a seat on the board of directors of electrical or telephone cooperatives who provide services to 10,000 or more customers to be subject to regulation by the Alaska Public Offices Commission.

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

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

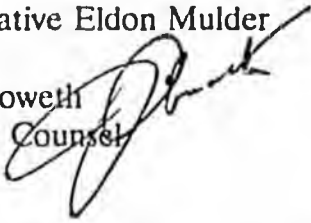
130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

April 22, 1993

SUBJECT: CS for House Bill 206(STA) am -- sectional analysis (Work Order No. 8-LS0686(X))

TO: Representative Eldon Mulder

FROM: Jack Chenoweth
Legislative Counsel 

Through staff, you have asked me to prepare a revised sectional analysis of the House-adopted version of the measure.

As passed by the House, the bill (1) subjects to regulation by the Alaska Public Offices Commission elections for seats on boards of directors of certain electrical and telephone cooperatives, and (2) exempts from election campaign reporting requirements candidates whose campaign contributions and expenditures do not exceed \$1000.

Bill section 1: This bill section expands and reformats AS 15.13.010(a). The substantive addition appears on page 2, at lines 12 - 15, and incorporates within the statement of the scope of AS 15.13 the additional reference to campaigns of candidates for seats on boards of directors of electrical and telephone cooperatives having at least 10,000 customers. ^{1/}

Bill section 2: This bill section adds a new subsection, subsection (c), to accommodate the sentence that is proposed to be deleted at the end of bill section 1. The deletion and addition are intended to reformat the content of this section so that AS 15.13.010(a) reads a little easier.

^{1/} The additional language set out at lines 4 and 5 of page 2 is inserted only by way of introduction of the next following sentence of current law ("A municipality may exempt itself . . ."), and simply serves to affirm what is already presumed in the law--that a municipality may exempt itself from operation of the election campaign disclosure requirements.

Representative Eldon Mulder

April 22, 1993

Page 2

Bill section 3: This provision, added by House floor amendment, provides the exemption from election campaign reporting requirements candidates whose campaign contributions and expenditures do not exceed \$1000.

Bill section 4: This bill section, an addition to AS 15.13.120(f), directs that, if a candidate for a seat on the board of directors of an electrical or telephone cooperative is successful in the election campaign and is subsequently "convicted of a violation of [AS 15.13]," the successful candidate is subject to whatever appropriate punitive action may be required by the articles of incorporation and bylaws of the cooperative for whose board the candidate successfully sought election.

Bill section 5: The bill section directs the electrical and telephone cooperatives whose elections are subject to AS 15.13 to file a list of the candidates for directors seats with the Alaska Public Office Commission.

Bill section 6: The bill section, substantively, revises the definition of "candidate" in AS 15.13.130(1) to add a reference to a candidate for a seat on the board of directors of an electrical or telephone cooperative with at least 10,000 customers. As a technical matter, the format for the text of the definition is revised.

Bill section 7: The bill section, adding additional paragraphs to the list of terms defined in AS 15.13.130, supplies definitions to the terms "electrical cooperative" and "telephone cooperative."

JBC:glc
93-358.glc

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. CSHB 206 (STA) am

This bill would require candidates for an electrical or telephone cooperative's board of directors to comply with the Campaign Disclosure Law, AS 15.13, if the cooperative serviced at least 10,000 customers. Any group that took action to support or oppose these candidates would also be required to file reports and otherwise comply with AS 15.13. According to information from the Alaska Public Utilities Commission, there are 5 electrical cooperatives and one telephone cooperative that meet these criteria. All have annual meetings in March, April or May at which time newly elected board members would take office.

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FISCAL NOTE

**STATE OF ALASKA
1993 LEGISLATIVE SESSION**

BILL NO. CSHB 206 (STA) am

ANALYSIS: (continued)

This comes at a time when Alaska Public Offices Commission staff and other resources are stretched thin and funding is at a maintenance level. Although an additional staff person is not necessary to accommodate these provisions, funds for printing of forms and manuals, conducting training, as well as overtime funds for staff to provide compliance assistance, training, to revise the manual and forms, draft advisory opinions and investigate complaints are needed. An estimated \$600 is allocated for the first year for printing, training, and materials and \$500 each year thereafter. An estimated \$1,300, or 65 hours at \$20 per hour, is allocated for overtime.

ALASKA RURAL ELECTRIC COOPERATIVE ASSOCIATION

ACTIVE MEMBERSHIP

<u>ORGANIZATION</u>	<u>AREA OF SERVICE</u>	<u>CONSUMERS</u>
1.) Alaska Electric Generation and Transmission Cooperative, Inc..	Sterling to Homer	approximately 14, 000 ?
2.) Alaska Village Electric Cooperative, Inc.	Western Alaska	5,420
3.) Chugach Electric Association, Inc.	Anchorage Area	63,361
4.) Copper Valley Electric Association, Inc.	Glennallen to Valdez	2,784
5. Cordova Electric Cooperative, Inc.	Cordova Area	1,569
6.) Golden Valley Electric Association, Inc.	Fairbanks Area	26,726
7.) Homer Electric Association, Inc.	Sterling to Soldovia	18,173
8.) Inn Electric Cooperative, Inc.	Iliamna Area	256
9.) Kodiak Electric Association, Inc.	Kodiak Area	5,197
10.) Kotzebue Electric Association	Kotzebue Area	1,004

11.) Levelock Electric Cooperative	Levelock Area	73
12.) Matanuska Electric Association, Inc.	Talkeetna to Eagle River Area	29,008
13.) Middle Kuskokwim Electric Cooperative, Inc.	Sleetmute, Stony River, Chuathbaluk, Crooked Creek, Red Devil	172
14.) Naknek Electric Association, Inc.	Naknek/King Salmon Area	765
15.) Nushagak Electric Cooperative, Inc.	Dillingham Area	1,158
16.) Tlingit-Haida Regional Electrical Authority	Scutheast Area	1,183
17.) Unalakleet Valley Electric Cooperative	Unalakleet Area	235

ALASKA TELEPHONE COOPERATIVES

<u>Cooperative</u>	<u>Subscribers</u>
Arctic Slope Telephone Assoc. Cooperative, Inc.	1,724
Bristol Bay Telephone Cooperative, Inc.	1,249
Copper Valley Telephone Cooperative, Inc.	3,821
Cordova Telephone Cooperative, Inc.	1,455
Matanuska Telephone Association	31,577
Nushagak Telephone Cooperative, Inc.	1,590
Otz Telephone Cooperative, Inc.	2,071

HB

235

MEMORANDUM

State of Alaska

Department of Law

TO: Sheila Peterson
Legislative Liaison
Department of Education

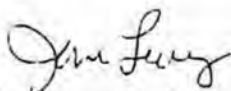
DATE March 22, 1993

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 State or Federal regulations, many States 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 § 300.650; 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 § 300.650; 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. 94-884, 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 615(e)(2) of the Act. (Authority: 20 U.S.C. 1415)

§ 300.512 Timeliness 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 additional 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 7871		# of pages	2
To	Sheila Peterson	From	Jan Levy
Co.		Dist.	
Dept.	DOE	Phone #	
Fax #	4156	Fax #	

Paul and Merrily Verhagen
P.O. Box 563
Nenana, AK 99760
Phone 907-832-5238

RE: HB 235

19 March 1993

House HESS
Fax 465-2137

My wife and I are professionals with many responsibilities. We consider the most important of our responsibilities to be raising our children and seeing to it that they receive an appropriate education. We do not need, nor do we seek additional responsibilities, and we do not appreciate it when we are forced to throw something else into our already busy schedules because someone in the DOE (whether is was purposely or otherwise) has failed to allow us, as parents, adequate time to be advised of, and respond to, proposed changes in education legislation.

This is the second year in a row that we have been forced to respond, on short notice (in this case 2 hours) to something which parents should not be forced to "react" to but rather should be able to carefully evaluate before expressing their opinions.

We agree that there is need for changes to the current legislation. However, we do not feel that it is appropriate to make those changes hurriedly, and without proper input from parents, under the guise of necessity in order assure continued federal funding.

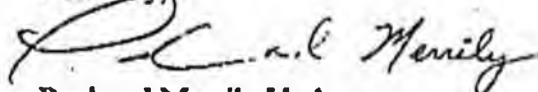
We do not believe that the proposed changes are necessary for continued federal funding and do believe that if these changes are adopted that the real changes which need to be made will not likely be made as the issue will be considered already dealt with.

For this reason we feel that the current legislation is better left as is while DOE's proposals for change are made widely known to all who have interest. Sufficient time should then be allowed for response and recommendations. These recommendations should then be incorporated into a new proposal for HESS to review and approve.

It is our understanding that at least one separate proposal has been made and is currently on the desk of Senator Miller. We urge you not to adopt DOE's proposal under the pretext that it must be adopted in order to guarantee continued federal funding. Instead please provide the means for those of us who are concerned to be made aware of proposed legislation or changes to legislation with adequate time to properly review and comment before it is acted upon.

Thank you for your consideration.

Sincerely,



Paul and Merrily Verhagen



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,
Acting Director *Patricia J. Guard*
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).¹ 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.² 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

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

² 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.



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
301 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

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 Nome	100	28,058
036 North Slope	163	45,735
037 NW Arctic	269	81,088
039 Petersburg	106	29,742
042 Sitka	219	61,448
048 Valdez	95	26,655
049 Wrangell	81	22,727
Subtotal	13,465	3,778,047
017 Galena	20	5,612
034 Nenana	34	9,540
053 Tanana	20	5,612
Subtotal	74	20,763
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
155 SERRC	406	113,917
Total	13,945	3,912,726

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	
	<i>Dec-92</i>	<i>Projected</i>
	Child	FY94
	Count	Allocation
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	18	10,085
038 Pelican		0
042 Sitka	35	19,609
Subtotal	1,375	770,362
039 Petersburg	7	3,922
048 Valdez	15	8,404
Subtotal	22	12,326
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
155 SERRC	93	52,105
Total	1,490	834,793

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
Heas	558	\$351,025
Iditarod	70	\$44,035
Kashunamut	30	\$18,872
Kuspuk	93	\$58,504
Lake & Pen	0	\$0
Lower Kuskokwim	429	\$269,874
Lower Yukon	254	\$159,788
Pribilof	34	\$21,389
Raiibelt	0	\$0
Southeast Is	65	\$41,519
Southwest Region	82	\$51,584
Yukon Flats	50	\$31,454
Yukon Koyukuk	119	\$74,231
Yupik	79	\$49,697
Mt Edgcombe	5	\$3,145
total	3181	\$2,001,094
LEA		
Aleutian East	2	\$1,258
Denali	32	\$20,130
Fairbanks, LEA	88	\$55,359
Haines	7	\$4,404
Lake & Peninsula	42	\$26,421
Mat-Su	48	\$30,196
Nome	21	\$13,211
NW Arctic	0	\$0
Petersburg	0	\$0
Wrangell	1	\$629
total	241	\$151,608
GRAND TOTAL	3422	\$2,152,702
NOTE: Based on FY 93 Allocation and FY 94 Child Count		



WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF EDUCATION

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

OFFICE OF THE COMMISSIONER

April 6, 1993

The Honorable Loren Leman
Senate State Affairs Committee, Chair
State Capitol, Room 113
Juneau, AK 99801

Dear Senator Leman:

I respectfully request a hearing before the Senate State Affairs Committee, to consider HB 235, "An Act relating to education programs and services for children with disabilities and other exceptional children."

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

DEPARTMENT POSITION

Letter, Senator Leman
April 6, 1993
Page 2

Section 23. 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.

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,


Jerry Covey
Commissioner

cc: Representative Con Bunde

Committee Substitute for House Bill 235 (FIN)
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. Deletes the term "guardian" as this word is included in the definition of a parent, AS 14.30.350 (11).
- Sec. 3. Replaces the term "an exceptional child" with the phrase "a child with disabilities". As the definition of a "child with disabilities" does not include a gifted child, this change will mean that a gifted student in a specialized educational program will not need to be re-evaluated every three years.
- 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. Allows a parent to obtain an independent educational evaluation at the expense of the school district if the parent disagrees with an evaluation obtained by the school district. If it is determined that the school district's evaluation is appropriate, the school district may not be required to pay for the independent educational evaluation.
- 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 -- a 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 promptly to the consent request. Also, if a parent disagrees with the district's placement or program for a child, a the parent may request a hearing.

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

- 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 superior court.
- 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.
- 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 provide 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.

HB 235, "EDUCATIONAL PROGRAMS AND SERVICES FOR CHILDREN WITH DISABILITIES AND OTHER EXCEPTIONAL CHILDREN AND PERSONS WITH A HANDICAP"

Testimony:

1. Representative Con Bunde, Prime Sponsor
2. Patricia Swenson, Aide to Rep. Con Bunde
3. Myra Howe, DOE
4. Shiela Peterson, DOE
5. Dennis Wetherall (in Anchorage via teleconference)
6. Marc Grober (Family/Parents' Rights Attorney on an off net line in Nenana. He is very knowledgeable) Bridge #800-478-7612
- X Tom Slagle, Department of Law
18. Jan Levy, Department of Law

Home #
(832-5227)

9. Rhonda Weiss, USDE, (Washington D.C.)
(Attorney)
10. C.J. Jenzano, USDE (Washington D.C.)
(Attorney)



Alaska State Legislature

Please enter into the record my testimony to the Senate State Affairs Comm.
 committee name
 committee on HB 235, dated April 14, 1993
 bill/subject

I have a few concerns about this bill. Moving Gifted Ed. out from under Special Education to Vocational Ed. would certainly reduce the paperwork for the gifted programs. However, we would then be the only state in the country with such an arrangement, and I am concerned that this would make administration, grants, and other funding more difficult for gifted ed. in Alaska, as we would be outside normal federal and state channels. Gifted education in Alaska would then be vulnerable to being cut out or eliminated altogether in some future action. Voc. Ed. is certainly not a "natural" placement for gifted programs.

Gifted education is definitely needed as part of our educational system. Past attempts to mainstream gifted students back into regular education, along with other special ed. students, have met with frustration on the part of regular ed. teachers, who are already dealing with overcrowded classrooms and do not have the specialized training to meet the needs of students at the extremes, be they gifted or with some kind of handicapping condition.

Research has shown that gifted students are at the highest risk of any student group for dropping out of school, are at the highest risk for suicidal behavior, and that they have no special ability to look after themselves or take care of themselves just because they are gifted. Gifted students come from all walks of life, and can include those from both rich and poor families, and from all sorts of social and ethnic groupings.

Assisting gifted students with their educational needs has the distinct advantage of giving support to a group that has the potential to make some real contributions to our future society, so it can be seen as an investment with a payback. Most school districts in this state and in the country already support gifted programs without realizing it. We have sports and athletic programs already for the physically

Signed: Dr. Roger Poppe Dr. Roger Poppe gifted, and band & chorus for the musically gifted.
 Testifier
 Self

Representing (Optional)

Box 874601

Address

Wasilla, Alaska 99687

Phone No.

Dennis Wetherell
P.O. Box 876882
Wasilla, AK 99687
April 14, 1993
285-6501 wk / 745-2007 hm

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

Dear Sen. Leman:

I have had an opportunity to review CSHB235(STA) and would like to offer my comments on the amendments made. I have expressed reservations in the past that sections 6 and 8 of the original bill appear to reduce parents rights with respect to their child's education so I appreciate your efforts to reword these provisions to strengthen parents rights. However, these sections do make the findings of the hearing officer non-binding and, as we heard today from the US Department of Education, would place Alaska law in conflict with federal law. If passed as amended, Alaska will lose federal funds.

I do not wish to suggest that we return to the original bill because I think there are other ways of meeting federal requirements and retaining parents rights. Specifically, I would endorse Marc Grober's bill as a way of doing this. I don't know whether the committee caught it or not, but the first statement made by the federal representative, before she was asked to state her name, was that she concurred with Mr. Grober's statements.

CSHB235(STA) does nothing to address my main complaint with the proposed legislation which is that there is no reason to include changes to gifted law in a bill that is designed to comply with federal disabilities law. The only reason DOE is doing this is because they did not want to take the time to properly rewrite HB419 and because DOE has a very public agenda to eliminate gifted education from state law. Although HB235 does not accomplish this goal, I believe that the proposed changes to gifted education weaken existing law and make it easier for DOE to eventually achieve their stated goal.

An amendment was made to paragraph (c) of section 15 so that it reads: Each school district shall develop an individualized education program for every exceptional child who receives services under AS 14.30.180 - 14.30.350. Although this amendment seems logical (why should a district develop an IEP for a child not receiving services?), it has the effect of weakening state law. There are many identified and unidentified exceptional children who are not receiving services despite existing law. If left as originally worded and assuming this provision was enforced, the school districts would be required to develop an IEP for these children and once an IEP was drafted, would be required to provide services to these children. The amendment allows school districts to continue to ignore the needs of these students by not requiring an IEP. It may be stretching a point but what about students who transfer into a district or newly enrolled students? Technically they are not receiving services so would they be exempt from having an IEP under this amendment?

Again I would like to refer to Marc Grober's bill as an alternative. His bill is restricted to the issue at hand, compliance with federal disabilities statutes. Gifted education is not changed from the status quo. If anything Mr. Grober's bill strengthens gifted education by making all parts of AS 14.30.180 - AS 14.30.350 refer to exceptional children as a group instead of referring to handicapped and gifted separately. This contrasts with the divide and conquer approach used in HB235 and in current law.

The amendments I have suggested in previous correspondence and in my testimony today are merely patches on a patchwork bill. I think the same can be said of the committee's proposed amendments. Mr. Grober's bill, however, is clear, concise, satisfies federal requirements, and protects parents rights. I urge you to adopt his bill as a substitute for HB235.

Thank you for your interest in this matter.

Sincerely,

Dennis G. Wetherell

Dennis G. Wetherell



WALTER J. HICKEL/GOVERNOR
State of Alaska

GOVERNOR'S COUNCIL ON DISABILITIES AND SPECIAL EDUCATION

P.O. Box 240249 • Anchorage, Alaska 99524-0249 • Phone: 907-563-5355 • Fax: 907-563-5357

April 12, 1993

Senator Loren Leman, Chair
State Affairs Committee
State Capitol, Room 113
Juneau, Alaska 99801 1182

Dear Senator Leman:

As we understand it, House Bill 235 is scheduled for discussion in the State Affairs Committee on Wednesday, April 14, 1993. The bill proposes changes in state law that will affect special education. Under AS 14.30, the Governors Council acts as the state's Special Education Advisory Panel.

At this point, the Council has not taken a position on the bill. In order to give the bill our endorsement, our practice is to obtain broad public input. Apparently, the legislative process is moving faster than we expected.

However, we have discussed the bill in several forms with representatives of the Department of Education. Before the bill was introduced and numbered we reviewed the sectional analysis with DOE. The Department has accommodated some of our original concerns raised during that session.

Given the Council's limited meeting schedule, it is doubtful that we could take a position on HB 235 very soon. Realizing there are a number of sections in the bill which may be of concern to parents of students enrolled in Special Education, we strongly recommend that the legislature attain adequate public input before voting on the bill.

Thank you for your consideration of this matter. Should you need more information, call our office at 563 5355.

Sincerely,

A handwritten signature in black ink, appearing to read "David Maltman".

David Maltman
Executive Director

TESTIMONY

Dennis Wetherell
P.O. Box 876862
Wasilla, AK 99687
April 12, 1993

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

Dear Sen Lehman:

As a parent of a gifted child, I am concerned with the potential effect HB235 may have on gifted education. Although the stated purpose of this bill is to comply with federal disabilities education law, many provisions relating to gifted education have also been changed. I do not understand why any changes need to be made to gifted education if the problem is compliance with disabilities law.

In light of recent policy statements made by DOE (they intend to do away with IEP's, plans of service, and state review of local programs) when discussing other bills (HB85/SB82), I am concerned that changes to HB235 may have opened a loophole which will allow DOE to change existing regulations that mandate gifted programs. HB235, section 3 eliminates the requirement for re-evaluation of gifted students at least once every 3 years. Section 5 states that school districts need to consult with parents about their child's program only after such a re-evaluation or after a change in placement of the child. This would seem to open the door for DOE to exempt school districts from preparing an IEP for gifted students. The language of section 15, which was added in the House Finance committee, requires an IEP to be developed for every exceptional child, but this is a singular reference. There still does not appear to be any requirement for the school district to review or revise the IEP after its initial development.

The only public testimony taken on this bill was when it came before the House HESS committee on March 22. Testimony was limited to 2 minutes each and only about five people testified. Several people were upset with the short notice given before the bill came up for hearing. Most had learned about it Friday and testimony was taken on Monday. I would appreciate it if a public hearing could be scheduled for HB235 before it leaves your committee.

I would like you to consider 3 amendments to this bill. Two of these only change the law to reflect current practice and would prevent DOE from changing existing regulations. The third is a change to existing law which would strengthen and improve the consistency of gifted programs throughout the state.

1) Add a paragraph to AS 14.30.278 that says "Each Individual Education Program must be reviewed or revised on at least an annual basis or upon reasonable request by a parent."

2) Add a new section which states "Each school district shall develop a plan of service for every category of exceptional child served and submit this plan to the Department of Education for approval at least once every three years."

3) Modify section 24(9) to read "gifted children" means children who exhibit outstanding intellect, ability, or creative talent as determined using methods of evaluation and eligibility thresholds defined under regulations adopted by the department." This last amendment would force DOE to develop a set of consistent, enforceable criteria for identifying gifted children which could be applied throughout the state. Such a change was recommended by the Governor's Council last fall.

I am forwarding a statement which details my concerns with this bill and HB85/SB82. Many of the changes I advocate for the latter bills were incorporated by Sen. Phillips' committee substitute SB82. Unfortunately, HB85 is still alive and well in the House and has not been modified significantly with respect to gifted education.

Thank you for your interest in this matter.

Sincerely,

Dennis G. Wetherell
Dennis G. Wetherell

Dennis Wetherell
P.O. Box 876862
Wasilla, AK 99687
745-2007 hm
265-6501 wk

POSITION STATEMENT RE HB85/SB62 & HB235

CONCERNS

As a parent of a gifted child, I am concerned about changes that are being proposed to state statutes governing gifted education. Existing law is already weak in this area and gifted programs throughout the state are often inadequate and poorly designed. Any further weakening of the law as has been proposed with the introduction of HB235 and HB85/SB62 will tend to eliminate gifted education altogether.

Why are provisions relating to gifted education being changed in HB235 when the sole requirement is to comply with the federal Individuals with Disabilities Education Act?

Why are funding levels for gifted education being cut by HB85/SB62 when there is no net reduction in overall state education spending? Why should gifted education allocations be adjusted at all when the purpose of this bill is to alter the state's foundation formula?

DOE policy

One of the main reasons for my concern is that representatives of the Department of Education have repeatedly made policy statements which indicate that the state would like to remove gifted education protections from state law and leave the issue of gifted education entirely up to local school board policy decisions.

Duane Guiley, when discussing HB85/SB62 before the House HESS committee on Feb. 23 and Mar. 22 stated that it was DOE's intent to remove gifted education from state law, especially those provisions relating to Individual Education Programs, plans of service, and requirements for state review of local programs.

Harry Gamble, DOE public information officer, has said that the state wants to disassociate itself from gifted education. DOE would like to

allow each individual school board to decide whether the education needs of the gifted would be met.

Myra Howe, Director of Special Education at DOE, has stated that Commissioner Covey is opposed to keeping protective clauses for gifted education in state law because only 5% of DOE's budget is allocated for gifted program support. If DOE personnel spend more than 1.5 hours per week on gifted education, the Department will be liable for a Federal audit exception for misuse of funds allocated to disabilities related Special Education programs. Rather than monitor their work load or seek increased funding for gifted education, Mr. Covey's solution is to do away with the state mandate for gifted education.

Precedent in other states

One only has to look at other states where protections for gifted education have been eliminated to see what the probable outcome of these changes would be. Many states have separated gifted education from special education over the last 10-15 years. In those states where gifted education was protected under separate statutes, the programs flourish and there is a high level of support from the community, parents, and educators. Where this separation was accomplished simply by removing reference to gifted education from the law, however, gifted programs have been virtually eliminated. Occasionally an individual district may have a good program, but most districts do not.

Inconsistent DOE statements

Another reason for concern stems from the conflicting statements made by DOE representatives. As mentioned above, Duane Guiley has stated that DOE intends to eliminate gifted education protection. Myra Howe, however, has told legislators, educators, and parents, that if HB235 is passed, no changes will be made; gifted education protection will remain in the law. Ms. Howe has also stated that if HB235 passes, gifted education funding allocations will not change. This comment was made in spite of the existence of HB85/SB62 which, according to public testimony by Mr. Guiley, will cut gifted education funding by nearly \$4 million (40%) if passed. Ms. Howe has stated that the plans of service provisions will remain in effect for gifted education upon passage of HB235, but Sheila Peterson, legislative liaison for DOE, has told me that those provisions have already been eliminated from DOE regulations.

Regulation vs. Law

This conflicting commentary is frustrating, confusing, and points out a fundamental problem with both of these pieces of legislation. Neither HB85/SB62 nor HB235, as originally written, address the issue of whether

Individual Education Programs, district plans of service, or state review of those plans will be required for gifted education. Instead, these items are covered only in regulations drafted by DOE. Mr. Guiley is emphatically stating that those regulations will be changed, while Ms. Howe is asking us to trust her and the Department not to change anything.

SPECIFIC PROBLEMS

HB235/CSHB235(FIN)

Permissive Legislation

HB235 is "permissive" legislation, i.e. it opens a loophole which would allow DOE to change the regulations with respect to gifted education. Under Section 3, gifted children are exempt from mandatory re-evaluation. Section 5 requires the school district to consult with the parents of an exceptional child after each re-evaluation or each change in placement of the child. Since re-evaluation of a gifted child is not required, the district does not have to consult with the parents of the child unless the child's placement is changed. Throughout most of the state, the gifted program consists of a pull-out program where supplemental services are provided for 1-3 hours each week. The program does not change from Kindergarten through High School. Therefore it is likely that the placement of the child in the regular classroom with cursory supplemental services will not be changed. As a consequence, HB235 has opened a loophole which will allow DOE to eliminate the requirement for an annual Individual Education Program with mandatory parent consultation for the gifted child.

CSHB235(FIN) has narrowed this loophole by adding Section 15 which states that each school district shall develop an Individual Education Program for every exceptional child. However the language of this amendment is still permissive because it is singular, i.e. the letter of the law could be satisfied by developing one Individual Education Plan upon initial identification.

Parents Rights

Section 6 has reworded AS 14.30.191(e) in such a way that it appears to place the burden of proof on the parent if there is a disagreement with the school district's plan of action, whereas existing law places the burden of proof on the school district.

When combined with the language of section 8, I believe that the end result is that the parent has fewer rights with respect to their child's education, or at least less likelihood of being able to successfully disagree with a school district's desired placement.

Inadequate definition

Section 24 of CSHB235(FIN) places the definition of gifted children under DOE regulation. The existing regulations are vague and unenforceable. This leads to inconsistencies in identifying gifted children from one area of the state to another.

HB85/SB62**Funding**

Section 6 removes gifted education from special education for funding purposes. Section 7 (AS 14.17.048(1),(2)) provides for funding for gifted education. According to testimony by Mr. Guiley, the weighting factor referenced in paragraph 2 is 0.012 and has been approved by the state school board. The result of this change will reduce funding for gifted education in 32 out of 54 school districts. The average loss of funds is about 40%. By this formula, any school district which identifies more than 2.16% (less than half the national average) of its population as gifted will lose funds.

As provided for in Section 7, gifted education will be funded at about 20% of the minimum funding level for students with disabilities. This is not consistent with national research which shows that gifted students are at risk of dropping out of school, dropping out of society, or committing suicide with twice the frequency of disabled children. Proper education of gifted children can be just as expensive as services for minimally handicapped children. Funding levels should reflect these needs.

The funds removed from gifted education will be applied to vocational education. Because of this provision, the state is not cutting the budget, it is just hurting gifted children and their educational programs.

No guaranteed minimum funding level is provided for gifted education as was done for vocational and special education under Sections 5 and 6.

Abuses of funding provisions

In his testimony before the House HESS committee on Mar. 22, Mr. Guiley stated that the changes to gifted education funding were partially in response to perceived abuses of the current system. By setting a flat rate, funding levels would be independent of the number of students identified. The flaw in this approach is that only 2.16% of the student population is actually being funded (as compared to current funding formulas). The amount of gifted students will vary from district to district and a funding cap discriminates against those districts which have more identified gifted students.

Lack of fiscal responsibility

No provisions are made within the law that funds allocated must be used for the purpose for which they were allocated. Each district can take the funds for gifted education and apply those funds for any purpose they wish. The money does not have to be used for gifted education.

RECOMMENDED SOLUTIONS

HB235/CSHB235(FIN)

Individual Education Programs

This loophole could be closed by adding one additional amendment to AS 14.30.278 stating "Each Individual Education Program must be reviewed or revised on at least an annual basis or upon reasonable request by a parent." This statement is adapted from Title 4 Chapter 52 Section 130(d) of the Alaska Administrative Code. It does not change the intent of HB235 in any way. It does modify the law to reflect current practice. If, as Ms. Howe has stated, DOE does not plan to change existing regulations regarding Individual Education Programs for gifted children then DOE should have no objection to this amendment.

Plans of Service

Add a new section to HB235 which states "Each school district shall develop a plan of service for every category of exceptional child served and submit this plan to the Department of Education for approval at least once every three years." Again, this would not change the intent of HB235 but would only modify it to reflect current practice. Plans of service are required by existing regulation. This amendment would ensure that DOE does not change those regulations with respect to gifted children.

An even better solution would be to require DOE to draft plans of service guidelines that must be followed by each school district unless the district submits an alternative plan and justifies the need for deviation from the guidelines.

Eligibility Criteria

DOE should be required to develop consistent, enforceable criteria for identifying gifted and talented children as recommended by Linda Manwill of the Governor's Council for Disabilities and Special Education. These criteria should prescribe a specific referral/screening process, indicate what types of tests or other measures of ability may be used, who may administer the tests, and what the eligibility thresholds are. This could be accomplished by amending Section 24(9) to read: "gifted children" means children who exhibit

outstanding intellect, ability, or creative talent as determined using methods of evaluation and eligibility thresholds defined under regulations adopted by the department.

HB85/SB62

Restore status quo

Section 7 should be dropped from this bill and Section 6 amended to restore the original wording of AS 14.17.045. This will restore gifted education funding to its original level and guarantee at least minimum funding levels.

Fiscal Responsibility

Section 6 should be further amended to add a paragraph (c) Funds allocated under this section may not be used for any purpose other than to provide special educational services to the category of exceptional children for which the funds were appropriated.

CONCLUSION

Existing law is very weak with respect to gifted education. Ultimately, the law needs to be rewritten to strengthen it and ensure the continuation of gifted education programs. One of the main problems that exists is that too much is left up to DOE regulation. These regulations are too easily changed and do not receive the same public scrutiny that changes to law receive. Many of the existing DOE regulations should be incorporated into the law and other provisions not addressed by regulation should be added to the law.

However, this legislative session is not the time to tackle these larger issues. Instead, I ask that you critically review any changes to existing provisions for gifted education. Ask whether these changes are necessary and do they strengthen or weaken existing statutes? Be particularly wary of "permissive" legislation such as HB235.

Significant problems with HB235 can be mitigated by making 2 amendments which do nothing more than make the law reflect current practice. A third amendment regarding eligibility criteria for gifted programs is consistent with the Governor's Council recommendations and would significantly improve gifted education law.

HB85/SB62 could be cleaned up by restoring the status quo and making one amendment to ensure fiscal responsibility.

Ms. Claudia Walton 248-1323 Distribution 60
PC Box 221166 Anchorage AK 99522 Date POM Sent 04/06/93
Constituency N Bill Number HB 235 Response AMEND
Subject LL Back?

DL - stay on top of this - Jack Phelps gave us a proposed amendment - we need to get this bill referred to STA

THE ORIGINAL FORM OF HB 235 IS VERY DANGEROUS. PLEASE TAKE ALL STEPS POSSIBLE TO ENSURE THE PARENTS ALWAYS HAVE THE LEGAL AUTHORITY TO RESTRICT THE INVOLVEMENT OF THEIR CHILDREN IN THESE EDUCATION PROGRAMS. PLEASE ENSURE EVALUATIONS, PLACEMENT, ETC., ARE OPTIONS AVAILABLE TO THE PARENTS AND NOT REQUIREMENTS IMPOSED BY OTHERS.

8-LS0869NO ✓
Ford
4/19/93

SENATE CS FOR CS FOR HOUSE BILL NO. 235(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES BUNDE, Grussendorf

A BILL

FOR AN ACT ENTITLED

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

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

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

6 Sec. 14.30.180. PURPOSE. It is the purpose of AS 14.30.180 - 14.30.350 to

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

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

12 * Sec. 2. AS 14.30.186 is amended by adding a new subsection to read:

13 (e) Exceptional children being educated as provided under AS 14.30.010(b)
14 have the right to special education and related services as provided under

1 AS 14.30.180 - 14.30.350. The exceptional child of a parent who elects to educate the
2 child as allowed under AS 14.50.010(b) may not be compelled to receive the special
3 education and related services provided under AS 14.30.180 - 14.30.350.

4 * Sec. 3. AS 14.30.191(a) is amended to read:

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

8 * Sec. 4. AS 14.30.191(c) is amended to read:

9 (c) Before a school district initiates or refuses a change in a child's placement
10 or program, the district shall notify the child's parent [OR GUARDIAN].

11 * Sec. 5. AS 14.30.191(d) is amended to read:

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

16 * Sec. 6. AS 14.30.191(f) is amended to read:

17 (f) If the parent [OR GUARDIAN] obtains an independent educational
18 evaluation at private expense, the results of the evaluation

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

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

22 * Sec. 7. AS 14.30 is amended by adding a new section to read:

23 Sec. 14.30.193. SCHOOL DISTRICT HEARINGS. (a) If a parent refuses to
24 consent, or does not respond within 30 days to the school district's request for consent,
25 under AS 14.30.191(a) or 14.30.285(f), the school district may appoint an impartial
26 hearing officer to conduct a hearing to determine whether the school district may
27 initiate the evaluation or placement of the child, or transfer the child.

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

Mike Ford

1 (c) A hearing officer may not be appointed under this section unless approved
2 in writing by the parent. After a hearing officer is appointed under of this section, the
3 hearing officer shall conduct an informal prehearing settlement conference and attempt
4 to resolve the disagreement between the parent and the school district. If, after a
5 hearing under this section, the hearing officer determines that the school district's
6 intended action is in accordance with law and is in the child's best interest, the hearing
7 officer shall approve that action.

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

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

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

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

24 (h) The department shall maintain a list of qualified hearing officers. The
25 department shall qualify hearing officers by annual examination that shall be open to
26 all residents of the state and shall qualify hearing officers for a period not to exceed
27 five years. The list shall be maintained as a public record.

28 (i) The district in which a hearing or administrative appeal arises shall bear all
29 the costs and expenses of district level and district level administrative appeal hearings,
30 including the costs of all hearing officers.

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

1 (a) The department shall, by regulation, provide for administrative appeal
2 hearings, based on the record, of impartial hearing officers' decisions under
3 AS 14.30.193. An administrative appeal hearing shall comply with all
4 requirements necessary for participation in federal grant-in-aid programs,
5 including 20 U.S.C. 1400 - 1485 (Individuals with Disabilities Education Act) [TO
6 BE CONDUCTED UNDER AS 14.30.180 - 14.30.350].

7 * Sec. 9. AS 14.30.195 is amended by adding new subsections to read:

8 (c) After an appeal hearing under this section, the department shall render its
9 decision affirming, reversing, modifying, or remanding the hearing officer's decision
10 under AS 14.30.193.

11 (d) A parent or the school district may appeal to the appropriate court for
12 review of the department's decision on appeal under (c) of this section.

13 (e) A parent who appeals to the court and who is determined by the court to
14 be an indigent person shall be provided with a court appointed attorney at public
15 expense. In this subsection, "indigent person" has the meaning given in AS 18.85.170.

16 * Sec. 10. AS 14.30 is amended by adding a new section to read:

17 Sec. 14.30.235. WITHDRAWAL OF CONSENT. If under a provision of this
18 chapter the consent of the parent is required, the parent may withdraw the parent's
19 consent.

20 * Sec. 11. AS 14.30.272 is amended to read:

21 Sec. 14.30.272. PROCEDURAL SAFEGUARDS. A school district shall
22 inform the parent [OR GUARDIAN] of an exceptional child of the right to review the
23 child's educational record, to review evaluation tests and procedures, to refuse to
24 permit evaluation or a change in the child's educational placement, to be informed of
25 the results of evaluation, to obtain an independent evaluation by a person of the
26 parent's choosing or by a person the parent consents to in writing, to request an
27 impartial hearing, to appeal a hearing officer's decision, and to give consent or deny
28 access to others to the child's educational record.

29 * Sec. 12. AS 14.30.272 is amended by adding a new subsection to read:

30 (b) The department shall establish, by regulation, impartial procedures for a
31 school district to follow for hearings under AS 14.30.193 to comply with requirements

1 necessary to participate in federal grant-in-aid programs, including 20 U.S.C. 1400 -
2 1485 (Individuals with Disabilities Education Act).

3 * Sec. 13. AS 14.30.278(b) is amended to read:

4 (b) Each meeting concerning an exceptional child must include

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

7 (2) the child's teacher;

8 (3) at least one of the child's parents [OR GUARDIANS];

9 (4) the child, when appropriate;

10 (5) other individuals selected by the parent [, GUARDIAN,] or school
11 district.

12 * Sec. 14. AS 14.30.278 is amended by adding a new subsection to read:

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

16 * Sec. 15. AS 14.30.285(f) is amended to read:

17 (f) A school district shall obtain the consent of the child's parent before
18 a child may [NOT] be transferred to a school outside the district in which the child
19 resides [WITHOUT THE CONSENT OF THE PARENT OR GUARDIAN].

20 * Sec. 16. AS 14.30.285(g) is amended to read:

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

25 * Sec. 17. AS 14.30.340 is repealed and reenacted to read:

26 Sec. 14.30.340. PROVISION OF SPECIAL EDUCATION IN A PRIVATE
27 SCHOOL, HOME, OR HOSPITAL SETTING. (a) If a parent of an exceptional child
28 enrolls the child in a private school at the parent's expense or teaches the child at
29 home, the school district in which the child is located shall make special education and
30 related services available in conformance with an individualized education program
31 under AS 14.30.278.

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

9 * Sec. 18. AS 14.30.347 is amended to read:

10 Sec. 14.30.347. TRANSPORTATION OF EXCEPTIONAL CHILDREN.

11 When transportation is required to be provided as related services, exceptional children
12 shall be carried with other children, except when the nature of their physical or mental
13 disabilities [HANDICAPS] is such that it is in the best interest of the exceptional
14 children, as determined by the school district, that they be transported separately. State
15 reimbursement for transportation of exceptional children shall be as provided for
16 transportation of all other pupils except that eligibility for reimbursement is not subject
17 to restriction based on the minimum distance between the school and the residence of
18 the exceptional child.

19 * Sec. 19. AS 14.30.350(2) is amended to read:

20 (2) "consent" means [IS ONLY OBTAINED IF] the parent [OR
21 GUARDIAN] has been fully informed of all information relevant to the activity or the
22 release of records for which [OBJECT OF THE] consent is sought and the parent
23 understands and voluntarily agrees to the activity or release of records:

24 * Sec. 20. AS 14.30.350(3) is repealed and reenacted to read:

25 (3) "exceptional children" means children with disabilities, and gifted
26 children, who differ markedly from their peers to the degree that special facilities,
27 equipment, or methods are required to make their educational program effective;

28 * Sec. 21. AS 14.30.350(4) is amended to read:

29 (4) "related services" means transportation and developmental,
30 corrective, and other supportive services required to assist children with disabilities
31 [A HANDICAPPED] or gifted children [CHILD] to benefit from special education

1 and includes but is not limited to speech pathology and audiology, psychological
2 services, physical and occupational therapy, recreation, counseling services including
3 rehabilitation counseling, and medical services for diagnostic or evaluation purposes;
4 the term also includes school health services, school social work services, and parent
5 counseling and training;

6 * Sec. 22. AS 14.30.350(5) is amended to read:

7 (5) "special education" means specially designed instruction, at no cost
8 to the parent, to meet the unique needs of exceptional children [A HANDICAPPED
9 CHILD], including classroom instruction, instruction in physical education, home
10 instruction, and instruction in hospitals and institutions; the term includes speech
11 pathology, or any other related service, if the service consists of specially designed
12 instruction, at no cost to the parents, to meet the unique needs of exceptional children
13 [A HANDICAPPED CHILD], and is considered special education rather than a related
14 service under state standards; the term also includes vocational education if it consists
15 of specially designed instruction, at no cost to the parents, to meet the unique needs
16 of exceptional children [A HANDICAPPED CHILD]; in this paragraph

17 (A) "at no cost" means that all specially designed instruction is
18 provided without charge but does not preclude incidental fees that are normally
19 charged to nonexceptional [NONHANDICAPPED] students or their parents
20 as a part of the regular education program;

21 (B) "physical education" means the development of physical and
22 motor fitness, fundamental motor skills and patterns, skills in aquatics, dance,
23 and individual and group games, and sports (including intramural and lifetime
24 sports); the term includes special physical education, adapted physical
25 education, movement education, and motor development;

26 (C) "vocational education" means organized educational
27 programs that are directly related to the preparation of individuals for paid or
28 unpaid employment, or for additional preparation for a career requiring other
29 than a baccalaureate or advanced degree;

30 * Sec. 23. AS 14.30.350 is amended by adding new paragraphs to read:

31 (7) "children with disabilities" means children with mental retardation;

1 hearing impairments, including deafness; speech or language impairments; visual
2 impairments, including blindness; serious emotional disturbance; orthopedic
3 impairments; autism; traumatic brain injury; other health impairments; specific learning
4 disabilities; or preschool developmental delays;

5 (8) "educational records" means those files, documents, records, and
6 other material that contain information directly related to a student and are maintained
7 by a school district or a person acting for a school district; the term "educational
8 records" does not include the personnel records of the school district, maintained in the
9 normal course of business, that relate exclusively to a person's capacity as an
10 employee, or other records as designated by the department in regulation;

11 (9) "gifted children" means children who exhibit outstanding intellect,
12 ability, or creative talent as determined under regulations adopted by the department;

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

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

20 (B) the child's teacher;

21 (C) the child's parent;

22 (D) the child, if appropriate;

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

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

27 * Sec. 24. This Act takes effect June 30, 1993.

8-LS08690
Ford
4/15/93

SENATE CS FOR CS FOR HOUSE BILL NO. 235(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES BUNDE, Grussendorf

A BILL

FOR AN ACT ENTITLED

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

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

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

6 Sec. 14.30.180. PURPOSE. It is the purpose of AS 14.30.180 - 14.30.350 to

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

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

12 * Sec. 2. AS 14.30.191(a) is amended to read:

13 (a) A school district shall obtain the consent of the child's parent [OR
14 GUARDIAN] before an initial evaluation or placement in a program of special