ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672
8489 SENATE STATE AFFAIRS

education and related services.

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

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

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

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

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

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

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

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

* Sec. 6. AS 14.30 is amended by adding a new section to read:

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

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

(c) After a hearing officer is appointed under (a) or (b) of this section, the hearing officer shall conduct an informal prehearing settlement conference and attempt to resolve the disagreement between the parent and the school district. If, after a hearing under (a) or (b) of this section, the hearing officer determines that the school district's intended action is in accordance with law and is in the child's best interest, the hearing officer shall approve that action.

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

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

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

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

Hearing Officer

* **Sec. 7.** AS 14.30.195(a) is amended to read:

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

* **Sec. 8.** AS 14.30.195 is amended by adding new subsections to read:

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

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

* **Sec. 9.** AS 14.30 is amended by adding a new section to read:

Sec. 14.30.235. WITHDRAWAL OF CONSENT. If under a provision of this

chapter the consent of the parent is required, the parent may withdraw the parent's consent.

* **Sec. 10.** AS 14.30.272 is amended to read:

Sec. 14.30.272. PROCEDURAL SAFEGUARDS. A school district shall inform the parent [OR GUARDIAN] of an exceptional child of the right to review the child's educational record, to review evaluation tests and procedures, to refuse to permit evaluation or a change in the child's educational placement, to be informed of the results of evaluation, to obtain an independent evaluation, to request an impartial hearing, **to appeal a hearing officer's decision,** and to give consent or deny access to others to the child's educational record.

* **Sec. 11.** AS 14.30.272 is amended by adding a new subsection to read:

(b) The department shall establish, by regulation, impartial procedures for a school district to follow for hearings under AS 14.30.193 to comply with requirements necessary to participate in federal grant-in-aid programs, including 20 U.S.C. 1400 - 1485 (Individuals with Disabilities Education Act).

* **Sec. 12.** AS 14.30.278(b) is amended to read:

(b) Each meeting concerning an exceptional child must include

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

(2) the child's teacher;

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

(4) the child, when appropriate;

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

* **Sec. 13.** AS 14.30.278 is amended by adding a new subsection to read:

(c) Each school district shall develop an individualized education program for every exceptional child who receives services under AS 14.30.180 - 14.30.350.

* **Sec. 14.** AS 14.30.285(f) is amended to read:

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

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

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

* **Sec. 16.** AS 14.30.340 is repealed and reenacted to read:

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

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

* **Sec. 17.** AS 14.30.347 is amended to read:

Sec. 14.30.347. TRANSPORTATION OF EXCEPTIONAL CHILDREN. When transportation is required to be provided as related services, exceptional children shall be carried with other children, except when the nature of their physical or mental **disabilities** [HANDICAPS] is such that it is in the best interest of the exceptional children, as determined by the school district, that they be transported separately. State reimbursement for transportation of exceptional children shall be as provided for transportation of all other pupils except that eligibility for reimbursement is not subject to restriction based on the minimum distance between the school and the residence of the exceptional child.

* **Sec. 18.** AS 14.30.350(2) is amended to read:

(2) "consent" **means** [IS ONLY OBTAINED IF] the parent [OR

GUARDIAN] has been fully informed of all information relevant to the **activity or the release of records for which** [OBJECT OF THE] consent **is sought and the parent understands and voluntarily agrees to the activity or release of records**;

* **Sec. 19.** AS 14.30.350(3) is repealed and reenacted to read:

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

* **Sec. 20.** AS 14.30.350(4) is amended to read:

(4) "related services" means transportation and developmental, corrective, and other supportive services required to assist **children with disabilities** [A HANDICAPPED] or gifted **children** [CHILD] to benefit from special education and includes but is not limited to speech pathology and audiology, psychological services, physical and occupational therapy, recreation, counseling services **including rehabilitation counseling**, and medical services for diagnostic or evaluation purposes; the term also includes school health services, school social work services, and parent counseling and training;

* **Sec. 21.** AS 14.30.350(5) is amended to read:

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

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

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

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

* Sec. 22. AS 14.30.350 is amended by adding new paragraphs to read:

(7) "children with disabilities" means children with mental retardation; hearing impairments, including deafness; speech or language impairments; visual impairments, including blindness; serious emotional disturbance; orthopedic impairments; autism; traumatic brain injury; other health impairments; specific learning disabilities; or preschool developmental delays;

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

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

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

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

(B) the child's teacher;

(C) the child's parent;

(D) the child, if appropriate;

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

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

* Sec. 23. This Act takes effect June 30, 1993.

#3

A M E N D M E N T

OFFERED IN THE SENATE
TO:

By Senator Leman

DRAFT Senate CS For CSHB235 (STA)
(Work Draft LS0869/O by Ford, dated 4/15/93)

Page 3, line 16:

Add new subsections to read:

"through a training program,"

(h) The department shall maintain a list of qualified hearing officers. The department shall qualify hearing officers [redacted], which shall be open to all residents of the state and shall qualify hearing officers for a period not to exceed five years. The list shall be maintained as public record.

(i) [redacted] The parent involved in the hearing must consent in writing to the hearing officer selected. The parent must consent to one of the first three hearing officers offered for consideration by the school district.

✓ adopted unan.

Waiting on NEW CS!

#4

A M E N D M E N T

OFFERED IN THE SENATE TO:

By Senator Leman

DRAFT Senate CS For CSHB235 (STA)
(Work Draft LS0869/O by Ford, dated 4/15/93)

Page 4, line 8:

Following: "to obtain an independent evaluation"

Insert: "by a person of the parent's choosing or by agreement between the parent and school district,"

Page 4, line 27:

Following: "who receives services"

Insert: "or whose parent requests services"

Page 5, line 16:

Following: "to teach the child at home"

Insert: "in accordance with AS 14.30.010(b)"

V adopted unan.

#1

A M E N D M E N T

OFFERED IN THE SENATE
TO:

By Senator Leman

DRAFT Senate CS For CSHB235 (STA)
(Work Draft LS0869/O by Ford, dated 4/15/93)

√adopted unan.

"Conceptual" amendment:

Make clear in statute that indigent parents have the right to state appointed counsel during the court appellate review process if the parents appeal under AS 14.30.193 (g)

#2

A M E N D M E N T

OFFERED IN THE SENATE
TO:

By Senator Leman

DRAFT Senate CS For CSHB235 (STA)
(Work Draft LS0869/O by Ford, dated 4/15/93)

✓ adopted unan.

Page 1, line 12:

Add a NEW Section 2:

AS 14.30.186 is amended to read:

(e) nonpublic school children have the right to public agency servics under AS 14.30.180 - AS 14.30.350. A parent who elects to educate their exceptional child in a nonpublic education program in accordance with AS 14.30.010 (b) shall not be compelled to receive services under AS 14.30.180 - AS 14.30.350.

8-LS0869\O
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

"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."

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

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

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

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

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

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

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

AS 14.30.180 - 14.30.350. The exceptional child of a parent who elects to educate the child as allowed under AS 14.30.010(b) may not be compelled to receive the special education and related services provided under AS 14.30.180 - 14.30.350.

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

(a) A school district shall 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.

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

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

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

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

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

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

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

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

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

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

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

Mike Ford

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Each meeting concerning an exceptional child must include

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

(2) the child's teacher;

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

(4) the child, when appropriate;

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

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

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

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

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

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

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

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

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

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

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

Sec. 14.30.347. TRANSPORTATION OF EXCEPTIONAL CHILDREN. When transportation is required to be provided as related services, exceptional children shall be carried with other children, except when the nature of their physical or mental **disabilities** [HANDICAPS] is such that it is in the best interest of the exceptional children, as determined by the school district, that they be transported separately. State reimbursement for transportation of exceptional children shall be as provided for transportation of all other pupils except that eligibility for reimbursement is not subject to restriction based on the minimum distance between the school and the residence of the exceptional child.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) the child's teacher;

(C) the child's parent;

(D) the child, if appropriate;

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

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

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

SENATE BILL NO. _____

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

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

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

* Section 1. AS 14.30.180 is repealed and reenacted to read:

Section 14.30.180. PURPOSE. (a) It is the mandate of AS 14.30.180 - 14.30.350 that all exceptional children in this state who are at least three years of age but less than 22 years of age receive all such special education and related services so as to afford each exceptional child a free appropriate public education at no cost.

(b) The provisions of AS 14.30.185 - 14.30.350 are to be construed liberally for the dual purposes of assuring the maximum development of exceptional children in the state and of complying with the requirements of federal law including but not limited to the Individuals with Disabilities Education Act, as codified at 20 U.S.C. 1400-1485.

* Section 2. AS 47.10.010 is amended by adding a new paragraph to read:

(e) The provisions of this chapter apply to all cases in which an educational institution believes that a parents refusal to consent to any evaluation of, placement of, or programming for, the child under AS 14.30.180 - 14.30.350 will deny the child a free appropriate public education.

* Section 3. AS 14.30.195 is repealed and reenacted to read:

AS 14.30.195. HEARINGS. (a) The department shall, by regulation, provide for school district and administrative appeal hearings All hearings and hearing procedures shall comply with all requirements necessary for participation in federal grant-in-aid programs, including the Individuals with Disabilities Education Act, as codified at 20 U.S.C. 1400-1485 and with the provisions of Title 44, Chapter 62 relating to adjudicatory hearings.

(b) The department shall maintain a list of qualified hearing officers. The department shall qualify hearing officers by ~~qualifying~~ semi-yearly examination, which shall be open to all residents of the state and shall qualify hearing officers for a period not to exceed five years. The list shall be maintained as a public record.

(c) The district in which any hearing or appeal arises shall bear all costs and expenses of district and appeal level hearings, including the costs of all hearing officers, provided however, that the parent involved in the hearing must consent in writing to the hearing officer selected.

(d) A decision in a hearing under these regulations is final and binding upon the parent and district, unless appealed in accordance with AS 14.30.180 - 14.30.350 or an original action is filed in ~~federal district court~~ the appropriate court.

(e) An appellate administrative hearing shall be based on the record below. The departmental hearing officer shall affirm, reverse, modify or remand the district hearing officer's decision.

(f) A decision of a district hearing officer may be appealed to the department and a decision of a departmental hearing officer may be appealed to the ~~superior~~ appropriate court within thirty days after receipt of the lower tribunal's decision rendered under AS 14.30.180 - 14.40.350.

This provision does not constitute any limitation upon a parent's filing of an original action in ~~federal district~~ court. For the purposes of identifying an appropriate statute of limitations any federal action must be filed within the six years of the act complained of.

* Section 4. AS 14.30.272 is repealed and reenacted to read:

Section 14.30.272 PROCEDURAL SAFEGUARDS. A school district shall inform the parent [or guardian] of an exceptional child of the right

(a) to review the child's educational record;

(b) to review evaluation tests and procedures, including but not limited to documentation that tests and procedures are statistically validated for the purposes for which they were used and were administered by someone qualified to administer and in conformance with the requirements of the tests or procedures and be fully informed of all results thereof;

(c) to refuse to permit evaluation or a change in the child's educational placement and that no evaluation or placement shall occur without consent;

(d) to obtain an independent evaluation by a person of the parent's choosing, and to have the district pay for same unless the district, upon receipt of the independent evaluation demands a hearing on the appropriateness of the evaluation and a hearing officer finds that the district's prior evaluation is more appropriate;

(e) to request an impartial hearing, to appeal the hearing decision to the department and the superior court and to file an original action in the federal district court;

(f) to give or deny consent to access to others to the child's educational record;

(g) to obtain counsel and obtain payment of attorney fees.

* Section 5. AS 14.30.340 is repealed and reenacted to read:

Section 14.30.340 PROVISION OF SPECIAL EDUCATION IN A PRIVATE SCHOOL, HOME OR HOSPITAL SETTING. (a) The school district in which an exceptional child's parent maintains legal residence, wheresoever the child is domiciled, shall ~~provide~~ offer special education and related services under AS 14.30.180-14.30.350 to all such exceptional children without regard to whether the child is enrolled in private, home or correspondence

school in accordance with an individualized education program established under AS 14.30.278. No individual education program may require as a condition of receiving the benefit of such program that the child enroll or attend the district's schools to receive the services mandated under authority of this section.

(b) A district shall enroll and serve any child not otherwise enrolled in some education program by reason of medical necessity in accordance with the provisions of AS 14.30.180 - 14.30.350.

* Section 6. AS 14.30.347 is amended to read:

Section 14.30.347 TRANSPORTATION OF EXCEPTIONAL CHILDREN. When transportation is required to be provided as related services, exceptional children shall be carried with other children, except when the nature of their exceptionality is such that it is in the best interest of ~~the~~ exceptional ~~child~~ children, as set forth in the individual education program, that they be transported separately. State reimbursement for transportation of exceptional children shall be as provided for transportation of all other pupils except that eligibility for reimbursement is not subject to restriction based upon the minimum distance between the school and the residence of the exceptional child.

* Section 7. AS 14.30.350(2) is repealed and reenacted to read:

(2) "consent" means that the parent has been fully informed of all information relevant to the purpose and act for which consent is sought and the parent understands and agrees to the act and purpose for which the consent is sought. Consent must be in writing and must specifically set forth the information provided to the parent and certify that the parent received and understood the material provided. Consent is to any act under AS 14.30.180 - AS 14.30.350 is voluntary and may be revoked at any time. A statement by a parent that the parent did not understand the material received or that he consented in error or under duress shall render the consent previously given and all acts taken thereupon null and void.

* Section 8. AS 14.30.350(3) is repealed and reenacted to read:

(4) "exceptional" children are children who differ markedly from their peers to the degree that special facilities, equipment, or methods are required to make their educational program effective; these children may be mentally retarded, hearing impaired, deaf, speech or language impaired, mute, visually impaired, blind, seriously emotionally disturbed, orthopedically impaired, autistic, subject to traumatic brain injury or minimal brain dysfunction, gifted, developmentally delayed, subject to specific learning disabilities, and other health impairments requiring intervention;

* Section 9. AS 14.30.350(5) is amended to read:

(5) "related services" means transportation and developmental, corrective, and other supportive services required to assist exceptional children [A HANDICAPPED OR GIFTED CHILD] to benefit from special education and includes but is not limited to speech pathology and audiology, psychological services, physical and occupational therapy, recreation, counseling services including rehabilitation counseling, social work services, parent counseling and training, medical services for diagnostic or evaluation purposes and to maintain the child with such medical treatment and nursing services as may be required in the individual education program for the purpose of assuring that the child will obtain an educational benefit and costs of room, board and transportation for family members where the child's placement is not residential but is not so proximate to the parent's residence so as to allow the child to live at home [: the term also includes school health services, school social work services, parent counseling and training;]

* Section 10. AS 14.30.350(6) is repealed and reenacted to read:

(6) "special education" means specially designed instruction, at no cost to the parent, to meet the needs of the exceptional child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions;

* Section 11. AS 14.30.350 is amended by adding new paragraphs to read:

(8) "at no cost" means that special education and related services must be provided without charge but does not preclude incidental fees that are normally charged to

nonexceptional students or their parents as a part of the regular educational program in effect in the district;

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

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

(10) "education records" means those files, documents, records, and other material that contain information directly related to a student and are maintained by a school district or a person acting for a school district as more specifically defined at 34 C.F.R. Part 99. The term is used here to reflect the nature of the child's rights of privacy and confidentiality. The term does not provide any protection to persons other than the child and the child's parents as to the personnel records of the school district or any other records of the district or the department;

(11) "parent" or "guardian" is used interchangeably to refer to a person lawfully acting in the role of a parent, including but not limited to any person acting under the authority of the child's lawful parent, any person acting under the written authority of a court of competent jurisdiction, and anyone acting under the authority of the State of Alaska Division of Family and Youth Services where the child is lawfully in the custody of the State of Alaska, to the extent of the authority granted.

* Section 12. AS 14.30.315 is repealed and reenacted to read:

Section 14.30.315. STATE SUPPORT OF PROGRAMS FOR EXCEPTIONAL CHILDREN. The department shall provide by regulation for a program of unannounced inspections of state school districts, including random review of files and individual education programs to assure compliance with these statutes. The department shall provide by regulation

for withholding state funding in support of education for exceptional children where districts are out of compliance. Any action under this section does not excuse the provision of services required under AS 14.30.180 - AS 14.30.350.

* Section 13. This Act takes effect June 30, 1993.

CINA by adding a line that imposes the process where any educational institution alleges that a parent's refusal would harm the child. Certainly this is the intent of the federal regulations. If, however, we look at the CINA provision Ms. Levy cites, is it DOE's position that a district should be entitled to override a parent's refusal if the proposed services ("treatment" in the parlance of the provision cited by Levy) would not produce a failure to thrive, anxiety, depression, hostility etc.? In other words, under what conditions are a parent's perceptions of what the district is or is not doing and the parent's position thereon going to be rejected, ignored, disposed of? DOE argues that this should happen anytime that it hires a hearing officer, parents argue that their right to control should only be interfered with when there is a demonstrable potential for harm to the child, and that determination should be made by a judge with appointed counsel available.

Now let's look at what CINA really provides. CINA applies to a child whose parents or parents fail or refuse to provide for the emotional, social or mental needs of the child. AS 47.10.990(1) and AS 47.10.010(a)(2)(A). CINA also applies to children who suffer from neglect. AS 47.10.010(a)(F). This provision may be redundant as the CINA does not define "neglect", but the Child Protection statutes define neglect as failing to provide care. And while speaking of child protection, the school districts and their personnel are required by law to report any failure to provide appropriate care. AS 47.17.010 et seq. This is required to "safeguard and enhance the general well being of children in this state". A failure to provide care exists any time there is potential for or threat of "injury to the emotional well-being, or intellectual or psychological capacity of the child ..." It must be abundantly clear at this point that a parent's refusal to consent to services that are reasonably necessary for the child's well-being or intellectual or psychological capacity is not only squarely within CINA, but the school district and its employees MUST report same to the Division of Family and Youth Services of the Department of Health and Human Services for investigation under CINA. So much for Ms. Levy's unschooled arguments!

We must also note that a substantial part of the special education and related services that children may be entitled to are medical and psychiatric services. It is the provision of this type of service based upon evaluation and certification as severely emotionally disturbed that would most likely trigger the pertinent due process demands by a district and it is these very services that are most clearly within the ambit of CINA. It is in this arena that districts are also in grossest violation of the law and in which improper certification and programming by incompetent "school" psychologists (who are practicing in violation of the Alaska Special Education Plan anyway) and poorly trained special education teachers can most severely injure a child. The alarming incidence of miscertification of gifted/learning disabled children as severely emotionally disturbed is somber testimony to the need for parents to stand up to malpracticing educational institutions.

Let's also look at the underlying process and the court's authority under CINA. There must be a complete pre-disposition report. Hearings may be formal or they may be totally informal. All parties are entitled to appointed counsel (including the child.) All proceedings are presided over by a judge of the Superior Court or a master appointed by such a judge. All participants are entitled to pre-empt both the judge and an appointed master and a master is largely limited to making recommendations, upon which the participants are entitled to a hearing. The court can implement a broad range of orders ranging from simply requiring that the parent consent to removing the child from the home and terminating parental rights; but most importantly can fashion what amounts to "custom" orders that accommodate the exigencies of the particular situation.

Some might suggest that our position reflects an inappropriate paranoia. As a father (their mother is a special educator teaching severely emotionally disturbed children) of an eleven year old gifted child and a three year old developmentally delayed child (neither of whom receive services), who has practiced law in this area extensively and has provided in service training to school districts, I can safely say that our position is not paranoid at all.

Ms. Libby Stortz 747-5916 **Distribution** 05
Box 6198
Sitka AK 99835 **Date POM Sent** 04/16/93

Constituency N **Bill Number** HB 235 **Response** SUPPORTS

Subject **LL Back?**

PB - response

PLEASE SUPPORT HB 235 WHICH WOULD ELIMINATE THE REQUIREMENT FOR RETESTING GT STUDENTS EVERY 3 YEARS. RESEARCH CONCLUSIVELY INDICATES IQ REMAINS STABLE OVER TIME. RETESTING COSTS OUR EDUCATIONAL SYSTEMS VALUABLE

TIME AND MONEY BETTER SPENT IN OTHER WAYS. THANK YOU.

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

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

Dear Sen. Leman:

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

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

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

Sincerely,
Dennis G. Wetherell

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

ALASKA LEGAL INFORMATION FOR HOME SCHOOL FAMILIES

Jack E. Phelps

Please note: The following is offered for information only and nothing in this article should be construed as the giving of legal advice.

The Constitution of the State of Alaska provides that the state shall afford an educational opportunity for all children residing in the state. Because of the inordinate size of Alaska and the difficulty of travel in major portions of it, the Centralized Correspondence Study program (CCS) was started in 1939. In recent years, this program has been made available to all students in the state whether or not they reside in a remote area. It is, then, a state sponsored home study program and students enrolled in it are automatically exempt from the compulsory attendance law. Additionally, several school districts have their own correspondence programs which are made available to students residing within their boundaries.

Currently hundreds of Alaska families are home schooling using programs other than those provided by state or local government. These range from private, full-service correspondence schools such as Calvert and Christian Liberty Academy, to freelance, homemade eclectic programs.

Under state law, there are several routes parents can take to legally teach their own children at home. Alaska's compulsory attendance law is found in statute 14.30.010. It provides eleven categories of exceptions for compulsory attendance at public school under subsection (b). The exceptions that apply or may apply to home school families are (1)(B), (1)(C), (7), (8), (10)(B), and (11). In the following paragraphs we will consider each of these possible exceptions individually.

Option One

If a parent holds a current Alaska Type A teaching certificate, subsection (b)(1)(B) would allow that parent to tutor his own child at home and exempt the child from compulsory attendance as required in subsection (a).

Option Two

Subsection (b)(1)(C) provides that a student enrolled in a private, exempt school as authorized under Alaska statute 14.45.100 shall be exempt from the compulsory attendance requirement. AS 14.45.100 through 14.45.200 allows a family to establish a private school exempt from "provisions of law and regulations relating to education except law and regulations relating to physical health, fire safety, sanitation, immunization, and physical examinations.

Specifically, this provision requires the home school to file an Affidavit of Compliance, an annual enrollment report, and an annual calendar. The parent must also file an annual notice of enrollment with the local superintendent. The private, exempt school must also maintain attendance records indicating at least 180 days of academic instruction; maintain transcripts of courses completed; administer a standardized test in grades four, six and eight; and ensure that all students are current on required immunizations. If the parents have religious objections to immunizations, an exemption form must be filed with the state. All forms necessary for full compliance with these provisions may be obtained from APHEA in a legal packet which is available upon request. They may also be requested from the state Department of Education.

Home schools are excluded from obligation to two provisions of the regulations governing exempt, private schools. These have to do with asbestos inspections and corporal punishment. The original proposal regulating spanking in private schools recognized no distinction between traditional private schools and those that are actually home schools. APHEA intervened on behalf of home schools and the Board of Education amended the regulation to include the following language: "The requirements . . . of this section do not apply to a school in which only the children of a single family are enrolled and the schooling is provided by the parent or legal guardian of the children."

Option Three

Some private schools established under AS 14.45.100 operate home school satellite programs. These programs provide a legal umbrella of protection for parents whose children are enrolled in them, provided the parent and school comply with the reporting requirements mentioned under Option Two. This may be the best option for home school families who attend churches that have such schools as part of their ministry. An added advantage to this approach is the educational assistance available to such parents when the private school is truly supportive of home school.

continued on page 8

Option Four

A few home school families in Alaska live in such a place that lets them take advantage of subsection (b)(7). This provision exempts from compulsory attendance any child who lives more than two miles from a school or school bus route.

Option Five

Subsection (b)(10)(B) clearly was intended to establish an exemption for those students who are enrolled in CCS or a borough correspondence program. However, the language does not specify CCS. Rather, it refers to a "full-time program of correspondence study approved by the department." Preliminary discussions have been held with Department of Education officials to explore the possibility of including private correspondence programs under this provision. The state currently uses material developed by at least one non-Alaska correspondence program in its own CCS curriculum.

Option Six

Another way to home school legally in Alaska is to seek exemption from compulsory attendance based upon subsection (b)(11), the "equally well-served" provision. For home schoolers, there is little practical difference between (b)(11) and (b)(8), so the two will be considered together here. The reason for applying under (11) rather than (8) is that the language of (11) provides a baseline argument for the home school family.

For the strongly academic home school family, this route may be preferable since it requires less paperwork once exemption has been recognized. Depending upon the attitude of the school principal and the district administration, however, approval may be more difficult to obtain. Under Option Two, the family is required only to file the paperwork. If parents choose Option Six, their curriculum and educational plan is likely to come under intense scrutiny from local public school officials.

General comments

Beyond the six options listed, the home school family may want to consider the question of whether the decision to home school is a privilege or a right. Home school parents may want to be very careful about asking for permission to home school as opposed to notifying the authorities of their intent to home school. Under American constitutional law and its forerunner, English common law, the parent has the inherent right to direct the upbringing and education of his child. As recently as 1977, the United States Supreme Court noted that interests of natural parents are "intrinsic human rights" and are, therefore, antecedent to state interests. For Christians, this is not only a legal issue, it is a religious and moral one as well.

With respect to this question, HSLDA's Michael Farris has written, "If you believe that God forbids you to seek government approval for your home school, then we suggest that you respond to an 'approval' law by following Daniel's example. Offer your official a respectful 'notice of intent to home school.' This means that you courteously inform the official what you plan to do as opposed to asking him for permission."

In his book, *Home Schooling and the Law*, Mr. Farris lists 10 rules for legal preparedness that home schoolers should follow. We recommend these for your consideration and we urge you to obtain a copy of Mr. Farris' book and read it carefully. The 10 rules are:

1. Join Home School Legal Defense Association.
2. Know your state's law.
3. Know your local school district's stance on home schooling.
4. Join your state support group.
5. Keep good records.
6. Don't hide your children.
7. Give your home school a name.
8. Write a full statement of your family's religious conviction about home schooling.
9. If you are contacted by an official, ask for his request in writing.
10. Remember that God is your ultimate protector.

In summary, we should remember that home schooling is a legal and constitutionally protected way of providing a good education for our children. For many of us, it has become the only way. Let us be good stewards of our right to teach our own children at home. This means that we will work hard to ensure that they receive a good education, both in academics and character.

HOME SCHOOL
LEGAL DEFENSE ASSOCIATION
PAEONIAN SPRINGS, VIRGINIA 22129
PHONE: (703) ~~882-3928~~ 338-5600

FACSIMILE TRANSMITTAL

DATE: 4-8-93

TO: Jack Phelps 90 Rep. Kott

LOCATION: Alaska House of Representatives

FAX NUMBER: (907) 465-4565

FROM: Dee Black

SENDER'S FAX NUMBER: (703) 338-1952

[✓] **URGENT - Please notify recipient for pickup**
[ ] **LEAVE IN FAX AREA - Recipient is aware of fax.**

No. of pages (including cover): 9

SPECIAL INSTRUCTIONS: Jack, I am sending along copies of answers to inquiries made to the U.S. Dept. of Education re whether special ed. services are mandatory. The provisions of section 8 in the proposed law are contrary to the requirements of federal law, because section 8 would mandate that students be evaluated and then recieve the services if the hearing officer agreed with the school officials

I am also enclosing a section from the Oregon Admin. Rules from which you should be able to extract some language to remedy this problem. I would delete (e) from Sec. 14.30.193 and then substitute language similar to that found in the Oregon law at (6)(a) and (b). I would then add another paragraph before (4) saying:

> Notwithstanding any decision by the hearing officer, no child shall be compelled to be evaluated, placed, or transferred or compelled to receive special education or related services through the school district without the consent of the parent or guardian.

Jack, the legislation as it is presently proposed is probably unconstitutional because it compels services through the public school. Parents have the right to choose private sources to meet the needs of their handicapped children. Thanks, Dee

Home Advisory Group (received 4/1/93.)

→ These letters have been edited to eliminate extraneous and irrelevant material.

of this letter, the State educational agency (SEA) must also meet the requirements at 34 C.F.R. 74.92. That section states that:

> Methods and procedures for making payments to recipients shall minimize the time elapsing between the transfer of funds and the recipient's disbursements.

A Federal auditor may object to a procedure for payments which releases funds to LEAs months before the funds are actually expended. On the other hand, it may not be effective to hold back the last fifty percent of an LEA's entitlement until the end of the fiscal year. A Federal auditor may also question that practice.

If the SEA is concerned about reports regarding the expenditure of entitlement funds by LEAs, it would be possible to require quarterly reports on actual expenditures and still allow LEAs to draw out entitlement funds as they were expended. Quarterly reports could be used to help satisfy the requirements in EDGAR and other Federal requirements regarding a grantee's responsibility for monitoring a subgrantee's activities. As you know, the nonsupplanting requirements for LEAs in the EHA-B do take into account the actual expenditure of funds, so the detailed report you currently require is useful (*see* 34 C.F.R. 300.230). However, an SEA has the option of establishing its own procedures for demonstrating compliance with the requirements used for Federal entitlement funds when there is no specific Federal standard. We are not aware of any Federal requirements which would make it necessary to collect a detailed report about an LEA's expenditures for a six-month period before the SEA releases the balance of an LEA's entitlement funds.

In your letter, you asked if, instead of asking for a report showing actual expenditures, you could ask LEAs for the following information:

> A simple one-page report showing a line item budget (as approved by the SEA) and a column for actual expenditures by line item; and
>
> An assurance from the LEA superintendent that the required accounting procedures have been followed and that records are available for audit.

Regardless of the single audit requirement, as long as detailed information showing actual expenditures is available for audits, there is no Federal requirement for the SEA to continually collect this information at the State level. As long as proposed procedures provide the SEA with access to the information it needs to monitor LEAs' compliance with the Federal requirements for these three entitlement programs, it appears that the proposed procedures you described do not conflict with Federal requirements at this time.

If you propose any changes in the procedures currently used by LEAs to collect entitlement funds, you must discuss these changes with the officials who are responsible for State audits. State auditors must be agreeable to any changes you propose to make in existing procedures.

We hope that you find this information useful. Please let us know if you have any additional questions.

G. Thomas Bellamy, Ph.D.
Director
Office of Special Education Programs

Inquiry by: Michael P. Farris
Home School Legal Defense Association
731 Walker Road
Suite E-2
P.O. Box 950
Great Falls, VA 22066

Digest of Inquiry
(March 18, 1988)

- May a public school district require that handicapped children take part in its special education program?
- May parents of handicapped children opt to make nonpublic arrangements for their children's education such as private or home schooling?

Digest of Response
(June 24, 1988)

Public Education Not Mandatory for Handicapped Children

While neither the EHA nor its regulations require that children who are handicapped must receive a public education, nonpublic school children have the right to public agency services.

Parents May Educate Handicapped Child At Home or In Private School

Nothing in the EHA or its regulations permits interference with parents' right to educate their handicapped child at home or in a private school, regardless of whether the child was ever enrolled in public school.

→ These letters have been edited to eliminate extraneous and irrelevant material.

Text of Inquiry

We have recently run into problems in several states with school districts who interpret the Education of the Handicapped Act, 20 U.S.C. Sec. 1401 (et seq.), in what we believe to be an incorrect manner, and I would like to ask for your help in clearing up the confusion. The dispute centers over whether handicapped children *must* participate in the public school's special education programs, or whether parents may opt to make other arrangements for their handicapped child's education, such as through private or home schooling. We have had several superintendents insist that handicapped children *must* be educated in the public school system.

In looking over the wording of the pertinent section of the regulations, 34 C.F.R. Sec. 300.403(a),[1] it appears, as we have always understood to be the case, that a public education must be *made available* to every handicapped child, but that the parents have the option of providing an alternative education if they so desire. The parents cannot receive government funding for anything other than the public school's program, but they do have the choice to forego funding and make their own provision for their child's education.

Our problems with school districts have fallen into two different, but closely related categories. The first involves children who have never been enrolled in the public schools (by reason of being home schooled), but who are handicapped. The school district claims it has jurisdiction over the child's education under the EHA simply by virtue of the child's being handicapped, although the parents have never requested that the child receive a public education in any form, including a special education under the EHA.

The second involves children who have been a part of special education programs in the public schools, but whose parents decide at some point that they want to end their relationship with the public schools and to provide education for their children via either home or private schooling. In such cases, the school district claims that its jurisdiction over the child continues, since the child was once part of an EHA program. They view the parents' refusal of the continuing Individualized Education Program as they would an objection to the nature of the program, instead of (as the parents intend) a decision to remove their child from the public education system completely, and therefore from the EHA program, as well. No doubt the school districts' objections in such cases would not arise if these children were enrolled in private schools, but since these families are home schooling, the public schools are suspicious and unwilling to give up control over the child.

In light of these confusions with school districts in several states, I would appreciate it if you or the appropriate person in the Department of Education could issue some kind of explanation or ruling on this question of whether or not public education is mandatory for handicapped children under the provisions of the Act. It would greatly help us to avoid unnecessary legal action if we could get a clear statement on what the Education for the Handicapped Act provides on this area.

Thank you very much for your help in this. If you have any questions about this, please let me know.

Text of Response

After further consultation with other staff in the Department of Education, I have some additional information on the issues you raised in your letter.

You asked about both children who are handicapped and have never been enrolled in public schools (by reason of being home-schooled), and children who are handicapped, have been enrolled in the public schools, and have left to be educated in either a private school or through home-schooling. You are concerned about public agencies taking the position that they have jurisdiction over such children under authority provided by Part B of the Education of the Handicapped Act (EHA-B).

Under EHA-B, public agencies are required to provide a free appropriate public education (FAPE) to all handicapped children within an agency's jurisdiction. However, there is nothing in the EHA-B statute or regulations that indicates that the FAPE requirement applicable to participating States was intended to interfere with the right of parents to educate their children at home or in a private school in accordance with their State's provisions for these alternatives.

It is clear under the EHA-B regulations and the Department of Education's General Administrative Regulations (EDGAR) that public education is not mandatory for children who are handicapped. In addition to the regulatory passage which you cited in your letter, 34 C.F.R. Sec. 300.403(a), the EHA-B sections immediately following, Secs. 300.450-300.452 and particularly EDGAR at 34 C.F.R. Secs. 300.651-662, define the rights of nonpublic school children and the limited obligations of public agencies for those children.

While these regulations define the nonpublic school child's right to participate in public agency services, they do not expand or limit a State's authority to regulate or otherwise set standards for the education of children residing in the State whose parents choose to enroll them in nonpublic educational programs.

[1] 34 C.F.R. Sec. 300.403(a) provides in pertinent part:

> If a handicapped child has available a free appropriate public education and the parents choose to place the child in a private school or facility, the public agency is not required by this part to pay for the child's education.

→ These letters have been edited to eliminate extraneous and irrelevant material.

I hope you find this information helpful. Let me know if we can be of additional assistance.

Charles J. O'Malley, Ph.D.
Executive Assistant for Private Education

Inquiry by: Charlotte Des Jardins
Executive Director
Coordinating Council for Handicapped Children
20 E. Jackson Blvd., Room 900
Chicago, IL 60604

Digest of Inquiry
(April 5, 1988)

- Why are chem[illegible]y dependent children not eligible for services under [illegible]. 94-142?
- Are EHA and Section 504 in conflict with respect to coverage for chemical dependency?

Digest of Response
(June 16, 1988)

Qualifying Condition

Chemical dependency alone does not make a child "other health impaired" under EHA. Unless the chemically dependent student has another health impairing or handicapping condition requiring special education, use of EHA funds to serve him is improper.

EHA Not in Conflict with Section 504

While the definitions and persons protected under EHA-B and Section 504 differ regarding coverage for chemical dependency, the statutes are not in conflict and school districts are not precluded from complying with both statutes.

Text of Inquiry

This letter comes to request a clarification of an OSEP written communication regarding eligibility of students with substance abuse problems for services under P.L. 94-142, published under your name in *Education for the Handicapped Law Report*, February 27, 1987.

As a result of this communication, and a subsequent Illinois State Board of Education Memorandum on the same issue, Illinois students with substance abuse problems have been denied access to services under P.L. 94-142.

The OSEP and ISBE communications on this issue have caused a great deal of confusion in Illinois, especially since *Section 504* of the *Rehabilitation Act of 1973* has defined substance absue as a disability and Section 504 prohibits discrimination by recipients of federal funds. A number of Illinois attorneys have indicated that both the OSEP and ISBE eligibility determinations are in conflict with Section 504, and they have indicated their interest in pursuing the matter through the courts.

A number of desperate parents whose children have been denied access to services as a result of these determinations have contacted our office for assistance. In some of these cases, the parents were ordered by the courts to place their students in a drug rehabilitation facility — an order which they cannot implement without the financial cooperation of the school district.

The end result of the OSEP and ISBE determination is that students with several substance abuse problems are prevented from getting the help they need because the high cost of this service can only be borne at public expense.

The Illinois Department of Mental Health and Developmental Disabilities likewise has its own rule placing funding responsibility on local and state education agencies.

While federal and state agencies each in turn deny responsibility in substance abuse cases, students and parents get a mixed message. While the President of the United States has launched a major offensive against substance abuse with a clear, loud message SAY NO TO DRUGS, students are prevented by federal and state agencies from implementing this federal directive by the federal and state agencies whose designated responsibilities are to provide the needed assistance.

Your clarification is requested to enable students to get the educational services they need in a setting which will provide the related services needed to benefit from the educational program.

Text of Response

Thank you for your letter requesting clarification of a February 22, 1988, letter this office prepared regarding eligibility of students with substance abuse problems for services under Part B of the Education of the Handicapped Act (EHA-B).

In your letter, you state that, because of this Office of Special Education Programs (OSEP) policy letter, and a subsequent Illinois State Board of Education memorandum on the same subject, Illinois students with substance abuse problems have been denied access to services under EHA-B. You state further that these two communications have caused a great deal of confusion in Illinois, especially since Section 504 of the Rehabilitation Act of 1973 prohibits discrimination by recipients of Federal funds.

→ These letters have been edited to eliminate extraneous and irrelevant material.

Text of Inquiry

I am requesting relief from the Office of Special Education Programs regarding a denial by the Indiana Department of Education for a due process hearing regarding the provision of a free appropriate public education for my daughter, a student in the Tippecanoe (County) School Corporation, Lafayette, Indiana.

I am enclosing a copy of my request for a hearing, which was received by the Division on April 14, 1988 and the response which was received from the Indiana Department of Education.

This was a request for a second hearing for my daughter, the first of which was referred to in the April 28, 1988 letter from Kevin McDowell. I am also enclosing page seven from the decision resulting from that hearing, which was rendered by M. Jean Rawson on January 7, 1988, wherein is defined the three hearable issues. [Not reproduced.] (1) Whether the proposed IEP for 1987-1988 was appropriate for the child; (2) Whether the parents are entitled to reimbursement for their costs expended for related services and independent evaluations in 1985-86, 1986-87, and 1987-1988; (3) Whether GLASS's (the school's) procedures and practices regarding notice of parental rights in 1986-86 and 1986-87 were proper. You will note that appropriateness of the program prior to 1987-88 was not described as an issue.

It is my belief that my request for a hearing on April 6, 1988 was based on new issues, and that the request for a hearing has been unjustly denied.

Please contact me for more information and let me know what options in this matter may be afforded us by the Office for Special Education Programs. I may be reached at (317) 572-2892.

Text of Response

Thank you for your letter concerning the denial by the Indiana Department of Education (SEA) of your April 6, 1988, request for a due process hearing in regard to the provision of a free appropriate public education for your daughter.

The documents submitted with your letter stated that the SEA is refusing your request for a due process hearing based on the legal principal of *res judicata*. That is, the SEA contends that the seven issues you raised in your April 6 due process request were already raised and disposed of by the hearing officer during the first hearing convened on behalf of [ ] and that the orders of the hearing officer were not appealed.

Part B of the Education of the Handicapped Act does not provide any authority for an SEA to deny a parent's request for a hearing. 34 C.F.R. Sec. 300.506(a). In fact, the EHA-B regulations specifically prohibit local and State educational agency employees from functioning as due process hearing officers. The issue of whether or not a parent's request for a hearing is based on new issues or not can only be decided by an impartial hearing officer. 34 C.F.R. Sec. 300.507(a).

While in no way presupposing how a hearing officer would decide on this issue, we are going to contact the Indiana Department of Education to remind them of the above requirement and their obligations under 34 C.F.R. Sec. 300.506 and 34 C.F.R. Sec. 300.507(a).

Thank you for bringing this matter to our attention.

G. Thomas Bellamy, Ph.D.
Director
Office of Special Education
Programs

Inquiry by: Beth E. Wierda
Legal Counsel II
Nebraska Department of Education
301 Centennial Mall South
Box 94987
Lincoln, NE 68509-4987

Digest of Inquiry
(March 17, 1988)

• Must an LEA take any action if it believes that a child in a nonpublic or home school qualifies for and would benefit from special education services but the parent will not permit the child to take part in such activities?

Digest of Response
(June 6, 1988)

Parents May Refuse Special Education for Nonpublic or Home Students

EHA regulations require that students enrolled in nonpublic or home schools be given the opportunity to take part in public school special education activities, but there is no federal authority to disregard a parent's decision not to let their handicapped child participate.

Text of Inquiry

We are seeking your assistance in answering a question related to the provision of special education services to students enrolled in nonpublic schools or home schools. Our question is as follows:

> If an LEA believes that a child enrolled in a nonpublic school or a home school is eligible for and will benefit from the provision of special

→ These letters have been edited to eliminate extraneous and irrelevant material.

education services but the parent refuses to allow the child to participate in special education activities, what action, if any, should the LEA take?

Your assistance in answering this question will be helpful to us as we continue to provide special education services to children in Nebraska.

Text of Response

Thank you for your letter to Jeff Champagne concerning the provision of special education services to children enrolled in nonpublic or home schools. Under 34 C.F.R. Secs. 300.450-452 and 34 C.F.R. Secs. 76.650-76.662, these students must be provided with a genuine opportunity for equitable participation in the public school program. See 34 C.F.R. Sec. 76.651(a).

This Federal requirement does not limit or expand the authority of State and local agencies to provide services under State or local statutes and regulation. Rather, it defines the State or local obligation that exists when a parent exercises the right under any State or local authority to educate a child outside of the public program.

Federal rules determine the right of the nonpublic school child who is handicapped and wishes to participate to have the opportunity to participate in public school services. They do not establish or eliminate any right of a parent to refuse to allow the child to participate in special education activities when the parent's decision is that the child should not participate. In this latter situation, State and local requirements are determinative. While a school district must stand ready to serve a child when that child seeks services, either through regular enrollment or participation as a nonpublic school student, there is no Federal authority to override a parent's decision not to have their child participate.

We hope you find this information helpful.

G. Thomas Bellamy, Ph.D.
Director
Office of Special Education Programs

Inquiry by: Honorable Phil Gramm
United States Senate
Washington, DC 20510
on behalf of
Cleon M. Scarborough
Superintendent
Martinsville Public Schools
Martinsville, TX 75958

Digest of Inquiry
(February 25, 1988)

- Are school districts required to provide summer programs for handicapped children if their parents so request?
- May EHA-B funds be used to pay legal and advocacy costs of parents of handicapped children?

Digest of Response
(July 28, 1988)

EHA-B Bars States from Denying ESY Programs to Handicapped Children

Extended school year programs must be made available when they are necessary to provide FAPE to a handicapped child.

EHA-B Funds May Not Pay Legal and Advocacy Costs

EHA-B funds cannot be used to pay for legal and advocacy costs of a parent or public agency; separately funded protection and advocacy agencies help facilitate parent involvement called for in federal special education legislation.

Text of Inquiry

We are enclosing a letter that will affect our Special Education Cooperative this coming summer. It seems that the Texas Education Agency will not fund anything but a bus route. My concern is if our tax dollars are paying for Advocacy, Incorporated, what is your position regarding their funding? I am also opposed to government-funded legal aid for representation of any malcontent to sue us as a school district and our tax dollars (state or federal) having to essentially pay for both sides.

The attitude taken by some parents of handicapped children is that if they want it, it should be provided. Our other children do not get everything they would like to have. Advocacy, Incorporated has convinced some of our parents that money is no object. According to them, we are obligated to provide any service the parents believe would be helpful. If things keep going the way they are, those parents will be demanding 24-hour service for 7 days a week.

I will be looking forward to your reply.

OREGON ADMINISTRATIVE RULES

OAR 581-21-029, Home Schooling for Handicapped Students

(1) The following definitions apply to OAR 581-21-029:
  (a) "District" means the school district of the parent's residence on the date of the notification to the superintendent by the parent or guardian of the intent to teach the child at home.
  (b) "Resident district superintendent" means the superintendent of the district as defined in Section (1)(a) above.
  (c) "Superintendent" means the executive officer of the Education Service District or, where there is no ESD, the county school district serving the school district of which the child is a resident.
  (d) "Parent" means the natural parent or legal guardian of a child whom the parent desires to be exempted from compulsory attendance under the provisions of ORS 339.030(5).
  (e) "Handicapped child" means a child meeting the eligibility criteria for their specific handicapping condition as set forth in OAR 581-15-051.

(2) When a parent notifies the superintendent, as provided in OAR 581-21-025, that he/she intends to teach the child at home, the superintendent, in accordance with OAR 581-21-026, shall notify the resident district superintendent.

(3) If the child is identified as handicapped, the district shall offer, and document to the parent, opportunities for the child to receive or continue to receive special education and related services. Such services, however, shall not be provided in the home.

(4) If the child has been identified as handicapped and the parent refuses special education services, the district shall:
  (a) record the parent's refusal;
  (b) document to the parent the availability of special education services for their child; and
  (c) for the students in a special education program, send a notice of change of placement to the parent stating that the parent has elected to withdraw the child from public school under ORS 339.030(5). The notice shall include statements that:
    (A) The district has the responsibility to offer a free appropriate public education,
    (B) The district has offered the free appropriate public education,
    (C) The parent may request a due process hearing as provided under OAR 581-15-081, and
    (D) The child is entitled at any time to re-enroll in the public school.

(5) If the parent, resident district superintendent or superintendent believes a child is handicapped, the district shall follow procedures under OAR 581-15-039 to obtain parent consent for evaluation to determine the child's eligibility to receive special education and related services. If the child is eligible, the district shall notify the parent and shall offer the child a free appropriate public education.

(6) If a parent of a child refuses consent for evaluation of the child, the district shall document the refusal and initiate due process hearing procedures under ORS 343.165 and OARs 581-15-080 through 581-15-096.
  (a) If the parent participates in the hearing but refuses to comply with the decision of the hearings officer, the district shall document, in the hearing record, its attempt to evaluate, identify and offer the child a free appropriate education.

(b) If the parent does not participate in the hearing, the district shall document, in the hearing record, its attempt to evaluate, identify, and offer the child a free appropriate education and the parent's lack of consent thereto.

(c) A child who has not been evaluated and identified, shall be considered nonhandicapped by the district.

(7) Notwithstanding OAR 581-21-027 in determining satisfactory education progress for a handicapped child, the district shall direct the multidisciplinary team to evaluate the child as required under OAR 581-15-072 to determine whether satisfactory educational progress appropriate to the age and handicapping condition of the child has been made:

(a) In place of the child's regular teacher as specified in OAR 581-15-072(7)(a)(A), the multidisciplinary team shall include the parent, and the person teaching the child when such is the case.

(b) The multidisciplinary team shall state whether the child has made satisfactory educational progress, and the superintendent shall consider that report in determining the child's progress. The student need not complete all IEP goals in order for the superintendent to make a determination that the child is making satisfactory educational progress.

(c) If the parent refuses the annual evaluation or refuses to arrange to have a test administered as required in ORS 339.035 and OAR 581-21-026 for nonhandicapped students, the superintendent shall follow procedures set out in OAR 581-21-026(10). The local district may take action against the parent for violation of ORS 339.035 or ORS 339.020.

(8) The superintendent may order the child back to school if the child has not made satisfactory educational progress. The parent may appeal the order of the superintendent following procedures under OAR 581-21-028. 7/23/86 (eff)

CS FOR HOUSE BILL NO. 235(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 3/30/93
Referred: Rules

Sponsor(s): REPRESENTATIVES BUNDE, Grussendorf

A BILL

FOR AN ACT ENTITLED

"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."

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

* Section 1. AS 14.30.180 is amended to read:

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

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

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

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

(a) A school district shall 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.

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

(b) After initial placement in a program of special education and related services and not less than once every three years for as long as the child is assigned to the program, a [AN EXCEPTIONAL] child with disabilities shall receive an educational evaluation for the identification and classification of [EXCEPTIONAL] children with disabilities.

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

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

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

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

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

(e) A parent may obtain an independent educational evaluation at the expense of the school district if the parent disagrees with an evaluation obtained by the school district. [THE SCHOOL DISTRICT MAY INITIATE A HEARING TO SHOW THAT ITS EVALUATION IS APPROPRIATE.] If, as a result of a hearing under AS 14.30.193(c), the hearing officer determines that the school district's evaluation is appropriate, the school district may not be required to pay for the independent educational evaluation.

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

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

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

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

* Sec. 8. AS 14.30 is amended by adding a new section to read:

Sec. 14.30.193. SCHOOL DISTRICT HEARINGS. (a) If a parent refuses to

consent, or does not respond promptly to the school district's request for consent, under AS 14.30.191(a) or 14.30.285(f), the school district may appoint an impartial hearing officer to conduct a hearing to determine whether the school district may initiate the evaluation or placement of the child, or transfer the child.

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

(c) If a parent wishes to obtain an independent educational evaluation at the expense of the school district under AS 14.30.191(e), the school district may appoint an impartial hearing officer to conduct a hearing to determine whether the school district's evaluation is appropriate.

(d) If, after a hearing under (a) or (b) of this section, the hearing officer determines that the school district's intended action is in accordance with law and is in the child's best interest, the hearing officer shall approve that action.

(e) A hearing officer's decision under this section is final and binding on the school district and the parent, unless appealed under (f) of this section.

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

* Sec. 9. AS 14.30.195(a) is amended to read:

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

* Sec. 10. AS 14.30.195 is amended by adding new subsections to read:

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

under AS 14.30.193.

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

* Sec. 11. AS 14.30 is amended by adding a new section to read:

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

* Sec. 12. AS 14.30.272 is amended to read:

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

* Sec. 13. AS 14.30.272 is amended by adding a new subsection to read:

(b) The department shall establish, by regulation, impartial procedures for a school district to follow for hearings under AS 14.30.193 to comply with requirements necessary to participate in federal grant-in-aid programs, including 20 U.S.C. 1400 - 1485 (Individuals with Disabilities Education Act).

* Sec. 14. AS 14.30.278(b) is amended to read:

(b) Each meeting concerning an exceptional child must include

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

(2) the child's teacher;

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

(4) the child, when appropriate;

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

* Sec. 15. AS 14.30.278 is amended by adding a new subsection to read:

(c) Each school district shall develop an individualized education program for

every exceptional child.

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

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

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

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

* Sec. 18. AS 14.30.340 is repealed and reenacted to read:

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

(b) If a physician certifies in writing that, and if the child's individualized education program team then determines that, a child's bodily, mental, or emotional condition does not permit attendance at a school, the school district in which the child is located shall enroll the child in public school and provide the child with special education and related services in conformance with an individualized education program under AS 14.30.278 at the child's home or at a medical treatment facility.

* Sec. 19. AS 14.30.347 is amended to read:

Sec. 14.30.347. TRANSPORTATION OF EXCEPTIONAL CHILDREN. When transportation is required to be provided as related services, exceptional children shall be carried with other children, except when the nature of their physical or mental <u>disabilities</u> [HANDICAPS] is such that it is in the best interest of the exceptional children, as determined by the school district, that they be transported separately. State reimbursement for transportation of exceptional children shall be as provided for transportation of all other pupils except that eligibility for reimbursement is not subject

to restriction based on the minimum distance between the school and the residence of the exceptional child.

* Sec. 20. AS 14.30.350(2) is amended to read:

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

* Sec. 21. AS 14.30.350(3) is repealed and reenacted to read:

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

* Sec. 22. AS 14.30.350(4) is amended to read:

(4) "related services" means transportation and developmental, corrective, and other supportive services required to assist <u>children with disabilities</u> [A HANDICAPPED] or gifted <u>children</u> [CHILD] to benefit from special education and includes but is not limited to speech pathology and audiology, psychological services, physical and occupational therapy, recreation, counseling services <u>including rehabilitation counseling</u>, and medical services for diagnostic or evaluation purposes; the term also includes school health services, school social work services, and parent counseling and training;

* Sec. 23. AS 14.30.350(5) is amended to read:

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

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

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

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

* Sec. 24. AS 14.30.350 is amended by adding new paragraphs to read:

(7) "children with disabilities" means children with mental retardation; hearing impairments, including deafness; speech or language impairments; visual impairments, including blindness; serious emotional disturbance; orthopedic impairments; autism; traumatic brain injury; other health impairments; specific learning disabilities; or preschool developmental delays;

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

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

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

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

(B) the child's teacher;

(C) the child's parent;

(D) the child, if appropriate;

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

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

* Sec. 25. This Act takes effect June 30, 1993.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 235

Revision Date: _____

Department Affected: Education

Title: An Act relating to educational programs and services for children with disabilities and other exceptional children

BRU: Educational Program Support

Component: Special and Supplemental Services

Sponsor: Representative Con Bunde

Requestor: Representative Con Bunde

COMPONENT SERIAL NO. 166

Expenditures/Revenues: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year (FY93) impact: $ _____

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

Prepared by: Mike Maher
Phone: 465-2803
Division: Commissioner's Office
Date: 3/19/93

Approved by Commissioner: Jerry Covey
Agency: Education
Date: 3-19-93

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Rev 11/92

FISCAL NOTE

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

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

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

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

HB 263

Representative Mark Hanley
Alaska State Legislature

MEMORANDUM

DATE: February 14, 1994

TO: Senator Loren Leman
Chairman, State Affairs

FROM: Representative Mark Hanley MH

RE: Sponsor Substitute for House Bill 263: "An Act relating to municipal property tax exemptions."

This memo is to respectfully request that you schedule Sponsor Substitute for HB 263 for a hearing in Senate State Affairs. SSHB 263 passed out of the House February 9th with thirty-nine Yeas and one Nay.

SSHB 263 amends AS 29.45.050 to allow municipalities to exempt or partially exempt from taxation aircraft, undocumented boats and vessels, pickup campers, shells and canopies, and unlicensed motorized all-terrain vehicles, snow machines, and trail bikes.

This bill is intended to give municipalities flexibility in taxing private property. It has *no fiscal impact* on the State of Alaska. The Municipality of Anchorage is attempting to address the lack of equity and consistency in municipal tax code between private non-commercial aircraft, and other recreational vehicles.

The Anchorage Assembly passed resolution no. AR 93-46(S) in support of amending 29.45.050 to allow this exemption. Mayor Fink and his administration are also in support of the resolution.

Your prompt attention to this matter would be greatly appreciated.

Interim: 716 West 4th Avenue, # 300, Anchorage, AK 99501; (907) 258-8192 *Session: State Capitol, Juneau, AK 99801-1182; (907) 465-4939*

TO ANCHORAGE ASSEMBLY 2/16/93

Statement by: Bob Gastrock, 13151 Nora Drive, Anchorage 99515
Flying Crown Homeowners' Association

Good evening, my name is Bob Gastrock. I am here tonight representing the aircraft owners and pilots of the Flying Crown Homeowners' Association.

Speaking on their behalf, I would like to make four brief but important points:

1. The tax many of us are paying for the priviledge of keeping airplanes in Anchorage is grossly disproportionate to that paid by owners of other types of motor vehicles.

2. We are ready and willing to pay our fair share of taxes

3. This issue involves correcting an acknowledged lack of equity and consistency in the municipal tax code. It should be dealt with on its own merit. It should not be deferred pending resolution of the many tax initiatives presently being considered.

4. Disposition of this matter is rightly within the purview and authority of this Assembly. It need not and should not be relegated to a ballot proposition.

This matter is before you tonight because we believe a change is in order. During the mid 1970s, airplanes, cars, trucks, and other motor vehicles were all taxed on the same basis. Then, in 1976, the Municipality elected to participate in a State sponsored program to collect a Motor Vehicle Registration Tax in lieu of personal property tax. The program did not include airplanes, which have continued to be taxed as personal property. At first, the difference in tax paid by owners of airplanes and the other vehicles was not significant enough to prompt concern. In recent years, however, the gap has widened considerably, to the point that many airplanes are taxed more than 15 times as much as new motorhomes of comparable value. For example, a new $50,000 motorhome is taxed $60, while most Cessna 185s worth the same amount are taxed almost $1000! When one considers the fact that the motorhome tax declines yearly to only $5 after the seventh year, the disparity becomes even more exaggerated. What makes this lack of parity even more difficult for us to accept is the fact that while other motor vehicles use roadways that are constructed, maintained, and lighted by the Municipality, airplanes get virtually no benefits in return for their considerably higher tax contribution.

Contrary to a popular misconception, airplane owners, especially those in Alaska, are not generally a wealthy bunch. They are school teachers, truck drivers, and people of virtually every profession. They use airplanes like pickup trucks: to haul people and goods around a state with few roads. Most pilots have been staggered by rapidly increasing costs for maintenance, parts, and insurance. Excessive taxes contribute unfairly to their mounting financial burdens. Indeed, escallating costs, especially fixed ones that must be paid before a propeller turns, are negatively impacting airplane ownership in our town. As a result, many owners have had to sell. Likewise, many aspiring buyers have been priced out of the market by recurring overhead expenses as much as by initial acquisition cost. Anyone who doubts this fact needs only to survey the growing empty ramp space on Merrill Field.

To say that we are unhappy with the current situation would be an understatement at best. Yet it is important to note that airplane owners are ready and willing to pay their fair share of taxes. We simply ask for reasonable and equitable treatment. We look to you to reestablish fairness in the system. You are our elected representatives, and we trust in you to protect our fundamental right to just taxation.

Thank you very much.

Representative Mark Hanley

Alaska State Legislature

MEMORANDUM

DATE: March 3, 1994

TO: Senator Rick Halford
Chairman, Rules

FROM: Representative Mark Hanley

RE: Sponsor Substitute for House Bill 263: "An Act relating to municipal property tax exemptions."

This memo is to respectfully request that you schedule Sponsor Substitute for HB 263 for a vote on the floor. SSHB 263 passed out of State Affairs March 2nd with one Do Pass and two No Recommendations.

HB 263 amends AS 29.45.050 to allow municipalities to exempt or partially exempt from taxation aircraft, undocumented boats and vessels, pickup campers, shells and canopies, and unlicensed motorized all-terrain vehicles, snow machines, and trail bikes.

This bill is intended to give municipalities flexibility in taxing private property. It has *no fiscal impact* on the State of Alaska. The Municipality of Anchorage is attempting to address the lack of equity and consistency in municipal tax code between private non-commercial aircraft, and other recreational vehicles.

The Anchorage Assembly passed resolution no. AR 93-46(S) in support of amending 29.45.050 to allow this exemption. Mayor Fink and his administration are also in support of the resolution.

Your prompt attention to this matter would be greatly appreciated.

Interim: 3111 C St., Suite 410, Anchorage, AK 99503 • (907) 561-2033 *Session: State Capitol, Juneau, AK 99801-1182 • (907) 465-4939*

HB263

Representative Mark Hanley

Alaska State Legislature

MEMORANDUM

March 14, 1994

TO: Senator Drue Pearce

FROM: Representative Hanley

RE: SSHB 263, "An Act relating to municipal property tax exemptions".

Thank you for co-sponsoring SSHB 263 and for carrying it on the Senate floor. Thank you for your support.

Enclosed please find back-up documents for the bill, including resolutions of support from the Anchorage Assembly and Mayor Tom Fink.

Interim: 716 West 4th Avenue, # 300, Anchorage, AK 99501; (907) 258-8192 *Session: State Capitol, Juneau, AK 99801-1182; (907) 465-4939*

13151 Nora Drive
Anchorage, AK 99515-3746
April 16, 1992

Assemblyman Chuck Landers
c/o Municipal Clerk's Office
P.O. Box 196650
Anchorage, AK 99519-6650

Dear Chuck:

As we discussed several weeks ago, there is an issue that sorely deserves consideration by the Municipal Assembly. It concerns personal property taxes and the discriminatory nature of one in particular: that involving airplanes.

While I understand that the Municipality is struggling with shrinking revenues, it is unfair to perpetuate (or, in some cases increase) reliance on specialized groups who pay a disproportionate share of taxes. This inequity is exacerbated by the fact that these taxpayers receive little or no reciprocal benefit that can be associated with the item for which they are being taxed.

One such group is aircraft owners, whose airplanes are taxed as personal property like automobiles and trailers. The Municipality provides road maintenance and police protection for drivers, but no service to pilots. Thus the very basis for the tax is questionable, since the Municipality expends little, if any, revenue to support aviation. Unfortunately, the unequity has been magnified recently since most major small aircraft manufacturers have ceased production due to product liability. The result has been a dramatic rise in market values on existing aircraft. Airplanes worth $25,000 in 1988 cost their owners some $350 in personal property tax that year. Today that same airplane is worth about $50,000, bringing the tax bill to $700 or more. Still with no benefit.

Like the luxury boat tax on the national level, this unfair and unwarranted aircraft tax should be eliminated. The common belief that pilots are rich and can thus afford to pay is fallacious, especially in Alaska, where flying is more necessary than luxurious. It is reasonable to tax people for services provided. It is not fair to tax a visible minority simply because they are judged to be able to "afford it."

Please do the right thing and correct this inequity. Your constituents and I will applaud you.

Sincerely,

Bob

Robert C. Gastrock

cc: Pat Abney
Jim Barnett
Alaska Airmen's Association, Inc.

STATE OF ALASKA
1993 LEGISLATIVE SESSION

FISCAL NOTE

BILL NO: SSHB 263

Revision Date: 1/26/94
Dept. Affected: Community & Regional Affairs

Title: "An Act relating to a municipal property tax exemption for aircraft."
BRU:
Component:

Sponsor: Hanley

Requestor:
COMPONENT SERIAL NO.

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current (FY93) Impact $ none

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Rimond Henderson — Director — Phone: 465-4708
Division: Administrative Services — Date: 1/26/94
Approved by Commissioner: [signature] — Deputy Commissioner — Date: 1/26/94
Agency: Community & Regional Affairs

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(7)

Date Referred: January 10, 1994 FURTHER REFERRALS:

Date of Committee Action: _____

The COMMUNITY AND REGIONAL AFFAIRS Committee considered: SSHB 263

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 263 TAX EXEMPTION FOR AIRCRAFT

"An Act relating to municipal property tax exemptions."

RECOMMENDATIONS: [ ] the same title
be replaced with _____ [ ] 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 _____ [ ] zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
[illegible]	✓	[illegible]		✓	
[illegible]	✓				
[illegible]	✓				
[illegible]	✓				
[illegible]	✓				
[illegible]	✓				

[illegible]
CHAIRMAN'S SIGNATURE

MUNICIPALITY OF ANCHORAGE
ASSEMBLY MEMORANDUM
NO. AM 127-93

Meeting Date: February 2,1993

From: Assemblymember Campbell

Subject: AN ORDINANCE PROPOSING AN AMENDMENT TO CHAPTER 12, SECTION 12.10.020 OF THE ANCHORAGE MUNICIPAL CODE PERTAINING TO EXEMPTIONS FOR CERTAIN AIRCRAFT NOT SUBJECT TO THE TAX PROVISIONS OF SECTION 12.10.060, FROM THE "FULL AND TRUE VALUE" PROVISIONS OF 12.10.60.

There is a lack of equity and consistency in the municipal tax code in the taxation applied to various classes of personal property. For example, motor homes, some of considerable value, are not subject to a municipal personal property tax; but instead pay a relatively flat fee to the State of Alaska, with a tax renumeration from the State being transferred to the municipality. The maximum fee received by the municipality from the State is $60 for a brand new vehicle or motor home, regardless of book value.

However, privately owned, non-commercial aircraft are taxed by the municipality based upon their full book value. Thus while an Anchorage resident owning a $50,000 book value motor home is paying a fee of $60 to the municipality, a private aircraft assessed at $50,000 owned by an Anchorage resident is costing that resident about $1,000 in personal property taxes.

Unfortunately the Assembly cannot change the State statute regarding the taxes on motor vehicles. However the Assembly can address inequities the statute creates in the municipal personal property tax system by modifying the method of property taxation to come more closely in line with the State's approach. This ordinance represents a first step toward addressing the inequity issues in the personal property tax system. It proposes changing the method of taxing private aircraft from an ad valorum system to a flat fee, based on the number of engines the aircraft possesses. Single engine aircraft would pay a fee of $75, and multi-engine aircraft would pay a fee of $125.

The municipality obtains roughly $800,000 annually from the taxes on about 2,100 private airplanes, for an average tax of $381/aircraft. Between 100-200 of the 2,100 fees are appealed annually: however most protests are resolved at staff level, with only 3 or 4 proceeding to the Board of Equalization for a more formal review.

The new tax structure would generate about $160,000 in annual revenue, and would likely eliminate the need for about 1-1.5 municipal positions, for an approximate personnel savings of $60,000 to $90,000. Net loss of municipal tax revenue would thus be about $520,000-550,000 annually. However, the change would place more equity in the personal property tax system.

Submitted by: Assemblyman Craig Campbell
Prepared by: Assembly Policy and Budget Office
For reading: February 2, 1993

ANCHORAGE, ALASKA
AO NO. 93- 29

AN ORDINANCE OF THE MUNICIPALITY OF ANCHORAGE PROPOSING A BALLOT PROPOSITION TO QUALIFIED VOTERS AT THE APRIL 20, 1993 REGULAR MUNICIPAL ELECTION AMENDING CHAPTER 12, SECTION 12.10.020 OF THE ANCHORAGE MUNICIPAL CODE PERTAINING TO EXEMPTIONS FROM THE PERSONAL PROPERTY TAX, EXEMPTING AIRCRAFT NOT SUBJECT TO THE TAX ASSESSMENT PROVISIONS SECTIONS OF 12.10.060.E. FROM THE FULL AND TRUE VALUE PROVISIONS OF SECTION 12.10.060.

THE ANCHORAGE ASSEMBLY ORDAINS:

Section 1: That a ballot proposition containing substantially the following language shall be submitted to qualified Anchorage voters on the ballot for the April 20, 1993 regular election:

Shall the Anchorage Municipal Code section 12.10.020 be amended to read as follows: (bracketed words to be deleted: underlined words to be added)

12.10.020 Exemptions

(D) Aircraft not subject to provisions of the Anchorage Municipal Code 12.10.060.E are taxed by the municipality at an annual rate of $75 for single engine aircraft and $125 for multi-engine aircraft.

[ ] YES
[ ] NO

Section 2: Upon passage of this proposition by a majority of those qualified voters voting in the affirmative at the April 20, 1993 regular election, this ordinance shall become effective at 12:00 a.m. on January 1, 1994.

3 REC'D

MUNICIPALITY OF ANCHORAGE

ASSEMBLY MEMORANDUM

No. _____

Meeting Date: _____

From: Mayor

Subject: AO 93-29; Regarding Exemption from Personal Property Tax for Aircraft

A question has arisen as to the legality of the proposed ordinance. The Legal Department has been requested to review the ordinance and the following sets forth its conclusion.

The ordinance is constitutionally acceptable. It is, however, unlikely to be found legally acceptable under State law.

AS 29.45.050 addresses the exemptions and exclusions from taxation available to municipalities. According to case law, a municipality's right to allow exemptions from taxation needs to be expressly conferred by law. Valentine v. City of Juneau, 36 F.2d 904 (9th Cir. 1929), decided under former, similar law. Further, the Municipality incorporates AS 29.45.050 into its Charter pursuant to Charter Section 14.02(b) which reads as follows:

> The procedures [for taxation] shall provide for assessment of property at full and true value, except as otherwise provided by law, and for notice of assessment, appeal and judicial review.

Hence, if the ordinance is valid "aircraft" must fall within the term "motor vehicles" as used in the following portion of the statute:

AS 29.45.050. Optional exemptions and exclusions.

. . . .

(b) A municipality may by ordinance

. . . .

(5) classify as to type and exempt or partially exempt any or all types of motor vehicles from taxation.

There are several reasons why it is unlikely that aircraft would be held to be included within the term "motor vehicles. The following definition of personal property is contained in AS 29.71.800(16):

> "personal property" means tangible property other than real property, such as merchandise, stock in trade, machinery, equipment, furniture, fixtures, vehicles, boats, and aircraft;

(Emphasis added). The fact that "aircraft" and "vehicles" are addressed specifically and distinctly is significant. Also significant is the fact that AS 29.45.065, Assessment of private airports open for public use, uses the term "aircraft." Although not directly applicable, a court would also probably look to the definition of motor vehicle in the immediately adjacent Title 28. The relevant provisions are the following:

> AS 28.40.100(a):
>
> . . . .
>
> (11) "motor vehicle" means a vehicle which is self-propelled except a vehicle moved by human or animal power;
>
> . . . .
>
> (21) "vehicle" means a device in, upon, or by which a person or property may be transported or drawn upon or immediately over a highway or vehicular way or area except devices used exclusively upon stationary rails or tracks;

(Emphasis added). Case law regarding the common usage of the term "motor vehicles" is not unanimous but generally supports the exclusion of aircraft. See Mann v. American Flyers Airline Corp., 433 P.2d 961 (Okla. 1968), dealing with the term in the context of workmens' compensation law; Sperry v. Maki, 740 P.2d 342 (Wash. App. 1987), dealing with the term in the context of uninsured motorist coverage; and the following statement in the Annotation captioned "Airplane as within terms 'vehicle', 'motor vehicle', etc." appearing in 165 A.L.R. 916:

> Although the result is always contingent on the particular wording involved, it has been almost invariably held, in the construction of statutes and regulations, that airplanes are not within the terms 'vehicles', 'motor vehicles', etc.

Finally, it should be noted that it is the position of the current State Assessor, Steve Van Sant, that the legislature did not intend the statute to cover aircraft; rather, that, because of the great varieties of motor vehicles, it would be logical to allow classifications by type. If that opinion were to be adopted

formally by the Department of Community and Regional Affairs, it could be used by the court as a relevant administrative agency's interpretation. State, Dept. of Highways v. Green, 586 P.2d 595 (Alaska 1978).

In sum, the weight of authority suggests that the ordinance is invalid absent a change in state law.

THEREFORE, THE ADMINISTRATION RECOMMENDS DISAPPROVAL OF AO 93-29.

Concur:

Larry D. Crawford
Municipal Manager

Prepared by:

Richard L. McVeigh
Municipal Attorney

Respectfully submitted,

Tom Fink
Mayor

m:\assy\am\ballot.tax

POSITION PAPER

PERSONAL PROPERTY TAXATION OF PRIVATE AIRCRAFT

The Municipality of Anchorage (MOA) derives operating revenues from many sources, including personal property tax. Primarily an ad valorem tax, it is paid annually by owners of defined personal property. In return for payment of such taxes, taxpayers expect, and in most cases receive, certain services and/or benefits provided by the MOA.

People pay taxes on real and personal property to fund a variety of government furnished institutions, including schools, police and fire departments, and other administrative agencies. Children live in homes which are taxed to pay for schools. Similarly, automobile taxes pay for roads which are constructed, maintained, lighted, plowed, swept, and marked with signs.

There is one group of individuals, however, who pay a disproportionate share of the tax burden in Anchorage. Ironically, they receive little, if any, service or benefit from the MOA in exchange for the dollars they contribute to the government's coffers. They are the owners of private aircraft.

For years many of them have been dutifully acknowledging ownership of small aircraft, and paying many hundreds of dollars annually in personal property tax. Their money goes into the general fund, providing no benefit or service to the aviation community. In fact, the MOA's only involvement or interest in aviation (other than collecting taxes) is Merrill Field, which is rightfully "controlled" by the FAA. The MOA merely owns the land and charges leaseholders for the right to use it.

It is noteworthy that most aircraft with a tax situs in Anchorage are used almost exclusively **outside** the Municipality. They are, in effect, stored in Anchorage, and used to travel everywhere else in and out of the State. Most are parked in Anchorage simply as a matter of convenience to their owners, who reside and work in the community.

Anchorage has always been an aviation hub for the State as well as the world. As such, it serves a unique purpose. Aviation fosters commerce and brings people to town. As a result, many local businesses directly support this important industry and, in turn, rely on it for their livelihood. Examples are parts stores, maintenance facilities, equipment manufacturers, and flight schools. They cater not only to locally based aircraft, also to many that "come in from the bush" to be worked on. Similarly, many local retail merchants, hotels, and restaurants profit from airplane pilots and their passengers who frequent Anchorage. Thus aviation is a major contributor to the financial stability and diversity of Anchorage's economy.

It is ironic then, that the present personal property tax on aircraft discourages the presence of airplanes in the Municipality. Airplane owners residing elsewhere often avoid "wintering" their planes in Anchorage to have work done on them, for fear of establishing a tax situs there. Likewise, many locals have work done and/or park their aircraft elsewhere to avoid paying the tax. Some simply don't admit ownership, choosing to avoid the tax by omission. For them, the amount of money saved is worth the risk of being caught.

In recent years the financial burden on private airplane owners has grown considerably. Fuel, maintenance, and insurance costs have all escallated. But perhaps the greatest proportional increase has been the personal property tax. That is because market values of many aircraft have skyrocketed as manufacturing declined or ceased due to product liability; not because existing aircraft are inherently worth any more. The significant rise in costs is pushing airplane ownership out of the reach of more and more pilots. Admittedly, everyone cannot afford to buy an airplane. But many who could afford the acquisition cost don't have the resources to meet the recurrent costs such as taxes. As a result, the number of airplanes in Anchorage is decreasing. During the past five years, the number of general aviation aircraft parked at Merrill Field has declined by 160. While some may have relocated elsewhere in the local area, some undoubtably left forever. With them went tax revenues and customers valued by local businesses.

The fundamental problem involves the tax rate. Airplanes, which have high relative value, are taxed at the same mill rate as other less valuable personal property. While mill rates approaching 20 may be appropriate for homes, they are unrealistic when applied to airplanes. The owner of a $150,000 home pays about $3000 in property tax. For that he receives all the basic government services. But he does not receive any additional services for the almost $1000 tax he now pays for the priviledge of owning a $50,000 airplane. Yet his airplane ownership and use costs the MOA absolutely nothing!

Anchorage Municipal Code (AMC) 12.10.010, Personal Property Subject to Taxation, subparagraph A.1., states,

> "All vehicles propelled by other than human muscular power shall be taxable as personal property. This shall include, but is not limited to automobiles, motorcycles, aircraft, boats and snowmobiles."

Alaska Statute (AS) 29.45.050 provides for optional property tax exemptions and exclusions. Paragraph (b) states,

> "A municipality may by ordinance...(5) classify as to type and exempt or partially exempt any or all types of motor vehicles from taxation."

On December 21, 1976, the Municipality of Anchorage (MOA) Assembly passed AR No. 121-76, providing for an Annual Motor Vehicle Registration Tax (MVRT) in lieu of a personal property tax assessment on certain motor vehicles, including automobiles and motorcycles. This method of taxation, provided for by 1976 SLA 256, is based on a fixed fee schedule. Accordingly, a NOTE was added to AMC 12.10.010 paragraph A, stating,

> "Pursuant to Ch. 256 SLA 1976 and AR 121-76, the Municipality no longer imposes a personal property tax on motor vehicles."

This action simplified processing, lowered the rate per vehicle, and resulted in a net increase in revenue due to the fact that more people paid the tax. Today, the owner of a new $50,000 motorhome is taxed $60 the first year, and less in subsequent years. In return, he benefits from many miles of MOA maintained roads, parks, street lights and signs, etc. Despite the NOTE quoted above, the owner of an airplane valued at $50,000 is still taxed almost $1000, yet the airplane gets nothing for its revenue contribution.

It is time to revise tax rates for airplanes. A simple fee schedule like that used for other motor vehicles is the best solution. An annual tax of $60, an amount equal to that paid for the most expensive private automobile or motorhome, is both fair and reasonable. Such a flat fee would significantly reduce administrative costs for the MOA, since each airplane would not have to be appraised every year by physically "canvassing" local airports and researching "book" values. Likewise, the present appeals process, which requires much review time and negotiation, would be eliminated.

All parties stand to gain from such reform. Municipal administrative costs will go down, the sagging and vulnerable general aviation industry will be stimulated, and local businesses will benefit from revived activity at local airports.

PLANETX5.WPF/RCG/01/26/92

MUNICIPALITY OF ANCHORAGE

ASSEMBLY MEMORANDUM

No. AM 270-93

Meeting Date: February 23, 1993

From: Mayor

Subject: AR 93-46(S) - Exemption of Personal Property Items

The public testimony last week was oriented primarily on the need for changes to the personal property tax on aircraft. The Administration recommends the scope of the Assembly Resolution to the Alaska State Legislature be expanded to include other items that are taxed unevenly due to self-reporting requirements. A registration tax at the point of sale with possible annual renewals is probably a more equitable system.

The Administration recommends approval of AR 93-46(S).

Concurrence:

Larry D Crawford
Larry B. Crawford
Municipal Manager

Prepared by:

Jerry Anderson
Chief Fiscal Officer

Respectfully submitted:

Tom Fink
Tom Fink
Mayor

Concurrence:

Richard L. McVeigh
Municipal Attorney

CLERK'S OFFICE
APPROVED
Date: 2-23-93

Submitted by: Chairman of the Assembly at the Request of the Mayor
Prepared by: Department of Law
For Reading: February 23, 1993

ANCHORAGE, ALASKA
RESOLUTION NO. AR 93-46(S)

A RESOLUTION OF THE MUNICIPALITY OF ANCHORAGE ENDORSING OPTIONAL EXEMPTION OF DESIGNATED ITEMS FROM PERSONAL PROPERTY TAX

THE ANCHORAGE ASSEMBLY FINDS:

WHEREAS, Alaska Statutes 29.45.050 permits municipalities to exempt certain items from property taxation; and

WHEREAS, AS 29.45.050 does not permit a partial or total exemption for aircraft and some other personal property items but does allow such exemptions for boats, vessels or motor vehicles; and

WHEREAS, the Municipality of Anchorage wishes to adopt a partial exemption for certain personal property.

NOW, THEREFORE, the Anchorage Assembly resolves that:

Section 1. The Municipality endorse an amendment to AS 29.45.050 to allow partial or total exemption of aircraft, pick-up campers, shells and canopies, all-terrain vehicles, snow vehicles, undocumented boats and motors, and unlicensed trail bikes from property taxation as part of its legislative program.

Section 2. An ordinance providing a partial exemption (i.e. flat fee tax) for exempt items taxation will be introduced within 30 days of passage of an amendment to AS 29.45.050 which authorizes use of such an approach.

Section 3. Passage of this resolution indicates a firm statement of intent of those Assembly members voting for this resolution to vote favor of the ordinance referenced in Section 2.

PASSED AND APPROVED this 23rd day of February, 1993.

Chairman

ATTEST:

Municipal Clerk

AM 270-93

First Name: Richard
Last Name: Thompson
Telephone: 488-3329

PO Box 55968
Zip: 99705

North Pole
Reg. Voter: Y
Distribution: 60
Constituency: N

Affiliation
Date POM Sent: 01/27/94

Subject
Bill Number: HB 162 ✓

Message 1
BRING BACK THE DEATH PENALTY. LIMIT APPEAL PROCESS TO SPECIFIC TIME. $ NOT AN ISSUE. RACE CANNOT BE ALLOWED TO BE AN ISSUE. IF A CRIME IS COMMITTED THAT WARRANTS DEATH PENALTY---ADMINISTER IT QUICKLY.

First Name: Thomas
Last Name: Munns
Telephone: 277-5284

1601 Medfra #400
Zip: 99501

Anchorage
Reg. Voter: Y
Distribution: 60
Constituency: N

Affiliation
Date POM Sent: 01/26/94

Subject
Bill Number: HB 263 file

Message 1
I STRONGLY SUPPORT AND URGE PASSAGE OF HB 263. (TAX EXEMPTION FOR CERTAIN PERSONAL PROP.)

First Name: Carl
Last Name: Cartwright
Telephone: 277-8798

417 N Klevin
Zip: 99508

Anchorage
Reg. Voter: Y
Distribution: 60
Constituency: N

Affiliation
Date POM Sent: 01/26/94

Subject
Bill Number: HB 263 file

Message 1
I SUPPORT IT STRONGLY. (TAX EXEMPTION FOR CERTAIN PERSONAL PROP.)

First Name: Nancy
Last Name: Fuerstenberg
Telephone: 344-8521

420 Pettis Rd
Zip 99515

Anchorage
Reg. Voter Y
Distribution 60
Constituency N

Affiliation
Date POM Sent 01/26/94

Subject
Bill Number HB 263 ✓ hlc

Message 1
I WANT YOU TO SUPPORT HB 263. (TAX EXEMPTION FOR CERTAIN PERSONAL PROP.)

First Name: Daniel
Last Name: Zivanich
Telephone: NONE

12921 Midori Dr
Zip 99516

Anchorage
Reg. Voter Y
Distribution 60
Constituency N

Affiliation
Date POM Sent 01/26/94

Subject
Bill Number HB 263 ✓ hlc

Message 1
I'M IN SUPPORT OF TAKING TAXES OFF OF PEOPLE WHO OWN AIRCRAFT.

First Name: Dennis
Last Name: Waldock
Telephone: NONE

3327 Iliamna Ave
Zip 99517

Anchorage
Reg. Voter
Distribution 08
Constituency C

Affiliation
Date POM Sent 01/26/94

Subject
Bill Number HB 263

Message 1
IN REGARDS TO HB 263 I VERY STRONGLY SUPPORT THIS BILL I WOULD APPRECIATE YOUR EFFORTS TO TRY TO GET THIS TO THE FLOOR AS SOON AS POSSIBLE. IF YOU WOULD LIKE TO DISCUSS THIS BILL IN MORE DETAIL

PLEASE CALL, 800-770-3029.

LL Call

First Name: Burt
Last Name: Myers
Telephone: 688-0737

PO Box 671689
Zip: 99567

Chugiak
Reg. Voter
Distribution: 60
Constituency: N

Affiliation
Date POM Sent: 01/26/94

Subject
Bill Number: HB 263

Message 1
I STRONGLY SUPPORT AND URGE PASSAGE OF HB 263. (TAX EXEMPTION FOR CERTAIN PERSONAL PROP.)

First Name: Rex
Last Name: Gray
Telephone: 745-2320

HC04 Box 9313
Zip: 99645

Palmer
Reg. Voter
Distribution: 60
Constituency: N

Affiliation
Date POM Sent: 01/27/94

Subject
Bill Number: HB 263

Message 1
TAX EXEMPTION FOR CERTAIN PERSONAL PROP: I URGE ALL MEMBERS TO SUPPORT HB 263.

First Name: James
Last Name: Grant
Telephone: 753-3206

30352 Cherry Dr Apt B
Zip: 99506

~~Anchorage~~ EAFB
Reg. Voter
Distribution: 60
Constituency: C

Affiliation
Date POM Sent: 01/27/94

Subject
Bill Number: HB 351

Message 1
I WOULD LIKE TO VOICE SUPPORT OF HB 351. I WOULD RECOMMEND CHANGING THE LENGTH OF ONE YEAR TO A FOUR YEAR PERMIT.

HB 277

Municipality of Anchorage

P.O. BOX 196650
ANCHORAGE, ALASKA 99519-6650
(907) 343-4545

TOM FINK,
MAYOR

OFFICE OF THE MUNICIPAL ATTORNEY

February 1, 1994

Representative Brian Porter
Chair House Judiciary Committee
Alaska State Legislature
State Capital
Juneau, Alaska 99801

Re: House Bill 277 Relating To Defense And Indemnification Of Public Employees With Respect To Claims Arising Out Of Conduct That Is Within The Scope Of Employment

Dear Representative Porter:

After reviewing House Bill 277 the Municipality of Anchorage supports the proposed bill. From discussions with the Municipal Risk Management Department, Police Department and the Legal Department concerning this issue the proposed bill would provide the Municipality certain benefits.

As with a prior incarnation of this legislation, CSHP 395 which was before the House Judiciary Committee in April of 1992, this bill would allow the Municipality of Anchorage flexibility to defend and indemnify its employees in appropriate circumstances, including punitive damage situations. Additionally, the legislation allows an employee a defined time period in which to assert and protect the employees' rights to defense or indemnity. The bill appropriately limits the defense of those rights to declaratory actions, for enforcing the rights to defense; cross-claims, for enforcing rights to indemnity where the employer is named as a party; and an action brought within one year, for enforcing indemnification where the employer is not named as a party. With these elements the Municipality of Anchorage supports the bill.

Sincerely,

Richard L. McVeigh
Municipal Attorney

cc: Duane Udland, Deputy Chief Police
Harry Sjoberg, Risk Manager
Mary Vollendorf, Municipal Manager's Office
matter\hb395\porter

ALASKA MUNICIPAL LEAGUE

217 Second Street, Suite 200 ▪ Juneau, Alaska 99801 ▪ Tel (907) 586-1325, Fax (907) 463-548

January 24, 1994

TO: Representative Al Vezey, Chair
and
Members, House Committee on State Affairs

FROM: Kent E. Swisher, Executive Director

RE: **HB 277 - Indemnification of public employees**

It has been brought to my attention that your committee is considering **HB 277- Indemnification of public employees**, which would amend AS 39.90 to require public employers, including municipalities, to provide defense and indemnification of employees for actions or omissions that occurred during the course and within the scope of the employee's employment, except in cases of gross negligence or intentional or wilful misconduct. The bill allows for collective bargaining agreements to supersede state law with regard to defense and indemnification.

It is the understanding of the Alaska Municipal League that it is already common practice for municipalities to indemnify employees for actions/omissions taken during the course and scope of their employment and that such indemnification is included within most, if not all, collective bargaining agreements.

The League has no objection to the current draft of HB 277, or to the proposed Committee Substitute dated 1/20/94. It appears to codify existing common practice, to provide reasonable protection for employers by requiring the employee to keep the employer informed and to cooperate in the defense, and to provide equal treatment of all types of employees.

cc: Representative Brian Porter

The New ATU
Behind Every Call You Make

Anchorage Telephone Utility

Executive Offices

January 20, 1994

Representative Brian Porter
Room 122
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Porter:

I want to express my appreciation to you for introducing H.B. 277. This legislation would allow public entities to indemnify employees from personnel liability resulting from honest and efficient accomplishment of their job responsibilities. ATU fully supports this bill and urges its speedy approval.

Our society is seeing increasing numbers of former employees arguing wrongful discharge cases in front of juries. Without regard to the merits of such cases, our system of justice places public employees in a precarious position. Plaintiffs in such actions can not gain punitive damages from a public entity; punitive damages may only be applied to a private entity. Given this, plaintiffs' attorneys will often name an individual as defendant in order to establish a party with punitive liability or, as may be the case, simply to provide leverage.

While individuals so named, more often than not, eventually are relieved of liability, their lives in the meantime can be dramatically impacted. An individual so named will have all credit suspended pending outcome of the case. Simply put, the individual is unable to buy a house, a car or even a large appliance through normal credit channels until the case is settled. In many instances, such cases take years to resolve.

600 Telephone Avenue ☎ Anchorage, Alaska 99503-6091 ☎ Telephone: (907) 561-3000 ☎ Fax: (907) 563-2688

Our concern in rectifying this unfair situation stems from our desire to have effective employees carrying out their responsibilities in a competent and efficient manner. Clearly, an employee who must consider his/her personal fortunes and those of his family each time he makes a decision will find his thinking swayed by this potential threat. We ask for this legislation to be passed so that our employees may work in an atmosphere free from the threat of personal reprisal.

Again, thank you for your efforts. If you need anything further from ATU regarding this legislation, please let me know.

Sincerely,

ANCHORAGE TELEPHONE UTILITY

James G. Morrison
General Manager

ALASKA PEACE OFFICERS ASSOCIATION

State APOA Office • P.O. Box 240106 • Anchorage, Alaska 99524-0106 • (907) 277-0615

January 18, 1994

Representative Brian Porter
State Capitol
Juneau, AK 99801

Dear Representative Porter,

The Alaska Peace Officers Association supports House Bill 277. We believe that government must be held responsible for its actions. When someone is wrongly harmed through the actions of government, injured parties should be able to make claims as appropriate. However, we believe very strongly that government employees should be defended and protected when their actions are made in good faith and without malice.

Generally when a lawsuit is filed, employees are listed as parties to the action. In the past, employees have not been held personally liable for actions taken at the behest of their employer, unless they were clearly working outside the scope of their authority. This seems to be changing. Recent court rulings imposing personal punitive damages are placing the livelihoods of our public employees in jeopardy.

The trend where public employees are being held personally liable places employees in a position where their own personal assets are at risk. All government employees are in danger, from the highest level policy maker to the lowest level of workers where those policies are carried out. The social worker, the road maintenance supervisor, the police officer, the medic, the fire fighter, and elected officials are all vulnerable.

We in law enforcement believe this is an undue burden upon the state's public employees, It carries great potential for the workings of government to become bogged down because employees fear that decisions they make in good faith may result in the loss of their assets. I encourage you and your colleagues to support House Bill 277.

Sincerely,

Michael A. Grimes, Statewide President
Alaska Peace Officers Association

ANCHORAGE POLICE DEPARTMENT

4501 SOUTH BRAGAW STREET ♦ ANCHORAGE, ALASKA 99507-1599
TELEPHONE (907) 786-8500

Tom Fink, Mayor

Service since 1921

January 18, 1994

Representative Brian Porter
House of Representatives
Alaska State Legislature
Juneau, Alaska 99801-1182

Dear Representative Porter,

I am writing this letter in support of House Bill 277, which would require public employers to indemnify public employees with respect to law suits and legal claims made against employees who are working within the scope and authority of their position. I can safely represent that the subject of indemnification is very important to all public employees.

Law enforcement over the years has identified indemnification as a top legislative priority. Our premise is simple. We believe that when a public employee is working at the behest of their employer, and they operate in good faith and within their proper authority, employees should be indemnified.

This is not an argument for protection of bad employees. It is a request that, as a matter of law, employers protect employees who are doing the work of the government. Threatened or actual legal action has a very chilling effect on any employee. If personal assets or wealth are unfairly at risk, employees are discouraged from making decisions or taking action.

We are happy to work with you and the Legislature in the passage of this bill. If you have any questions, please contact me at 786-8552.

Sincerely,

Duane S. Udland

Duane S. Udland, Deputy Chief
Anchorage Police Department
4501 South Bragaw
Anchorage, Alaska 99507

Alaska Association Chiefs of Police

January 17, 1994

Representative Brian Porter
House of Representatives
State Capital
Juneau, Alaska, 99811

Dear Representative Porter:

Two years ago the Alaska Association of Chiefs of Police, the Alaska Peace Officers Association, and the FBI National Academy Associates identified the indemnification of public employees as their number one legislative priority. This issue is even more timely and critical now. The following is the combined statement and position of the three professional law enforcement associations concerning indemnification.

"We believe that government must be held responsible for its actions. When someone is wrongly harmed through the actions of government, injured parties should be able to make claims as appropriate. However, we believe very strongly that government employees should be defended and protected when their actions are made in good faith.

Generally when a lawsuit is filed, individual employees are listed as parties to the action also. In the past, employees have not been held personally liable for actions taken at the behest of their employer unless they were clearly working outside the scope of their authority. This seems to be changing. Recent court rulings imposing personal punitive damages are placing the livelihoods of public employees in jeopardy.

The trend to hold public employees personally liable places employees in a position where their own personal assets are at risk. This means that all government employees are in danger, from the highest level policy maker to the level of worker where the policy is implemented. Even elected officials are vulnerable today.

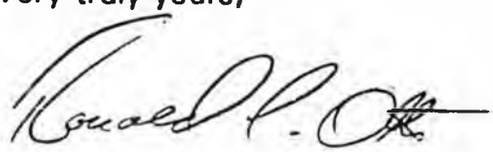
We in law enforcement believe this is an undue burden upon the public employees of this State. It carries the potential for the workings of government to become bogged down because employees fear that decisions they make in good faith may result in the loss of their assets.

When employees are doing the work of the government, within the scope of their authority, and without malice, they should not be held personally liable when they are named as parties to law suits.

Legislation should be passed that indemnifies public employees and frees them from the burden of working under the constant threat that their good faith judgments can result in the loss of their homes, their cars, or their savings."

If we can be of any assistance in the passage of your bill please let me know.

Very truly yours,



Ronald L. Otte
President

RLO/lp