

ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 8672

9822 HOUSE HEALTH EDUCATION & SOCIAL SERVICES

3

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE COGHILL

TO: CSHB 301(HES)

1 Page 4, line 11:

2 Delete lines 11 - 17

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14 The purpose of this amendment is to allow the Department the latitude of establishing  
15 special programs such as gifted and talented, but not mandating special programs other  
16 than those mandated and funding by the federal government, such as existing language in  
17 the bill does.

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*Sec. 14.30.300. Nonresident apportionment. [Repealed, § 5 ch 70 SLA 1963.]*

**Sec. 14.30.305. State support of programs for children hospitalized or confined to their homes.** A child who is hospitalized or confined to home and who receives at least 10 hours of special education and related services per week may be counted as a pupil in average daily membership when computing state support under the public school funding program. (§ 2 ch 46 SLA 1966; am § 14 ch 147 SLA 1984; am § 29 ch 83 SLA 1998)

**Cross references.** — For provisions of the public school foundation program, see AS 14.17. effective July 1, 1998, substituted "funding" for "foundation" near the end.

**Effect of amendments.** — The 1998 amendment,

*Sec. 14.30.310. Hospitalized and homebound children. [Repealed, § 5 ch 70 SLA 1963.]*

**Sec. 14.30.315. State support of programs for gifted children.** (a) *[Repealed, § 39 ch 83 SLA 1998.]*

(b) Nothing in this section prohibits the department from requiring approval of programs of special education and related services for other categories of exceptional children. (§ 15 ch 147 SLA 1984; am § 39 ch 83 SLA 1998)

**Effect of amendments.** — The 1998 amendment, effective July 1, 1998, repealed subsection (a).

*Sec. 14.30.320. Reimbursement for hospitalized or homebound children. [Repealed, § 5 ch 70 SLA 1963.]*

**Sec. 14.30.325. Surrogate parents.** (a) The department may by regulation provide for the appointment of surrogate parents to represent exceptional children in matters relating to the provision of an appropriate public education.

(b) A surrogate parent is not liable for civil damages as a result of an act or omission committed in the surrogate parent's official capacity, except that a surrogate parent may be liable for civil damages as a result of gross negligence or intentional misconduct. (§ 15 ch 147 SLA 1984)

*Sec. 14.30.330. Application for enrollment. [Repealed, § 19 ch 147 SLA 1984.]*

**Sec. 14.30.335. Eligibility for federal funds.** Notwithstanding any other provision of AS 14.30.180 — 14.30.350, the department may do all things necessary to qualify for federal funds that are available to the state for the education of exceptional children. (§ 16 ch 147 SLA 1984)

**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

put back  
in statutes

Defecto

AMENDMENT

4  
Page 1  
Corrected

OFFERED IN THE HOUSE

BY REPRESENTATIVE COGHILL

TO: CSHB 301(HES)

1 Page 1, line 12

2 Delete:

3 "shall"

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5 Beginning on Page 1, line 13:

6 Delete subsection (1), subsection (2), & subsection (3);

7

8 Page 1, line 12, after the words "The department may"

9 Insert:

10 , notwithstanding any other provision of AS 14.30.180 – 14.30.350, may

11 (1) do all things necessary to qualify for federal funds that are available to the state for

12 the education of exceptional students;

13 (2) adopt regulations necessary to comply with AS 14.30 – 14.30.350.

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15 Page 2, line 7:

16 Delete: (4)

17 Insert: (3)

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19 Page 5, line 5, after "14.30.285,"

20 Insert: 14.30.335,

21

1 Page 5, line 2:

2 Delete:

3 "under state and federal law, including regulations adopted by the department;"

4

5 Page 5, line 2:

6 Insert:

7 under state law;

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11 The purpose of this amendment is to make provisions for the Department to write regulations  
12 consistent with state law, but to stop short of providing for the Department to write  
13 regulations and impose laws to comply with new federal laws that are not consistent  
14 with state law. It is the duty of the legislature to impose state laws. The original wording  
15 of this section delegated to the Department the authority to implement and enforce federal  
16 laws that may be inconsistent with state law and without any review by the legislature.

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Amendment No. \_\_\_\_\_

By:  
Date:

- 1 In Section 6, page 3, line 22, delete "school district" and add the phrase:
- 2 "department through a process of random selection"

1-GH2003VD  
Ford  
3/21/00

**CS FOR HOUSE BILL NO. 301(HES)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-FIRST LEGISLATURE - SECOND SESSION**

**BY THE HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE**

Offered:  
Referred:

Sponsor(s): **HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to the education of exceptional children; and providing for an  
2 effective date."

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

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

5 **Sec. 14.30.180. Purpose.** It is the purpose of AS 14.30.180 - 14.30.350 to

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

8 (2) allow procedures and actions necessary to comply with the  
9 requirements of federal law, including 20 U.S.C. 1400 - 1487 [20 U.S.C. 1400 - 1485]  
10 (Individuals with Disabilities Education Act).

11 \* Sec. 2. AS 14.30 is amended by adding a new section to read:

12 **Sec. 14.30.182. Duties of department.** The department shall

13 (1) cooperate with the federal government and do all things necessary  
14 to continue state eligibility for federal money available under 20 U.S.C. 1400 - 1487

1 (Individuals with Disabilities Education Act);

2 (2) comply with the requirements of 20 U.S.C. 1400 - 1487 (Individuals  
3 with Disabilities Education Act) and other federal law related to children with  
4 disabilities; if a provision of AS 14.30.180 - 14.30.350 conflicts with federal law and  
5 the conflict would affect the continued receipt of federal money, the department shall  
6 comply with the federal provision necessary to ensure continued receipt of that money;

7 (3) adopt regulations necessary to comply with state law and federal  
8 law for the education of exceptional children, including 20 U.S.C. 1400 - 1487  
9 (Individuals with Disabilities Education Act); and

10 (4) make an annual report available to the legislature by January 31;  
11 the report must include

12 (A) a side-by-side comparison of the federal requirements for  
13 special education services and the special education services provided by the  
14 department;

15 (B) a description of special education services provided under  
16 AS 14.30.180 - 14.30.350 that are not required under federal law; and

17 (C) any suggestions for changes to special education services  
18 provided by the state.

19 \* Sec. 3. AS 14.30.186 is repealed and reenacted to read:

20 Sec. 14.30.186. Coverage. The school district in which a child with a  
21 disability is enrolled is responsible for providing special education and related services  
22 to the child.

23 \* Sec. 4. AS 14.30.193(a) is repealed and reenacted to read:

24 (a) A school district or a parent of a student with a disability may request a  
25 due process hearing on any issue related to identification, evaluation, educational  
26 placement, or the provision of a free, appropriate, public education regarding a student  
27 with a disability.

28 \* Sec. 5. AS 14.30.193(b) is repealed and reenacted to read:

29 (b) A request by a parent for a due process hearing must be made not later  
30 than 12 months after the date the school district provides the parent with written notice  
31 of the decision with which the parent disagrees and with written notice of procedural

1 safeguards available to that parent in federal law. A school district shall make its  
2 request under (a) of this section under regulations adopted by the department.

3 \* Sec. 6. AS 14.30.193(c) is repealed and reenacted to read:

4 (c) If a due process hearing is requested by a parent or school district, the  
5 school district shall provide the parent with the names of three qualified hearing  
6 officers from a list maintained by the department. The parent may choose one person  
7 from the list of three provided by the school district. If the parent does not select a  
8 name, the school district may appoint as hearing officer any person from the list  
9 maintained by the department. After appointment under this subsection, a hearing  
10 officer shall proceed under regulations adopted by the department.

11 \* Sec. 7. AS 14.30.193(h) is amended to read:

12 (h) The department shall maintain a list of qualified hearing officers. The  
13 department shall qualify hearing officers through a training program that is [SHALL  
14 BE] open to all persons who meet the criteria set by the department by regulation  
15 [RESIDENTS OF THE STATE. A HEARING OFFICER MAY BE QUALIFIED FOR  
16 A PERIOD NOT TO EXCEED FIVE YEARS]. The list of qualified hearing officers  
17 shall be maintained as a public record.

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

19 (a) The department shall, by regulation, provide for administrative appeal  
20 hearings, based on the record, of impartial hearing officers' decisions under  
21 AS 14.30.193. An administrative appeal hearing shall comply with all requirements  
22 necessary for participation in federal grant-in-aid programs, including 20 U.S.C. 1400 -  
23 1487 [20 U.S.C. 1400 - 1485] (Individuals with Disabilities Education Act).

24 \* Sec. 9. AS 14.30.315 is repealed and reenacted to read:

25 **Sec. 14.30.315. Programs for gifted children.** Every school district shall  
26 establish a program for the provision of educational services for gifted children,  
27 consistent with regulations adopted by the department.

28 \* Sec. 10. AS 14.30.340(a) is amended to read:

29 (a) If a parent of a [AN EXCEPTIONAL] child with a disability enrolls the  
30 child in a private or religious school at the parent's expense or teaches the child at  
31 home, the school district in which the child resides [IS LOCATED] shall make special

1 education and related services available in conformance with an individual services  
2 plan as authorized by federal law. A parent who teaches a child at home may  
3 refuse special education and related services [INDIVIDUALIZED EDUCATION  
4 PROGRAM UNDER AS 14.30.278].

5 \* Sec. 11. AS 14.30.350(1) is amended to read:

6 (1) "appropriate public education" means personalized instruction with  
7 sufficient support services to permit a child to benefit educationally from the  
8 instruction, under state and federal law, including regulations adopted by the  
9 department;

10 \* Sec. 12. AS 14.30.191, 14.30.193(d), 14.30.193(e), 14.30.235, 14.30.272, 14.30.274,  
11 14.30.276, 14.30.278, 14.30.285, 14.30.325, 14.30.340(b), 14.30.347, 14.30.350(3),  
12 14.30.350(4), 14.30.350(7), 14.30.350(8), 14.30.350(9), and 14.30.350(11) are repealed.

13 \* Sec. 13. This Act takes effect immediately under AS 01.10.070(c).



The Honorable Brian Porter  
January 19, 2000  
Page 2

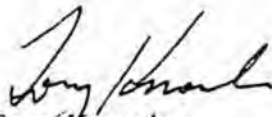
program may have to be creative in providing the required services to a special education student. It may, for example, have to contract with the student's home district for assistance in providing those services, or may have to make other arrangements.

Present state law also provides that services for "exceptional children" include programs for gifted and talented children along with programs for children with disabilities. Federal money is available for children with disabilities but cannot be used for gifted and talented programs. To be consistent with federal policy, this bill separates special education requirements from offerings for gifted and talented children, while retaining the requirement that school districts provide programs for gifted and talented children. The department will adopt regulations to assist school districts in meeting this requirement.

The bill also clarifies the method by which hearing officers are appointed to address appeals of special education issues. It requires the department to maintain a list of qualified hearing officers, establish criteria by which persons may be qualified, and provide appropriate training to them.

As part of Alaska's commitment to quality education of our young people, I urge your prompt and favorable action on this bill.

Sincerely,



Tony Knowles  
Governor



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

FEB 28 2000

Honorable Richard S. Cross  
Commissioner  
Alaska Department of Education and  
Early Development  
Goldbelt Place  
801 West 10th Street, Suite 200  
Juneau, Alaska 99801-1894

Dear Commissioner Cross:

This is in response to your letter dated February 14, 2000, in which you set out what you refer to in your inquiry as "unique circumstances" that you indicate the Alaska Department of Education (AKDE) has faced since the reauthorization of the Individuals with Disabilities Education Act Amendments of 1997, Pub. L. 105-17, (IDEA '97). You ask about the possibility of a waiver of the State's requirement to review and revise Alaska's state statutes regarding special education in light of the changed Federal requirements of IDEA '97 and its implementing regulations.

As explained below, a waiver is not possible.

Under IDEA '97, to be eligible for funds a State "must demonstrate to the satisfaction of the Secretary that the State has in effect policies and procedures to ensure that it meets each of the conditions [set forth in section 612(a) of the Act and the implementing regulations]." Most of the provisions of IDEA '97 regarding State eligibility for formula grants for special education became effective on June 4, 1997, the date of enactment. See section 201(a) of IDEA '97. Some statutory changes, however, had a delayed effective date, until July 1, 1998. In addition, final Department regulations implementing IDEA '97 were published on March 12, 1999, and became effective on May 11, 1999.

Recognizing that States would need some time to revise State statutes and regulations consistent with new IDEA provisions, for Federal fiscal years 1997, 1998, and 1999, States were allowed -- in lieu of providing revised policies and procedures -- to submit an assurance that throughout the period of the grant award, all public agencies in the State would comply with the pertinent requirements of IDEA '97 and the provisions of the then current regulations that were not in conflict with the requirements of IDEA '97, as well as any State laws, policies, and procedures under IDEA approved by this Office that were not inconsistent with IDEA '97. This was not a waiver of State compliance responsibility but a realistic approach to allow States time to conform their policies and procedures to IDEA requirements, while operating in a manner that was consistent with those new requirements. Alaska submitted the required assurances for receipt of FFY 1997, 1998 and 1999 Part B grant awards. States were advised, however, that once the IDEA '97 regulations were final, they would be required to submit their conforming policies and procedures, including revised statutes and regulations, as appropriate, in order to establish

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Additional Information

eligibility for subsequent awards. Thus, final policies, procedures or regulations implementing IDEA 97 are to be submitted with the States' FFY 2000 applications. Subsequent to the publication of the final regulations, the Office of Special Education Programs staff worked cooperatively with States to review a State's existing policies and procedures in light of the changes made by IDEA '97 and its regulations and develop an 'Implementation Plan' to guide the State through conforming modifications to policies, procedures and practices. Alaska's 'Implementation Plan', like that of other States, identified the IDEA requirements that had changed and for which State statutes and regulations would need to be revised:

The only IDEA-specific waiver authority that would allow a State not to comply with program requirements is the authority the Secretary has to grant waivers relevant to State level nonsupplanting and maintenance of fiscal support in certain very limited circumstances. See 20 U.S.C. §1412(a)(18)(C) and 1412(a)(19)(C) and (E); 34 CFR §300.589. Other waiver authority of the Department under programs such as Goals 2000 and the Elementary and Secondary Education Act does not apply and has never applied to the IDEA.

We understand the personnel matters in Alaska that have occurred during the implementation of the new Federal requirements. However, we have an obligation to ensure that a State that participates in the IDEA special education program is operating consistent with IDEA '97 and its implementing regulations and that all children with disabilities in the State have the rights and protections afforded thereunder.

We appreciate your commitment to provide quality educational services to children and youth with disabilities. My staff and I are available to provide any necessary technical assistance to support your efforts.

Sincerely



Kenneth R. Warlick  
Director  
Office of Special Education  
Programs

# FISCAL NOTE

Bill Version: HB 301

(H) Publish Date: 1/21/00

**STATE OF ALASKA  
2000 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction) \_\_\_\_\_ Dept. Affected Education & Early Dev.  
 Title Education of Exceptional Children BRU Teaching and Learning Support  
 Component Special & Supplemental Services  
 Sponsor Rules Committee  
 Requester Governor Knowles Component No. 166

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

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2000) cost: \_\_\_\_\_

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill proposes statute changes that would bring Alaska law into compliance with federal laws and regulations regarding special education services. There are no expected fiscal impacts to the Department as a result of this bill.

Prepared by: Barbara Thompson, Deputy Director Phone 465-8727  
 Division Commissioner's Office Date/Time 12/20/99 4:14 PM  
 Approved by Commissioner Richard S. Cross Date 1-6-2000  
 Agency Education & Early Development

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**REPEALED AND REENACTED:**

**Sec. 14.30.186. Coverage.**

(a) A borough or city school district shall provide special education and related services for exceptional children residing in the district.

(b) The board of a regional educational attendance area shall provide special education and related services in a school in the area for exceptional children residing in the area served by the school.

(c) [Repealed, Sec. 19 ch 147 SLA 1984].

(d) [Repealed, Sec. 19 ch 147 SLA 1984].

(e) Exceptional children being educated as provided under AS 14.30.010(b) may receive 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. 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) A hearing officer may not be appointed under this section unless approved in writing by the parent; however, parent approval of a hearing officer is not required if the parent has been offered and has rejected three different hearing officers. 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.

**Sec. 14.30.315. State support of programs for gifted children.**

(a) [Repealed, Sec. 39 ch 83 SLA 1998].

(b) Nothing in this section prohibits the department from requiring approval of programs of special education and related services for other categories of exceptional children.

Sec. 14.30.320. Reimbursement for hospitalized or homebound children.  
[Repealed, Sec. 5 ch 70  
SLA 1963].

**REPEALED:**

Sec. 14.30.191. Educational evaluation and placement.

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

(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, an exceptional child shall receive an educational evaluation for the identification and classification of exceptional children.

(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.

(d) Upon completion of the evaluation and before placement, the school district shall provide to the parent 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.

(e) A parent may obtain an independent educational evaluation by choosing a person from a list provided by the district or by choosing a person by agreement between the parent and the school district, 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 the hearing officer determines that the evaluation is appropriate, the school district may not be required to pay for the independent educational evaluation.

(f) If the parent 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.

(g) If a hearing officer requests an independent educational evaluation as part of a hearing, the school district shall pay for the evaluation.

Sec. 14.30.193 (d) & (e)

(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 participation in evaluation, placement, or transfer.

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. 14.30.272. Procedural safeguards.

(a) A school district shall inform the parent 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 choosing a person from a list provided by the district or by choosing a person by agreement between the parent and school district, 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.

(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. 14.30.274. Identification of exceptional children.

Each school district shall establish and implement written procedures to ensure that all exceptional children under the age of 22 who reside in the district are identified and located for the purpose of establishing their need for special education and related services.

Sec. 14.30.276. Least restrictive environment.

Each school district shall ensure that to the maximum extent appropriate, exceptional children, including children in public or private institutions or other care facilities, are educated with children who are not exceptional and that special classes, separate schooling, or other removal of exceptional children from the regular educational environment occurs only when the nature or severity of the child's exceptionality is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

Sec. 14.30.278. Individualized education program.

(a) The individualized education program for each exceptional child must include

- (1) a statement of the child's present levels of educational performance;
- (2) a statement of annual goals, including short term instructional objectives;
- (3) a statement of the specific special education and related services to be provided to the child, and the extent to which the child will be able to participate in regular educational programs;
- (4) the projected dates for initiation of services and the anticipated duration of the services;
- (5) appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short term instructional objectives are being achieved.

(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;
- (4) the child, when appropriate;
- (5) other individuals selected by the parent or school district.

(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. 14.30.285. Transfers of exceptional children.

(a) The department shall institute a statewide program for the education of exceptional children, to ensure that whenever possible children are educated in the state at locations in or near their resident school district.

(b) An identified exceptional child may be sent to an educational program or residential school outside the child's community or school district if the child resides in a community or school district where an appropriate educational program cannot reasonably be made available and if the department determines that provision of special education and related services in another educational program or residential school is appropriate. If the school district and the department approve the enrollment of the exceptional child in another educational program or residential school outside the child's community or school district and the child is enrolled, the child's education expenses shall be paid as follows:

(1) except as otherwise provided by (2) of this subsection, the sending district shall pay all costs associated with the transfer;

(2) the department may provide financial assistance to the district for a child's education provided for in (1) of this subsection under regulations adopted by the department.

(c) [Repealed, Sec. 19 ch 147 SLA 1984].

(d) For the purposes of this section a child's education expenses are limited to the actual cost of necessary care, transportation, and special education and related services, including room and board.

(e) The educational assessment of an exceptional child that indicates that the educational program that is locally available is inappropriate for the needs of the child must conform to the standards set out in AS 14.30.191.

(f) A school district shall obtain the consent of the child's parent before a child may be transferred to a school outside the district in which the child resides.

(g) The withholding of consent by a parent 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. 14.30.325. Surrogate parents.

(a) The department may by regulation provide for the appointment of surrogate parents to represent exceptional children in matters relating to the provision of an appropriate public education.

(b) A surrogate parent is not liable for civil damages as a result of an act or omission committed in the surrogate parent's official capacity, except that a surrogate parent may be liable for civil damages as a result of gross negligence or intentional misconduct.

Sec. 14.30.340. Provision of special education in a private school, home, or hospital setting.

(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. 14.30.347. Transportation of exceptional children.

When transportation is required to be provided as related services, an exceptional child shall be carried with other children if the district provides transportation to other children in the district except when the nature of the physical or mental disability is such that it is in the best interest of the exceptional child, as determined by the school district, that the child 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. 14.30.350 Definitions:

(3) "consent" means the parent has been fully informed of all information relevant to the activity or the release of records for which consent is sought and the parent understands and voluntarily agrees to the activity or release of records;

(4) "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;

(7) "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;

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

(9) "related services" means transportation and developmental, corrective, and other supportive services required to assist children with disabilities or gifted children 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;

(11) "special education" means specially designed instruction, at no cost to the parent, to meet the unique needs of exceptional children, 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, 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; in this paragraph



TONY KNOWLES, GOVERNOR  
State of Alaska

**GOVERNOR'S COUNCIL ON DISABILITIES AND SPECIAL EDUCATION**

P.O. Box 240249 • Anchorage, Alaska 99524-0249 • Phone: 907-269-8990 • Fax: 907-269-8995

March 22, 2000

Representative Fred Dyson  
Alaska State Legislature  
State Capitol, Room 104  
Juneau, AK 99801-1182

Dear Representative Dyson:

Subject: HB 301

In its role as the state's Special Education Advisory Committee, the Governor's Council on Disabilities and Special Education asks for your support for HB 301 under consideration by the House Health and Social Services Committee on March 23, 2000. As we understand it, the bill revises Alaska Statute by incorporating amendments to the Individuals with Disabilities Education Act (IDEA).

With the improvements that we discuss below, the Council supports the passage of HB 301.

HB 301 will repeal conflicts and inconsistencies between state and federal law and incorporate the IDEA amendments into the state's procedures. Some of the most significant changes made to IDEA in 1997 that strengthen the role and responsibilities of parents in the education of their children in special education include:

- participation of children and youth with disabilities in state and districtwide assessment (testing) programs such as the Alaska High School Qualifying Exam;
- the way in which evaluations are conducted;
- parent participation in eligibility and placement decisions
- development and review of the Individualized Education Program (IEP) including an emphasis upon participation of students with disabilities in the general education classroom and in the general curriculum, with appropriate aids and services;
- the addition of transition planning;
- voluntary mediation as a means of resolving parent-school controversies; and
- discipline of children with disabilities.

**Suggested improvements to the proposed language in HB 301:**

The proposed change in Section 3 (line 11) to AS 14.30.126 clarifies a district's responsibility to provide special education when the student enrolls in a statewide correspondence program. Additionally, Section 10 (line 22) which makes changes to AS 14.30.340 (a) clarifies a district's accountability for funding special education when a student enrolls in a private school with the agreement of the district. Clarifying this accountability is helpful. However, neither of the proposed changes clarifies what type of services can be received.

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To	R.P. Fred Dyson	F#
Co.	W.S. Kelley	Co.
Dept.	2 PAGES	Prio.

Sometimes when these situations have occurred in the past, districts have had problems in resolving issues of providing transportation and related services. Many times the districts will enter Memorandums of Agreement to define their responsibilities. If the department is authorized to write regulations for this section, the regulations should identify further the services that must be funded under these sections.

We are concerned about the limitations on parents to request a due process hearing and their access to information about hearing officers. In Section 5 (line 21), AS 14.30.193, the change would only allow a 6 month period of time in which a parent may request a due process hearing to resolve a dispute with the district. Given the emphasis to explore other remedies to conflicts between parents and districts, this time limit is too short and it puts the parents in a difficult position to resolve problems with schools using other methods. As we understand it, the Committee Substitute provides at a one year time period in which to request a due process hearing and we support this amendment.

The proposed change to AS 14.30.193 in Section 7 (line 06) would allow the department to set criteria for hearing officers by regulations. Under this section, the department must provide the parents requesting a hearing with a list of qualified hearing officers. This section can be improved by adding to the list of hearing officers a statement of qualifications of each hearing officer and a disclosure of any relationship that may exist between a hearing officer and a district or conflicts of interest that may interfere with the hearing officer's objectivity.

Section 9 (line 18), AS 14.30.340 (a) would separate gifted and talented programs from services for exceptional children (students in special education). This change may better represent the nature of special education and resolve concerns about the use of federal special education funding. However, the proposed language does not assure that the current procedures available to parents of gifted students will continue under the new statute. These procedures are of great value to parents as they assure that they are partners in planning, evaluating, and directing the education of their children.

We suggest the legislature make it clear that in writing regulations to implement Section 9 current procedures available to the parents of gifted students must continue. Additionally, we request that the legislature direct the department to adopt consistent criteria for eligibility, level of service, and uniform practices in the delivery of Gifted and Talented Education curriculum across the state.

Thank you for your thoughtful consideration of these suggested amendments. If we can answer any questions regarding the Council's position or suggested improvements to HB 301, please contact me at 907 269 8991.

Sincerely,



David Maltman,  
Executive Director

# STATE OF ALASKA

Department of Education & Early Development

Office of the Commissioner

TONY KNOWLES, GOVERNOR

Goldbell Place  
801 West 10<sup>th</sup> Street, Suite 200  
Juneau, Alaska 99801-1894  
(907) 465-2800  
(907) 465-4156 Fax

March 27, 2000

The Honorable Fred Dyson, Chair  
House Health Education & Social Services Committee  
Alaska State Legislature  
State Capitol, Room 104  
Juneau, AK 99801-1182

Dear Representative Dyson:

The enclosed committee substitute (CS) for HB 301 is offered in response to written and oral testimony received at the March 23, 2000 meeting of the House HESS committee. We offer this letter to address the points presented and to explain the manner in which they are addressed in the CS or the reason that they are not addressed through a proposed amendment.

- (1) Looking first to the extensive written testimony presented by the Disability Law Center (DLC), we have to disagree with the characterization offered that "the federal IDEA provides only a framework for special education." (Pg. 1). In fact, the federal IDEA statutes contain 51 pages of detailed requirements that the state must comply with in order to be eligible for federal IDEA funding, and the federal IDEA regulations contain 74 pages of interpretations and definitions of those federal statutes in a like format. In comparison, the current State special education statutes total eight pages of large format, much more generalized requirements. The department has therefore determined that rather than continue the practice of trying to providing a short, paraphrased duplication of the far more detailed federal requirements, the department, the districts, and the special education community would be better served by directly adopting the detailed federal provisions as the substantive requirements of state law.
- (2) The value of direct reliance on the federal law is well exemplified in responding to the next DLC suggestion (pages 2 - 4), that the proposed AS 14.30.186 would encourage districts to transfer their special education students out-of-district into private programs in order to escape financial liability for serving those students. The federal law expressly denies the possibility of this suggested scenario. 20 USC 1414(f) states:

*Educational placements.* Each local educational agency or State educational agency shall ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.

20 USC 1412(a)(10)(B)(i) provides:

Children with disabilities in private schools and facilities are provided special education and related services, in accordance with an individualized education program, at no cost to their parents, if such children are placed in, or referred to, such schools or facilities by the State or appropriate local educational agency as the means of carrying out the requirements of this part or any other applicable law requiring the provision of special education and related services to all children with disabilities within such State.

In summary, a district can't out-place a child with special needs – placement decisions are made by individualized education program (IEP) teams which must include the parents – and any out-of-district placement must provide for full special education services in the out-placement setting at no cost to the parents. Rather than attempting to restate these lengthy, detailed federal requirements (which must be strictly complied with to maintain State funding eligibility) verbatim in the state statutes, the department proposal directly incorporates the entire federal IDEA program language by reference.

- (3) The department agrees with the suggestions of the DLC, the Alaska Mental Health Board, and David Maltman that a clarification of the "Coverage" requirements of proposed AS 14.30.186 could improve the state statute. The listing of each category of public education provider, as suggested in the DLC proposed subsection (a), is adopted in the CS. An additional new paragraph (5) is added to include the category of statewide correspondence study programs.
  - A. AS 14.30.186(b). The DLC proposed AS 14.30.186(b) would provide that parents could unilaterally place their children in any educational program (including any private program) without compliance with the federally mandated IEP process discussed above, and could then require the district of residence to fund that unilateral placement. Federal law does allow a parent to opt-out of a special education program offered by a district. However, where a parent unilaterally places their child in a private program -- typically at tremendously greater expense than the cost of a district program -- the parent is responsible for funding that private placement unless it is established that the district offered IEP did not provide a free appropriate public education under federal law. (20 USC 1412 (a)(10)(B)(ii))

The federal law sets out an administrative process through which the parent may contest the "appropriateness" of the district program, instead of unilaterally transferring the child from the district program. This proposal – that a parent be authorized to unilaterally transfer their child from a district program to a private program at district expense *even where the district program meets IDEA requirements* – would be a substantial expansion of rights beyond those provided under the federal IDEA, and would have a very substantial fiscal note to the districts. The department proposal provides the full protections offered by the federal IDEA.

- B. AS 14.30.186(c). The DLC's proposed AS 14.30.186(c) attempts to assign financial responsibility between the districts. The department suggests that the State Board of Education is the appropriate body to determine the proper allocation of financial responsibility between the various public education entities. The Board has already addressed these allocations in regulations that allocate both financial responsibility and the coordination of provision of special education services in cases where a child is enrolled simultaneously in more than one district's programs. The CS therefore replaces the DLC proposed paragraph(c) with a new paragraph (o) that expressly charges the State Board with adopting regulations that coordinate the provision of special education and related services and allocate financial responsibility, between the various educational programs in which a child is enrolled.
- (4) Statute of limitations. The CS lengthens the statute of limitations period from six months to twelve months. This time period for filing a request for a due process hearing essentially comes into play only where a parent is seeking financial reimbursement from a district for the parent's unilateral placement of their child in a private program – since in any case where the parents are seeking a modification of the child's on-going IEP provided by a district the issues involve a current ongoing problem. Since a parent is obviously aware that they have undertaken a large financial burden as soon as they enroll their child in a private program, the department believes that a twelve month statute of limitations would provide all the reasonable time necessary for a parent to exhaust mediation and other alternative dispute resolution systems and initiate a due process hearing on the reimbursement issue.
- (5) The proposed CS incorporates the suggestion of the DLC and of David Maltman that a notice of the qualifications of the potential due process hearing officers be provided to parents.

- (6) Abolition of state mandates. As discussed above, the department strongly disagrees with the suggestion that the federal IDEA provides merely a general framework for state and district special education programs. Even a quick review of the federal IDEA reveals that the (125+) pages of detailed federal requirements far surpass the (eight pages) current state special education statutes that are suggested be retained. We have provided copies of the current state statutes attached to the corresponding provisions of the federal IDEA, to illustrate this comparison. For example, provisions on "Individualized Education Programs" (IEP) in AS 14.30.278 are 22 lines long – less than half a page – while in federal law, the IEP provisions include nearly two full pages in 20 USC 1414(d) plus over three pages in 34 CFR 300.340 - 300.350.

This is not a question of whether the state should comply with the federal law instead of complying with state law – compliance with federal requirements will ensure that students with disabilities are well served. The department has therefore proposed simply adopting the detailed federal requirements into state law. If left in the state statutes as suggested by the DLC, the differently worded state requirements will

- at a minimum be merely duplicative of the more detailed federal requirements; and
- likely open the state and districts to additional litigation based on arguments of non-compliance with the differently worded state statutes despite our compliance with the more detailed federal requirements.

In summary, the much shorter and less detailed provisions of the current state statutes provide no additional substantive protection to Alaskan children with disabilities over the detailed protections of the federal law. The department's suggestion that the detailed federal requirements be adopted by reference into the Alaska Statutes will insure that the state will provide students with disabilities with the full extensive protections of federal law.

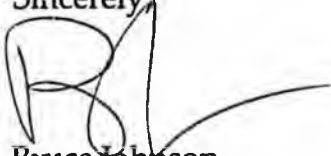
- (6) Gifted and talented program. Present state law intertwines the gifted and talented programs within the state special education program statutes. The department has been directly notified by the federal Department of Education that the expenditure of federal special education funds, including the utilization of federally funded state personnel, on gifted and talented programs is a misallocation of those federal funds and must be stopped. For this reason the proposed HB301 directly removes the

Representative Dyson  
March 27, 2000  
Page 5 of 5

gifted and talented program from the special education statutes and places the requirements in a separate section in AS 14.30.315.

In response to testimony received at the March 23<sup>rd</sup> House HESS committee hearing, the department's proposed CS provides an expanded outline of the required components of a district gifted and talented program, and the department plans to address additional needed guidance on specific program requirements through regulations to be adopted by the State Board of Education. Gifted and talented programs are the responsibility of the local district, and there are no federal funds provided for department pass-through to the districts designated specifically for the gifted and talented program category.

Sincerely

A handwritten signature in black ink, appearing to read "Bruce Johnson", with a long horizontal flourish extending to the right.

Bruce Johnson  
Deputy Commissioner

Enclosure

WSS HB 301

FRANK H. MURKOWSKI  
ALASKA

COMMITTEES:

CHAIRMAN  
ENERGY AND NATURAL RESOURCES

FINANCE  
VETERANS' AFFAIRS  
INDIAN AFFAIRS

# United States Senate

WASHINGTON, DC 20510-0202  
(202) 224-6665  
(202) 224-5301 FAX

222 WEST 7TH AVENUE, BOX 1  
ANCHORAGE, AK 99513-7570  
(907) 271-3735

101 12TH AVENUE, BOX 7  
FAIRBANKS, AK 99701-6278  
(907) 456-0233

P.O. BOX 21647  
JUNEAU, AK 99802-1647  
(907) 586-7400

130 TRADING BAY ROAD, SUITE 350  
KENAI, AK 99611-7716  
(907) 283-5808

109 MAIN STREET  
KETCHIKAN, AK 99901-6409  
(907) 225-6880

851 E. WESTPOINT DRIVE, SUITE 307  
WASILLA, AK 99654-7142  
(907) 376-7665

March 1, 2000

The Honorable Fred Dyson  
The Honorable Mike Miller  
Senate and House Committee on  
Health, Education & Social Services  
State Capitol  
Juneau, AK 99801-1182

Dear Fred and Mike:

Thank you for writing me about Alaska's efforts to meet the requirements of federal disability laws. I understand the difficulty in quickly complying with a regulation that just became effective on May 11, 1999. Unfortunately, after reviewing applicable law and consulting with the Department of Education's Office of Special Education Programs, I have found no provision that would allow Alaska to receive a waiver from compliance.

Under the Individuals with Disabilities Education Act Amendments of 1997 (IDEA '97), a state must demonstrate that it has in effect policies and procedures to ensure that it meets each condition set forth in the Act. Failure to comply with IDEA '97 would threaten funding in Alaska's FY 2000 applications.

There is no specific waiver which would allow Alaska to delay implementing policies and procedures to comply with IDEA '97 and still receive federal funding under the Act. The only IDEA-specific waiver authority allows the Secretary of Education to grant waivers in cases of unusual financial hardship.

While no waiver exemption exists, I would be willing to assist you in your efforts to comply with IDEA '97. Please do not hesitate to contact my office if I can be of assistance.

Sincerely,



Frank H. Murkowski  
United States Senator

*I know that  
you may want  
to be - but big  
brother makes  
exceptions -*



March 22, 2000

By fax and regular mail

Hon. John Coghill, Jr.  
Co-Chair, HESS Committee  
Alaska House of Representatives  
Capitol Room 416  
Juneau, Alaska

Hon. Fred Dyson  
Co-Chair, HESS Committee  
Alaska House of Representatives  
Capitol Room 104  
Juneau, Alaska

## JUNEAU

230 South Franklin  
Suite 209  
Juneau, AK 99801  
(907) 586-1627  
FAX (907) 586-1066

Re: **HB 301: Education of exceptional children**

Dear Reps. Coghill and Dyson:

We have reviewed the above-referenced bill. We are generally supportive of the concept of ensuring that state law is not in conflict with the recent revisions in 1997 of the federal IDEA, and the issuance of implementing regulations in 1999. Attached please find detailed comments on specific provisions of the bill. In summary, we believe the following sections of the bill should be revised (listed in section order, although not necessarily in order of priority):

Section 3: We note that this section is not required in order to ensure compliance with federal law, but instead contains an important change in state law. We are concerned that a shift from an obligation to deliver special education and related services **based on residence** to an obligation **based on enrollment**, coupled with the deletion of the mandates of A.S. 14.30.285, will be stepping away from community-based, inclusive special education and related services. We raise several unresolved questions regarding out-of-state and out-of-district placements, expulsions, suspensions, and service to children placed in youth detention facilities. We provide a revised form of AS 14.30.186 that, for the most part, retains the residency-based allocation of fiscal and administrative responsibility, while also attempting to address correspondence, boarding, and private school enrollments, as well as juvenile detention facility placements.

Section 5: we believe the proposed 6-month statute of limitations is contrary to federal law, and that the most analogous period to be applied should be two years. We believe this statute of limitations should apply to both parents and school districts.

MEMBER OF THE  
NATIONAL  
ASSOCIATION OF  
PROTECTION &  
ADVOCACY  
SYSTEMS

**Rep. John Coghill, Jr. and Rep. Fred Dyson, co-chairs, House HESS Committee**  
**Re: HB 301: Education of Exceptional Children**  
**March 22, 2000**  
**Page 2**

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Section 6: this section needs only a minor modification to make it consistent with the applicable federal regulation.

Section 12: this section contains the repeal of a number of Alaska special education laws, several of which are not clearly in conflict with federal law and have value in their own right as substantive state mandates. Thus we disagree with the proposal to delete such important State mandates as:

- the obligation to identify children needing special education and related services (also known as "childfind")
- the obligation to provide a free and appropriate public education in the least restrictive environment
- minimum State criteria for an individualized education program (IEP)
- State law definitions of "special education" and "related services" that we believe are nearly if not completely consistent with federal law

Alaskans believe in these public policy mandates. Their repeal cannot be justified on the grounds that there is conflict with federal law. We believe they should not be repealed.

Thank you for your consideration of our comments, and we look forward to continued dialog on this legislation. It is of great importance Alaska's students with disabilities, and their families.

Very truly yours,



Robert B. Briggs  
Staff attorney

Encl.

**Rep. John Coghill, Jr. and Rep. Fred Dyson, co-chairs, House HESS Committee**  
**Re: HB 301: Education of Exceptional Children**  
**March 22, 2000**  
**Page 3**

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Cc: (w/ encl.)

Rep. Joe Green  
Rep. Carl Morgan, Jr.  
Rep Jim Whitaker  
Rep. Tom Brice  
Rep. Allen Kemplen  
Sen. Mike Miller, Chair, Senate HESS committee  
Dave Maltman, Governor's Council on Disabilities and Special Education  
Faye Nieto, exec. dir., Tim Weiss, PARENTS, INC.  
P.J. Ford-Slack, Ph.D., Alaska Dept. of Education & Early Development  
Margot Knuth, AAG, Special Assistant to the Commissioner, Dept. of Corrections

(w/o encls.)

Dave Fleurant, legal director, Rick Tessandore, exec. dir., DLC-Anchorage



Statement of Steve Essley and Robert B. Briggs,  
staff attorneys, Disability Law Center of Alaska, Inc.

Testimony before the House Health, Education and Social Services Committee  
Alaska Legislature

Hearing on HB 301, Education of exceptional children

JUNEAU

230 South Franklin  
Suite 209  
Juneau, AK 99801  
(907) 586-1627  
FAX (907) 586-1066

March 23, 2000

The Disability Law Center is generally supportive of the proposition that Alaska's special education laws must not be in conflict with federal special education laws. However, in the effort to eliminate conflict, it should not be forgotten that the federal IDEA provides only a framework for special education. Much latitude is left for a state to fashion a specific design that best meets its needs. States remain free to impose mandates independent of the federal law that are found to be in the public interest, over and above what a federal law may require. In reviewing any change to Alaska's special education laws, care should be taken to ensure that a change does not inadvertently discard a valued public policy mandate under the guise of avoiding conflict with a federal law, if there is no real conflict between the two.

In this regard, we believe that certain provisions of HB 301 (and its identical companion, SB 205) make changes in substantive Alaska special education law that are not required, because the existing laws are *not in conflict* with federal special education law. We also believe some changes in the bill involve questions purely of state policy, in areas that have been left open by federal law for a state to determine. Viewed in this light, we question the wisdom and necessity of some proposed changes.

Our detailed comments are listed in order of the section numbers in the bill:

A. **Section 3: Obligation to provide special education: enrollment versus residence**

Section 3 of the bill proposes to base the obligation to provide special education and related services based on "enrollment," rather than based on a student's residence, as is provided under current Alaska law. A.S. 14.30.186(a), (b); 4 AAC 52.020 (district responsibility owed to those "who reside within the district"). This significant change in state law is *not required by the federal IDEA*, as amended

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SYSTEMS

in 1997, or its implementing regulations issued in 1999. We believe this approach presents some problems for certain categories of children, may encourage the dumping of students in order to escape special education obligations, and poses new questions for students placed in youth detention facilities.

The federal IDEA regulations impose the obligation to provide a *free and appropriate public education (FAPE)* based on the fact of a student's residence in the state, even if the student may be enrolled at a school located outside the state, or may have been expelled or suspended from school. 34 C.F.R. § 300.121(a); 300.300(a). However, federal law does not define how within a state the obligation to deliver FAPE is delegated. That is a question of state law, and Section 3 of the bill proposes to change state law.

With regard to special education for students enrolled in private schools or by correspondence courses, our experience is that some parents remove their children from a school district and enroll in a private school or correspondence program precisely because they believe the resident school district is incapable of or failing to provide FAPE. It will lessen the disputes regarding special education if the parent has an option of obtaining FAPE in another way. Thus we believe the Department is on the right to track, for some students, to link the responsibility for special education to enrollment. However, basing the obligation on enrollment raises unanswered questions with regard to a large number of other students.

1. An encouragement to out-of-district placements?

The federal IDEA envisions that school districts may place or refer students with disabilities into private schools rather than serve them in the public school setting. 20 U.S.C. § 1412(a)(10)(B). There is no requirement in the IDEA or its regulations that such schools must be within the school district, or even within the state. Under federal law, ordinarily the referring school district remains "responsible" for ensuring that FAPE is provided to a child referred or placed outside the district. 34 C.F.R. § 300.349(c); Response to Question 15 contained in discussion re: IDEA regulations, 64 Fed. Reg. 12476 (Mar. 12, 1999). However, this mandate of "responsibility" does not include a clear mandate of financial liability for the expenses of providing special education and related services to a student "placed" or "referred" outside the district. Rather, the IDEA leaves financial responsibility within the state to be determined by "State law, policy or practice." *E.g.*, 34 C.F.R. §§ 300.349, 300.401, 300.403; see Response to Questions 15 and 16, contained in discussion re: IDEA regulations, 64 Fed. Reg. 12476 (Mar. 12, 1999). Ultimately, if no one else does, the state must pick up the tab for Alaskan children placed out-of-state. 34 C.F.R. §§ 300.121(a); 300.300(a).

Thus an immediate question is, in which school district will a student placed out-of-state or out-of-district be considered to be enrolled? Existing state law clearly imposes on the *originating* school district the financial responsibility despite the out-of-district or out-of-state placement, except to the extent the department provides financial assistance to the district. A.S. 14.30.285(b). In past litigation, the Disability Law Center has successfully argued that the school district of residence of a student is defined by the residence of a custodial parent, and that the financial obligation to provide special education and related services follows the student even though placed out-of-state or out-of-district – if the reason for the out-of-state or out-of-district placement was a failure by the district to provide FAPE. Section 3 of the bill implies that this financial obligation based on residence will no longer exist. Section 12 of the bill repeals A.S. 14.30.285 in its entirety.

If a school district could escape financial responsibility by referring children out of the district – because the obligation to provide special education under Section 3 is based on “enrollment” – we expect there could be an effort to “dump” special education students by some school districts by referring them to schools outside of the district, particularly if the school district does not bear the financial obligation for providing special education and services to these students.

The fiscal responsibility for a student expelled or placed on long-term suspension is also put in question under the current form of Section 3 in the bill. Special education and related services may be such a child’s only remaining link to academic and social compliance. Section 3 severs that link. This appears to be in conflict with federal special education regulations, which require a school district to continue to provide special education and related services to students removed from school for longer than 10 days, i.e., expulsions or long-term suspensions. 34 C.F.R. § 300.121(d); 300.520(a)(1)(ii).

**The state will still have to ensure that special education and related services are provided to expelled or suspended students, even though they may no longer be enrolled in a school district. 34 C.F.R. § 300.121(a); 300.300(a), (b).**<sup>1</sup> Section 3 has the potential of turning the problem of how to deal with the expelled student from a local problem into a state problem. The fiscal implications of this for the state have not been explored.

The Department may have developed plans for resolving these questions. We believe that as long as the school district of residence remains primarily financially responsible for providing special education and related services, there will be less incentive to fail to serve students, less incentive to dump students through unnecessary

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<sup>1</sup> “Each State must have . . . in effect a policy that ensures that all children with disabilities aged 3 through 21 residing in the State have the right to FAPE, including children with disabilities who have been suspended or expelled from school.” 34 C.F.R. § 300.121(a).

referrals out-of-state or out-of-district, expulsions and the like. We believe that financial responsibility that "follows the student" will encourage quality special education services within the community, in the most integrated setting possible.

Thus we do not believe federal law "requires" the repeal of A.S. 14.30.285, and we believe it is poor public policy to abolish the mandate of that statute, without replacing it with fully explained legislative mandate that will prevent unnecessary out-of-district transfers.

## 2. Responsibility for students placed in juvenile detention centers

Responsibility for providing special education and related services to children placed in juvenile detention centers is unresolved in HB 301. Which school district – if any – bears the responsibility for providing special education to these students? Having been placed in the detention facility, does a student remain "enrolled" at the school district in which he or she was enrolled before incarceration?<sup>2</sup> If so, what are the FAPE obligations of the school district where the youth detention facility is located?

The IDEA '97 and its regulations also leave these sorts of questions up to individual states to resolve. Correctional facilities and juvenile detention facilities are defined as public agencies within the state that are subject to the mandates of the IDEA, 34 C.F.R. § 300.2(b)(1)(iv), but the obligation to provide a free and appropriate public education (FAPE), rests generally with the Department of Education and Early Development.<sup>3</sup> The design of a system to deliver special education and related services is left up to the State, as prescribed by state laws, regulations and policies implemented by the Department.

We believe that school district responsibility for students placed in juvenile detention centers is analogous to ensuring district responsibility for other out-of-district or out-of-state transfers. If school districts (and their base communities) remain financially responsible for special education to students placed elsewhere during a period

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<sup>2</sup> This seems unlikely. A.S. 14.30.010(b)(4) provides an exception to the required enrollment based on residence if a student is in the custody of a court or law enforcement authorities. A.S. 14.30.045 allows the suspension or denial of admission of students based on certain behaviors, including behavior "inimicable to the welfare, safety, or morals of other pupils," and conviction of certain felonies.

<sup>3</sup> The IDEA leaves up to states whether to impose the obligation to provide a free and appropriate public education to persons ages 18 through 21 who become incarcerated at an "adult correctional facility" before having been identified as being eligible for special education or before development of an IEP. IDEA, 20 U.S.C. § 1412(a)(1)(B)(ii). The Governor, or as otherwise provided by state law, may assign to a public agency within the state the responsibility of providing FAPE to "children with disabilities that are convicted as adults . . . and incarcerated in adult prisons." *Id.*, § 1412(a)(1)(C). Other than this class of juveniles incarcerated at adult correctional centers, for which the state-provided special education is optional, the state remains obligated to ensure special education for all other incarcerated juveniles.

of incarceration, the communities may have an additional stake in the success of programs to reduce criminal behavior and promote success in special education. Statistics from youth detention facilities and our experience generally support the proposition that incarcerated youths experience a higher percentage of certain disabilities than the general population, particularly learning disabilities. *Successful special education for this population will likely have a direct impact on future criminal behavior.*

We make no recommendation as to which entity (the Department of Corrections, the Department of Education and Early Development, the resident school district, or the school district in which the youth detention facility is located) ought to bear financial responsibility for providing special education and related services to incarcerated juveniles, although as discussed above we can see reasons why the resident school district arguably ought to bear that financial obligation. The proposed language below assumes that the school district in which the facility is located bears the obligation to deliver special education and related services, while the school district of residence is financially obligated for that service. We offer this language to foster debate on the subject.

3. An alternative to Section 3 of the bill:

Based on the foregoing discussion, if the Legislature decides to retain the concept of financial obligation to deliver FAPE based on residence, we have prepared an alternative to Section 3 of the bill. This alternative attempts to address the issue of correspondence and boarding school enrollments as well as the other situations:

**Sec. 14.30.186. Coverage.** (a) Except as provided in (b) of this section, special education and related services shall be provided either

(1) by a borough or city school district, for a child with a disability residing within the district;

(2) by a board of a regional educational attendance area operating a school in the area, for a child with a disability residing in the area served by the school;

(3) by the borough, city school district, or regional educational attendance area in which a correctional or youth detention facility is located, for a child with a disability placed at the facility; or

(4) by a state boarding school established under AS 14.16, for a child enrolled at the boarding school;

(b) For a child with a disability enrolled in a course of study under AS 14.30.010(b)(1) or a correspondence study program under A.S. 14.30.010(b)(10)(B), the child, parent or surrogate parent may elect that special education and related services be provided by an entity other than as provided in (a)(1) or (a)(2) of this section, under regulations prescribed by the department.

(c) For a child with a disability receiving special education and related services under subsection (a)(3), (a)(4), or (b) of this section, the borough, city school district, or regional educational attendance area where the child resides shall reimburse for the expense of the special education and related services provided, under regulations prescribed by the department.

This alternative envisions that in the first instance, obligation to deliver special education and related services will rest with the school district where the student resides. If a student is incarcerated in a youth detention facility, the school district where the youth detention facility is located is obligated to provide special education and related services. If a student is enrolled in a state-operated boarding school, the boarding school is obligated to provide special education and related services. A parent of a student enrolled in a correspondence or private (including parochial) school will have the option of placing the student in another special education program, under regulations to be prescribed by the department. Financial responsibility for students in a correspondence school, private school, youth detention facility, or state boarding school remains with the school district of residence, with the details of transfer of funds in these situations to be worked out in regulations by the department.

**B. Section 5: the statute of limitation should be two years, not 6 months:**

We believe the statute of limitations contained in Section 5, at page 2, may conflict with federal interpretations of the IDEA. A legal opinion from the Office of Special Education Programs of the U.S. Department of Education, identified federal courts rejecting state statutes of limitations ("SOL") that effectively limit the exercise of rights under the federal IDEA, where the state-imposed SOL is shorter than one used for a similar state right or cause of action.

A longer limitations period has the added benefit of offering an opportunity for alternative dispute resolution devices, such as mediation, to be tried before litigants need to resort to a formal administrative fair hearing. With a shorter time limit, litigants may be forced to preserve their litigation rights by filing administrative fair hearing requests and prevent the use of alternative methods of dispute resolution. This would be contrary to the IDEA '97 mandate to encourage mediation.

We believe the most analogous Alaska statute of limitations is contained in AS 09.10.070 (a) (two-year statute of limitations for "any injury to the . . . rights of another not arising on contract and not specifically provided for otherwise . . . or . . . upon a liability created by statute. . . .")

A two year statute will not prevent speedy resolution of disputes regarding special education. In cases involving the need for speed, either the school district or the parents will be motivated to seek a prompt administrative hearing. For cases involving monetary liability, AS 09.10.070 (a)(5) is certainly analogous, and we don't believe the Legislature can lawfully impose a shorter time period for initiation of a cause of action for a monetary claim under the IDEA when other types of monetary claims ("liability created by statute") may be brought in Alaska within two years of accrual.

Thus we suggest that the phrase "six months" on page 2, line 21 should be changed to "two years."

Also, we suggest that you consider adoption of a statute of limitations to be applied to actions brought by the state or school districts as well. The current form of the bill appears to leave to the Department the determination of the exact period of time. Section 5, page 2, lines 23-25. We think that an existing state 6-year statute contained in AS 09.10.120(a) for actions brought in the name of the State, political subdivisions, or public corporations, is too long. *See County of Oneida v. Oneida Indian Nation*, 470 U.S. 226, 240 (1985)(stating rule that in absence of an applicable federal statute, a court must choose the most analogous state statute, in determining a limitation on the right to pursue a federal cause of action in the state, "provided that the application of the state statute would not be inconsistent with underlying federal policies"). We think it would be inconsistent with underlying federal policies to encourage appropriate education if six years were to pass before a school district brought an administrative claim regarding a student's special education, or the state brought an action against a school district to obtain compliance with the IDEA.

**C. Section 6: Providing qualifications of hearing officers:**

Applicable federal regulations require that a list of prospective hearing officers "must include a statement of the qualifications of each" hearing officer. 34 C.F.R. § 300.508(c). Accordingly, we recommend that in Section 6, at page 2, line 28 of the bill, the phrase "and qualifications" be added after the word "names," such that the bill read as follows: "the school district shall provide the parent with the names and qualifications of three qualified hearing officers from a list maintained by the department."

**D. Section 12: State mandates for appropriate special education**

**should not be repealed**

We are concerned that in Section 12 of the bill it is proposed to delete several substantive mandates in our state law, even though the mandates are not in conflict with federal law.<sup>1</sup> We do not believe this is good policy for Alaskans.

- AS 14.30.274 imposes a mandate to identify children needing special education and related services, commonly referred to as the "*childfind*" *obligation*. This state mandate is not in conflict with federal law. The Department proposes deleting the state mandate because it does not include correspondence schools. We think AS 14.30.274 ought to be amended to be consistent with federal law, not deleted in its entirety.
- AS 14.30.276 imposes a mandate to provide special education in the *least restrictive environment*. This mandate is the linchpin of free and appropriate education, because it provides for inclusion of children with disabilities in the regular education setting, and ultimately in society. This mandate is as important for Alaskans in a regular education program as it is for Alaskans in a special education program. It promotes mutual understanding and respect that is the foundation of an integrated society. This general mandate is not in conflict with federal law. The Department proposes deleting the state mandate because it contains "unnecessary detail" but does not identify how the state mandate conflicts with federal law.
- AS 14.30.278 imposes minimum criteria of what must be contained in an *individualized education program (IEP)*, including statements of the specific education and related services to be provided, the extent of participation in the regular education setting, IEP goals and objectives, criteria for measuring whether the IEP is achieving the goals and objectives, and minimum standards of who must attend IEP meetings. These requirements are not in conflict with federal law, but instead establish a state-mandated floor of the criteria to be contained in an IEP. Without saying so directly, the bill proposes abandonment of minimal Alaska standards because the Department says it will "rely on federal law" rather than simply amending this statute to include other provisions that may be required by federal law.

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<sup>1</sup> In analyzing the rationale for the provisions of this bill, we have reviewed a document entitled "FY2000 Proposed Special Education Legislation," dated February 9, 2000, that has been referred to as the "side-by-side" analysis of the bill (copy enclosed).

- AS 14.30.350(9) definition of "*related services*" is not inconsistent with federal law, despite the Department's representation that it "conflicts with" federal law. The state's definition in AS 14.30.350(9) matches nearly verbatim the federal definition contained at 34 C.F.R. § 300.24(a). There may be additional gloss and subdefinitions of terms within the federal regulatory definition, but there is no conflict that we can see – other than the inclusion of "a gifted child" – in the state's definition. If the intent is to delete gifted children from the state definition, the entire definition need not be deleted.
- AS 14.30.350(11) definition of "*special education*." Here, there is little if any conflict with federal law. The existing state definition again matches nearly verbatim the federal definition in 34 C.F.R. § 300.26. The major differences appear to be addition to the federal definition of a subdefinition of the terms "specially-designed instruction" and "travel training." Again, this difference calls for a simple revision of the state definition, if necessary at all. Repeal cannot be justified based on conflict with a federal definition.

Prior Alaska Legislatures adopted our existing laws on the premise that they are good public policy for the state. The decision was made to place the mandates in state statutes, rather than regulations. The Department has not shown that these statutes are in conflict with federal law, and does not justify why otherwise they should be removed from Alaska's statutes. We believe it is important for the Legislature to retain these mandates as substantive state mandates that do not depend upon the vagaries of federal legislation or regulations, and that the Legislature ought to retain the definitions (perhaps with slight modifications).

#### Conclusion

For the reasons expressed, we urge you to consider these points and to revise HB 301 accordingly.

DISABILITY LAW CENTER OF ALASKA, INC.

Steve Essley, staff attorney  
Robert B. Briggs, staff attorney

**29 IDELR 1088****Pawlish, Letter to (Statute of Limitations)**

Office of Special Education Programs

Dr. Juanita S. Pawlish  
 Division Learning Support  
 Assistant Superintendent  
 Department of Public Instruction  
 125 South Webster  
 P.O. Box 7841  
 Madison, WI 53707-7841

**Digest of Inquiry**

[Date Not Provided]

- Is a one-year statute of limitations for requesting due process hearings allowable?

**Digest of Response**

October 22, 1997

***One-Year Statute Of Limitations Permitted***

Since the IDEA lacks a provision specifying a statute of limitations, courts most often borrow the most closely analogous state statute of limitations. In Wisconsin, a proposed statute required a written request for a due process hearing to be filed within one-year of the challenged action, provided the parents were made aware of the limitations period. OSEP stated a 60-day limitations period would be unreasonable, but the one-year period might be allowed. Before enacting the one-year period, the state was directed to make sure the one-year limit was similar to the most closely related state statute of limitations, and to ensure that federal education claims were not subjected to a stricter statute of limitations than state claims.

**Text of Response**

The Office of Special Education Programs (OSEP) has completed its review of Wisconsin's 1997 Assembly Bill 261. The Bill provides that the written request for a hearing must be filed within one year after the proposal or refusal of the school board to initiate or change the child's multidisciplinary team evaluation, individualized education program, educational placement, or the provision of an appropriate special education program. The Bill also includes a proposed addition, which states that the limitation period would apply only if the parent of a child with a disability received notice of the right to appeal.

Under current Wisconsin law, there is no specific limitation as to when a parent of a child with disabilities may file a written request with the Wisconsin Department of Public Instruction for a hearing to challenge the school board's proposal or refusal to initiate or change the child's multidisciplinary team evaluation, individualized education program, educational placement, or the provision of an appropriate special education program.

The Individuals with Disabilities Education Act does not impose any time limitations. Under the Act, there is no statute of limitations for either requesting an administrative hearing or seeking judicial review. Although the Congress has created a federal statute of limitations for civil actions arising under Acts of Congress, its application is limited to laws enacted after 1990. 28 U.S.C. § 1658. However, OSEP previously indicated in a letter to Raskin, OSEP 1991, that a 60-day time limit for filing due process requests which had been proposed in New Hampshire would be an unreasonable limitation upon Federal law.

Traditionally, Courts have imposed analogous State statute of limitations on both requests for due

process hearings and judicial appeals of those hearing decisions. *Dell v. Bd. of Educ., Township High Sch. Dist. 113*, 32 F.3d 1053 (7th Cir. 1994); *Murphy v. Timberlane Regional Sch. Dist.*, 22 F.3d 1186, 1192-1194 (1st Cir., 1994); *Oak Park and River Forest High Sch. Dist. v. Ill. St. Bd. of Educ.*, 886 F.Supp. 1417, (N.D.Ill. 1995) *rev'd on other grounds*, 79 F.3d 654 (7th Cir. 1996). One of the federal interests behind the borrowing of State limitations periods is to ensure that plaintiffs filing federal claims are not subjected to more stringent limitations than are imposed upon analogous State claims. See *Wilson v. Garcia*, 471 U.S. 261, 276 (1985).

While we are not aware of any case that specifically addresses the relevant statute of limitations in Wisconsin, in reviewing this legislation, the proposed one-year limitations period should be compared to the most analogous State statute of limitations for claims arising under State law. In enacting this limitation period for IDEA due process hearings, the State should not discriminate against federal claims by making the statute of limitations more restrictive for this federally protected right than for analogous State-based claims. Further, the application of such limitations in particular cases must be decided by impartial hearing officers and the Courts.

On August 20, 1997, a member of my staff, Ms. Barbara Route, spoke with Ms. Stephanie Petska of your staff, regarding the status of the Bill. Ms. Petska stated that the Bill was being reviewed by the Legislative Reference Bureau, an adjunct to the Legislature. Ms. Petska further stated that the Bureau would be notifying the Wisconsin Department of Public Instruction in October regarding the status of the Bill.

I hope the information in this letter will be of assistance to you. If you have additional questions and/or concerns, please do not hesitate to contact Ms. Route, State contact, at (202) 205-9029.

Thomas Hehir

Director

Office of Special Education Programs

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Newest 2-19

### FY2000 Proposed Special Education Legislation

2/9/2000

Proposed statutory legislation	Rationale for changes from current law	Federal Citation
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Proposed statutory legislation	Rationale for changes from current law	Federal Citation
<p><b>Sec. 14.30.180. Purpose.</b> It is the purpose of AS 14.30.180 – 14.30.350 to</p> <ul style="list-style-type: none"> <li>(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;</li> <li>(2) allow procedures and actions necessary to comply with the requirements of federal law, including <u>20 U.S.C. 1400 – 1487</u> [20 U. S. C. 1400 – 1485] (Individuals with Disabilities Education Act) <u>as amended.</u></li> </ul>	<ul style="list-style-type: none"> <li>✓ No change to (1).</li> <li>✓ To be consistent with the change in the federal statute number (was 1400-1485).</li> </ul>	<p>20 USC 1400-1487 34 CFR 300</p>

The basic purpose of this bill is to update AS 14.30 to conform to the 1997 comprehensive review of federal special education law and the 1999 comprehensive revision of the implementing of federal regulation. The approach taken by this bill removes much detail and thus removes actual and potential conflicts and inconsistencies between state and federal law.

Proposed statutory legislation	Rationale for changes from current law	Federal Citation
<p><b>Sec. 2 AS 14.30.182 Duties of department.</b> The department shall</p> <ul style="list-style-type: none"> <li>(1) cooperate with the federal government and do all things necessary to continue state eligibility for federal money available under 20 U. S. C. 1400 – 1487 (Individuals with Disabilities Education Act), as amended;</li> <li>(2) comply with the requirements of 20 U. S. C. 1400 – 1487 (Individuals with Disabilities Act), as amended, and other federal law related to children with disabilities; if a provision of this chapter conflicts with federal law and the conflict would affect the continued receipt of federal money, the department shall comply with the federal provision necessary to ensure continued receipt of that money; and</li> <li>(3) adopt regulations necessary to comply with state law and federal law for the education of exceptional children, including 20 U.S.C. 1400 – 1487 (Individuals with Disabilities Education Act), as amended.</li> </ul>	<p>✓ This new section was added to clearly delineate the duties of the department as they correspond to federal special education requirements. The state will come into compliance with federal law by performing these duties.</p>	<p>20 USC 1400-1487</p>
<p><b>Sec 3. AS 14.30.186 is repealed and reenacted to read:</b></p> <p><b>Sec. 14.30.186 Coverage.</b> The school district in which a child with a disability is enrolled is responsible for providing special education and related services to the child.</p>	<p>✓ Currently, the state law requires the student's district of residence to provide special education services. The proposed change clarifies that statewide correspondence programs (that enroll students outside of their districts) are responsible to provide services to students with disabilities.</p>	<p>Publicly funded out-of-district correspondence programs are unique to Alaska.</p>

Proposed statutory legislation	Rationale for changes from current law	Federal Citation
<p><b>Sec. 4. AS 14.30.193(a) is repealed and reenacted to read:</b></p> <p>(a) A school district or a parent of a student with a disability may request a due process hearing on any issue related to identification, evaluation, educational placement, or the provision of a free, appropriate, public education regarding a student with a disability.</p>	<p>✓ Corresponds to federal language and clarifies/specifies under what circumstances a due process hearing should be requested.</p>	<p>20 USC 1415 This section on "procedural safeguards" is greatly expanded and very clear.</p>
<p><b>Sec. 5 AS 14.30.193(b) is repealed and reenacted to read:</b></p> <p>(b) A request by a parent for a due process hearing must be made not later than six months after the date the school district provides the parent with written notice of the decision with which the parent disagrees and with written notice of procedural safeguards available to that parent in federal law. A school district shall make its request under (a) of this section in accordance with regulations adopted by the department.</p>	<p>✓ Provides a timeframe in which parents can request a due process hearing. Federal legislation encourages a timeline to be set.</p>	<p>20 USC 1415</p>
<p><b>Sec 6. AS 14.30.193(c) is repealed and reenacted to read:</b></p> <p>(c) If a due process hearing is requested by either a parent or school district, the school district shall provide the parent with the names of three qualified hearing officers</p>	<p>✓ Allows the hearing process to proceed without undue delay.</p>	<p>20 USC 1415 Reg. 300.508 (a)(b)(c)</p>

Proposed statutory legislation	Rationale for changes from current law	Federal Citation
<p>from a list maintained by the department. The parent may choose one person from the list of three provided by the school district. If the parent does not select a name, the school district may appoint as hearing officer any person from the list maintained by the department. After appointment under this section, a hearing officer shall proceed in accordance with regulations adopted by the department.</p>		
<p><b>Sec. 7.</b> AS 14.30.193(h) is amended to read:            (h) the department shall maintain a list of qualified hearing officers. The department shall qualify hearing officers through a training program that <u>is [SHALL BE] open to all persons who meet the criteria set by the department by regulation [RESIDENTS OF THE STATE. A HEARING OFFICER MAY BE QUALIFIED FOR A PERIOD NOT TO EXCEED FIVE YEARS]</u>. The list of qualified hearing officers shall be maintained as a public record.</p>	<ul style="list-style-type: none"> <li>✓ Allows only qualified individuals to participate in state hearing officer training.</li> <li>✓ Criteria will be set in regulation.</li> <li>✓ Current law requires training to be available to all interested people, whether qualified or not. This is cost prohibitive and has resulted in wasting training resources on individuals who were not able to pass the hearing officer test.</li> </ul>	<p>20 USC 1415            Reg. 300.508 (a)(b)(c)</p>
<p><b>Sec. 8.</b> 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</p>	<ul style="list-style-type: none"> <li>✓ To be consistent with the change in the federal statute number (was 1400-1485)</li> </ul>	<p>20 USC 1400-1487</p>



Proposed statutory legislation	Rationale for changes from current law	Federal Citation
<p><b>Sec. 11. AS 14.30.350(1) is amended to read:</b>            (1) "appropriate <b>public</b> education" means personalized instruction with sufficient support services to permit a child to benefit educationally from the instruction, <b><u>in accordance with state and federal law, including regulation adopted by the department;</u></b></p>	<ul style="list-style-type: none"> <li>✓ Clarifies that this section addresses appropriate "public" education (as opposed to private).</li> </ul>	<p>20 USC 1401 (8)</p>
<p><b>Sec 12. The following are repealed:</b></p>		
<p>14.30.191 Educational evaluation and placement</p>	<ul style="list-style-type: none"> <li>✓ Section (b) is incomplete.</li> <li>✓ Sec. (c) and (e) violate current federal law. Further, the state is under a federal corrective action related to (c).</li> <li>✓ Section (d) is not required in federal law.</li> <li>✓ Section (f) is inconsistent with federal law.</li> <li>✓ Current state law does not address the re-evaluation process.</li> <li>✓ The state will rely on federal law related to evaluation and placement.</li> </ul>	<p>20 USC 1414 (a)(1-5)</p>
<p>14.30.193(d) School district hearings (parent participation in hearing with noncompliance of decision of hearing officer)</p>	<ul style="list-style-type: none"> <li>✓ The provisions of this subsection were clarified by amendments in AS 14.30.193 (a) and (b) (see Sections 4 and 5 of the bill).</li> </ul>	<p>20 USC 1415</p>
<p>14.30.193(e) School district hearings (non participation of parent)</p>	<ul style="list-style-type: none"> <li>✓ Provisions of this subsection represent unnecessary detail.</li> </ul>	<p>20 USC 1415</p>
<p>14.30.235 Withdrawal of consent (parent may withdraw parent's consent)</p>	<ul style="list-style-type: none"> <li>✓ Once a child is placed in special education at the parent's consent, they don't have the right to withdraw that</li> </ul>	<p>20 USC 1414</p>

Proposed statutory legislation	Rationale for changes from current law	Federal Citation
	consent. The decision for exiting the child from special education rests with the IEP team. By repealing this section, we will come into compliance with federal law.	
14.30.272 Procedural safeguards	<ul style="list-style-type: none"> <li>✓ Current state law is violation of federal law and does not include all of the procedural safeguards afforded to students with disabilities.</li> <li>✓ The state will rely on the federal law.</li> <li>✓ Procedural safeguards for gifted students will be addressed in state regulation.</li> </ul>	20 USC 1415
14.30.274 Identification of exceptional children	<ul style="list-style-type: none"> <li>✓ Current law does not take into account the responsibility of statewide correspondence programs for identifying children with disabilities ("child find").</li> <li>✓ The state will rely on federal law for "child find."</li> </ul>	20 USC 1412
14.30.276 Least restrictive environment	<ul style="list-style-type: none"> <li>✓ The state will rely on federal law, as current language contains unnecessary detail.</li> </ul>	20 USC 1414 Reg. 300.550-555
14.30.278 Individualized education program	<ul style="list-style-type: none"> <li>✓ Federal law changes IEP requirements.</li> <li>✓ Increases the role of the parent, student and regular education teacher.</li> <li>✓ The state will rely on federal law.</li> </ul>	20 USC 1414
14.30.285 Transfers of exceptional children	<ul style="list-style-type: none"> <li>✓ Federal law does not require this section for gifted students.</li> <li>✓ The state will rely on federal law for</li> </ul>	20 USC 1412

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Proposed statutory legislation	Rationale for changes from current law	Federal Citation
	<p>transfers for students with disabilities.</p> <ul style="list-style-type: none"> <li>✓ The state will draft regulations for transfers related to students with disabilities.</li> </ul>	
14.30.325 Surrogate parents	<ul style="list-style-type: none"> <li>✓ Federal law does not require this section for gifted students.</li> <li>✓ The state will rely on federal law.</li> <li>✓ The state will draft regulations for surrogate parents related to special education students.</li> </ul>	20 USC 1415 Reg. 300.515
14.30.340(b) Provision of special education in a private school, home, or hospital setting	<ul style="list-style-type: none"> <li>✓ Federal law does not require these provisions for gifted students, only for students with disabilities.</li> <li>✓ The state has been and will continue to rely on federal law.</li> <li>✓ The state will adopt regulations related to students with disabilities.</li> </ul>	20 USC 1412 Reg. 300.402, 300.451, 300.452, 300.460, 300.461
14.30.347 Transportation of exceptional children	<ul style="list-style-type: none"> <li>✓ Federal law does not require these provisions for gifted students, only for students with disabilities.</li> <li>✓ The state will rely on federal law.</li> <li>✓ The state will draft regulations for transportation related to students with disabilities.</li> </ul>	20 USC 1401 Reg. 300.24
14.30.350(3) Definitions ("consent")	<ul style="list-style-type: none"> <li>✓ Contains unnecessary detail.</li> <li>✓ Subject is thoroughly covered by federal law.</li> <li>✓ Federal law goes into great detail.</li> </ul>	20 USC 1412 20 USC 1415 Reg. 300.505, 300.571
14.30.350(4) Definitions ("educational records")	<ul style="list-style-type: none"> <li>✓ Contains unnecessary detail.</li> <li>✓ Subject is thoroughly covered by federal law.</li> </ul>	20 USC 1412 20 USC 1417 20 USC 1221e-3

Proposed statutory legislation	Rationale for changes from current law	Federal Citation
	✓ Federal law goes into great detail.	Reg. 300.560
14.30.350(7) Definitions ("individualized education program team")	<ul style="list-style-type: none"> <li>✓ Current definition conflicts with federal law, which goes into considerable detail on the subject.</li> <li>✓ Participation by parent, student, regular education teacher, and district personnel are several of the many important team member additions to the IEP team.</li> </ul>	USC 20 1414
14.30.350(8) Definitions ("parent")	✓ Current definition conflicts with federal law, which goes into considerable detail on the subject.	20 USC 1415 Reg. 300.344, 300.345, 300.502
14.30.350(9) Definitions ("related services")	✓ Current definition conflicts with federal law, which goes into considerable detail on the subject.	20 USC 1414 Reg. 300.24, 300.533
14.30.350(11) Definitions ("special education")	✓ Current definition conflicts with federal law, which goes into considerable detail on the subject.	20 USC 1401 20 USC 1415 Reg. 300.26, 300.527
Sec. 13. This act takes effect immediately under AS 01.10.070(c)		



**SB 205/HB 301**

**Special Education Statute Updates**



Alaska Department of  
**EDUCATION**  
**& EARLY DEVELOPMENT**

Highlights of SB 205/HB 301

**"An Act relating to the education of exceptional children"**

**Purpose:**

To update state special education statutes to conform with the federal Individuals with Disabilities Education Act of 1997. The bill removes unnecessary detail from state statute, thus removing conflicts and inconsistencies with state and federal law. Alaska stands to lose thirteen million dollars in federal funding if we fail to update our statutes.

**State Statutes Proposed for Repeal:**

**14.30.191 Educational evaluation and placement.**

The current state statute is inconsistent and incomplete with regard to evaluation and placement of students with disabilities. Federal statute on education evaluation and placement is comprehensive, and now includes parents in the process of determining their child's eligibility and evaluation needs. The state will rely on federal law.

**14.30.272 Procedural safeguards.**

The current state statute does not include all federal procedural safeguards (parents' and students' rights and protections including mediation, complaint investigation or due process hearings) for students with disabilities. The state will rely on federal law.

**14.30.274 Identification of exceptional children.**

Current state law does not hold statewide correspondence programs fully accountable for identifying enrolled children with disabilities (child find). The state will rely on federal law.

**14.30.278 Individualized education program.**

Parents, students and regular education teachers are now essential members of the Individual Education Plan (IEP) teams according to federal law. The state will rely on federal law.

Federal law does not require any services for gifted students. This bill would repeal the following services for gifted students:

- 14.30.285 Transfers of exceptional children
- 14.30.325 Surrogate parents
- 14.30.340(b) Provision of special education in a private school, home, or hospital setting.
- 14.30.347 Transportation of exceptional children

The state will promulgate regulations on these topics according to AS 14.30.315, the statute requiring districts to establish programs for gifted students.

The following definitions contain unnecessary detail or conflict with federal law:

- 14.30.350(3) "consent"
- 14.30.350(4) "educational records"
- 14.30.350(7) "individualized education program team"
- 14.30.350(8) "parent"
- 14.30.350(9) "related services"
- 14.30.350(11) "special education"

The state will rely on definitions in federal law.

#### **Other Proposed Amendments:**

##### **14.30.186 Coverage.**

Currently, state law requires a student's district of residence to provide special education services. The proposed change clarifies that statewide correspondence programs, which enroll students from outside their districts, are responsible for ensuring that services are provided to students with disabilities.

##### **14.30.315 Programs for gifted children.**

This section requires every district to establish a program for gifted children. The gifted program is a state entitlement, not federal.

##### **14.30.340(a) Special education in private school, home, or hospital setting.**

New bill language clarifies that children with disabilities enrolled in private schools are entitled to some special education and related services from their public school district of residence. Public school districts would be allowed to provide the minimum amount of services as defined by federal law to students with disabilities attending private schools.

# FISCAL NOTE

**STATE OF ALASKA  
2000 LEGISLATIVE SESSION**

**BILL NO.** \_\_\_\_\_

Revision Date/Time (Note if correction) \_\_\_\_\_ Dept. Affected Education & Early Dev.  
 Title Education of Exceptional Children BRU Teaching and Learning Support  
 Component Special & Supplemental Services  
 Sponsor Rules Committee  
 Requester Governor Knowles Component No. 166

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

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2000) cost: \_\_\_\_\_

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill proposes statute changes that would bring Alaska law into compliance with federal laws and regulations regarding special education services. There are no expected fiscal impacts to the Department as a result of this bill.

Prepared by: Barbara Thompson, Deputy Director Phone 465-8727  
 Division Commissioner's Office Date/Time 12/20/99 4:14 PM  
 Approved by Commissioner Richard S. Cross Date 1-6-2000  
 Agency Education & Early Development

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AMENDMENT

FAILED

OFFERED IN THE HOUSE  
TO: HB 301

BY REPRESENTATIVE BRICE

1 Page 3, following line 16:

2 Insert new bill sections to read:

3 **\*\* Sec. 9.** AS 14.30.272 is amended to read:

4 **Sec. 14.30.272. Procedural safeguards for gifted children.** (a) A school  
5 district shall inform the parent of a gifted [AN EXCEPTIONAL] child of the right  
6 to review the child's educational record, to review evaluation tests and procedures, to  
7 refuse to permit evaluation or a change in the child's educational placement, to be  
8 informed of the results of evaluation, to obtain an independent evaluation by choosing  
9 a person from a list provided by the district or by choosing a person by agreement  
10 between the parent and school district, to request an impartial hearing, to appeal a  
11 hearing officer's decision, and to give consent or deny access to others to the child's  
12 educational record.

13 (b) The department shall establish, by regulation, impartial procedures for a  
14 school district to follow for hearings under this section [AS 14.30.193 TO COMPLY  
15 WITH REQUIREMENTS NECESSARY TO PARTICIPATE IN FEDERAL GRANT-  
16 IN-AID PROGRAMS, INCLUDING 20 U.S.C. 1400 - 1485 (INDIVIDUALS WITH  
17 DISABILITIES EDUCATION ACT)].

18 **\* Sec. 10.** AS 14.30.274 is amended to read:

19 **Sec. 14.30.274. Identification of gifted [EXCEPTIONAL] children.** Each  
20 school district shall establish and implement written procedures to ensure that all  
21 gifted [EXCEPTIONAL] children under the age of 22 who reside in the district are  
22 identified and located for the purpose of establishing their need for gifted [SPECIAL]  
23 education and related services.

24 **\* Sec. 11.** AS 14.30.278 is amended to read:

25 **Sec. 14.30.278. Individualized education program for gifted children.** (a)

1 The individualized education program for each gifted [EXCEPTIONAL] child must  
2 include

- 3 (1) a statement of the child's present levels of educational performance;  
4 (2) a statement of annual goals, including short-term [SHORT TERM]  
5 instructional objectives;  
6 (3) a statement of the specific gifted [SPECIAL] education and related  
7 services to be provided to the child, and the extent to which the child will be able to  
8 participate in regular educational programs;  
9 (4) the projected dates for initiation of services and the anticipated  
10 duration of the services;  
11 (5) appropriate objective criteria and evaluation procedures and  
12 schedules for determining, on at least an annual basis, whether the short-term  
13 [SHORT TERM] instructional objectives are being achieved.

14 (b) Each meeting concerning a gifted [AN EXCEPTIONAL] child must  
15 include

- 16 (1) a representative of the school district, other than the child's teacher,  
17 who is qualified to provide or supervise the provision of gifted [SPECIAL] education;  
18 (2) the child's teacher;  
19 (3) at least one of the child's parents;  
20 (4) the child, when appropriate;  
21 (5) other individuals selected by the parent or school district.

22 (c) Each school district shall develop an individualized education program for  
23 every gifted [EXCEPTIONAL] child who receives services or whose parent requests  
24 services under this section [AS 14.30.180 - 14.30.350]."

25 Renumber the following bill sections accordingly.

26 Page 3, line 20, following "department.":

27 Insert "The regulations adopted by the department must require separate accounting  
28 by the department and each school district of money spent for programs under this section,  
29 including procedures to ensure that federal money provided under 20 U.S.C. 1400 - 1487 is  
30 not used under this section."

1 Page 4, following line 1:

2 Insert new bill sections to read:

3 **\* Sec. 15.** AS 14.30.350(3) is amended to read:

4 (3) "consent" means, as applied to parents of gifted children, the  
5 parent has been fully informed of all information relevant to the activity or the release  
6 of records for which consent is sought and the parent understands and voluntarily  
7 agrees to the activity or release of records;

8 **\* Sec. 16.** AS 14.30.350(4) is amended to read:

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

16 **\* Sec. 17.** AS 14.30.350(7) is amended to read:

17 (7) "individualized education program team" means, as applied in  
18 gifted education, a group of people that translates child assessment information  
19 regarding a child into a practical plan for specially designed instruction and delivery  
20 of services for the child, and includes the following:

21 (A) [A REPRESENTATIVE OF THE SCHOOL DISTRICT,  
22 OTHER THAN THE CHILD'S TEACHER, WHO IS QUALIFIED TO  
23 PROVIDE OR SUPERVISE THE PROVISION OF SPECIAL EDUCATION;

24 (B)] the child's teacher;

25 ~~(B)~~ [(C)] the child's parent;

26 ~~(C)~~ [(D)] the child, if appropriate;

27 ~~(D)~~ [(E)] other individuals, at the discretion of the child's  
28 parent or the school district;

29 **\* Sec. 18.** AS 14.30.350(8) is amended to read:

30 (8) "parent," as applied to the parents of gifted children, includes  
31 a guardian and [,] a person acting as a parent of a child; [, AND A SURROGATE  
32 PARENT APPOINTED UNDER AS 14.30.325.]

1 \* **Sec. 19.** AS 14.30.350(9) is amended to read:

2 (9) "related services" means, as the term applies to gifted children,  
 3 [TRANSPORTATION AND DEVELOPMENTAL, CORRECTIVE, AND OTHER]  
 4 supportive services required to assist [CHILDREN WITH DISABILITIES OR] gifted  
 5 children to benefit from gifted [SPECIAL] education and includes [BUT IS NOT  
 6 LIMITED TO SPEECH PATHOLOGY AND AUDIOLOGY,] psychological services,  
 7 [PHYSICAL AND OCCUPATIONAL THERAPY, RECREATION,] counseling  
 8 services [INCLUDING REHABILITATION COUNSELING], and medical services  
 9 for diagnostic or evaluation purposes; the term also includes [SCHOOL HEALTH  
 10 SERVICES,] school social work services [,] and parent counseling and training;

11 \* **Sec. 20.** AS 14.30.350 is amended by adding a new paragraph to read:

12 (12) "gifted education" means specially designed or accelerated  
 13 instruction, at no cost to the parent, that meets the unique needs of gifted children."

14 Renumber the following bill sections accordingly.

15 Page 4, line 2:

16 Delete "14.30.272, 14.30.274,"

17 Page 4, line 3:

18 Delete "14.30.278,"

19 Page 4, lines 3 - 4:

20 Delete "14.30.350(3), 14.30.350(4), 14.30.350(7), 14.30.350(8), 14.30.350(9),"

21 Page 4, following line 4:

22 Insert a new bill section to read:

23 **\* Sec. 22.** The uncodified law of the State of Alaska is amended by adding a new section  
 24 to read:

25 **TRANSITION.** The Department of Education and Early Childhood Development shall  
 26 adopt regulations required under AS 14.30.315, as repealed and reenacted by sec. 12 of this  
 27 Act, by January 1, 2001."

1 Renumber the following bill section accordingly.

**HB**

**302**

# STATE OF ALASKA

## DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

P.O. BOX 110601  
JUNEAU, ALASKA 99811-0601  
PHONE: (907) 465-3030  
FAX: (907) 465-3068

February 1, 2000

Honorable Fred Dyson, Chairman  
House Health, Education and Social Services Committee  
Room 106 Capitol Building  
Juneau, AK 99811

Dear Representative Dyson,

The Department of Health and Social Services respectfully requests a hearing in the House Health, Education and Social Services Committee on House Bill 302 "An Act relating to disclosure of public assistance information to report suspected abuse or neglect of children or vulnerable adults."

Prior to federal welfare reform, it was clear under federal law that public assistance employees should report suspected abuse of children to the appropriate agency. The ability to report is not explicit in the new federal welfare law, however, and the underlying federal welfare program confidentiality requirements call into question the ability of employees to make reports of harm.

Similarly, state law is unclear regarding public assistance employees' authority to make reports of harm on behalf of vulnerable adults without violating confidentiality rules.

The proposed bill will remove any ambiguities regarding employees' ability to make reports of harm on both children and adults.

Your favorable consideration of this legislation will be appreciated. Fiscal notes have previously been provided to the Committee.

Sincerely,



Elmer A. Lindstrom  
Special Assistant to the Commissioner

cc: Pat Pourchot, Legislative Director  
Office of the Governor

Kay Burrows, Director  
Division of Senior Services  
Dept. of Administration

Jim Nordlund, Director  
Division of Public Assistance  
Department of Health and Social Services



**FISCAL NOTE**

No: 1

**STATE OF ALASKA  
2000 LEGISLATIVE SESSION**

Bill Version: HB 302  
(H) Publish Date: 1/21/00

Revision Date/Time (Note if correction): \_\_\_\_\_  
Title: Reports of harm by public assistance employees

Dept. Affected: Health and Social Services  
BRU: Public Assistance Admin  
Component: Public Assistance Admin

Sponsor: Rules Committee by request of the Governor

COMPONENT SERIAL NO. 233

Requestor: Governor

See also (SN#): \_\_\_\_\_

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

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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CHANGES IN REVENUES ( )						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2000) cost: \$0.0

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

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

This legislation adds an explicit exception to the confidentiality provisions of AS 47.05.030 which protect public assistance records. The bill clarifies that disclosure of information concerning a public assistance applicant or recipient, in order to make a report of suspected abuse or neglect of a child or vulnerable adult, is not a violation of the client's confidentiality.

Prepared by: [Signature]  
Division: DPA

Phone: \_\_\_\_\_  
Date/Time: 12/16/99 8:28 AM

Approved by Commissioner: [Signature]  
Agency: Department of Health & Social Services

Date: 12/22/99

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*Handwritten:* JB 12/16/99

# FISCAL NOTE

No: 2

**STATE OF ALASKA**  
**2000 LEGISLATIVE SESSION**

Bill Version: HB 302  
 (H) Publish Date: 1/21/00

Revision Date/Time (Note if Correction): \_\_\_\_\_  
 Title: "An Act relating to disclosure of public assistance information To report suspected abuse or neglect of a child or vulnerable adult"  
 Sponsor: Rules Committee  
 Requestor: Governor

Department Affected: Administration  
 BRU: Legal & Advocacy Services  
 Component: Public Defender Agency  
 COMPONENT SERIAL NO. 1631

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY2003	FY 2004	FY 2005	FY 2006
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0

<b>CAPITAL EXPENDITURES</b>	0.0	0.0	0.0	0.0	0.0	0.0
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<b>CHANGE IN REVENUES ( )</b>	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER (Specify Type)						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 2000) cost: \$ \_\_\_\_\_

POSITIONS:

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

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

No Impact on Public Defender Agency.

Prepared by: Barbara Brink, Director  
 Division: Public Defender Agency

Phone: (907) 264-4400  
 Date: 12/16/99

Approved by Commissioner: Robert Poe J. *Hanson*  
 Agency: Department of Administration

Phone: (907) 465-2200  
 Date: 12/17/99

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# FISCAL NOTE

Bill Version: HB 302

(H) Publish Date: 1/21/00

**STATE OF ALASKA  
2000 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction) \_\_\_\_\_ Dept. Affected Administration  
 Title Report of Harm by DPA employees BRU Senior Services  
 Component Protection, Community Services & Administration  
 Sponsor Rules Committee  
 Requester Governor Component No. 2083

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

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	*	*	*	*	*	*

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	*	*	*	*	*	*

Estimate of any current year (FY2000) cost: \_\_\_\_\_

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill will likely increase the number of intakes received and investigated by Adult Protective Services. There are 16 Division of Public Assistance Offices statewide which provide public assistance services and come into contact with vulnerable adults needing protective services each month. This bill will provide for the reporting of suspected harm of these vulnerable adults to Adult Protective Services for intake screening, investigation, guardianship assessment, protective services, and assisted living assistance. Currently, confidentiality protections appear to conflict with and preclude the sharing of this protected information by employees and employees of DHSS to Adult Protective Services regarding abuse and neglect. The increase in the number of reports of harm as a result of this legislation is unknown.

Prepared by: Dwight Becker Phone 269-3674  
 Division Senior Services Date/Time 12/20/99 9:11 AM  
 Approved by Commissioner Robert Poe Jr. Nelson M. Sela Date \_\_\_\_\_  
 Agency Department of Administration

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**HB**

**303**

Date of Committee Action: 22 March 2000

The LABOR AND COMMERCE Committee considered:

HB 303

HOUSE BILL NO. 303

MISC. INSURANCE PROVISIONS

"An Act relating to the method of payment of fees and adoption of regulations under AS 21; relating to orders under AS 21 regarding risk based capital instructions; relating to accounting standards for insurance companies; amending the definitions of 'creditable coverage' and 'late enrollees' in AS 21.54; relating to requirements for small employer insurers; relating to requirements for issuance of new voting securities by an insurance company; requiring health care insurance coverage for reconstructive surgery following mastectomy; requiring guaranteed renewability of and certification of coverage regarding certain individual health insurance policies; and providing for an effective date."

recommends it be replaced with the following committee substitute \_\_\_\_\_  the same title  a new title

additional referral to \_\_\_\_\_ Committee  attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) \_\_\_\_\_ APPROVES PREVIOUS: (Dept/Date) \_\_\_\_\_  
 fiscal note(s) \_\_\_\_\_  fiscal note(s) \_\_\_\_\_

zero fiscal note(s) Dce D  zero fiscal note(s) \_\_\_\_\_

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>[Signature]</i>			<input checked="" type="checkbox"/>	
<i>[Signature]</i>			<input checked="" type="checkbox"/>	
<i>[Signature]</i>			<input checked="" type="checkbox"/>	
<i>[Signature]</i>			<input checked="" type="checkbox"/>	
<i>[Signature]</i>			<input checked="" type="checkbox"/>	
<i>New Potely</i>	<input checked="" type="checkbox"/>			

CHAIR'S SIGNATURE *New Potely* 3-22-2000

## Sponsor Statement HB 303

This proposed legislation was developed by the Alaska Division of Insurance. The legislation contains several clean-up items and is non-controversial in nature with no known opposition.

The proposed legislation can be divided into two broad categories:

1. The first category relates to statutory accounting by insurance companies.
  - The division has adopted these uniform accounting standards to take effect on January 1, 2001. Amendments proposed in this bill remove obsolete sections of the insurance statutes to be consistent with these standards.
2. The second category relates to health insurance.
  - Two important amendments relating to health insurance proposed in the bill will bring Alaska's statutes into compliance with federal Health Insurance Portability and Accountability Act requirements. Passage of these amendments will allow Alaska to retain the authority to enforce these requirements on insurers marketing health insurance in Alaska and avoid federal enforcement of the provisions in Alaska.
  - Other amendments will clean up sections of the small employer health insurance act to clarify the intent of the guarantee issue requirements and fair marketing standards.

HB 303

TONY KNOWLES  
GOVERNOR  
governor@gov.state.ak.us



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

P.O. Box 110001  
Juneau, Alaska 99811-0001  
(907) 465-3500  
Fax (907) 465-3532  
www.gov.state.ak.us

January 20, 2000

The Honorable Brian Porter  
Speaker of the House  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801-1182

Dear Speaker Porter:

I am transmitting a bill relating to financial regulation of insurance companies and amending the state's 1997 insurance act to comply with federal requirements for health care insurance involving individuals, groups, and small employers.

The bill would amend the insurance code with respect to the accounting standards followed by insurers when reporting annually on their financial condition to the director of the division of insurance. Under the bill, certain statutes related to the reporting of insurance company assets and liabilities are amended to eliminate provisions that are obsolete or that conflict with new accounting standards adopted by the National Association of Insurance Commissioners (NAIC). Existing law requires insurers doing business in this state to adhere to such standards. This also ensures Alaska will maintain its accreditation as a state with effective insurer solvency regulation.

With respect to health care insurance, the bill puts Alaska in compliance with the federal Health Insurance Portability and Accountability Act of 1996 requiring guaranteed renewal of individual policies. Although the legislature three years ago passed amendments to the insurance code to conform to this federal law, that legislation relied on covering the market through the existing high-risk pool. But that did not take into consideration those who do not participate in the pool. This bill corrects that omission. In addition, this bill incorporates a 1998 federal mandate under the Women's Health and Cancer Rights Act requiring insurers to cover reconstructive surgery following mastectomies.

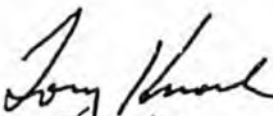
Governor

The Honorable Brian Porter  
January 20, 2000  
Page 2

This bill also includes several "clean-up" items to correct inadvertent errors and omissions and clarify changes made in the 1997 state law.

I urge your prompt and favorable action on this measure.

Sincerely,



Tony Knowles  
Governor

**HB 303  
Insurance Legislation**

**Sectional Analysis by the  
Department of Community and Economic Development  
Division of Insurance**

**Section 1. AS 21.06.250 Electronic payment of fees, Page 1.**

The amendment to this section will give the director the flexibility to require payments through electronic payment system as is currently allowed for premium tax payments.

**Sec. 2. AS 21.14.010(e) Risk based capital instructions, Page 2.**

The amendment to this subsection along with the amendment in Sec. 3 will resolve the conflict between AS 21.14.200(18) and this subsection regarding how the risk based capital formula is adopted. In 1997, AS 21.14.200(18) was amended to provide that "risk based capital instructions" were to be adopted by the director for the division of insurance by "order" rather than by "regulation." This change was intended to allow the director the flexibility necessary to ensure that the instructions conform to the continually refined NAIC instructions and to help achieve nationwide consistency in such instructions. Because of an oversight, the 1997 legislation did not make a necessary amendment to AS 21.14.010(e), which is the substantive statute that provides for the establishment of the risk based capital instructions. This section of the bill corrects this oversight.

**Sec. 3. AS 21.14.200(18) Risk based capital instructions, Page 2.**

The amendment to this definition paragraph along with the amendment in Sec. 2 will resolve the conflicting adoption requirements currently in AS 21.14.010(e) and this paragraph. The amendment removes from the definition the language that provides for the adoption of instructions by order, because such language is more appropriately placed in AS 21.14.010(e) rather than in a definition section.

**Sec. 4. AS 21.18.010 Allowable assets, Page 2.**

This section has been repealed and reenacted to conform to new insurance company accounting standards adopted by the National Association of Insurance Commissioners (NAIC) that insurance companies are required to follow under existing Alaska law. This section provides the basis for the recording of assets by an insurance company. While the provisions in this section are general in nature, the details for recording assets are provided in the NAIC Accounting Practices and Procedures Manual (codification) and in AS 21.18.030. Under AS 21.06.140(c), insurance companies are required to use the NAIC Accounting Practices and Procedures Manual. The requirements for premiums due from a controlling or controlled person are not repealed since the new insurance accounting standards do not have similar requirements.

**Sec. 5. AS 21.18.030 Assets not allowed, Page 4.**

This section has been repealed and reenacted to conform to new insurance company accounting standards adopted by the NAIC that insurance companies are required to follow under existing Alaska law. This section provides standards for the types of assets not allowed to be reported as

admitted assets by an insurance company. Details on the specific types of assets that are allowed and not allowed to be reported as admitted assets are in the NAIC Accounting Practices and Procedures Manual (codification). Under AS 21.06.140(c), insurance companies are required to use the NAIC Accounting Practices and Procedures Manual. The provisions regarding assets not allowed were repealed since they duplicated, and in some cases conflicted with, the requirements of the NAIC Accounting Practices and Procedures Manual in some manner.

**Sec. 6. AS 21.18.050 Reserves and liabilities, Page 4.**

This section has been repealed and reenacted to conform to new insurance company accounting standards adopted by the NAIC that insurance companies are required to follow under existing Alaska law. The amendments to this section clarify what is to be charged against assets in determining the financial condition of an insurer. In addition, a reference to taxes is removed from the stated liabilities to be charged against the assets because taxes are covered in more detail in the NAIC Accounting Practices and Procedures Manual (codification). Under AS 21.06.140(c), insurance companies are required to use the NAIC Accounting Practices and Procedures Manual.

**Sec. 7. AS 21.18.073 Unearned premium reserves for title insurance, Page 5.**

This section is repealed and reenacted for accreditation purposes and to remove provisions that might conflict with NAIC Accounting Practices and Procedures Manual (codification). Under current law, insurance companies are required to use the NAIC Accounting Practices and Procedures Manual to AS 21.06.140(c). The resulting language clarifies that an unearned premium reserve is required by title insurance companies and removes the duplicate requirement that the title insurer establish, segregate, and maintain a guaranty fund since a guaranty fund deposit is already required pursuant to AS 21.66.020.

**Sec. 8. AS 21.18.160 Regulations for assets and liabilities, Page 5.**

This is a new section to make clear that the director may adopt regulations to further clarify the statutory requirements in the chapter.

**Sec. 9. AS 21.21.050 Diversification of investments, Page 5.**

This section has been repealed and reenacted to conform to new insurance company accounting standards adopted by the NAIC that insurance companies are required to follow under existing Alaska law. The amendment to this section adds a limit of 10 percent of assets for investments in options and futures contracts. This limit will ensure that an insurance company's investments are not concentrated in one type of investment.

**Sec. 10. AS 21.42.400 Coverage for reconstructive surgery following mastectomy, Page 7.**

This section amends AS 21.42 to incorporate a federal mandate requiring insurers to cover reconstructive surgery following a mastectomy. Congress enacted this mandate in 1998 under the Women's Health and Cancer Rights Act of 1998, which amended provisions in ERISA and amended the 1997 HIPAA provisions in the Public Health Service Act (PHS). Adding this provision to statute ensures that Alaska maintains authority to enforce this federal mandate on insurers writing health insurance in Alaska.

**Sec. 11. AS 21.51.400 Renewability and certification, Page 7.**

The federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) requires that individual health insurance policies be guaranteed renewable with only certain exceptions. This requirement was not included in Alaska's 1997 HIPAA legislation in error. Adding these provisions to statute ensures that Alaska maintains authority to enforce the requirements on insurers writing health insurance in Alaska.

**Sec. 12. AS 21.54.500(7) Definitions, Page 8.**

The current definition of creditable coverage requires two modifications to bring it into compliance with the HIPAA definition of creditable coverage. The first modification corrects the definition to include all health care insurance plans not just those offered in the group market. The second modification clarifies that coverage under any state high risk pool is creditable coverage (not just Alaska's high risk pool).

**Sec. 13. AS 21.54.500(20) Definitions, Page 8.**

The definition of late enrollee requires a modification due to a drafting error in Alaska's 1997 HIPAA legislation. The current definition does not require that an individual be covered under creditable coverage at the time of the initial enrollment as defined under HIPAA. The modification to this definition corrects this error.

**Sec. 14. AS 21.56.110(e) Applicability, Page 9.**

Alaska's 1997 HIPAA legislation inadvertently omitted the requirement that an insurer must continue to provide coverage to a small employer until the employer's next anniversary in the event that the small employer no longer meets the definition of a small employer. This section adds this requirement back into the law and is consistent with HIPAA requirements.

**Sec. 15. AS 21.56.140(b) Required offer of coverage, Page 9.**

This section corrects a drafting error by changing the word insurer to insurance.

**Sec. 16. AS 21.56.140(c) Required offer of coverage, Page 10.**

In response to several questions regarding participation requirements for small employer plans, this section clarifies that the insurer must exclude those individuals who do not select coverage because they have other similar coverage in determining whether a small employer meets the participation requirements. The effect is to assist those very small employers with for example, 2 or 3 employees in attaining group coverage.

**Sec. 17. AS 21.56.140(d) Required offer of coverage, Page 10.**

In response to several question regarding the requirement in this section that an insurer offer coverage to all eligible employees as defined in the chapter, this section clarifies that the employer retains the right to determine which employees to cover. The insurer must initially offer to all eligible employees, but at the request of the employer may issue coverage only to those employees the employer chooses to cover.

**Sec. 18. AS 21.56.140(f) Required offer of coverage, Page 11.**

To clarify the law regarding sales of health insurance to small employers, this section adds the requirement that the insurer may not discriminate in sales to small employers by their size.

**Sec. 19. AS 21.56.180(a) Fair marketing standards, Page 11.**

To clarify the law regarding sales of health insurance to small employers, this section adds the requirement that compensation not vary by the size of the small employer.

**Section 20. Repeal, Page 11.**

This section repeals AS 21.18.900(4), which is the definition of foreign currency. This definition is unnecessary since amendments to AS 21.18.010 in Section 4 remove the term from the statute. This section also repeals AS 21.21.360(b) through (f), which provided accounting guidance for investments in options and futures contracts. The NAIC Accounting Practices and Procedures Manual (codification) now provides the current accounting guidance in this area. Under current law, insurance companies are required to use the NAIC Accounting Practices and Procedures Manual pursuant to AS 21.06.140(c).

# FISCAL NOTE

Bill-Version: HB 303

(H) Publish Date: 1/21/00

**STATE OF ALASKA  
2000 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction) \_\_\_\_\_ Dept. Affected Community & Economic Developm  
 Title An Act relating to the method of payment of fees and BRU Insurance  
 adoption of regulations under AS 21-Insurance cleanup bill Component Insurance  
 Sponsor Rules Committee  
 Requester Governor Component No. 354

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

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2000) cost: \_\_\_\_\_

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

No fiscal impact

Prepared by: Robert A. Lohr Phone 269-7900  
 Division Insurance Date/Time 12-29-99 8:50 AM  
 Approved by Commissioner Deborah B. Sedwick Date 12/29/99  
 Agency Community & Economic Development

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FISCAL NOTE

Page 1 of 1

**ALASKA INDEPENDENT INSURANCE AGENTS AND BROKERS, INC.  
(AIIAB)  
POSITION PAPER**

**HOUSE BILL 303 – MISCELLANEOUS INSURANCE PROVISIONS  
SUPPORT**

The AIIAB supports this Division of Insurance presented bill in its present form (Version A). This legislation simplifies and enhances current statute for clarity and additional consumer protection.

**RECEIVED**

**MAR 07 2000**