

ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 8672

10058 SENATE HEALTH EDUCATION & SOCIAL SERVICES

**Subject: HB 301 provision for gifted students**

**Date:** Sun, 16 Apr 2000 15:47:50 -0800

**From:** "Conradus Jager" <dutchboy@gci.net>

**To:** <Representative\_John\_Coghill@legis.state.ak.us>, <Representative\_Tom\_Brice@legis.state.ak.us>, <Representative\_Allen\_Kernplen@legis.state.ak.us>, <Representative\_Carl\_Morgan@legis.state.ak.us>, <Representative\_Jim\_Whitaker@legis.state.ak.us>, <Wes\_Keller@legis.state.ak.us>, <Senator\_Mike\_Miller@legis.state.ak.us>, <Senator\_Pete\_Kelly@legis.state.ak.us>, <Senator\_Drue\_Pearce@legis.state.ak.us>, <Senator\_Gary\_Wilken@legis.state.ak.us>, <Senator\_Kim\_Elton@legis.state.ak.us>, <Mary\_Gore@legis.state.ak.us>

Please do not vote for HB301 unless and until it makes provision for the needs of the state's gifted students. To ignore the needs of these students is to waste a valuable resource!

Sincerely, Robin Jager Gabbert & Con Jager

**Subject: Gifted and Talented Programs**

**Date:** Mon, 17 Apr 2000 02:12:58 -0400 (EDT)

**From:** jerry koenig <jerry.koenig@juno.com>

**To:** Bill Williams <Representative\_Bill\_Williams@legis.state.ak.us>,  
Con Bunde <Representative\_Con\_Bunde@legis.state.ak.us>,  
Mike Miller <Senator\_Mike\_Miller@legis.state.ak.us>,  
Randy Phillips <Representative\_Randy\_Phillips@legis.state.ak.us>,  
Kim Elton <Senator\_Kim\_Elton@legis.state.ak.us>,  
Eldon Mulder <Representative\_Eldon\_Mulder@legis.state.ak.us>,  
Pete Kelly <Senator\_Pete\_Kelly@legis.state.ak.us>,  
Ben Grussendorf <Representative\_Ben\_Grussendorf@legis.state.ak.us>,  
Gary Wilken <Senator\_Gary\_Wilken@legis.state.ak.us>,  
Drue Pearce <Senator\_Drue\_Pearce@legis.state.ak.us>,  
Allen Austerman <Representative\_Allen\_Austerman@legis.state.ak.us>,  
John Davies <Representative\_John\_Davies@legis.state.ak.us>,  
Gene Therriault <Representative\_Gene\_Therriault@legis.state.ak.us>

Dear Legislators,

My wife and I have recently heard that two bills, SB 205 and CSHB 301, are circulating through your committees and that these bills intend to make programs for the gifted student voluntary rather than mandatory. If this is true, we urge you to prevent these bills from passing into law.

These programs are as necessary for the gifted student as programs for struggling students. We are afraid that if school districts have the ultimate say in the programs they offer for these truly special students that these programs and these students will suffer. Our son depends on these programs to challenge his mind in ways that the ordinary classroom cannot.

Please remember all special education students in your deliberations for the students at both ends of the educational spectrum need and deserve special considerations.

Parent of a Gifted Student  
(907) 696-2057

**Subject: SB205**

**Date: Mon, 17 Apr 2000 10:44:53 -0800**

**From: Curt Burgoyne <clburgoy@alaska.net>**

**To: Senator\_Mike\_Miller@legis.state.ak.us**

Dear Senator.

Gifted education is very important! PLEASE ensure that these special needs kids continue to get the individual support that they need! Continue funding. Continue IEPs.

Sincerely,  
Kathy Burgoyne

**Subject: SB 205**

**Date:** Mon, 17 Apr 2000 20:45:03 -0800

**From:** "Stacy & Russ Oates" <oates@alaska.com>

**To:** <Senator\_Mike\_Miller@legis.state.ak.us>

We are writing to express our extreme concern over Senate Bill 205. This bill would eliminate all due process rights and procedural safeguards for gifted and talented students. It could mean the end of funding for gifted and talented programs for Alaska as parents would have no recourse if the school districts chose to defund them. This would indeed be a tragedy for many families, including ours. The gifted and talented programs have made a huge difference to our two daughters. While our girls were in grammar school, this program kept them stimulated and challenged and provided them with ideas for potential careers. The middle school gifted classes have been especially valuable to our older daughter. When she was not enrolled in the gifted program she was a behavior problem. Now she is finally challenged sufficiently and her academic success has improved dramatically.

These programs are very important. They serve students whose needs are as real as disabled students. We cannot afford to let these children be bored when they offer so much potential to the future of our state.

Please leave gifted students under special education programs.

Sincerely,

Stacy and Russ Oates

**Subject: [Fwd: SB 205 and HB 301]**

**Date:** Mon, 17 Apr 2000 21:27:14 -0800

**From:** Rich Steinzeig <sille@gci.net>

**To:** Senator\_Mike\_Miller@legis.state.ak.us

---

**Subject: SB 205 and HB 301**

**Date:** Sat, 15 Apr 2000 09:41:22 -0800

**From:** Rich Steinzeig <sille@gci.net>

**To:** Representative\_Eldon\_Muler@legis.state.ak.us,  
Representative\_Gene\_Therriault@legis.state.ak.us,  
Representative\_Con\_Bunde@legis.state.ak.us,  
Representative\_Randy\_Phillips@legis.state.ak.us,  
Representative\_Bill\_Williams@legis.state.ak.us,  
Representative\_John\_Davies@legis.state.ak.us,  
Representative\_Allen\_Austerman@legis.state.ak.us,  
Representative\_Ben\_Grussendorf@legis.state.ak.us, Representative\_Davis@legis.state.ak.us,  
Representative\_Foster@legis.state.ak.us

Our daughter, Aleah, has participated and benefited from the IGNIGHT program for the last two years. We are very concerned over the news that the legislation you are currently working on may disrupt her continued participation in the wonderful program in the years to come. Children in the Gifted and Talented programs, need and require these special programs to challenge them in positive directions. Not only does our daughter benefit from the Gifted and Talented program, but our family, her peers, her friends, and her school does as well. Ever since my daughter started at Willow Crest Elementary School in the first grade, the teachers and administrators recognized that she would benefit from the wonderful opportunities that the Gifted and Talented programs have to offer.

We urge you to support the Gifted and Talented programs in the State of Alaska by making sure that Gifted and Talented program is required for all Alaska School Districts; and to assure procedural safeguards for Gifted and Talented students, as in the current statute.

Thank you,

Elizabeth Ellis-Steinzeig  
Rich Steinzeig

**Subject: SB 205****Date: Mon, 17 Apr 2000 21:43:01 -0700****From: "JB BAILEY" <tbgak@gci.net>****To: "Mike Miller" <Senator\_Mike\_Miller@legis.state.ak.us>**

Dear Senator Miller,

I am writing you to express my concern about the Senate Bill 205's provision to cut gifted and talented programs from the school districts. My third grade son is currently in the gifted program and we have found it to be one of the most wonderful school experiences. My son's critical thinking skills are challenged in a way that his regular classroom experience does not provide. As most parents probably feel, I am continually worried about my children getting the level of education they need in a public school environment when so much of the classroom learning is based on getting the least capable students through the program. It is advantageous to all in society when these gifted students are given the opportunity to learn on a higher level for they will become our doctors, engineers, scientists and educators. Already my son is called upon to help his fellow students out when they are grouped for reading and projects. He is a positive role model for his peers when so much can be centered around the negative actions of students in the classroom.

I am totally frustrated with the amount of attention and money given to students with problems such as physical disabilities and behavior problems while little is done for those who already possess the positive learning attitude and ability to excel. It seems our society is focused on fixing "problems" instead of prevention through encouragement of those that are making great learning contributions to the classroom.

I am greatly concerned with the growing taxes my family is asked to pay each year in support of our education system and I applaud your efforts to cut waste. I have encountered school programs that I believe are wasteful and am sure other parents have encountered areas they find wasteful too. All too often these "wasteful" programs continue due to the politics of school board members while valuable programs are being slashed.

Please allow my children to continue to grow through the gifted and talented program...they are worth it!

Sincerely,  
Deborah Bailey  
16915 Yellowstone Dr.  
Eagle River, AK 99577  
tbgak@gci.net

**Subject: SB205**

**Date:** Tue, 18 Apr 2000 14:31:40 -0800

**From:** rjatchak@avcp.org (Raymond Atchak)

**To:** Senator\_Pete\_Kelly@legis.state.ak.us, Senator\_Mike\_Miller@legis.state.ak.us

For the sake of our children, please send SB205 out of your Committee for a vote on the Senate Floor before you adjourn, soon. You are compromising our children's education by not passing this bill out of committee. Do the right thing...

Have a wonderful Week!

**Subject: RE: SB205 (house bill 301) - Access to gifted programs**

**Date:** Tue, 18 Apr 2000 17:10:59 -0800

**From:** "Craig Holmes" <cccbholmes@pci.net>

**To:** <Senator\_Mike\_Miller@legis.state.ak.us>, <Senator\_Pete\_Kelly@legis.state.ak.us>, <Senator\_Gary\_Wilkin@legis.state.ak.us>, <Senator\_Drue\_Pearce@legis.state.ak.us>, <Senator\_Kim\_Elton@legis.state.ak.us>

Dear Senators on the Health & Social Services Committee:

As detailed below, we are opposed to the portion of SB205 that removes Gifted and Talented programs from the protection of Special Education.

Craig and Claudia Holmes

----- Original Message -----

From: Craig Holmes

To: Representative Eldon Mulder@legis.state.ak.us ; Representative Gene Therriault@legis.state.ak.us ; Representative Con Bunde@legis.state.ak.us ; Representative Randy Phillips@legis.state.ak.us ; Representative Bill Williams@legis.state.ak.us ; Representative John Davies@legis.state.ak.us ; Representative Allen Austerman@legis.state.ak.us ; Representative Ben Grussendorf@legis.state.ak.us

Sent: Tuesday, April 18, 2000 5:05 PM

Subject: RE: HB301 - Access to gifted programs

Dear Representatives of the House Finance Committee:

We are opposed to this bill which removes Gifted and Talented programs from the protection of special education. These programs should not be optional in a school district. Gifted children need appropriate education, just as special needs children do. Gifted children cannot be adequately challenged in a typical classroom setting which includes a broad mix of learning levels. Our children have attended an elementary gifted program off site for one-half day a week. The middle school also includes gifted education. This has been very important to their school development. Gifted programs are critical in providing a challenge for students who need accelerated learning to maximize their education. Without these programs, gifted children would be a population that our school district underserves.

Help our children receive the most of their education by leaving the gifted program as it is, so every child who qualifies for gifted education will receive it.

Claudia and Craig Holmes

4121 Ursa Circle

Anchorage, AK 99517

**Subject: SB 205**

**Date:** Mon, 17 Apr 2000 20:47:09 -0800

**From:** "Stacy & Russ Oates" <oates@alaska.com>

**To:** <Mary\_Gore@legis.state.ak.us>

We are writing to express our extreme concern over Senate Bill 205. This bill would eliminate all due process rights and procedural safeguards for gifted and talented students. It could mean the end of funding for gifted and talented programs for Alaska as parents would have no recourse if the school districts chose to defund them. This would indeed be a tragedy for many families, including ours. The gifted and talented programs have made a huge difference to our two daughters. While our girls were in grammar school, this program kept them stimulated and challenged and provided them with ideas for potential careers. The middle school gifted classes have been especially valuable to our older daughter. When she was not enrolled in the gifted program she was a behavior problem. Now she is finally challenged sufficiently and her academic success has improved dramatically.

These programs are very important. They serve students whose needs are as real as disabled students. We cannot afford to let these children be bored when they offer so much potential to the future of our state.

Please leave gifted students under special education programs.

Sincerely,

Stacy and Russ Oates

# CORRECTION

THE FOLLOWING DOCUMENT(S)  
HAVE BEEN REFILMED TO  
ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

Central Microfilm Services  
Department of Education & Early Development  
State of Alaska

**Subject: SB 205**

**Date: Mon, 17 Apr 2000 20:47:09 -0800**

**From: "Stacy & Russ Oates" <oates@alaska.com>**

**To: <Mary\_Gore@legis.state.ak.us>**

We are writing to express our extreme concern over Senate Bill 205. This bill would eliminate all due process rights and procedural safeguards for gifted and talented students. It could mean the end of funding for gifted and talented programs for Alaska as parents would have no recourse if the school districts chose to defund them. This would indeed be a tragedy for many families, including ours. The gifted and talented programs have made a huge difference to our two daughters. While our girls were in grammar school, this program kept them stimulated and challenged and provided them with ideas for potential careers. The middle school gifted classes have been especially valuable to our older daughter. When she was not enrolled in the gifted program she was a behavior problem. Now she is finally challenged sufficiently and her academic success has improved dramatically.

These programs are very important. They serve students whose needs are as real as disabled students. We cannot afford to let these children be bored when they offer so much potential to the future of our state.

Please leave gifted students under special education programs.

Sincerely,

Stacy and Russ Oates

## **CSSB 205 (HES)**

- Section 1**    **Current Bill--version D and amendment that passed 4/12/00**
- Section 2**    **Proposed Amendments by various groups**
- Section 3**    **General Information (including Grobers side by side)**
- Section 4**    **Letters Received**
- Section 5**    **Congressional Delegation Information**
- Section 6**    **Repealer Information**



**DISABILITY  
LAW CENTER  
OF ALASKA**

April 12, 2000

By hand delivery

Hon. Mike Miller  
Chair, HESS Committee  
Alaska Senate  
Capitol Room 119  
Juneau, Alaska

**JUNEAU**

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

**Re: SB 205: Education of exceptional children**

Dear Chairman Miller:

We have provided testimony regarding the original version of House Bill 301, the companion bill to SB 205. These comments (copy enclosed) apply equally to SB 205 as introduced on January 20, 2000.

We understand the Senate HESS committee may be deliberating on a committee substitute substantially similar to CSHB 301 as passed out of the House HESS committee on April 8, 2000. We have been provided a copy of Senate CS Workdraft "D." On Workdraft D, we have the following additional comments:

Statute of Limitations: we still emphasize that the one year statute of limitations contained in Section 5 of the bill should be two years. Thus we recommend changing "12 months" to "two years" in Section 5, at page 3, line 16.

Parental consent: the language found in Section 3, at page 3, lines 4-8, was adopted without public testimony. We are concerned that this language raises issues of equal protection under the Alaska and federal constitutions (since parents of children at public schools do not have the same rights as parents enrolling children under AS 14.30.010(b)). We also are concerned that the precatory "may request a hearing" on page 3, line 8 is inconsistent with 34 C.F.R. § 300.505(d), which requires that each state must "ensure that a parent's refusal to consent does not result in a failure to provide the child with a [free and appropriate public education]." Under the existing form of the bill, it might be interpreted that a school district is not under a mandatory duty to ensure that FAPE is provided by seeking an administrative hearing if a parent's refusal to provide consent would deny the child a free and appropriate public education. We think this violates IDEA and its implementing regulations.

Thus we propose that subsection (c) be deleted in its entirety, with the department to resolve this issue by regulations, for reasons that were discussed in our letter to the House HESS committee chair dated April 4, 2000. Basically, we believe that there is a sufficient panoply of rights under existing IDEA law and regulations to ensure that essentially any parent of a child with a disability may take steps to seek

MEMBER OF THE  
NATIONAL  
ASSOCIATION OF  
PROTECTION &  
ADVOCACY  
SYSTEMS

Sen Mike Miller, Chairman, Senate HESS Committee, Alaska Legislature  
Re: SB 205, Education of Exceptional Children  
April 12, 2000  
Page 2

---

an administrative review of any decision by a school district with regard to the child's individualized education program (IEP). We have listed those rights in our April 4 letter (copy enclosed).

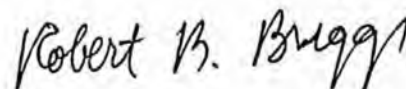
If the committee still believes that specific state law is necessary on the subject of parental consent, we suggest the following be adopted instead of the existing form of subsection (c) contained on page 3, lines 4-8 of Workdraft D:

#2  
(c) a parent may refuse special education or a related service provided under AS 14.30.180 - 14.30.350. The entity responsible under this section shall provide special education and related services to the extent consent has been provided. If a parent's refusal to consent will result in failure to provide an appropriate public education, the responsible entity shall resolve the dispute through mediation or other means, and if unsuccessful, shall request a hearing under AS 14.30.193.

This language will, in our view, eliminate a potential conflict between the current form of Workdraft D, the federal IDEA and its implementing regulations.

With the exceptions of the proposed revisions outlined in this letter, we recommend passage of Workdraft D as a committee substitute to SB 205.

Very truly yours,



Robert B. Briggs  
Staff attorney

Encl.

Cc: Rep. Fred Dyson, chairman, House HESS committee  
Reps. Gene Therriault and Eldon Mulder, co-chairmen, House Finance Committee  
Bruce Johnson, Deputy Commissioner, Alaska Dept. of Ed. & Early Development  
P.J. Ford-Slack, Ph.D., Alaska Dept. of Education & Early Development  
Dave Maltman, Governor's Council on Disabilities and Special Education  
Faye Nieto, exec. dir., Tim Weiss, PARENTS, INC.  
Dave Fleurant, legal director, Rick Tessandore, exec. dir., DLC Anchorage

1-GS2003D

Changes Proposed on 4/12/00 by  
*Pamela Bickford*, 16840 Tide View Drive, Anchorage  
 (345-7731) CS FOR SENATE BILL NO. 205(HES) AL. 99516

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE SENATE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered:  
 Referred:

Sponsor(s): SENATE 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 may, notwithstanding  
 13 any other provision of AS 14.30.180 - 14.30.350,

14 (1)

~~(1) take necessary action to qualify for federal funds that are available~~

Develop procedures for implementing and enforcing state  
 and federal laws and regulations pertaining to the education of  
 children with disabilities. New Text Underlined (DELETED TEXT BRACKETED)  
 CSSB 205(HES)

(?) adopt complaint procedures including appeal rights  
1-GS2003D

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

~~to the state for the education of exceptional students;~~

(2) adopt regulations necessary to comply with AS 14.30.180 - 14.30.350; and

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

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

(B) a description of special education services, including gifted and talented services, provided under AS 14.30.180 - 14.30.350 that are not required under federal law; and

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

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

Sec. 14.30.186. Coverage. (a) Except when different provision is made for special education and related services in regulations adopted under (b) of this section, special education and related services shall be provided by

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

(2) a governing body 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) 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;

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

(5) a district that provides a statewide correspondence study program, for a child with a disability who is enrolled in the program.

(b) The department shall adopt regulations necessary to provide for the allocation of financial responsibilities and the coordination of the provision of special

1-GS2003D

1 education and related services between the provider agencies in cases where a child  
2 with a disability is enrolled in the educational programs of more than one of the  
3 provider agencies described in (a) of this section.

4 (c) A parent who elects to educate a child as allowed under AS 14.30.010(b)  
5 may refuse the special education and related services provided under AS 14.30.180 -  
6 14.30.350. A school district that disagrees with a parent regarding the provision of  
7 special education and related services may attempt to resolve the disagreement by  
8 mediation or may request a hearing as provided under AS 14.30.193.

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

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

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

15 (b) A request by a parent for a due process hearing must be made not later  
16 than <sup>24</sup>~~12~~ months after the date the school district provides the parent with written notice  
17 of the decision with which the parent disagrees and with written notice of procedural  
18 safeguards available to that parent in federal law. A school district shall make its  
19 request under (a) of this section under regulations adopted by the department.

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

21 (c) If a due process hearing is requested by a parent or school district, the  
22 department, through a <sup>rotating</sup>~~random~~ selection process, shall provide the parent with the  
23 names and qualifications of three qualified hearing officers from a list maintained by  
24 the department. The parent may choose one person from the list of three provided by  
25 the department. If the parent does not select a name, the department may appoint as  
26 hearing officer <sup>any one of the three qualified hearing officers selected</sup>~~any person from the list maintained by the department.~~ After  
27 appointment under this subsection, a hearing officer shall proceed under regulations  
28 adopted by the department.

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

30 (h) The department shall maintain a list of qualified hearing officers. The  
31 department shall qualify hearing officers through a training program that is [SHALL

3

4

1-GS2003\D

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

Don't yield to the department's wholesale repeal of the protections for parents and their children without careful consideration.

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]. The list of qualified hearing officers shall be maintained as a public record.

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

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

\* Sec. 9. AS 14.30.325(a) is amended to read:

(a) The department may by regulation provide for the appointment of surrogate parents to represent children with disabilities [EXCEPTIONAL CHILDREN] in matters relating to the provision of an appropriate public education.

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

(a) If a parent of a [AN EXCEPTIONAL] child with a disability enrolls the child in a private or religious school at the parent's expense or teaches the child at home, the school district in which the child resides [IS LOCATED] shall make special education and related services available in conformance with an individual services plan as authorized by federal law [INDIVIDUALIZED EDUCATION PROGRAM UNDER AS 14.30.278].

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

(1) "appropriate public education" means personalized instruction with sufficient support services to permit a child to benefit educationally from the instruction. under state law;

\* Sec. 12. ~~AS 14.30.191, 14.30.193(d), 14.30.193(e), 14.30.235, 14.30.272, 14.30.274, 14.30.276, 14.30.278, 14.30.285, 14.30.335, 14.30.340(b), 14.30.347, 14.30.350(3), 14.30.350(4), 14.30.350(7), 14.30.350(8), 14.30.350(9), and 14.30.350(11) are repealed.~~

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

14.30 is amended to read:

The department shall post administrative hearing decisions and Complaint decisions on the department's website.

CSSB 205(HES)

5

Testimony of Margo Waring  
364-3155

For the record, my name is Margo Waring, a parent of a gifted child and I speak on behalf of other GT parents. Speaking on their behalf I greatly appreciate and am relieved by the adoption of Amendment #1. It shows your recognition of the needs of GT students that have been recognized in Alaska Statutes for the past 30 years.

I want you to know that your actions do not effect only GT students. Educational research shows that doing the best for GT students raises the level of academic achievement of all students in a school. Therefore, if we care about standards and exit exams, you need to care about GT programs & students.

Having said this, I would like to make some suggestions for further improvements.

1. The Department has had GT for decades without promulgation of regulations. Can we add a time certain for the promulgation of these regulations to assure speedy attention to this task.
2. I also urge you to retain the procedural safeguards currently part of the GT program. These include IEPs and due process and hearings. I have conveyed to the chair our concept of how this can be done. Please consider them as otherwise appeals will be made to the very body which has denied the request. This is an appropriate role for the Department and unlikely to be costly, as its effectiveness is in the threat, adding incentive to come to agreement.

Thank you for this opportunity to address SB205 and Thanks for Amendment #1.

AMENDMENT to SB 205

*A. Add new Sec. 9 to read:*

Sec. 9. AS 14.30.272 is amended to read:

**Sec. 14.30.272. Procedural safeguards for gifted children.** (a) A school district shall inform the parent of a gifted [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, 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 this section. [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).]

*B. Add new Sec. 10 to read:*

Sec. 10. AS 14.30.274 is amended to read:

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

*C. Add new Sec. 11 to read:*

Sec. 11. AS 14.30.278 is amended to read:

**Sec. 14.30.278. Individualized education program for gifted children.**

(a) The individualized education program for each gifted [EXCEPTIONAL] child must include

- (1) a statement of the child's present level of educational performance;
- (2) a statement of annual goals, including short term instructional objectives;
- (3) a statement of the specific gifted [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 a gifted [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 gifted [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 gifted [EXCEPTIONAL] child who receives services or whose parent requests services under this section [AS 14.30.180 – 14.30.350].

***D. Amend and renumber current Sec. 9 to read:***

Sec. 12. AS 14.30.315 is repealed and reenacted to read:

**Sec. 14.30.315. Programs for gifted children.** Every school district shall establish a program for the provision of educational services for gifted children consistent with minimum standards and regulations adopted by the department. The regulations adopted by the department shall require separate accounting by the department and each school district of money spent for programming under this section, including procedures for enforcement of rights, in order to ensure that federal money provided under 20 U.S.C. 1400 – 1487 is not used under this section. The department shall adopt such regulations with an effective date no later than January 1, 2001.

***E. Add new Sec. 15 to read:***

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

(3) "consent," as it applies to the parents of gifted children, 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;

***F. Add new Sec. 16 to read:***

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

(3) "educational records," as the term applies in gifted education, 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 "education 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;

**G. Add new Sec. 17 to read:**

Sec. 17. AS 14.30.350 is amended by adding a new subsection to read (the remaining subsections of 14.30.350 are renumbered accordingly):

(7) "gifted education" means specially designed enriched and/or accelerated instruction, at no cost to the parent, to meet the unique needs of gifted children, and related services;

**H. Add new Sec. 18 to read:**

Sec. 18. AS 14.30.350(7) is amended and renumbered to read:

(8) "individualized education program team," as the term applies in gifted education, 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) the teacher who provides the child's gifted education [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.

**I. Add new Sec. 19 to read:**

Sec. 19. AS 14.30.350(8) is amended and renumbered to read:

(9) "parent," as it applies to the parents of gifted children, includes a guardian and [,] a person acting as a parent of a child [AND A SURROGATE PARENT APPOINTED UNDER AS 14.30.325.];

**J. Add new Sec. 20 to read:**

Sec. 20. AS 14.30.350(9) is amended and renumbered to read:

(10) "related services," as the term applies to gifted children, means [TRANSPORTATION AND DEVELOPMENTAL, CORRECTIVE, AND

OTHER] supportive services required to assist [CHILDREN WITH DISABILITIES OR] gifted children to benefit from gifted [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;

*K. Amend and renumber current Sec. 12 to read:*

**Sec. 21.** AS 14.30.191, 14.30.193(d), 14.30.193(e), 14.30.235, 14.30.276, 14.30.285, 14.30.325, 14.30.340(b), and 14.30.347 are repealed.

# LEGAL SERVICES

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

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

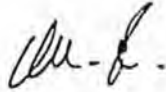
State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

April 7, 2000

**SUBJECT:** Special education services (CSHB 301(HES))

**TO:** Representative Fred Dyson  
Attn: Wes

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

You have asked if a parent has the right to refuse special education services offered by a school district. The answer to this question depends on why the parent is refusing the education services. Under AS 14.30.010 a child between seven and 16 years of age is required to attend school. There are exceptions to this compulsory education requirement under AS 14.30.010(b). Under existing law (AS 14.30.186(b)) and CSHB 301(HES) (Sec. 14.30.186(c)) a parent can refuse special education services if the child is receiving an education as allowed under AS 14.30.101(b). Assuming that a parent's refusal is based on an exception contained in AS 14.30.010(b), clearly there is a right to refuse the special education services.

The more difficult question arises regarding a parent's right to refuse special education services when the refusal does not fall into one of the statutory exceptions to the compulsory education law. In this instance the parent's refusal may or may not be successful, again depending on the reasons for the refusal. I do not think a parent has an absolute right to refuse to comply with the compulsory education law. See *Wisconsin v. Yoder*, 406 U.S. 205 (1972). In short, a parent can refuse special education services, but the refusal must be supported by law or be in the best interest of the child. As you probably know, both existing law and CSHB 301(HES) provide a dispute resolution mechanism for parents and school districts. A parent has a right to a hearing and a right to appeal to the courts if dissatisfied with the administrative process. See AS 14.30.195.

I would note that one of the provisions being repealed by CSHB 301(HES), is the existing provision under AS 14.30.193(c), requiring that in order for a hearing officer to approve the school district's action, that action must be "in accordance with law and" (be) "in the child's best interest". Given the time constraints on this memo, I cannot tell you if a similar provision exists in the department's regulations or under federal law.

Please contact me if you have further questions.

MFF: lmb:pl  
00-021.lmb

# STATE OF ALASKA

Department of Education & Early Development

Office of the Commissioner

TONY KNOWLES, GOVERNOR

Goldbelt 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 (b) 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

# PARENTS, Inc. Legislative Alert

Thursday, March 23, 2000, at 3 p.m.  
Hearing on Alaska Special Education Bill HB 301  
House HESS Committee, Capitol 106

HB 301 and SB 205 were offered to the Alaska Legislature on January 20, 2000 by Governor Tony Knowles. The purpose of the bill as stated by the Governor is:

"In 1997 Congress reauthorized the Individuals with Disabilities Education Act (IDEA) which took effect this past July. State law and regulations contain inconsistencies that restrict our compliance with federal programs while creating confusion between the state Department of Education and Early Development (department) and individual school districts. This bill repeals those inconsistent state laws, brings the state into compliance with the intent of Congress, and offers clear guidance and assistance to school districts in delivering services to special education students."

IDEA 97 is a parent-driven law that was part of a grassroots movement that included parents of children with disabilities and special needs from every state. Through IDEA:

- Over 1 million children in the U.S. are being educated in their neighborhood schools.
- There has been over a nine percent increase in high school graduation for students with disabilities.
- Youth served under IDEA are employed twice as often as students before IDEA was enacted.
- IDEA is committed to making parents a primary participant in their child's education and an equal partner in ensuring success with schools.

## FUNDING MAY BE LOST IF THIS BILL NOT PASSED

IDEA 97 provides substantial funding to Alaska for the education of our children with disabilities. If this bill is not passed into law quickly, and regulations not quickly adopted by the department, Alaska, our schools, and our children are in danger of losing federal funding. PARENTS, Inc. has received assurances from the federal government that they are very serious about delaying funding or penalizing Alaska financially if we do not come into compliance quickly with federal changes in the law. We do not want to lose what we have worked so hard to obtain in Alaska.

## CONCERNS ABOUT THE LEGISLATION

Here are some of the concerns that you will hear about HB 301 and SB 205, and here are the real facts:

- *Concern:* The bill would delegate all authority to the department to adopt whatever they want through regulation.  
*The Truth:* IDEA 97 and federal regulations clearly define what states and schools must provide for children with disabilities. Neither the Legislature or department can do anything that is less than the standard set by the federal government.
  - **Action Statement:** "Do not endanger our children's education by delaying passage of this bill."
- *Concern:* The bill does not clarify what type of service can be received for correspondence and/or private school student.  
*The Truth:* IDEA 97 and federal regulations clearly state that public correspondence programs must provide all the same services as you would receive if enrolled in a regular public school. Federal law clearly states that private school student are not entitled to the same amount of services as public school students and discretion is left to the department or school districts to decide how much services

will be provided. Such formulas are complex and it is inappropriate to confuse this section by specifying any sort of funding formula for private schools.

- **Action Statement:** "Allow the department to set regulations allowing local control of service to student enrolled in private schools. Do not bog down this crucial bill with unnecessary details."
  
- **Concern:** Leaving the authority to the department to bring Alaska into compliance with IDEA 97 will ensure that we receive nothing above the minimum required by federal law.  
**The Truth:** The State regulation process allows for considerable public comment. Agencies such as PARENTS, Inc., which is the parent training and information center authorized under IDEA 97, are specifically mandated by federal law to ensure that a maximum amount of parent participation and public comment is allowed during the process of writing the regulations. However, any sort of language added to the bill that would require Legislative approval of any regulations that differ from federal law will encourage the department to meet the minimum federal standards only. This is due primarily to the time limit set by the federal government for the regulations to be finished before Alaska will be subject to financial penalties.
  - **Action Statement:** "Please do not delay this bill by adding unnecessary oversight or approval processes. The state process for regulations, and federal laws are sufficient at this time."
  
- **Concern:** The bill would limit parents' rights to file a due process hearing.  
**The Truth:** Yes. The language in the bill would restrict the rights of parents to file due process hearings to be made no later than six months after the issue of disagreement. PARENTS, Inc. recommends that parents be given two years.
  - **Action Statement:** "The rights of parents and children must be adequately protected. Please protect us and our children by allowing two years to file a due process hearing request."
  
- **Concern:** The department may enact regulations that do not allow parents to see a list of qualifications of hearing officers for due process complaints, or possible relationships that may exist between them and a district.  
**The Truth:** IDEA 97 already requires States to maintain a list of hearing officers with full qualifications listed. Federal law and regulation also requires that these officers be impartial (in other words, they cannot have a conflict of interest relationship with the district in which they are hearing the complaint). A list of all of this information can be requested at any time through federal freedom of information laws. Any such additional language in the bill would be unnecessary and confusing.
  - **Action Statement:** "Please do not delay this bill by adding unnecessary language that is already covered by federal law."
  
- **Concern:** The bill would separate gifted and talented programs from special education services. It would be weakened. The language should be strengthened.  
**The Truth:** This is only partially correct. IDEA does not cover gifted and talented at all. The language in this bill would bury gifted and talented programs in the wrong state law. The federal government has stated repeatedly that putting gifted and talented in Alaska's state law will endanger our federal special education funding. Strengthening the language will not solve the problem and not be very helpful to gifted and talented programs. The only real solution is to urge the Legislature to create a separate bill that recognizes gifted and talented programs as separate and unique. This bill should be tailored to fit the unique needs of Alaska's gifted students, with clear services and protections included. This can never be done by leaving it in this bill.
  - **Action Statement:** "We urge the Legislature to support excellence in Alaska schools by creating a true gifted and talented program in a separate bill. Including it with this bill will only bury it and diminish it."
  
- **Concern:** This bill should include additional language ensuring participation of students with disabilities in state and district-wide assessments such as the Alaska High School Qualifying Exam; specify the way evaluations are conducted; parent participation in eligibility and placement decisions; participation of students in the IEP process; and additional transition planning.  
**The Truth:** All of this is already required in detail in IDEA 97 and related federal regulations.

Including a large amount of extra language that is already required by federal law is unnecessary and may slow the passage of this bill. The new federal law already requires that students with disabilities be included in the "exit exams," "benchmark exams," and to be given an alternative assessment if the student is unable to take the exams, even with full accommodations provided.

- **Action Statement:** "Please do not delay this bill by adding unnecessary language that is already covered by federal law."
- **Concern:** Considerable language is in the bill about due process hearings, but not mediation as a means of resolving parent-school controversies.  
*The Truth:* IDEA 97 requires that mediation be made available. This is a much better means of resolution than due process. Federal law allows states to encourage mediation by mandating the state's parent training and information (PTI) organization authorized under IDEA to provide training and information to parents and schools to encourage use of alternate means of dispute resolution.
- **Action Statement:** "Please add language to the bill to encourage alternative dispute resolution methods such as mediation. We encourage the use of Alaska's parent training and information center to encourage mediation and other alternative means of resolving disputes, as allowed in IDEA under Section 682."

**What to do:**

- E-mail: Representative Dyson of the House HESS committee (regarding HB 301) at [Representative Fred Dyson@legisl.state.ak.us](mailto:Representative_Fred_Dyson@legisl.state.ak.us) and call him at 907-465-2199
- E-mail: Senator Miller of the Senate HESS committee (regarding SB 205) at [Senator Mike Miller@legis.state.ak.us](mailto:Senator_Mike_Miller@legis.state.ak.us) and call him at 907-465-4976
- Contact the representative and senator that represents your area.
- **Note:** please let PARENTS, Inc. know what you said and what response you got by calling us at 337-7678 if you are located in Anchorage AK. Statewide please call toll-free at 1-800-478-7678 or e-mailing us at [IDEA@parentsinc.org](mailto:IDEA@parentsinc.org).
- Show up at your Legislative Information Office this Thursday, March 23, at 3pm to testify.

PARENTS, Inc. 1-800-478-7678

**Subject: CSHB301**

**Date: Mon, 27 Mar 2000 14:46:48 -0900**

**From: Marc Grober <marc@interak.com>**

**To: Wes\_Keller@legis.state.ak.us**

Wes,

Thanks for the fax of the working draft you just sent, tried to call but got the answering machine. Is the working draft public (i.e. is it appropriate to comment to the committee or the public about it), can you make the working draft available in redline format so its easier for people to recognize what has (or has not been changed from HB301) , whose work does the working draft reflect?

In any event I can't support it....

It does not contain the policy language I have recommended nor the due process provisions.

It does not correct existing flaws in our current statutes.

It continues to authorize the department to violate state law.

It continues to afford the department way too much authority without any adequate safeguards.

It provides additional authority to the department to fiddle with the issues of who is responsible for funding special ed and still fails to resolve the problem

It fails to address parental rights.

It fails to set an appropriate statute of limitations consistent with other limitations (I suggest you look at the statute addressing rights created under statute, so you should address a statute by reference to the appropriate existing provision and not provide authority for the department to do anything beyond that).

It fails to address the hearing officer issues I have raised at all.

It continues to leave g/t issues up to districts thereby disenfranchising these parents.

I see no reason for the act to take effect immediately. If nothing else that provision should be removed immediately.

AS 14.30.231 needs to be revised to remove the special ed function from the Gov's counsel, AS 14.30.195 is still very problematic.

The loophole in AS 14.30.255 has been the subject of gross abuse and needs to be closed.

The loophole presented by AS 14.30.270 needs to be closed.

The repeal of AS 14.30.235 is inappropriate

Section 335 is now redundant if the department is given such broad authority under the early sections..... didn't anybody vet this thing???

I can go on and on....

Please let me know how best to provide this info to the committee as it looks like I have to spend Tuesday afternoon drafting and filing pleadings requesting the Superior Court to assume jurisdiction of

special ed in this state (kind of like the federal courts and bussing) and to enjoin the violation of state law by the department..... so I may not be able to attend the hearing..... to be frank, I don't know anyone expects of me at this point.... As far as I can tell, no one has ever suggested that anything I have said or predicted was untrue or did not come to pass..... I have offered to look at working up something in place of HB301 but have not been encouraged to do that at all.... I was going to put together some testimony from school district attorneys recognizing that the bill is fatally flawed and fails to address needed change but is this overkill, is anyone interested? Does the committee want to hear from g/t administrators? Will it accept anonymous testimony or protect the identity of those wishing to testify? Is the cs process just a way of holding the bill in committee without doing anything? Does anyone on the committee believe that the department staff have any idea what they are talking about?

# An Analysis of the Governor's Special Education Proposal

Last updated/amended 1/31/2000

The governor has introduced identical bills in both the Alaska Senate and House for the purpose of amending the current special education statutes. Bill text, committee action and tracking information can be obtained on [Senate Bill 205](#) and [House Bill 301](#) by clicking on their respective links. The bills are short-sighted and anything but comprehensive. They are little more than a knee-jerk effort to pass something through this legislature that will allow AkDEED to promulgate regulations that were written by a contract attorney months ago. As far as I can determine, no input from any attorney practicing in the field of special education was either solicited or considered ( indeed I think I could safely say that any attempts to collaborate with the department in this effort were obstructed or rejected.) The bill is a clear attack on parents of at-risk G/T students, some correspondence programs, parental due process rights and state's rights. The bill also fails to address the impact of IDEA '97 on the Governor's Council. Current statutes and regulations merely indicate that the Council must be apportioned as provided under the IDEA. However, the '97 amendments would require appointment of university personnel, representatives of private schools and public charter schools, vocational, business or community organizations providing transition services, etc. and the majority of the panel **MUST** be individuals with disabilities or their parents!

**You can send your opinion to all the members of any of the legislative committees this bill has been referred to (Senate and House HESS and Finance) via the Akceptionalities WWW POM E-mail gateway with one click. Subscribe via [this link](#)**

Below you will find first an analysis of the bills, which includes the full text of the Governor's proposal (line numbers were omitted) and my comment section by section of the bill. This is a work in progress in the sense that I will take as much time as I can to provide links to appropriate references through the bill and its discussion. Text that would be added is in bold, while text that would be delete is in square brackets.

Below that you will find a copy of the Governor's transmittal letter with my response.

The sectional analysis:

Initial Bill Section Number and Text	<b>HESS CS for HB301 (the large majority of the HESS committee had no recommendation with respect to this Bill)</b>	Comment
		The state's statement of purpose continues to be the most aggravated flaw in the state's special education policy. I much prefer the policy enunciated by

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

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

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

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

(Individuals with Disabilities Education Act), as amended .

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

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

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

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

(Individuals with Disabilities Education Act).

states such as Missouri ([click here for the Missouri policy](#)) and Massachusetts ([click here for the Massachusetts policy](#)) which set affirmative state policy as opposed to simply falling back on federal minimums ([a proposed provision setting appropriate Alaska policy may be found here.](#))

HB301 has the effect of stating that Alaska is simply bowing to whatever the federal government sets as minimal standards. This is tantamount to stating that the Alaska lstate policy for our exceptional children that the state will do the least possible for these children which still allows the state to collect federal revenue. The House HESS Comm. apparently tried to amend the bill to address possible constitutional issues but nothing else.

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

Sec. 14.30.182. Duties of department. The department

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

Sec. 14.30.182. Duties of department. The department may,

shall

(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;

(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

(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.

notwithstanding any other provision of AS 14.30.180 - 14.30.350,

(1) take necessary action to qualify for federal funds that are available to the state for the education of exceptional students;

(2) adopt regulations necessary to comply with AS 14.30.180 - 14.30.350; and

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

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

(B) a description of special education services, including gifted and talented services, provided under AS 14.30.180 - 14.30.350 that are not required under federal law; and

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

This section, as announced in the policy statement, grants AkDEED a carte blanche to take any action whatsoever which in its judgment is necessary to comport with the IDEA, AS AMENDED. In other words, this section is adopted to ensure that whatever may happen in the future, AkDEED is to do anything necessary to keep the money coming in.

It also makes things much more complex because it cinfuses state and federal law. Alaska need not comply with federal law, and will qualify for federal funding if state law meets or exceeds the minimal baselines set by the federal government.

The HESS CS attempts to moderate AKDEED by requiring some reporting. AKDEED has failed to comply with federal reporting requirements for the past three years.

\*Sec. 3. AS 14.30.186 is repealed and reenacted to read:  
Sec. 14.30.186. Coverage. (a) Except when different provision is made for special education and related services in regulations adopted under (b) of this section, special education and related services shall be provided by  
(1) a borough or city school district, for a child with a disability residing within the district;  
(2) a governing body 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) the borough, city school

This section drops the term exceptional (as part of AkDEED's attempt to disenfranchise parents of at-risk gifted students; see more below), drops language that used to refer to boroughs and city schools districts and REAAs, and drops a section that provided an exemption for parents who wished to take advantage of the exemption and were educating their children under AS 14.30.010(b). The proposed amendment would appear to

\* Sec. 3. AS 14.30.186 is repealed and reenacted to read:  
Sec. 14.30.186. Coverage.  
The school district in which a child with a disability is enrolled is responsible for providing special education and related services to the child.

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;  
(4) a state boarding school established under AS 14.16, for a child enrolled at the boarding school; or  
(5) a district that provides a statewide correspondence study program, for a child with a disability who is enrolled in the program.  
(b) The department shall adopt regulations necessary to provide for the allocation of financial responsibilities and the coordination of the provision of special education and related services between the provider agencies in cases where a child with a disability is enrolled in the educational programs of more than one of the provider agencies described in (a) of this section.  
(c) A parent who elects to educate a child as allowed under AS 14.30.010(b) may refuse the special education and related services provided under AS 14.30.180 - 14.30.350. A school district that disagrees with a parent regarding the provision of special education and related services may attempt to resolve the disagreement by mediation or may request a hearing as provided under AS 14.30.193.

potentially allow districts to force children out of private schools by insisting that children receive services that can only be provided in the public schools. This could mean that parents who are obtaining special education services through correspondence programs would now be prohibited from receiving same through the correspondence program.

AS 14.30.285, which though having some flaws went some distance in trying to address the geographic issues involving special education matters is intended to be repealed (next to last section). There is no comprehensive statement of how the state intends to address geographic issues.

The CS attempts to address some of these issues. Paragraph (c) however creates a good deal of confusion as it essentially legislates pre-'97 IDEA law with respect to districts requesting due process hearings (the IDEA has now moved away from that model) while still refusing to afford parents the protections afforded under Alaska CINA to parents.

This is a welcome effort to clarify the existing statute, but it falls far short in the overall execution. This section alone simply provides access to the due

<p>* Sec. 4. AS 14.30.193(a) is repealed and reenacted to read:  (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>* Sec. 4. AS 14.30.193(a) is repealed and reenacted to read:  (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>process hearing system for both district and parents. What is not clear is how the current abuse of the NOPA will be effected. At present, some districts present a parent with a notice that the district intends to take some action, and even though the parent has not consented to any change in the IEP, the district makes the change and tells the parent the parent can seek a hearing. In fact, the previous amendment to federal regulations made it clear that the burden of seeking a hearing in such cases was on the district</p>
<p>* Sec. 5. AS 14.30.193(b) is repealed and reenacted to read:  (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>* Sec. 5. AS 14.30.193(b) is repealed and reenacted to read:  (b) A request by a parent for a due process hearing must be made not later than 12 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 under regulations adopted by the department.</p>	<p>It is immediately apparent that the attempt to impose a statute of limitations on these matters is not to be applied to districts. The simple fact of the matter is that parents are so poorly advised and have such minimal resources that this section is obviously intended to impede parental attempts to resolve issues. Of course, the section is also impossible to apply when there may be no written decision to request a hearing upon and is of questionable value without districts being able to demonstrate service upon the parent.  Due process must provide a level playing field. This must ensure legal representation for parents, especially where a district wants to over ride a parental decision, really impartial hearing officers, etc.  The CS simply extends the statute to 12 months and sets no limitations with regard to the district</p>
		<p>The due process system as embodied in this state is a disaster. Not only has AkDEED refused to comply with amendments the legislature</p>

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

(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 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.

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

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

adopted 7 years ago (which this bill in part tries to reverse) it has failed to maintain an accurate list of hearing officers as also mandated by statute.

Most counsel representing school districts have agreed that a single tier due process hearing system is necessary. Such a system can be found in the language that can be viewed by [clicking here](#). Missouri has gone from a two tier to a single tier system with some enhancements that encourage resolution of disputes at the hearing level.

I believe the Missouri language needs to be enhanced and that additional enhancements need to be added to ensure that AkDEED won't once again attempt to violate the intent of the legislature, but this is easily doable.

The CS tries to implement a "randomness", however this is left up to the agency to implement and continues the two tier system.

\* Sec. 7. 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 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]. The list of qualified hearing officers shall be maintained as a public record.

\* Sec. 7. 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 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]. The list of qualified hearing officers shall be maintained as a public record.

As noted above, this is AkDEED's attempt to remove a portion of what the legislature added in 1993 (Sec. 8 ch 77 SLA 1993, adopted in order to afford parents some additional protections.) In fact, AkDEED has refused to comply with the current statute and seeks to remove the language indicated so that the statute will comport with how AkDEED wants to do business. In fact, AkDEED has never opened the list to the public and has always insisted that all training was closed to the public.

The second tier, as noted above,

\* Sec. 8. AS 14.30.195(a) is amended to read:  
 (a) The department shall, by regulation, provide for administrative appeal hearings, based on the record, of impartial hearing officers' decisions under AS 14.30.193. An administrative appeal hearing shall comply with all requirements necessary for participation in federal grant-in-aid programs, including 20 U.S.C. 1400 - 1487 [20 U.S.C. 1400 - 1485] (Individuals with Disabilities Education Act), as amended .

\* Sec. 8. AS 14.30.195(a) is amended to read:  
 (a) The department shall, by regulation, provide for administrative appeal hearings, based on the record, of impartial hearing officers' decisions under AS 14.30.193. An administrative appeal hearing shall comply with all requirements necessary for participation in federal grant-in-aid programs, including 20 U.S.C. 1400 - 1487 [20 U.S.C. 1400 - 1485] (Individuals with Disabilities Education Act).

is a continuing problem in no small part because these appeal officers have never been subject to the requirements that initial tier officers are subject to and, one must assume, are chosen for particular reasons.  
 In any event, the current proposal even by-passes Alaska's own administrative procedure. I have repeatedly suggested that rather than reinvent the wheel, the special ed. statutes should reference the Administrative Procedure Act incorporating the process established there and adding such additional due process protections as are necessary in the premises.

\* Sec. 9. AS 14.30.315 is repealed and reenacted to read:  
 Sec. 14.30.315. Programs for gifted children. Every school district shall establish a program for the provision of educational services for gifted children, consistent with regulations adopted by the department.

{ Comment from Grober: The Committee Substitute has no provision regarding g/t as Section 9 though it does repeal the existing Section 315 (which only removes state review of g/t programs .) }

The intent of this section is pure and simple to disenfranchise parents of gifted students. I have heard educators claim that this is necessary because the cost of gifted programming is thwarting their ability to obtain adequate funding for disabled children. First of all, this is a ridiculous statement in that the state is mandated to provide such additional resources for disabled children as may be necessary to meet the needs of such children if the initial grant is inadequate. I understand only two districts have applied and in neither case could either district even demonstrate it had spent its initial grant on special education. Second, my son is enrolled in the most intensive gifted program in the state, and I have yet to see that this program incurs any incremental cost over the existing regular education program.  
 The problem here lies in the fact that districts attempt to use gifted funds for enrichment, instead of for gifted services, which by and large should mean counseling.

		<p>extra instructional staff etc. DOE/AkDEED has been attempting to prevent the parents of truly gifted children from enforcing their entitlement to services since 1991.</p>
	<p>* Sec. 9. AS 14.30.325(a) is amended to read: (a) The department may by regulation provide for the appointment of surrogate parents to represent <b>children with disabilities</b> [EXCEPTIONAL CHILDREN] in matters relating to the provision of an appropriate public education.</p>	<p>The CS again bypasses the existing CINA laws</p>
<p>* Sec. 10. AS 14.30.340(a) is amended to read: (a) If a parent of a [AN EXCEPTIONAL] child <b>with a disability</b> 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 <b>resides</b> [IS LOCATED] shall make special education and related services available in conformance with an <b>individual services plan as authorized by federal law</b> [INDIVIDUALIZED EDUCATION PROGRAM UNDER AS 14.30.278].</p>	<p>* Sec. 10. AS 14.30.340(a) is amended to read: (a) If a parent of a [AN EXCEPTIONAL] child <b>with a disability</b> enrolls the child in a private <b>or religious</b> school at the parent's expense or teaches the child at home, the school district in which the child <b>resides</b> [IS LOCATED] shall make special education and related services available in conformance with an <b>individual services plan as authorized by federal law</b> [INDIVIDUALIZED EDUCATION PROGRAM UNDER AS 14.30.278].</p>	<p>This is a welcome effort to address this issue. The problem is that it falls short of its goal. I suggest a comparison with like provisions in the old SB315 , some seven years old, which can be referenced from the <u>initial page addressing these matters</u>. These issues also fall within the same scope of who a child's parent is from the standpoint of legal rights when viewed in the context of divorce, separation, etc.  Of course, this section continues the policy of referencing federal law instead of state law.</p>
<p>* Sec. 11. AS 14.30.350(1) is amended to read: (1) "appropriate <b>public</b> education" means personalized instruction with sufficient support services to permit a child to benefit educationally from the instruction , <b>in accordance with state and federal law, including regulations adopted by the department ;</b></p>	<p>* Sec. 11. AS 14.30.350(1) is amended to read: (1) "appropriate <b>public</b> education" means personalized instruction with sufficient support services to permit a child to benefit educationally from the instruction , <b>under state law ;</b></p>	<p>It is unclear to me why the word "public" was added. In any event the additional phrasing is clearly not really necessary and once again references federal law.</p>

<p>* Sec. 12. AS 14.30.191, 14.30.193(d), 14.30.193(e), 14.30.235, 14.30.272, 14.30.274, 14.30.276, 14.30.278, 14.30.285, 14.30.325, 14.30.340(b), 14.30.347, 14.30.350(3), 14.30.350(4), 14.30.350(7), 14.30.350(8), 14.30.350(9), and 14.30.350(11) are repealed.</p>	<p>* Sec. 12. AS 14.30.191, 14.30.193(d), 14.30.193(e), 14.30.235, 14.30.272, 14.30.274, 14.30.276, 14.30.278, 14.30.285, 14.30.315, 14.30.335, 14.30.340(b), 14.30.347, 14.30.350(3), 14.30.350(4), 14.30.350(7), 14.30.350(8), 14.30.350(9), and 14.30.350(11) are repealed.</p>	<p>This section repeals a substantial number of existing sections of Alaska law and does not replace them largely because it is the Governor's position apparently that the legislature has no business stating education law for this state. Considering AkDEED's track record it is simply unthinkable to entrust that agency with additional authority.</p>
<p>* Sec. 13. This Act takes effect immediately under AS 01.10.070(c).</p>	<p>* Sec. 13. This Act takes effect immediately under AS 01.10.070(c).</p>	<p>One need not go to great lengths to recognize that this section is intended to make OSEP happy. Much as took place almost ten years ago, AkDEED has waited until the very last minute (they were on notice of the need to amend the statutes two years ago and warranted to OSEP that this would be done two years ago) to essentially advise the legislature, "Pass this bill within the next three months or lose ~8 million dollars." In most situations this is called blackmail.</p>

A response to Governor Knowles transmittal letter:

	<p>Ladies and Gentlemen of the Alaska Legislature:</p> <p>Alaska has the responsibility for stating and pursuing a policy of providing a quality education for all of our children. In presenting these bills to you the Governor fails once again to provide leadership in education and unfortunately misleads you as to the effect of his proposed legislation.</p> <p>In 1997 Congress amended the IDEA. Alaska has received funding under the IDEA based upon its adoption of statutes that meet minimal standards set by the federal government for provision of services and rights to children with disabilities and their parents (though Alaska has never really been able to fully comply with such requirements in the field.) The IDEA only mandates minimums, intended to try and keep states from actually abusing children.</p>
--	---

Dear President Pearce:

Alaska's responsibility of providing quality education for our children extends to all children, including those with special needs. The bill I transmit today clarifies the state's role in the education of our exceptional children.

In 1997 Congress reauthorized the Individuals with Disabilities Education Act (IDEA) which took effect this past July. State law and regulations contain inconsistencies that restrict our compliance with the federal program while creating confusion between the state Department of Education and Early Development (department) and individual school districts. This bill repeals those inconsistent state laws, brings the state into compliance with the intent of Congress, and offers clear guidance and assistance to school districts in delivering services to special education students.

Alaska law presently requires that a school district provide special education services to children with disabilities who reside in the district. But state law also exempts students from compulsory attendance at the public school in a student's home district if the student is enrolled in an alternative program. The result is that the district of residence, which has the legal responsibility to provide special education services, may not be able to provide the services because the child has not enrolled at a school in the district, and the district may know nothing about the child. The bill corrects this problem by properly identifying the district of enrollment as the entity responsible for providing special education programs to children with disabilities.

The department recognizes that under some

Many states have adopted standards and policies far exceeding the minimums set by USED, recognizing that they have a duty to their children that goes beyond minimum remedial measures attempted by Congress.

AkDEED has known that amendments to Alaska statutes would be required in order to receive continued funding since 1997, and has known the details of federal regulations adopted under those IDEA amendments since summer 1999. It has also been aware of efforts to encourage rewriting of Alaska statute so as to state a comprehensive state policy on special education. Nevertheless, the Governor eschewed any public discourse on drafting new statutes, did not try to prefile any bills and at the close of the first quarter of the session is asking you, as the governor did in 1993, to pass this bill in the next few weeks or lose funding. This action is irresponsible, to say the least.

What is most distressing about the bill however is that its primary intent is to bypass this legislature and to avoid establishing Alaska policy on education. The bill essentially adopts as our state policy the perspective that Alaska children are entitled to the least possible education that would still keep federal revenues flowing. The Governor is not providing an affirmative statement of how he wishes you to help him educate our children. He is asking you to help him guarantee that Alaska on its own will not lift a finger for its own children!

The bill really corrects nothing and is another of a long series of attempts to make our statutes into a patchwork abdication of state authority. Indeed, one could argue that the language employed may well be unconstitutional to the extent it suggests that governance of state matters will be controlled by federal law howsoever federal law may be amended in future without action by this legislature.

The issue of a child's residence has long been a troubling aspect and was addressed in legislation I proposed several years. This bill simply swaps one set of definitions for another and fails to address the underlying issue, how to ensure that services are properly provided. What you are not hearing is that what makes this matter an issue of concern for AkDEED is its own failures in providing an

circumstances, like enrollment in a statewide correspondence program provided by a district located far from the student's home, the 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,  
/s/  
Tony Knowles

effective system. Indeed, the bill actually repeals the statutory provision that established a framework for addressing such geographic issues. This patch will not work, and a similar issue, how to address parental rights as a result of divorce, custody orders etc. has not even been proposed, though the potential impact of such issues is dramatic. The fact that the bill I drafted several years ago went to 30 some odd pages gives you some idea of the problems faced in this arena. The Governor would attempt to address this by repealing virtually all substantive law on point and authorizing, as noted above, the department to bypass the legislature and simply draft regulations complying with federal law.

The Governor also suggests that somehow programs for at-risk gifted students have to be "separated" to comply with federal policy. This is not only false, but considering the hallmark of the federal legislation is its efforts to bar separation as inherently unequal under *Brown v Board*, the claim borders on the ludicrous. Yes, federal dollars cannot be spent on G/T programming. That however has nothing to do with anything in light of the fact that no special education funds actually tendered to districts are segregated for use for special education! The purpose of the bill in this regard, as has been the purpose of two prior bills, is to disenfranchise the parents of G/T students by depriving them of their rights to enforce delivery of the agreed upon services. In other words, the bill is intended to make it easier for AkDEED and districts to avoid delivering services.

Concerning hearing officers, the Governor fails to advise you that you amended the statutes in 1993 to try and provide parents with some effective due process and that AkDOE/AkDEED refused for the last seven years to either adopt regulations complying with those amendments or comply themselves with those amendments. The bill is designed to simply change the statutes to comply with what is, to be blunt, AkDEED's current unlawful practice. In fact the state hearing process is recognized as problematic by most legal practitioners in the field (and I should note that no one involved in the drafting or review of this bill has ever practiced law in this field). I have recommended substantial changes and have most

recently reviewed the Missouri process in that Missouri recently abandoned a process such as in place here. I believe the Missouri model, with some additional enhancements, is appropriate for consideration in this state and that further patching of current statutes is inappropriate.

In sum, nothing about this bill is intended to promote quality education of our children. Indeed, the purpose of this bill is to disenfranchise parents and eliminate any state policy concerning some thirty percent of our population during their most critical years.

Sincerely,  
Marc Grober

**Subject: sb 205 hearing was a travesty**

**Date: Wed, 12 Apr 2000 16:20:53 -0800**

**From: "Tim Weiss" <tim@parentsinc.org>**

**To: <Senator\_Mike\_Miller@legis.state.ak.us>, <Senator\_Pete\_Kelly@legis.state.ak.us>, <Senator\_Gary\_Wilken@legis.state.ak.us>, <Senator\_Kim\_Elton@legis.state.ak.us>, <Senator\_Drue\_Pierce@legis.state.ak.us>**

Senators,

I am quite dismayed by what I heard and saw during the Wednesday hearing on SB 205 (Education of Exceptional Children). In Anchorage saw numerous parents of "gifted" children making bigoted statements about "those handicapped children who shouldn't get services anyway because they won't amount to anything." I heard statements from the "gifted" children themselves talking about how they deserved more because "THOSE other kids are getting more." This looked like a return to the deep bigotted prejudice of the past. The excuse back in the 1950 and 60's was that we shouldn't include those black children because they wouldn't "amount to anything anyway" and would just "slow down the others in the classroom." That we should keep education to those who "deserved it."

IDEA is for children with DISABILITIES!!!! Not gifted. There is NO federal gifted program at all or federal funding available for it. Federal merely guarantees that children with disabilities are entitled to an "appropriate" education that allows them to "progress." That is FAR different from what the parents of "gifted" children are demanding, which is extra programs that allow their children's potential to be maximized or so they won't get "bored" (as I've heard from several parents). These "gifted" parents who spoke before you even went so far as to completely misrepresent the proposed amendments to the bill (such as suggesting that changing the due process limit to two years instead of one would "hurt" their kids because they would have to wait longer). They don't even understand the basics of special education. They demanded a return to the previous definition of "exceptional" children that included gifted, which is what has Alaska in hot water with the federal government currently. It violates federal law!!!! How simple can we possible make this?

Gifted programs are a STATE law, not federal and must be in a separate law. It deals with completely different issues of maximizing the potential of our "best and brightest" (despite how bigoted they may be toward my son who has disabilities and others), so that THEY can be the future leaders of our state (a thought that frightens me).

Please keep the bill as close to the CS of HB 301 as possible and resist the temptation to add "gifted" student language. If you do, we will be faced with withdrawal of major funding from the U.S. Department of Education and lawsuits. A fully functioning gifted bill is already being worked on by others. Keep it separate like it should be. The majority of states in the U.S. don't even have such a program at all. I believe Alaska should have a strong gifted program, but not one that is forced through by the bigoted views of those who believe they are the master race destined to rule this state.

Thank you for hearing me out.

Tim Weiss

**Testimony on behalf of passing SB 205**

**4/14/00 1:30pm**

**By: Faye Nieto, MA LMFT**

Executive Director of PARENTS, Inc. – Alaska's Statewide Parent Training and Information Center

PARENTS Inc. is funded by the US Department of Education, Office of Special Education Programs to improve early intervention, educational, and transitional services and results for children with disabilities through coordinated technical assistance, support and dissemination of information activities and services.

PARENTS, Inc., to meet our mandate is required to: assist parents to understand the provisions of federal IDEA, procedural safeguards, alternative methods of dispute resolution, such as mediation, decision making processes that pertain to development of Individual Education Programs under part B and Individual Family Service Plans under part C and the services therein so ensured through education reform activities like the conformance of state and federal law through passage of SB 205.

PARENTS, Inc. is compelled to let parents and decision makers know the good things that have resulted from IDEA best practice: a million children are now educated in their community schools, 9% increase in graduation rates, twice the opportunity to become employed vs. those not transitioned, parents are equal partners in their child's education. Alaskan special education students deserve this too!

PARENTS, Inc. in an effort to ensure that minimal or better standards were set for Alaska's children with disabilities engaged in a process over the last several weeks that compared state law to federal law, state regulation to federal regulation, proposed repeals and changes to state law as compared to federal law and regulation along with analysis of other public advocate, legal counsel and parent comments gathered during our statewide training, forums, regional advocates, e-mail and other pertinent contacts that totaled 67,000 FY00 year to date.

**ACTION NEEDED: PASS THE Bill AS IS**

- **There has been sufficient due process, testimony taken to pass now and regulate later**
- **Remember what beneficiary group this legislation is crafted to protect – THOSE WHO ARE DISABLED! Not those who are exceptionally able!**

Review of this data has yielded the CS before you. PARENTS, Inc. believes the content is sufficient and details can be worked through during the regulatory process. We have been assured by DEED administration that stakeholder comment will be considered and amendments made will round out a conceptual framework from which IDEA service provision can result.

**NOT PASSING THE BILL:**

- Continues to compromise federal funding for special education students', as US DOE is looking for SOLID assurance that conformance is in process. There are no guarantees that written assurance will forestall sanctions or that other compliance issues (that will be reviewed today) identified through review will not trigger a response.
- Parents of disabled children are aware information gained through prior legislative audit confirms that significant portions of money mandated by federal and state law to serve special education students was frequently used by local education agencies to serve gifted and

talented and sports programs. This is a major violation of law not to mention wholly unethical.

- Continuing to keep gifted students and special education (disabled) students co-mingled in state law perpetuates daily the risk of federal audit about mis-use of funds.
- Parents of disabled students loose faith daily when their child's peer comes before you and states, "we must receive the same services as the disabled student as we are on the other end of the scale".

**How is prolonging this process beneficial to anyone? What can you do to help those who depend upon your judgement, ethics, efforts to put in place educational opportunity so they can become able to help themselves? Your support and efforts are greatly appreciated!**

We understand and support the passage of SB 205 and the recommendations for stakeholder input to the regulatory processes so stated by PARENTS, Inc. and by so doing urge quick action that will ensure Alaska's compliance with federal law.

NAME	ADDRESS	PHONE #	E-MAIL ADDRESS
1. Maria Johnson	112 Nanook Circle	273-3019	<a href="mailto:froggienme@aol.com">froggienme@aol.com</a>
2. Pelton Goudey	735 E. 74 <sup>th</sup> Ave.	522-9476	<a href="mailto:igogoudey@ak.net">igogoudey@ak.net</a>
3. Gail Igo	same	same	same
4. Lori Knefelkamp	PO Box 87423	745-1857	<a href="mailto:lorikk@mataonline.net">lorikk@mataonline.net</a>
5. Catherine Burgess		337-1284	
6. Sanja Bolling		338-1623	
7. Shelia Booksh		245-1219	
8. Shawnee Hart		337-1284	
9. Ronnie Stork	1251 Muldoon Rd.	337- 0090	<a href="mailto:bsj@rstorkacfonline.org">bsj@rstorkacfonline.org</a>
10. Helen Johnson	PO Box 110687	786- 6441	
11. Lori Walter	535 2 <sup>nd</sup> Ave. Suite 163B.	456-6770	<a href="mailto:FBXPRC@mosquionet.com">FBXPRC@mosquionet.com</a>
12. Bernardine Jantzen	3300 Palmdale	376-0366	<a href="mailto:bsj@rogershasa.com">bsj@rogershasa.com</a>
13. John Vogt	PO Box 211245 99521	348-0209	
14. Kathy Griffeth		688-9463	
15. Kimberly Sedgraves		245-2125	
16. Barbara Weiss	11000 Navarot	336-2203	<a href="mailto:barbweiss@chugach.net">barbweiss@chugach.net</a>
17. Angela Eberhardt	1521 Elcadore Dr. #108	344-4234	<a href="mailto:goldie698@gci.net">goldie698@gci.net</a>

**Subject:** HB 301 comments

**Date:** Sun, 26 Mar 2000 13:27:45 -0900

**From:** "Tim Weiss" <timweiss@chugach.net>

**To:** <Representative\_Fred\_Dyson@legis.state.ak.us>,  
 <Representative\_Tom\_Brice@legis.state.ak.us>,  
 <Representative\_John\_Coghill@legis.state.ak.us>,  
 <Representative\_Joe\_Green@legis.state.ak.us>,  
 <Representative\_Allen\_Kelmplen@legis.state.ak.us>,  
 <Representative\_Carl\_Morgan@legis.state.ak.us>,  
 <Representative\_Jim\_Whitaker@legis.state.ak.us>

**CC:** <Wes\_Keller@legis.state.ak.us>, <Mary\_Gore@legis.state.ak.us>,  
 "Faye Nieto" <nieto@parentsinc.org>

I have traveled around Alaska for many years giving workshops to parents and educators both formerly as an employee of the Alaska Department of Education, and currently as an employee of PARENTS, Inc. I have especially given a lot of workshops to parents and educators on special education law (IDEA). HB 301 is supposed to bring Alaska into compliance with that federal law and its regulations. One of the most striking things that I have encountered time and time again from schools administrators, teachers, and special education professionals throughout Alaska, is there confusion between federal law, Alaska law, and their own district and school policies.

It is a basic precept of constitutional law that federal law and regulations ALWAYS overrides state laws, district laws, or school policies when they are in conflict. The vast majority of educators in Alaska have never seen the federal laws and regulations. The Alaska Department of Education and Early Development has attempted to embody current federal law and regulations in its State Special Education Handbook, balanced with the very few state laws and regulations that are not in conflict with federal mandates. Unfortunately, I have documented during my workshops and meetings, and those of the staff at PARENTS, Inc., that most educators in Alaska have never seen the state handbook, and only follow their current district policies. Unfortunately, not a single school district or school policy manual on special education in this state appears to be in complete compliance with the new federal mandates. The vast majority are still waiting for Alaska law and regulations to be completed before rewriting their own manuals. Those who have attempted to make the changes have ended up with a confusing mess that contains contradictions and still does not comply with federal mandates.

As a result of all this, parents of children with disabilities frequently are denied their rights given to them. Just two weeks ago, I received a special education request to evaluate my son, along with the federally required "parental rights" booklet. Unfortunately, both were the old ones that are very different than current laws. I contacted the school special education teacher and pointed this out to her. She was amazed that the all the paperwork they had in their school were old forms and parent rights handbooks that are very inaccurate and do not meet the new federal laws and regulations. Surprisingly this was from the Anchorage school district itself, which generally prides itself on acting quickly to keep up with changes in the laws. I was asked by the teachers of my son's school to give a workshop on IDEA (federal special education law) to them soon, and I explained that I had just given an inservice for the Anchorage educators five days before, but they had obviously not received word of that. I guess I will have to schedule more workshops.

Such confusion is even worse in other parts of Alaska. I encounter many educators who absolutely insist that their school district policies override any federal laws that I am talking about. Even individuals with basic background in law (including the little bit of constitutional law taught in

our public schools) will tell you that federal law always overrides local policies when they are in conflict. My son just learned that in his 8th grade class two months ago!

My point is: If HB 301 is cluttered with redundant language that is already included in federal law, especially if that language is not exactly the same as included in federal law and regulations, educators WILL continue to be confused. Parents throughout Alaska will continue to receive inadequate protection and services for their children with disabilities because of this confusion. Keeping the law simple and referring to federal law and state regulations to implement them will go very far in clearing up this mess. Nearly 90% of mistakes made by educators in special education are due to confusion, like that which could easily be created by including language that is redundant to, but is not exactly the same as, federal law and regulations. I am sure you understand the "KISS" principle of keeping it simple. Even the Alaska Association of School Administrators, is screaming that the conflicting wording between federal state and districts is making it very difficult for them to make sure they remain in compliance with the law. Please do not perpetuate the mistakes that we are currently inflicted with.

I am aware that Disability Law Center of Alaska, and the Governor's Council on Disability and Special Education, feel rather different about this. But neither of those two organizations have the statewide data that PARENTS, Inc. has that shows the high rate of confusion caused by these differences in language in laws and policies. I see it every day. A great deal of problems, lawsuits, costly due process complaints, and violations, can be easily reduced by simply avoiding the temptation to clutter this bill with unnecessary language. More language in the bill DOES NOT protect parents and children with disabilities. Our reports and experiences in all areas of Alaska show that it actually makes it worse.

Thank you for considering my comments.

--Tim Weiss, parent of a child with multiple disabilities  
and Program Director of PARENTS, Inc.  
907-337-7678  
tim@parentsinc.org (work)  
timweiss@chugach.net (home)

**Subject: SB 205 and HB 301**

**Date: Wed, 5 Apr 2000 22:18:23 -0800**

**From: "Sharon Baysinger" <baysingr@gci.net>**

**To: <Senator\_Mike\_Miller@legis.state.ak.us>**

Sir,

Please encourage the passing of SB 205 and HB 301. This Special Education funding is so important to many Alaskan families.

We have adopted Allena, a Fetal Alcohol Syndrome child who is now six and is in need of many services through the State to help her succeed in life. She is in Juneau Christian School kindergarten and is doing very well, due to Special Ed services she recieves!

Without those services, she and many other beautiful Alaskan children would be doomed to fail our education system.

Sincerely,

Sharon and Garry Baysinger

9503 Antler Way

Juneau, AK. 99801

April 12, 2000

Dear Members of the Finance Committee, *My name is Louise Parish.*

I am currently in due process on behalf of my learning disabled daughter. I believe this bill was constructed without appropriate opportunities for parent discussion and input. I understand a number of governmentally funded agencies have provided input for you on behalf of parents. I believe this does families and children in the state a grave disservice. We've had many years to change our laws. To do so in a last minute cram without opportunities for parents to fully understand and speak to it is a shame. I would like to tell you my story and ask for your help.

I have spent six long, arduous, and enlightening years advocating for my wonderful daughter. She has struggled to read since the first grade. Finally, in third grade, she was determined eligible for special education services. Now, at 16 years old in ninth grade, she is reading at a fourth to fifth grade level. *If you don't read well at 3rd grade...? I have read? at 90% for poor reader as adult*

*Cut in speed? Time?*

Since she was determined eligible for services, I struggled along with her, trying to understand how to help her and how to get her the services she needed. In 1996 I wrote a letter to her school, comparing the services they were providing her with a benevolent organization going in and dropping off food to a third world village instead of sending in seeds, trainers and equipment.

Throughout the years, I spoke to everyone I could to become informed. I joined the International Dyslexia Association, The Society for the Blind and Dyslexic, and a variety of other organizations, both local and national. I ordered books and subscribed to magazines. I read education journals and networked with other parents.

I tried to make the system work. I spoke to district representatives, AkDEED, Parents, Inc., Disability Law Center, the Governor's Council, and others. Unfortunately, I found the whole process of seeking assistance to be one fraught with confusion, funding issues, misstatements, and abdication.

I cannot tell you how many times in the last three years I have heard such statements as "Where's that money supposed to come from?" "Your daughter is only entitled to educational benefit," "Our hands are tied," "That's not the way it works," "I'm sorry that we can't help you," and the one I hated the most - "You're only one voice."

I was verbally referred to so many rules and guidelines that I started a new mantra, "Show me the law that says so." I do not want any of these entities to speak on my daughter's behalf. I do not want these agencies to write what they want at will, either. All of the agencies I have gone to for help are funded by public money. It is my belief that their recommendations may be tied more to their ROLFS in the special education system and MONEY, than to our children's TRUE NEEDS.

MY GRAVE CONCERN is that this bill will allow the current confused state of special education to continue. I may have only one voice, but it's an informed one. I want the system to work and believe it can, if we all sit at the table together. Please MAKE PARENTS EQUAL PARTNER'S in this process.

You have challenged the students of this state with benchmarks and exit exams. I fully support that. Now give them the resources they need to meet those challenges. Kids with special needs can meet these challenges, if provided with the proper support, services and expectations.

I'd like to address certain issues:

Sec.

- 1.) It appears you are simply guaranteeing that federal minimums will be met to ensure federal money will not be cut off this year. Our kids need more than minimums to meet the challenges you have set for them and the challenges of the 21<sup>st</sup> century.
- 2.) You are giving AkDEED too much power to write what they want. Parents need laws they can depend on when funding vs. services becomes an issue. I have seen at least three different guideline books over the years. Most parents don't have a clue even about the guideline books. They just take what they are told at face value. I don't want AkDEED having the power to write and change at will, just as you may not want to simply say you will comply with any federal law that comes up in the future.
- 3.) You don't seem to understand that we can write our own laws to meet our children's needs, not just set it according to federal minimums. Let's write comprehensive laws that set a path for our kids!
- 4.) Hearing officers should be trained every five years and the training should be opened to all persons who meet the criteria. AkDEED should, when heading to due process, select hearing officers at random from a full list. If the parent refuses all three, it should go back again to a random selection. *and document it. the random selection.*
- 5.) Mediators should be trained in a like process. Criteria should be established and the opportunity opened to those who meet it. There are mediators in other fields besides education. Open it to all.
- 6.) Leave Gifted and Talented under the protection of law. Districts take your block money for special education and pool it with all their other money anyway. Without safeguards, parents could face a real battle getting their child needed services.
- 7.) Do not repeal stuff and leave it to AkDEED to write what they want instead. I may disagree and will have no recourse. In fact I do disagree. It looks like this bill asks you to repeal, among a number of other things, Sec. 14.30.350, defining my "consent," my daughter's "educational records," my child's "IEP team" and more. If you are taking away parent rights and handing them to AkDEED, you should give

parents more of an opportunity to speak! Why are these and issues related to IFPs, identification and procedural safeguards possibly being repealed?

8.) Have AkDEED do a side by side comparison each year if you wish, but make it a public presentation, and provide parents an opportunity to speak to you directly regarding their concerns. This bill has flown way too fast through the mill. You need to provide for parent input next year.

9.) Create a better statement of purpose. Your statement of purpose seems to be saying we'll do whatever we need to do at a minimum to get federal money. Make a statement about what you want to see for kids. Other states do.

10.) Lengthen the amount of time parents have to request a due process hearing / I believe many parents, basically, are simply uninformed and dependent on the system to work without them. guarantee you, most parents are clueless and need time to digest things and understand them. I believe many parents, basically, are simply uninformed and dependent on the system to work without them.

*to two years. I believe parents must give informed consent.*

11.) Do not define appropriate educational services as the minimum necessary to provide educational benefit.

Please contact me at *bells@alaska.net* if you have any questions.

Louise Parish  
Box 1182  
Valdez, Alaska 99686  
(907) 835-4231  
*bells@alaska.net*

Thank you

- *Ms. Bickford's statements*  
Due process posted on the web! Is good idea. *Past ones too*
- *Hearing officers rotating is intriguing too.*
- *The 200% sped block grant is pooled by district anyway - it is at their will right now. leave G-T procedural safeguards in place.*

# Wasilla Extended Learning Program

Dewayne E. Joehnk, Coordinator  
(907) 352-5337

**Wasilla Middle School**  
650 East Bogard Road  
Wasilla, Alaska 99654  
Bob Thompson, Principal  
(907) 376-5308 376-9625 FAX

**Wasilla High School**  
701 East Bogard Road  
Wasilla, Alaska 99654  
Dwight Probasco, Principal  
(907) 376-5341 376-5348 FAX

4/12/00

Dear Senators;

Before I begin, I would like to thank Senator Green for calling me asking for input on Senate Bill 205. Senator, your call showed me there might be hope for gifted students in this state. You challenged me to offer suggestions for options and, in part, that's why I have drafted this testimony.

Always the eternal optimist, I am not used to assuming the role of a doomsayer, but if SB205 passes the State Senate, it will toll the death knell for gifted education in Alaska. The present bill removes child and parental rights granted to the gifted by the state with no safety net in place to maintain their services. This will allow erosion of gifted services at a time when disparate forces are at work. At the state level, we are beginning the fight against the property tax limitations that devastated the educational systems in other states like Oregon and California. At the same time, federal legislation currently under consideration could generate additional funding for education in this state. Initially, I want to consider the first force: reduction of gifted services via SB 205.

Nationally, advocates for gifted education have fought for years to maintain some level of protection for our gifted youth. In this state, that support has come in the form of protection provided through the Individuals with Disabilities Education Act (IDEA). With no protection in place for the gifted, programs perceived as fluff and nonsense by most will be the first programs cut if there are any funding reductions. Since its inception in 1957, gifted education has faced the pat public argument, "Those kids are smart, they'll survive." This is a misleading and dangerous philosophy that has been used repeatedly to justify incalculable harm to our best and brightest citizens over the years. It will be used again if SB 205 is allowed to come to fruition.

In speaking with Senator Green, support of SB 205 is being justified as accomplishing two goals: First, to reduce the paperwork I do, and second, to cover the state under the newly reauthorized IDEA.

To address the former, by removing gifted education from under the special education umbrella, you hope to reduce the amount of time and effort that goes into the paperwork necessary for creation of Individualized Education Plans. This is a moot argument as far as our gifted specialists are concerned. We treasure every minute we spend in IEP meetings and working to protect our children. The IEP process provides protections for our children and parents about which other states can only dream. Frankly, the IEP protection provided our gifted was the main factor in my decision to come to this state in 1995. I knew there was support at the state level for gifted children.

To summarize thrust of the latter argument, Senator Green, you voiced concern that the federal government would look at Alaska's inclusion of the gifted under IDEA and cut funding because we have spent special education money to monitor gifted services. Let me remind you that the spirit of all federal law is to establish a minimum level of protection and compliance. This assures state's rights. A state may adopt requirements that are more stringent for its citizenry. This is the case for gifted education in Alaska. IDEA in its 1975 form of PL 94-142 established the need for states to service children deemed disabled by federal definition, however, the federal government also made it possible for states to include others under that protection if they chose. Historically, this state has done so. The 1997 reauthorization of IDEA further goes on to state that funds for special education may be used for other state level activities if the state merely stays in compliance. These other activities can include: support and direct services, technical assistance, personnel development and training, administrative costs of monitoring, investigation of complaints, mediation processes, assistance to local educational agencies in meeting personnel shortages, development of a State Improvement Plan, and activities at the state and local levels to meet performance goals.

Please note that the Alaska State Educational Standards require:

1. Strategies to focus students on attainment of high standards by all students with clear standards and objectives and high expectations.
2. A climate of high expectations for students and staff communicated to everyone in the community, with incentives, recognition, and rewards in place to promote excellence.
3. Appropriate technology so students can apply academic skills to simulate real-life workplace situations in addition to performing research and exploration.

The high standards to which gifted students aspire lead them to lofty goals as far reaching as their imaginations can take them. How do you expect to challenge our best and our brightest unless programs are in place to address their needs, and personnel in schools to monitor their progress and assure them of continued growth? This erosion of gifted support in no way fosters

a climate of high expectations. It does nothing but support the same old mediocrity in education against which gifted educators continually lead the fight. As for technology, when I came here I brought my own computer from home for use by my students because no computers were available on-site to meet their needs. In the five years since, funding has gone to provide direct services to these students via establishment of high-end technology labs in Palmer, Colony, and Wasilla. Without the support and decision-making of gifted specialists, schools could not have provided real-life workplace situations for students destined to create the future in technology.

To return to the second force currently at work; the support at the federal level of gifted education. For the first time since the Javits Act, support for gifted education is on the horizon. Expansion of the Javits Act in the form of Senate Bill 505 is included as a portion of Senate Bill 2 – Reauthorization of the Elementary and Secondary Education Act. This bill will create grant funds for states to establish or enhance gifted education. The bill has already passed the House of Representatives and is currently under review in the Senate. Both Senators Stephens and Murkowski have expressed their support of this bill. When such funds are eminent, it is foolhardy to change a well-working system. By allowing passage of SB 205, you will allow protection to disappear so the plug can be pulled on gifted education just before aid at the federal level is initiated. This will force the state to backtrack and recreate slaughtered programs.

You asked me for ideas for dealing with the situation. In essence, by denying SB 205, you allow protection for the gifted to continue as is allowed by federal law. If you deem it necessary to remove these protections, we ask you to assist in creating an alternative system for gifted education before its removal from IDEA. Such a system must ensure that gifted education will remain in place and it must include due process rights and creation of state level system to monitor compliance. Legislation must also include an Individualized Education Plan as per IDEA. The power of this document assures parents and students that the needs of the gifted will be met or there will be consequences for non-compliance. Once a system that assures these protections is established, only then can we consider removing gifted education from the federal IDEA umbrella. Again, please shun SB 205 so such legislation can be drafted and adopted. If you need help in drafting such legislation, I am willing to assist you, as are my colleagues.

We cannot let protection of the gifted lapse. To show you how it can work, let me refer to how funding for gifted education is being used to enhance opportunities available to all students in Mat-Su. Using Wasilla as an example, we have sixth graders writing 1,200 word expository essays in APA-style format and participating in policy debates. Our seventh and eighth graders are challenged via a school-within-a-school honors program that potentially accelerates their education at least one year in one or more curriculum areas. In order to meet the needs of those students, the Advanced Placement options at the high school have been enhanced to allow all students the opportunity to take internationally normed testing and receive college credit. We

have students graduating with well over a year of highly transferable college credit, saving their families and this state in the neighborhood of \$20,000 per student. The most I have seen came from a student with whom I worked who was not identified as gifted. He left with seven AP courses successfully completed. To quote the Mat-Su school district, "Standards will give all of us a tool for judging how well our students are learning and how well our schools are performing." The highest standards available to secondary students are continually being met and exceeded by our gifted and achieving students via programs enhanced by gifted education dollars. We can't allow these funds to be endangered. To do so undermines the whole of education by removing its leading edge. What good is a race if the leader is hobbled before the race is done? Once again urge you to bring down SB 205 and bring it down with impunity. Thank you.

Sincerely,



Dewayne E. Joehnk  
Coordinator, Wasilla Extended Learning Program

ECONOMIC VALUE OF ADVANCED PLACEMENT PROGRAM:  
WASILLA HIGH SCHOOL

What is the best part time employment for a Wasilla High School student? Probably the best paying job for a college bound student is taking Advance Placement classes and doing the homework.

It is admittedly difficult to come up with accurate figures on the exact values but I believe my methodology is close enough to creditably prove my point. I am using the Alaska Minimum Wage of \$5.65 per hour against the average of three colleges that I believe fairly represent typical costs. The University of Alaska, Fairbanks represents an in state university with local tuition costs, Lewis and Clark represents a typical private university and Oregon State represents a typical out of state university with the expected out of state tuition costs. Costs were taken from the *College Costs and Financial Aid Handbook 1998, 18th edition*.

In school year 1996-1997, sixty-two AP tests were passed with a score of 3 or better. A passing score is good for 6 credits at an accepting university. Wasilla High School students earned the equivalent of 372 credits. I am assuming a course load of 15 credits per semester for a full time student.

UNIVERSITY	ANNUAL FEES	SEMESTER FEES	CREDIT COST
UAF	9,434	4,717	314
Lewis and Clark	25,800	12,900	860
Oregon State	19,249	9,624	642
-----			
AVERAGE	18,161	9,080	605

Value of AP based on credits earned: 225,060.

Value of 15 credits for one student: 9,080.

Hours needed to earn 15 credits at \$5.65 per hour: 1,607.

It should be remembered that college savings occur after the money is earned. This means a student will not be able to save everything earned but rather the money left over after expenses. Financial planners typically assume that 25% of a persons salary is expended in work related expenses such as clothes, transportation and food. Taxes of all kinds take an additional 15%. In other words only about 60% of earned income is

### Silverman's Chart of Provisions for Exceptional Learners

Difference	Below The Norm	Above The Norm
1 Standard Deviation (85 IQ vs. 115 IQ)	<ul style="list-style-type: none"> <li>- Remedial instruction in the regular classroom</li> <li>* Modified curriculum *</li> <li>* Consultants to teachers *</li> </ul>	<ul style="list-style-type: none"> <li>- Enrichment in the regular classroom</li> <li>* Modified curriculum *</li> <li>* Consultants to teachers *</li> </ul>
2 Standard Deviations (70 IQ vs. 130 IQ)	<ul style="list-style-type: none"> <li>- Resource room for academic subject</li> <li>* Individualized Educational Programs *</li> <li>* Special curriculum *</li> <li>* Certified teachers *</li> <li>* Adapted teaching strategies *</li> <li>- Decreased pace of instruction</li> </ul>	<ul style="list-style-type: none"> <li>- Special classes for academic subject</li> <li>* Individualized Educational Programs *</li> <li>* Special curriculum *</li> <li>* Certified teachers *</li> <li>* Adapted teaching strategies *</li> <li>- Increased pace of instruction</li> </ul>
3 Standard Deviations (55 IQ vs. 145 IQ)	<ul style="list-style-type: none"> <li>* Instruction in self-contained classes *</li> <li>- Radical adaptation of curriculum</li> <li>* Socialization with peers of similar abilities *</li> </ul>	<ul style="list-style-type: none"> <li>* Instruction in self-contained classes *</li> <li>- Radical acceleration of curriculum</li> <li>* Socialization with peers of similar abilities *</li> </ul>
4 Standard Deviations (40 IQ vs. 160 IQ)	<ul style="list-style-type: none"> <li>* Special facilities *</li> <li>* Individualized instruction *</li> </ul>	<ul style="list-style-type: none"> <li>* Special facilities *</li> <li>* Individualized instruction *</li> </ul>

Source: Silverman, Linda. Highly Gifted Children. Gifted Development Center.

[Back](#)

[Home Page](#) | [Overview](#) | [Benefits](#) | [Components](#) | [Selection](#) | [Application](#) | [FAQ](#)

**Subject: SB205**

**Date: Mon, 10 Apr 2000 21:53:00 -0800**

**From: Mary Klugherz <maryk@ktn.net>**

**Organization: Klugherz & Associates**

**To: Senator\_Mike\_Miller@legis.state.ak.us**

Dear Senator Miller,

CSHB301 has recently been passed out of the House HES committee and has moved on to the House Finance Committee. I understand that the companion bill, SB 205, is going to be heard on Wednesday, 4/12. There are serious problems with this legislation.

## **Background**

The Alaska Statutes for special education of exceptional children (AS.14.30.180 to 350) were designed in 1970 and included learning disabled AND gifted children. Since then these statutes have been amended and improved. Following changes to federal law in 1997 (Individuals with Disabilities Education Act amendments or IDEA) the State of Alaska needed to come into compliance with these changes. The feds include learning disabled in the IDEA. Alaska's statutes include learning disabled and gifted children.

The current legislation (CSHB301 and SB205) was drafted by the Alaska Department of Education and Early Development (ADEED). It is their attempt to come into compliance with federal statutes guiding special education. In the process ADEED has removed nearly every statute that guided education for gifted children. They have not replaced these statutes with separate legislation. They have simply taken away from gifted children every procedural safeguard and due process protection that they have had for 30 years. Further, in the HES committee, the bill was amended to make programs for gifted children OPTIONAL for districts rather than REQUIRED.

## **Comments**

This situation is a disaster for gifted children. First, it takes away the protections for this population of children that are desperately needed. Second, it makes gifted programs optional rather than required, even though districts are getting FUNDING through the block grant for gifted programs.

Gifted children need curriculum designed to meet their unique needs. This is a group of kids who is seriously at-risk for depression, suicide, behavior problems, and school drop out if their educational needs are not met. Gifted programs in school districts can help keep these kids in school and meet their educational needs. My experience with our gifted son suggests that these kinds of programs are absolutely essential to the well-being of the child.

The ADEED will tell you that they are required by the federal government to separate the learning disabled from the gifted and talented. This is not a statutory matter, this is an accounting and record keeping matter and they have not been required by the feds to eliminate gifted and talented. Seven other states have made separate statutes to comply with federal standards, but have maintained their programs for the gifted.

The ADEED will tell you that by including gifted and talented statutes that a large fiscal note would be required to pay for hearing officers and training investigators. They are already required to do this under the current legislation and this should not cost them any more money, unless, of course, they HAVE NOT been following the currentl statutes. They should have trained hearing officers available NOW.

The ADEED will tell you that if this legislation is not passed that Alaska will suffer a \$14.6 million penalty. Many parents have been working on this and it is our understanding that the federal department will not impose a financial penalty. Many have asked the ADEED for copies of correspondence to verify whether this threat is real or perceived. To date ADEED has not supplied written proof of this threat.

The ADEED will tell you that they will include gifted and talented as a "Chapter" program -- in other words provide regulations for gifted and talented programs. However, when Bruce Johnson, Deputy Commissioner of the ADEED was asked during a House HES committee hearing that if there were no statutes requiring programs for gifted and talented would the ADEED write regulations and he replied that ADEED might not. That means that there would be no statutes OR regulations from the state guiding gifted and talented programs. The problem then is that districts are left on their own in this area and there will be even more inconsistency than there is today between districts. Most states provide statutes and regulations to guide districts in the development of gifted and talented programs. There are many good examples that Alaska could follow.

## Remedy

An amendment to the current SB205 that includes gifted children would remedy this situation. As parents, all we are asking for is the same treatment that these children have received for 30 years. We are not asking for more than our children have received in the past. We are simply asking to preserve what has been their right for 30 years.

I understand that Margo Waring has provided your staff with an amendment to SB 205 that would remedy this situation. I strongly urge you and the committee to include the amendment and preserve the rights and protections for this group of children.

Please let me know if you have any questions or need further information.

Regards,  
Mary Klugherz  
272 Gold Rd.  
Ketchikan, AK 99901  
907-225-8330 (days)  
907-225-5783 (eve)  
907-247-9330 (fax)  
maryk@ktn.net

REC'D

Beverly Thornburg  
12521 Clippership Drive  
Anchorage AK 99515  
(h) 345-6306  
April 12, 2000

Dear Senators and Representatives,

This is testimony I was unable to present at the April 11 teleconference, where we ran out of time, on Senate Bill 205: "An Act relating to the education of exceptional children . . ."

I urge you to restore to this act a substantive mandate that gifted children be recognized as special needs children, and that they be served adequately and appropriately.

Although I sincerely appreciate the spirit of Amendment # 1 (thank you, Senators!), and the amendment does require that districts recognize gifted children and do something for them, the Act still puts these special needs children in jeopardy:

-- It does not require parameters for quality control or for the local accountability that Gifted Ed currently has as part of Special Education. Even with the amendment, the act removes due process protection for children and parents. In fact, as one of the April 11 testifiers said, it sets up local districts as their own appeals agents!

-- The act takes away the kind of IEP process that actually does works -- where goals are set and the teacher, student, parent, and Special or Gifted educator are all accountable to one another *and* to a higher authority for them. You may have heard testimony from DEED or from Special Educators about the burdensome paperwork of IEPs. But, I have talked with Gifted Education teachers in Anchorage who favor the IEP's protection for kids, as well as the IEP's power to bring Gifted Ed to the table with classroom teachers.

-- The act removes the protection, currently spelled out under Special Education, of access. With the new act, with no mandated services and no mandated funding levels, many children who need services will *not* be able to access those services. For example, under Special Education, district Gifted programs provide transportation. Without this as a mandate, we may be setting up a "catch system." In Anchorage, many children who qualify for the exceptional needs (highly gifted) program at Rogers Park Elementary School will not be able to go there unless a parent has the time and resources to take them to school and pick them up. Children of working parents will be out of luck. In fact, without mandated and funded transportation, Anchorage *cannot* provide the greater part of its Gifted services citywide.

-- In short, I'm afraid that the act takes the guts out of services and protection for our most invisible at-risk group of children. Moreover, the act as it stands does not seem to provide for a fiscal note; or, for that matter, for any requirement that districts actually put resources into their gifted education programs. I believe that, in Anchorage, we may see large inequities that place these special needs kids in jeopardy.

The new federal law opens a window for DEED and for local Special Education programs to divest themselves of responsibility for this group of children. But, just because IDEA now allows it, this does not make it right. We don't *have* to take "exceptional" children out of our law. If we pass SB 205/HB 301, let us first build back into the law mandated protection and resources for these children.

I'm the mother of an identified "highly gifted" first grader, but I also am a school district employee. Therefore, I know how strapped local districts are already. Today, at the teleconference, I heard representatives of DEED suggest that districts pay for Gifted services out of SB 36 money; or that they can decide locally whether and how much to allocate from categorical and local funds. It is my belief—representing myself as a parent and other parents—that local districts are unlikely to rise to the challenge and re-allocate local money to serve this population. At the same time, we must remember that we in Alaska say and believe that *all* children should have the chance to reach their potential.

Gifted children's needs are not well understood. They tend to be *invisible* relative to other special populations, and they lack the voice or the advocacy of other groups. It is easier to turn our backs on gifted children and hope—or say-- that they will fend for themselves. It is easier to rationalize that there is something "elitist" about having their driving needs and potential. As a mommy, I've discovered first-hand how fragile this population is. Yet, with districts understaffed and with crowded classrooms, it can be the path of least resistance to ignore them or throw a little something at them and call it enough. I've see the consequences when their needs are overlooked. Without ASD's outstanding Gifted Education program, my little boy would be in considerable danger of intellectually, emotionally, and spiritually "dropping out" of school as early as the primary years.

Our experience reflects the national research that shows how these children really are at risk. It is not true they will "take care of themselves." They can quickly learn that school is about somebody else, not about them. They can repress their gifts, their curiosity, and their rapid learning in order to be compliant in a regular classroom. They begin to think there is something wrong with them. They shut down. They *feel* invisible. In order to survive in school, they can commit the equivalent of mental and spiritual suicide (our son's risk). Or, in desperation, they can become behavior problems. They are candidates for dropping out and substance abuse. Yet, this is the group from which Alaska's 21<sup>st</sup> century leaders will come—the great scientists, world peace makers, inventors, artists, innovators, and leaders of tomorrow.

**Therefore, please consider:**

- Just because the federal legislation has deleted "exceptional" children, that does not mean that we should delete them in our law. That does not mean that our institutions should take the opportunity to marginalize them.
- A generalized mandate (Amendment #1) is not a mandate with teeth.
- An unfunded mandate is, in reality, pretty close to no mandate.
- An unfunded mandate that suggests that local districts rob Peter to pay Paul can turn out to be a fantasy mandate.
- If we remove or dilute local accountability, we may get little or no accountability.

**Therefore, I urge you to re-consider restoring "exceptional" children to the law.**

**At the least, please re-visit Amendment #1 and consider adding these things:**

- A more explicit requirement for due process and local accountability that meets or exceeds the parameters of the Special Education requirements.
- A more explicit requirement to make services accessible to gifted children that need them. Perhaps this could include a minimum pro rata allocation of resources *and*

transportation. This could be stated in the spirit of education in the "least restrictive environment," as with Special Education.

-A fiscal note that at least meets current allocations. This way, even if we take Gifted Education out of Special Education, we will still be able to provide Gifted services. If a fiscal note is politically unfeasible, please consider an inducement for districts to pro rata allocate categorical funds at a level commensurate with the numbers and proportions of special needs gifted children.

Thank you very much for your patience and thoughtful attention.

Beverly Thornburg

**Subject: sb 205**

**Date: Mon, 10 Apr 2000 23:06:06 -0800**

**From: bausler <bausler@alaska.net>**

**To: Senator\_Mike\_Miller@legis.state.ak.us**

Katie Bausler  
EL PAC, JSD  
364-3129  
bausler@alaska.net

>Hello,

I am a representative to a parent committee on Extended Learning or GT for the Juneau School District. I urge you to reject or amend SB 205 to:

1. Make GT a required program for all districts.
2. Assure procedural safeguards for GT students, as in current statute.

HERE'S WHY: For 30 years state law has said Alaska's best and brightest students-our future leaders-be appropriately academically challenged. HB 301 and the Coghill Amendment and SB 205 would do away with that directive. It's been proven if some of these kids don't get the challenge and direction they need, they don't reach their high potential.

THE WAY THIS ISSUE HAS BEEN PRESENTED SO FAR IS CONFUSING. THE FOLLOWING INFORMATION SHOULD CLEAR THIS UP:

The state Department of Education claims that the federal government requires the revisions.

This is not true: the feds require GT programs be split from special education. They do not require that it be eliminated. Seven other states have made separate statutes to comply with federal standards, but have maintained their GT programs.

State Department of Education claims that if current procedural safeguards are placed in the bill that a huge fiscal note will be required, i.e., that it will cost the State considerably more. And the Alaska Association of School Board calls it an unfunded mandate.

TRUTH IS: these services are currently required and available and no more would be required by maintaining the current programs and safeguards.

Gifted and Talented education has been in statute with procedural safeguards for 30 years. Districts already receive School Foundation Formula funding from the State for GT education.

IT'S IMPORTANT:

that GT parents be able to appeal local school district decisions to the state Department of Education. In HB 301 and SB 205, appeals to the State Department of Education are eliminated and parents may only appeal school district decisions to the school district itself. All other special education students would still have recourse under State standards.

PLEASE NOTE:

The state Department of Education and Early Development says that if HB 301/SB 205 is not passed the way they want it, Alaska will suffer a \$14.6 million penalty. This is speculation not fact. It is our understanding that the federal department will not impose a financial penalty.

**Subject: SB 205**

**Date:** Fri, 14 Apr 2000 08:40:58 -0800

**From:** "Dan P. Bilderback" <sage@gci.net>

**To:** Senator\_Mike\_Miller@legis.state.ak.us

4/14/00

Greetings Senator Miller:

As a parent of a 5th grader who is in the gifted and talented program in the Anchorage school district, I would like to comment on the proposed SB 205. To me the issue of great importance is the separating of the gifted or "exceptional" children from the "special ed" program. One of the prime tools of accountability would be lost. This is the Individual Education Plan or IEP that is in effect a contract between the school district and parents that holds the school district accountable to follow through with their stated commitment. I believe in putting faith and trust in the school district's intentions. I also believe that trust is better accomplished in an IEP. Please keep this requirement of an IEP between the school district and parent by not separating "Exceptional" from "Special Ed" time!

Dan P. Bilderback

Thank you for your

4623 Campus Circle  
Anchorage, Ak 99507

sage@gci.net

(907) 562-8428

**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). (§ 10 ch 144 SLA 1984; am §§ 12, 13 ch 77 SLA 1993)

**Effect of amendments.** — The 1993 amendment, effective June 30, 1993, in subsection (a), deleted "or guardian" following "parent" and inserted the language beginning "by choosing" and continuing to "between the parent and school district" and "to appeal a hearing officer's decision"; and added subsection (b).

**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. (§ 10 ch 147 SLA 1984)

**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. (§ 10 ch 147 SLA 1984)

**STATE WIDE PLAN**

**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. (§ 10 ch 147 SLA 1984; am §§ 14, 15 ch 77 SLA 1993)

**Effect of amendments.** — The 1993 amendment, effective June 30, 1993, in subsection (b), deleted "or guardians" following "parents" in paragraph (3) and deleted "guardian" following "parent" in paragraph (5); and added subsection (c).

**Sec. 14.30.280. Psychologist qualifications.** [Repealed, § 19 ch 147 SLA 1984.]

of a tute § 9

the to the an by an

E  
effe  
gua  
ins  
wh  
sch  
tia  
co  
ab  
ed  
ap  
ex  
co  
be  
al  
ec  
do  
a  
ir  
e  
n

**§§ 300.322–300.324 [Reserved]****Individualized Education Programs****§ 300.340 Definitions related to IEPs.**

(a) *Individualized education program.* As used in this part, the term *individualized education program* or *IEP* means a written statement for a child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§ 300.341–300.350.

(b) *Participating agency.* As used in § 300.348, *participating agency* means a State or local agency, other than the public agency responsible for a student's education, that is financially and legally responsible for providing transition services to the student.

(Authority: 20 U.S.C. 1401(11), 1412(a)(10)(B))

**§ 300.341 Responsibility of SEA and other public agencies for IEPs.**

(a) The SEA shall ensure that each public agency—

(1) Except as provided in §§ 300.450–300.462, develops and implements an IEP for each child with a disability served by that agency; and

(2) Ensures that an IEP is developed and implemented for each eligible child placed in or referred to a private school or facility by the public agency.

(b) Paragraph (a) of this section applies to—

(1) The SEA, if it is involved in providing direct services to children with disabilities, in accordance with § 300.370(a) and (b)(1); and

(2) Except as provided in § 300.600(d), the other public agencies described in § 300.2, including LEAs and other State agencies that provide special education and related services either directly, by contract, or through other arrangements.

(Authority: 20 U.S.C. 1412(a)(4), (a)(10)(B))

**§ 300.342 When IEPs must be in effect.**

(a) *General.* At the beginning of each school year, each public agency shall have an IEP in effect for each child with a disability within its jurisdiction.

(b) *Implementation of IEPs.* Each public agency shall ensure that—

(1) An IEP—

(i) Is in effect before special education and related services are provided to an eligible child under this part; and

(ii) Is implemented as soon as possible following the meetings described under § 300.343;

(2) The child's IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation; and

(3) Each teacher and provider described in paragraph (b)(2) of this section is informed of—

(i) His or her specific responsibilities related to implementing the child's IEP; and

(ii) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

(c) *IEP or IFSP for children aged 3 through 5.* (1) In the case of a child with a disability aged 3 through 5 (or, at the discretion of the SEA a 2-year-old child with a disability who will turn age 3 during the school year), an IFSP that contains the material described in section 636 of the Act, and that is developed in accordance with §§ 300.341–300.346 and §§ 300.349–300.350, may serve as the IEP of the child if using that plan as the IEP is—

(i) Consistent with State policy; and

(ii) Agreed to by the agency and the child's parents.

(2) In implementing the requirements of paragraph (c)(1) of this section, the public agency shall—

(i) Provide to the child's parents a detailed explanation of the differences between an IFSP and an IEP; and

(ii) If the parents choose an IFSP, obtain written informed consent from the parents.

(d) *Effective date for new requirements.* All IEPs developed, reviewed, or revised on or after July 1, 1998 must meet the requirements of §§ 300.340–300.350.

(Authority: 20 U.S.C. 1414(j)(2)(A) and (B), Pub. L. 105–17, sec. 201(a)(2)(A), (C))

**§ 300.343 IEP meetings.**

(a) *General.* Each public agency is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising the IEP of a child with a disability (or, if consistent with § 300.342(c), an IFSP).

(b) *Initial IEPs: provision of services.* (1) Each public agency shall ensure that within a reasonable period of time following the agency's receipt of parent consent to an initial evaluation of a child—

(i) The child is evaluated; and

(ii) If determined eligible under this part, special education and related services are made available to the child in accordance with an IEP.

(2) In meeting the requirement in paragraph (b)(1) of this section, a meeting to develop an IEP for the child must be conducted within 30 days of a determination that the child needs special education and related services.

(c) *Review and revision of IEPs.* Each public agency shall ensure that the IEP team—

(1) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and

(2) Revises the IEP as appropriate to address—

(i) Any lack of expected progress toward the annual goals described in § 300.347(a), and in the general curriculum, if appropriate;

(ii) The results of any reevaluation conducted under § 300.536;

(iii) Information about the child provided to, or by, the parents, as described in § 300.533(a)(1);

(iv) The child's anticipated needs; or

(v) Other matters.

(Authority: 20 U.S.C. 1413(a)(1), 1414(d)(4)(A))

**§ 300.344 IEP team.**

(a) *General.* The public agency shall ensure that the IEP team for each child with a disability includes—

(1) The parents of the child;

(2) At least one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);

(3) At least one special education teacher of the child, or if appropriate, at least one special education provider of the child;

(4) A representative of the public agency who—

(i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;

(ii) Is knowledgeable about the general curriculum; and

(iii) Is knowledgeable about the availability of resources of the public agency;

(5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (6) of this section;

(6) At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and

(7) If appropriate, the child.

(b) *Transition services participants.*

(1) Under paragraph (a)(7) of this section, the public agency shall invite a student with a disability of any age to attend his or her IEP meeting if a purpose of the meeting will be the consideration of—

(i) The student's transition services needs under § 300.347(b)(1);

(ii) The needed transition services for the student under § 300.347(b)(2); or

(iii) Both.

(2) If the student does not attend the IEP meeting, the public agency shall

take other steps to ensure that the student's preferences and interests are considered.

(3)(i) In implementing the requirements of § 300.347(b)(2), the public agency also shall invite a representative of any other agency that is likely to be responsible for providing or paying for transition services.

(ii) If an agency invited to send a representative to a meeting does not do so, the public agency shall take other steps to obtain participation of the other agency in the planning of any transition services.

(c) *Determination of knowledge and special expertise.* The determination of the knowledge or special expertise of any individual described in paragraph (a)(6) of this section shall be made by the party (parents or public agency) who invited the individual to be a member of the IEP.

(d) *Designating a public agency representative.* A public agency may designate another public agency member of the IEP team to also serve as the agency representative, if the criteria in paragraph (a)(4) of this section are satisfied.

(Authority: 20 U.S.C. 1401(30), 1414(d)(1)(A)(7), (B))

#### § 300.345 Parent participation.

(a) *Public agency responsibility—general.* Each public agency shall take steps to ensure that one or both of the parents of a child with a disability are present at each IEP meeting or are afforded the opportunity to participate, including—

(1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

(2) Scheduling the meeting at a mutually agreed on time and place.

(b) *Information provided to parents.*

(1) The notice required under paragraph (a)(1) of this section must—

(i) Indicate the purpose, time, and location of the meeting and who will be in attendance; and

(ii) Inform the parents of the provisions in § 300.344(a)(6) and (c) (relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child).

(2) For a student with a disability beginning at age 14, or younger, if appropriate, the notice must also—

(i) Indicate that a purpose of the meeting will be the development of a statement of the transition services needs of the student required in § 300.347(b)(1); and

(ii) Indicate that the agency will invite the student.

(3) For a student with a disability beginning at age 16, or younger, if appropriate, the notice must—

(i) Indicate that a purpose of the meeting is the consideration of needed transition services for the student required in § 300.347(b)(2);

(ii) Indicate that the agency will invite the student; and

(iii) Identify any other agency that will be invited to send a representative.

(c) *Other methods to ensure parent participation.* If neither parent can attend, the public agency shall use other methods to ensure parent participation, including individual or conference telephone calls.

(d) *Conducting an IEP meeting without a parent in attendance.* A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case the public agency must have a record of its attempts to arrange a mutually agreed on time and place, such as—

(1) Detailed records of telephone calls made or attempted and the results of those calls;

(2) Copies of correspondence sent to the parents and any responses received; and

(3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(e) *Use of interpreters or other action, as appropriate.* The public agency shall take whatever action is necessary to ensure that the parent understands the proceedings at the IEP meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

(f) *Parent copy of child's IEP.* The public agency shall give the parent a copy of the child's IEP at no cost to the parent.

(Authority: 20 U.S.C. 1414(d)(1)(B)(i))

#### § 300.346 Development, review, and revision of IEP.

(a) *Development of IEP.* (1) *General.* In developing each child's IEP, the IEP team shall consider—

(i) The strengths of the child and the concerns of the parents for enhancing the education of their child;

(ii) The results of the initial or most recent evaluation of the child; and

(iii) As appropriate, the results of the child's performance on any general State or district-wide assessment programs.

(2) *Consideration of special factors.* The IEP team also shall—

(i) In the case of a child whose behavior impedes his or her learning or that of others, consider, if appropriate,

strategies, including positive behavioral interventions, strategies, and supports to address that behavior;

(ii) In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;

(iii) In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;

(iv) Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and

(v) Consider whether the child requires assistive technology devices and services.

(b) *Review and Revision of IEP.* In conducting a meeting to review, and, if appropriate, revise a child's IEP, the IEP team shall consider the factors described in paragraph (a) of this section.

(c) *Statement in IEP.* If, in considering the special factors described in paragraphs (a)(1) and (2) of this section, the IEP team determines that a child needs a particular device or service (including an intervention, accommodation, or other program modification) in order for the child to receive FAPE, the IEP team must include a statement to that effect in the child's IEP.

(d) *Requirement with respect to regular education teacher.* The regular education teacher of a child with a disability, as a member of the IEP team, must, to the extent appropriate, participate in the development, review, and revision of the child's IEP, including assisting in the determination of—

(1) Appropriate positive behavioral interventions and strategies for the child; and

(2) Supplementary aids and services, program modifications or supports for school personnel that will be provided for the child, consistent with § 300.347(a)(3).

(e) *Construction.* Nothing in this section shall be construed to require the IEP team to include information under one component of a child's IEP that is already contained under another component of the child's IEP.

(Authority: 20 U.S.C. 1414(d)(3) and (4)(B) and (e))

**§ 300.347 Content of IEP.**

(a) *General.* The IEP for each child with a disability must include—

(1) A statement of the child's present levels of educational performance, including—

(i) How the child's disability affects the child's involvement and progress in the general curriculum (i.e., the same curriculum as for nondisabled children); or

(ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

(2) A statement of measurable annual goals, including benchmarks or short-term objectives, related to—

(i) Meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum (i.e., the same curriculum as for nondisabled children), or for preschool children, as appropriate, to participate in appropriate activities; and

(ii) Meeting each of the child's other educational needs that result from the child's disability;

(3) A statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child—

(i) To advance appropriately toward attaining the annual goals;

(ii) To be involved and progress in the general curriculum in accordance with paragraph (a)(1) of this section and to participate in extracurricular and other nonacademic activities; and

(iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;

(4) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(3) of this section;

(5)(i) A statement of any individual modifications in the administration of State or district-wide assessments of student achievement that are needed in order for the child to participate in the assessment; and

(ii) If the IEP team determines that the child will not participate in a particular State or district-wide assessment of student achievement (or part of an assessment), a statement of—

(A) Why that assessment is not appropriate for the child; and

(B) How the child will be assessed;

(6) The projected date for the beginning of the services and modifications described in paragraph (a)(3) of this section, and the anticipated frequency, location, and duration of those services and modifications; and

(7) A statement of—

(i) How the child's progress toward the annual goals described in paragraph (a)(2) of this section will be measured; and

(ii) How the child's parents will be regularly informed (through such means as periodic report cards), at least as often as parents are informed of their nondisabled children's progress, of—

(A) Their child's progress toward the annual goals; and

(B) The extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.

(b) *Transition services.* The IEP must include—

(1) For each student with a disability beginning at age 14 (or younger, if determined appropriate by the IEP team), and updated annually, a statement of the transition service needs of the student under the applicable components of the student's IEP that focuses on the student's courses of study (such as participation in advanced-placement courses or a vocational education program); and

(2) For each student beginning at age 16 (or younger, if determined appropriate by the IEP team), a statement of needed transition services for the student, including, if appropriate, a statement of the interagency responsibilities or any needed linkages.

(c) *Transfer of rights.* In a State that transfers rights at the age majority, beginning at least one year before a student reaches the age of majority under State law, the student's IEP must include a statement that the student has been informed of his or her rights under Part B of the Act, if any, that will transfer to the student on reaching the age of majority, consistent with § 300.517.

(d) *Students with disabilities convicted as adults and incarcerated in adult prisons.* Special rules concerning the content of IEPs for students with disabilities convicted as adults and incarcerated in adult prisons are contained in § 300.311(b) and (c).

(Authority: 20 U.S.C. 1414(d)(1)(A) and (d)(6)(A)(ii))

**§ 300.348 Agency responsibilities for transition services.**

(a) If a participating agency, other than the public agency, fails to provide the transition services described in the IEP in accordance with § 300.347(b)(1), the public agency shall reconvene the IEP team to identify alternative strategies to meet the transition objectives for the student set out in the IEP.

(b) Nothing in this part relieves any participating agency, including a State vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

(Authority: 20 U.S.C. 1414(d)(5); 1414(d)(1)(A)(vii))

**§ 300.349 Private school placements by public agencies.**

(a) *Developing IEPs.* (1) Before a public agency places a child with a disability in, or refers a child to, a private school or facility, the agency shall initiate and conduct a meeting to develop an IEP for the child in accordance with §§ 300.346 and 300.347.

(2) The agency shall ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the agency shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

(b) *Reviewing and revising IEPs.* (1) After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the public agency.

(2) If the private school or facility initiates and conducts these meetings, the public agency shall ensure that the parents and an agency representative—

(i) Are involved in any decision about the child's IEP; and

(ii) Agree to any proposed changes in the IEP before those changes are implemented.

(c) *Responsibility.* Even if a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the public agency and the SEA.

(Authority: 20 U.S.C. 1412(a)(10)(B))

**§ 300.350 IEP—accountability.**

(a) *Provision of services.* Subject to paragraph (b) of this section, each public agency must—

(1) Provide special education and related services to a child with a disability in accordance with the child's IEP; and

(2) Make a good faith effort to assist the child to achieve the goals and objectives or benchmarks listed in the IEP.

(b) *Accountability.* Part B of the Act does not require that any agency, teacher, or other person be held accountable if a child does not achieve the growth projected in the annual goals and benchmarks or objectives. However, the Act does not prohibit a State or public agency from establishing its own accountability systems regarding teacher, school, or agency performance.

(c) *Construction—parent rights.* Nothing in this section limits a parent's right to ask for revisions of the child's IEP or to invoke due process procedures if the parent feels that the efforts required in paragraph (a) of this section are not being made.

(Authority: 20 U.S.C. 1414(d)); Cong. Rec. at H7152 (daily ed., July 21, 1975))

#### Direct Services by the Sea

##### § 300.360 Use of LEA allocation for direct services.

(a) *General.* An SEA shall use the payments that would otherwise have been available to an LEA or to a State agency to provide special education and related services directly to children with disabilities residing in the area served by that local agency, or for whom that State agency is responsible, if the SEA determines that the LEA or State agency—

(1) Has not provided the information needed to establish the eligibility of the agency under Part B of the Act;

(2) Is unable to establish and maintain programs of FAPE that meet the requirements of this part;

(3) Is unable or unwilling to be consolidated with one or more LEAs in order to establish and maintain the programs; or

(4) Has one or more children with disabilities who can best be served by a regional or State program or service-delivery system designed to meet the needs of these children.

(b) *SEA responsibility if an LEA does not apply for Part B funds.* (1) If an LEA elects not to apply for its Part B allotment, the SEA must use those funds to ensure that FAPE is available to all eligible children residing in the jurisdiction of the LEA.

(2)(i) If the local allotment is not sufficient to meet the purpose described in paragraph (b)(1) of this section, the SEA must ensure compliance with §§ 300.121(a) and 300.300(a).

(ii) Consistent with § 300.301(a), the [State; SEA] may use whatever funding sources are available in the State to implement paragraph (b)(2)(i) of this section.

(c) *SEA administrative procedures.* (1) In meeting the requirements in paragraph (a) of this section, the SEA may provide special education and related services directly, by contract, or through other arrangements.

(2) The excess cost requirements of §§ 300.184 and 300.185 do not apply to the SEA.

(Authority: 20 U.S.C. 1413(h)(1))

##### § 300.361 Nature and location of services.

The SEA may provide special education and related services under § 300.360(a) in the manner and at the location it considers appropriate (including regional and State centers). However, the manner in which the education and services are provided must be consistent with the requirements of this part (including the LRE provisions of §§ 300.550–300.556).

(Authority: 20 U.S.C. 1413(h)(2))

##### §§ 300.362–300.369 [Reserved]

##### § 300.370 Use of SEA allocations.

(a) Each State shall use any funds it retains under § 300.602 and does not use for administration under § 300.620 for any of the following:

(1) Support and direct services, including technical assistance and personnel development and training.

(2) Administrative costs of monitoring and complaint investigation, but only to the extent that those costs exceed the costs incurred for those activities during fiscal year 1985.

(3) To establish and implement the mediation process required by § 300.506, including providing for the costs of mediators and support personnel.

(4) To assist LEAs in meeting personnel shortages.

(5) To develop a State Improvement Plan under subpart 1 of Part D of the Act.

(6) Activities at the State and local levels to meet the performance goals established by the State under § 300.137 and to support implementation of the State Improvement Plan under subpart 1 of Part D of the Act if the State receives funds under that subpart.

(7) To supplement other amounts used to develop and implement a Statewide coordinated services system designed to improve results for children and families, including children with disabilities and their families, but not to exceed one percent of the amount received by the State under section 611

of the Act. This system must be coordinated with and, to the extent appropriate, build on the system of coordinated services developed by the State under Part C of the Act.

(8) For subgrants to LEAs for the purposes described in § 300.622 (local capacity building).

(b) For the purposes of paragraph (a) of this section—

(1) *Direct services* means services provided to a child with a disability by the State directly, by contract, or through other arrangements; and

(2) *Support services* includes implementing the comprehensive system of personnel development under §§ 300.380–300.382, recruitment and training of mediators, hearing officers, and surrogate parents, and public information and parent training activities relating to FAPE for children with disabilities.

(c) Of the funds an SEA retains under paragraph (a) of this section, the SEA may use the funds directly, or distribute them to LEAs on a competitive, targeted, or formula basis.

(Authority: 20 U.S.C. 1411(f)(3))

##### § 300.371 [Reserved]

##### § 300.372 Nonapplicability of requirements that prohibit commingling and supplanting of funds.

A State may use funds it retains under § 300.602 without regard to—

(a) The prohibition on commingling of funds in § 300.152; and

(b) The prohibition on supplanting other funds in § 300.153.

(Authority: 20 U.S.C. 1411(f)(1)(C))

##### Comprehensive System of Personnel Development (CSPD)

##### § 300.380 General CSPD requirements.

(a) Each State shall develop and implement a comprehensive system of personnel development that—

(1) Is consistent with the purposes of this part and with section 635(a)(8) of the Act;

(2) Is designed to ensure an adequate supply of qualified special education, regular education, and related services personnel;

(3) Meets the requirements of §§ 300.381 and 300.382; and

(4) Is updated at least every five years.

(b) A State that has a State improvement grant has met the requirements of paragraph (a) of this section.

(Authority: 20 U.S.C. 1412(a)(14))

##### § 300.381 Adequate supply of qualified personnel.

Each State must include, at least, an analysis of State and local needs for

ualifications. [Repealed, § 19 ch 147 SLA 1984.]

AS 14.30.250 does not prohibit the employment of a  
p<sub>er</sub>son to serve as a substitute teacher, to serve as a substitute  
teacher of exceptional children. (§ 12 ch 120 SLA 1959; am § 49 ch 98 SLA 1966; am § 9  
ch 147 SLA 1984)

**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) (§ 10 ch 144 SLA 1984; am §§ 12, 13 ch 147  
SLA 1993)

**Effect of amendments.** — The 1993 amendment, effective June 30, 1993, in subsection (a), deleted "or guardian" following "parent" and inserted the lan-  
guage beginning "by choosing" and continuing to "be-  
tween the parent and school district" and "to appeal  
hearing officer's decision"; and added subsection (b).

STATE "KIDFIND"

**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. (§ 10 ch 147 SLA 1984)

**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. (§ 10  
ch 147 SLA 1984)

**Sec. 14.30.278. Individualized education program.** (a) The individualized edu-  
cation 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;

who left school prior to their incarceration; or

(B) Did not have an IEP in their last educational setting, but who had actually been identified as a "child with a disability" under § 300.7.

(3)(i) Students with disabilities who have graduated from high school with a regular high school diploma.

(ii) The exception in paragraph (a)(3)(i) of this section does not apply to students who have graduated but have not been awarded a regular high school diploma.

(iii) Graduation from high school with a regular diploma constitutes a change in placement, requiring written prior notice in accordance with § 300.503.

(b) *Documents relating to exceptions.* The State must have on file with the Secretary—

(1)(i) Information that describes in detail the extent to which the exception in paragraph (a)(1) of this section applies to the State; and

(ii) A copy of each State law, court order, and other documents that provide a basis for the exception; and

(2) With respect to paragraph (a)(2) of this section, a copy of the State law that excludes from services under Part B of the Act certain students who are incarcerated in an adult correctional facility.

(Authority: 20 U.S.C. 1412(a)(1)(B))

**§ 300.123 Full educational opportunity goal (FEOG).**

The State must have on file with the Secretary detailed policies and procedures through which the State has established a goal of providing educational opportunity for all children with disabilities aged birth through 21.

(Authority: 20 U.S.C. 1412(a)(2))

**§ 300.124 FEOG—timetable.**

The State must have on file with the Secretary a detailed timetable for accomplishing the goal of providing full educational opportunity for all children with disabilities.

(Authority: 20 U.S.C. 1412(a)(2))

**§ 300.125 Child find.**

(a) *General requirement.* (1) The State must have in effect policies and procedures to ensure that—

(i) All children with disabilities residing in the State, including children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and

(ii) A practical method is developed and implemented to determine which

children are currently receiving needed special education and related services.

(2) The requirements of paragraph (a)(1) of this section apply to—

(i) Highly mobile children with disabilities (such as migrant and homeless children); and

(ii) Children who are suspected of being a child with a disability under § 300.7 and in need of special education, even though they are advancing from grade to grade.

(b) *Documents relating to child find.* The State must have on file with the Secretary the policies and procedures described in paragraph (a) of this section, including—

(1) The name of the State agency (if other than the SEA) responsible for coordinating the planning and implementation of the policies and procedures under paragraph (a) of this section;

(2) The name of each agency that participates in the planning and implementation of the child find activities and a description of the nature and extent of its participation;

(3) A description of how the policies and procedures under paragraph (a) of this section will be monitored to ensure that the SEA obtains—

(i) The number of children with disabilities within each disability category that have been identified, located, and evaluated; and

(ii) Information adequate to evaluate the effectiveness of those policies and procedures; and

(4) A description of the method the State uses to determine which children are currently receiving special education and related services.

(c) *Child find for children from birth through age 2 when the SEA and lead agency for the Part C program are different.* (1) In States where the SEA and the State's lead agency for the Part C program are different and the Part C lead agency will be participating in the child find activities described in paragraph (a) of this section, a description of the nature and extent of the Part C lead agency's participation must be included under paragraph (b)(2) of this section.

(2) With the SEA's agreement, the Part C lead agency's participation may include the actual implementation of child find activities for infants and toddlers with disabilities.

(3) The use of an interagency agreement or other mechanism for providing for the Part C lead agency's participation does not alter or diminish the responsibility of the SEA to ensure compliance with the requirements of this section.

(d) *Construction.* Nothing in the Act requires that children be classified by their disability so long as each child who has a disability listed in § 300.7 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under Part B of the Act.

(e) *Confidentiality of child find data.* The collection and use of data to meet the requirements of this section are subject to the confidentiality requirements of §§ 300.560–300.577.

(Authority: 20 U.S.C. 1412(a)(3)(A) and (B))

**§ 300.126 Procedures for evaluation and determination of eligibility.**

The State must have on file with the Secretary policies and procedures that ensure that the requirements of §§ 300.530–300.536 are met.

(Authority: 20 U.S.C. 1412(a)(6)(B), (7))

**§ 300.127 Confidentiality of personally identifiable information.**

(a) The State must have on file in detail the policies and procedures that the State has undertaken to ensure protection of the confidentiality of any personally identifiable information, collected, used, or maintained under Part B of the Act.

(b) The Secretary uses the criteria in §§ 300.560–300.576 to evaluate the policies and procedures of the State under paragraph (a) of this section.

(Authority: 20 U.S.C. 1412(a)(8))

**§ 300.128 Individualized education programs.**

(a) *General.* The State must have on file with the Secretary information that shows that an IEP, or an IFSP that meets the requirements of section 636(d) of the Act, is developed, reviewed, and revised for each child with a disability in accordance with §§ 300.340–300.350.

(b) *Required information.* The information described in paragraph (a) of this section must include—

(1) A copy of each State statute, policy, and standard that regulates the manner in which IEPs are developed, implemented, reviewed, and revised; and

(2) The procedures that the SEA follows in monitoring and evaluating those IEPs or IFSPs.

(Authority: 20 U.S.C. 1412(a)(4))

**§ 300.129 Procedural safeguards.**

(a) The State must have on file with the Secretary procedural safeguards that ensure that the requirements of §§ 300.500–300.529 are met.

(b) Children with disabilities and their parents must be afforded the procedural safeguards identified in paragraph (a) of this section.

(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;

(10) "school district" means a borough school district, a city school district, or a regional educational attendance area;

(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

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

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

(C) "vocational education" means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree. (§ 2 ch 120 SLA 1959; am §§ 5, 6 ch 81 SLA 1965; am §§ 13, 14 ch 144 SLA 1970; am § 2 ch 119 SLA 1981; am § 18 ch 147 SLA 1984; am § 38 ch 30 SLA 1992; am §§ 20 — 24 ch 77 SLA 1993)

**Revisor's notes.** — In 1992, former paragraphs (4)-(7) were renumbered as (3)-(6), respectively, to reflect the 1992 repeal of former paragraph (3).

Paragraphs (2), (4), and (6)-(8) were enacted as (7)-(11), respectively, and renumbered in 1993, at which time former (1)-(6) were renumbered accordingly.

**Effect of amendments.** — The 1992 amendment, effective May 16, 1992, repealed former paragraph (3), defining "department."

The 1993 amendment, effective June 30, 1993, rewrote paragraphs (3) and (5); substituted "children with disabilities or gifted children" for "a handicapped or gifted child" and inserted "including rehabilitation counseling" in paragraph (9); in paragraph (11), substituted "exceptional children" for "a handicapped child" in three places and "nonexceptional" for "nonhandicapped" in subparagraph (A); and added paragraphs (6)-(8).

## Article 4. Health and Safety Education.

### Section

360. Curriculum

370. Evaluation

**Collateral references.** — 68 Am. Jur. 2d Schools, § 298 et seq.

78A C.J.S. Schools and School Districts, § 780 et seq.

enclosures or structures to house the machinery, utilities, or equipment; and

(b) All other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

(Authority: 20 U.S.C. 1401(6))

**§ 300.12 Evaluation.**

As used in this part, the term *evaluation* has the meaning given that term in § 300.500(b)(2).

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

**§ 300.13 Free appropriate public education.**

As used in this part, the term *free appropriate public education* or *FAPE* means special education and related services that—

(a) Are provided at public expense, under public supervision and direction, and without charge;

(b) Meet the standards of the SEA, including the requirements of this part;

(c) Include preschool, elementary school, or secondary school education in the State; and

(d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§ 300.340-300.350.

(Authority: 20 U.S.C. 1401(8))

**§ 300.14 Include.**

As used in this part, the term *include* means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

(Authority: 20 U.S.C. 1221e-3)

**§ 300.15 Individualized education program.**

As used in this part, the term *individualized education program* or *IEP* has the meaning given the term in § 300.340(a).

(Authority: 20 U.S.C. 1401(11))

**§ 300.16 Individualized education program team.**

As used in this part, the term *individualized education program team* or *IEP team* means a group of individuals described in § 300.344 that is responsible for developing, reviewing, or revising an IEP for a child with a disability.

(Authority: 20 U.S.C. 1221e-3)

**§ 300.17 Individualized family service plan.**

As used in this part, the term *individualized family service plan* or

*IFSP* has the meaning given the term in 34 CFR 303.340(b).

(Authority: 20 U.S.C. 1401(12))

**§ 300.18 Local educational agency.**

(a) As used in this part, the term *local educational agency* means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools.

(b) The term includes—

(1) An educational service agency, as defined in § 300.10;

(2) Any other public institution or agency having administrative control and direction of a public elementary or secondary school, including a public charter school that is established as an LEA under State law; and

(3) An elementary or secondary school funded by the Bureau of Indian Affairs, and not subject to the jurisdiction of any SLA other than the Bureau of Indian Affairs, but only to the extent that the inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the LEA receiving assistance under this Act with the smallest student population.

(Authority: 20 U.S.C. 1401(15))

**§ 300.19 Native language.**

(a) As used in this part, the term *native language*, if used with reference to an individual of limited English proficiency, means the following:

(1) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in paragraph (a)(2) of this section.

(2) In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment.

(b) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, braille, or oral communication).

(Authority: 20 U.S.C. 1401(16))

**§ 300.20 Parent.**

(a) *General.* As used in this part, the term *parent* means—

(1) A natural or adoptive parent of a child;

(2) A guardian but not the State if the child is a ward of the State;

(3) A person acting in the place of a parent (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare); or

(4) A surrogate parent who has been appointed in accordance with § 300.515.

(b) *Foster parent.* Unless State law prohibits a foster parent from acting as a parent, a State may allow a foster parent to act as a parent under Part B of the Act if—

(1) The natural parents' authority to make educational decisions on the child's behalf has been extinguished under State law; and

(2) The foster parent—

(i) Has an ongoing, long-term parental relationship with the child;

(ii) Is willing to make the educational decisions required of parents under the Act; and

(iii) Has no interest that would conflict with the interests of the child.

(Authority: 20 U.S.C. 1401(19))

**§ 300.21 Personally identifiable**

As used in this part, the term *personally identifiable* has the meaning given that term in § 300.500(b)(3).

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

**§ 300.22 Public agency.**

As used in this part, the term *public agency* includes the SEA, LEAs, ESAs, public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities.

(Authority: 20 U.S.C. 1412(a)(1)(A), (a)(11))

**§ 300.23 Qualified personnel.**

As used in this part, the term *qualified personnel* means personnel who have met State-approved or SEA-recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the individuals are providing special education or related services.

(Authority: 20 U.S.C. 1221e-3)

**§ 300.24 Related services.**

(a) *General.* As used in this part, the term *related services* means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a

disability to benefit from special education, and includes speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.

(b) *Individual terms defined.* The terms used in this definition are defined as follows:

(1) *Audiology* includes—

- (i) Identification of children with hearing loss;
- (ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;
- (iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;
- (iv) Creation and administration of programs for prevention of hearing loss;
- (v) Counseling and guidance of children, parents, and teachers regarding hearing loss; and
- (vi) Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(2) *Counseling services* means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

(3) *Early identification and assessment of disabilities in children* means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

(4) *Medical services* means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.

(5) *Occupational therapy*—

- (i) Means services provided by a qualified occupational therapist; and
- (ii) Includes—
  - (A) Improving, developing or restoring functions impaired or lost through illness, injury, or deprivation;
  - (B) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and
  - (C) Preventing, through early intervention, initial or further impairment or loss of function.

(6) *Orientation and mobility services*—

(i) Means services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and

(ii) Includes teaching students the following, as appropriate:

- (A) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);
- (B) To use the long cane to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision;
- (C) To understand and use remaining vision and distance low vision aids; and
- (D) Other concepts, techniques, and tools.

(7) *Parent counseling and training means*—

- (i) Assisting parents in understanding the special needs of their child;
- (ii) Providing parents with information about child development; and
- (iii) Helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.

(8) *Physical therapy* means services provided by a qualified physical therapist.

(9) *Psychological services* includes—

- (i) Administering psychological and educational tests, and other assessment procedures;
- (ii) Interpreting assessment results;
- (iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;
- (iv) Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations;
- (v) Planning and managing a program of psychological services, including psychological counseling for children and parents; and
- (vi) Assisting in developing positive behavioral intervention strategies.

(10) *Recreation* includes—

- (i) Assessment of leisure function;
- (ii) Therapeutic recreation services;
- (iii) Recreation programs in schools and community agencies; and
- (iv) Leisure education.

(11) *Rehabilitation counseling services* means services provided by

qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.

(12) *School health services* means services provided by a qualified school nurse or other qualified person.

(13) *Social work services in schools* includes—

- (i) Preparing a social or developmental history on a child with a disability;
- (ii) Group and individual counseling with the child and family;
- (iii) Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;

(iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and

(v) Assisting in developing positive behavioral intervention strategies.

(14) *Speech-language pathology services* includes—

- (i) Identification of children with speech or language impairments;
- (ii) Diagnosis and appraisal of specific speech or language impairments;
- (iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;
- (iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and
- (v) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

(15) *Transportation* includes—

- (i) Travel to and from school and between schools;
- (ii) Travel in and around school buildings; and
- (iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

(Authority: 20 U.S.C. 1401(22))

§ 300.25 *Secondary school.*

As used in this part, the term *secondary school* means a nonprofit institutional day or residential school that provides secondary education, as determined under State law, except that

ualifications. [Repealed, § 19 ch 147 SLA 1984.]

AS 14.30.250 does not prohibit the employment of a  
pt  
teacher of exceptional children. (§ 12 ch 120 SLA 1959; am § 49 ch 98 SLA 1966; am § 9  
ch 147 SLA 1984)

**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). (§ 10 ch 144 SLA 1984; am §§ 12, 13 ch 77  
SLA 1993)

**Effect of amendments.** — The 1993 amendment, effective June 30, 1993, in subsection (a), deleted "or  
guardian" following "parent" and inserted the lan-  
guage beginning "by choosing" and continuing to "be-  
tween the parent and school district" and "to appeal a  
hearing officer's decision"; and added subsection (b).

**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. (§ 10 ch 147 SLA 1984)

**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. (§ 10  
ch 147 SLA 1984)

**Sec. 14.30.278. Individualized education program.** (a) The individualized edu-  
cation 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 deter-  
mining, 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;

- (i) Lack of instruction in reading or math; or
- (ii) Limited English proficiency; and
- (2) The child does not otherwise meet the eligibility criteria under § 300.7(a).
- (c)(1) A public agency must evaluate a child with a disability in accordance with §§ 300.532 and 300.533 before determining that the child is no longer a child with a disability.

(2) The evaluation described in paragraph (c)(1) of this section is not required before the termination of a student's eligibility under Part B of the Act due to graduation with a regular high school diploma, or exceeding the age eligibility for FAPE under State law.

(Authority: 20 U.S.C. 1414(b)(4) and (5), (c)(5))

#### § 300.535 Procedures for determining eligibility and placement.

(a) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under § 300.7, and the educational needs of the child, each public agency shall—

(1) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; and

(2) Ensure that information obtained from all of these sources is documented and carefully considered.

(b) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with §§ 300.340-300.350.

(Authority: 20 U.S.C. 1412(a)(6), 1414(b)(4))

#### § 300.536 Reevaluation.

Each public agency shall ensure—

(a) That the IEP of each child with a disability is reviewed in accordance with §§ 300.340-300.350; and

(b) That a reevaluation of each child, in accordance with §§ 300.532-300.535, is conducted if conditions warrant a reevaluation, or if the child's parent or teacher requests a reevaluation, but at least once every three years.

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

#### Additional Procedures for Evaluating Children With Specific Disabilities

#### § 300.540 Additional team members.

The determination of whether a child suspected of having a specific learning disability is a child with a disability as defined in § 300.7, must be made by the child's parents and a team of qualified professionals which must include—

- (a)(1) The child's regular teacher; or
- (2) If the child does not have a regular teacher, a regular classroom teacher

qualified to teach a child of his or her age; or

(3) For a child of less than school age, an individual qualified by the SEA to teach a child of his or her age; and

(b) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

(Authority: Sec. 5(b), Pub. L. 94-142)

#### § 300.541 Criteria for determining the existence of a specific learning disability.

(a) A team may determine that a child has a specific learning disability if—

(1) The child does not achieve commensurate with or her age and ability levels in one or more of the areas listed in paragraph (b)(2) of this section, if provided with learning experiences appropriate for the child's age and ability levels; and

(2) The team finds that a child has a severe discrepancy between achievement and intellectual ability in one or more of the following areas:

- (i) Oral expression.
- (ii) Listening comprehension.
- (iii) Written expression.
- (iv) Basic reading skill.
- (v) Reading comprehension.
- (vi) Mathematics calculation.
- (vii) Mathematics reasoning.

(b) The team may not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of—

- (1) A visual, hearing, or motor impairment;
- (2) Mental retardation;
- (3) Emotional disturbance; or
- (4) Environmental, cultural or economic disadvantage.

(Authority: Sec. 5(b), Pub. L. 94-142)

#### § 300.542 Observation.

(a) At least one team member other than the child's regular teacher shall observe the child's academic performance in the regular classroom setting.

(b) In the case of a child of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age.

(Authority: Sec. 5(b), Pub. L. 94-142)

#### § 300.543 Written report.

(a) For a child suspected of having a specific learning disability, the documentation of the team's determination of eligibility, as required by § 300.534(a)(2), must include a statement of—

- (1) Whether the child has a specific learning disability;

(2) The basis for making the determination;

(3) The relevant behavior noted during the observation of the child;

(4) The relationship of that behavior to the child's academic functioning;

(5) The educationally relevant medical findings, if any;

(6) Whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services; and

(7) The determination of the team concerning the effects of environmental, cultural, or economic disadvantage.

(b) Each team member shall certify in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the team member must submit a separate statement presenting his or her conclusions.

(Authority: Sec. 5(b), Pub. L. 94-142)

#### Least Restrictive Environment (LRE)

#### § 300.550 General LRE requirements.

(a) Except as provided in § 300.311(b) and (c), a State shall demonstrate to the satisfaction of the Secretary that the State has in effect policies and procedures to ensure that it meets the requirements of §§ 300.550-300.556.

(b) Each public agency shall ensure—

(1) That to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and

(2) That special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(Authority: 20 U.S.C. 1412(a)(5))

#### § 300.551 Continuum of alternative placements.

(a) Each public agency shall ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.

(b) The continuum required in paragraph (a) of this section must—

(1) Include the alternative placements listed in the definition of special education under § 300.26 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and

(2) Make provision for supplementary services (such as resource room or

Itinerant instruction) to be provided in conjunction with regular class placement.

(Authority: 20 U.S.C. 1412(a)(5))

#### § 300.552 Placements.

In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency shall ensure that—

(a) The placement decision—

(1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

(2) Is made in conformity with the LRE provisions of this subpart, including §§ 300.550–300.554;

(b) The child's placement—

(1) Is determined at least annually;

(2) Is based on the child's IEP; and

(3) Is as close as possible to the child's home;

(c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled;

(d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and

(e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.

(Authority: 20 U.S.C. 1412(a)(5))

#### § 300.553 Nonacademic settings.

In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in § 300.306, each public agency shall ensure that each child with a disability participates with nondisabled children in those services and activities to the maximum extent appropriate to the needs of that child.

(Authority: 20 U.S.C. 1412(a)(5))

#### § 300.554 Children in public or private institutions.

Except as provided in § 300.600(d), an SEA must ensure that § 300.550 is effectively implemented, including, if necessary, making arrangements with public and private institutions (such as a memorandum of agreement or special implementation procedures).

(Authority: 20 U.S.C. 1412(a)(5))

#### § 300.555 Technical assistance and training activities.

Each SEA shall carry out activities to ensure that teachers and administrators in all public agencies—

(a) Are fully informed about their responsibilities for implementing § 300.550; and

(b) Are provided with technical assistance and training necessary to assist them in this effort.

(Authority: 20 U.S.C. 1412(a)(5))

#### § 300.556 Monitoring activities.

(a) The SEA shall carry out activities to ensure that § 300.550 is implemented by each public agency.

(b) If there is evidence that a public agency makes placements that are inconsistent with § 300.550, the SEA shall—

(1) Review the public agency's justification for its actions; and

(2) Assist in planning and implementing any necessary corrective action.

(Authority: 20 U.S.C. 1412(a)(5))

#### Confidentiality of Information

##### § 300.560 Definitions.

As used in §§ 300.560–300.577—

(a) *Destruction* means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

(b) *Education records* means the type of records covered under the definition of "education records" in 34 CFR part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974).

(c) *Participating agency* means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the Act.

(Authority: 20 U.S.C. 1221e-3, 1412(a)(8), 1417(c))

##### § 300.561 Notice to parents.

(a) The SEA shall give notice that is adequate to fully inform parents about the requirements of § 300.127, including—

(1) A description of the extent that the notice is given in the native languages of the various population groups in the State;

(2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;

(3) A summary of the policies and procedures that participating agencies must follow regarding storage,

disclosure to third parties, retention, and destruction of personally identifiable information; and

(4) A description of all of the rights of parents and children regarding this information, including the rights under the Family Educational Rights and Privacy Act of 1974 and implementing regulations in 34 CFR part 99.

(b) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity.

(Authority: 20 U.S.C. 1412(a)(8), 1417(c))

##### § 300.562 Access rights.

(a) Each participating agency shall permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part.

The agency shall comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to §§ 300.507 and 300.521–300.528, and in no case more than 45 days after the request has been made.

(b) The right to inspect and review education records under this section includes—

(1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;

(2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(3) The right to have a representative of the parent inspect and review the records.

(c) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

(Authority: 20 U.S.C. 1412(a)(8), 1417(c))

##### § 300.563 Record of access.

Each participating agency shall keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the Act (except access by parents and authorized employees of the

[Reserved]

**Comprehensive system of personnel development.**

*General.* The State must have in effect, consistent with the purposes of this part and with section 635(a)(8) of the Act, a comprehensive system of personnel development that—

- (1) Is designed to ensure an adequate supply of qualified special education, regular education, and related services personnel; and
- (2) Meets the requirements for a State improvement plan relating to personnel development in section 653(b)(2)(B) and (c)(3)(D) of the Act.

(b) *Information.* The State must have on file with the Secretary information that shows that the requirements of paragraph (a) of this section are met. (Authority: 20 U.S.C. 1412(a)(14))

**§ 300.136 Personnel standards.**

(a) *Definitions.* As used in this part—  
(1) *Appropriate professional requirements in the State* means entry level requirements that—

- (i) Are based on the highest requirements in the State applicable to the profession or discipline in which a person is providing special education or related services; and
- (ii) Establish suitable qualifications for personnel providing special education and related services under Part B of the Act to children with disabilities who are served by State, local, and private agencies (see § 300.2);

(2) *Highest requirements in the State applicable to a specific profession or discipline* means the highest entry-level academic degree needed for any State-approved or -recognized certification, licensing, registration, or other comparable requirements that apply to that profession or discipline;

(3) *Profession or discipline* means a specific occupational category that—  
(i) Provides special education and related services to children with disabilities under Part B of the Act;

- (ii) Has been established or designated by the State;
- (iii) Has a required scope of responsibility and degree of supervision; and
- (iv) Is not limited to traditional occupational categories; and

(4) *State-approved or -recognized certification, licensing, registration, or other comparable requirements* means the requirements that a State legislature either has enacted or has authorized a State agency to promulgate through rules to establish the entry-level standards for employment in a specific profession or discipline in that State.

(b) *Policies and procedures.* (1)(i) The State must have on file with the

Secretary policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained.

(ii) The policies and procedures required in paragraph (b)(1)(i) of this section must provide for the establishment and maintenance of standards that are consistent with any State-approved or -recognized certification, licensing, registration, or other comparable requirements that apply to the profession or discipline in which a person is providing special education or related services.

- (2) Each State may—  
(i) Determine the specific occupational categories required to provide special education and related services within the State; and  
(ii) Revise or expand those categories as needed.

(3) Nothing in this part requires a State to establish a specified training standard (e.g., a masters degree) for personnel who provide special education and related services under Part B of the Act.

(4) A State with only one entry-level academic degree for employment of personnel in a specific profession or discipline may modify that standard as necessary to ensure the provision of FAPE to all children with disabilities in the State without violating the requirements of this section.

(c) *Steps for retraining or hiring personnel.* To the extent that a State's standards for a profession or discipline, including standards for temporary or emergency certification, are not based on the highest requirements in the State applicable to a specific profession or discipline, the State must provide the steps the State is taking and the procedures for notifying public agencies and personnel of those steps and the timelines it has established for the retraining or hiring of personnel to meet appropriate professional requirements in the State.

(d) *Status of personnel standards in the State.* (1) In meeting the requirements in paragraphs (b) and (c) of this section, a determination must be made about the status of personnel standards in the State. That determination must be based on current information that accurately describes, for each profession or discipline in which personnel are providing special education or related services, whether the applicable standards are consistent with the highest requirements in the State for that profession or discipline.

(2) The information required in paragraph (d)(1) of this section must be

mechanism for placements that meet the requirements of this section.

(2) If the State does not have policies and procedures to ensure compliance with paragraph (b)(1) of this section, the State must provide the Secretary an assurance that the State will revise the funding mechanism as soon as feasible to ensure that the mechanism does not result in placements that violate that paragraph.

(Authority: 20 U.S.C. 1412(a)(5))

**§ 300.131 [Reserved]**

**§ 300.132 Transition of children from Part C to preschool programs.**

The State must have on file with the Secretary policies and procedures to ensure that—

(a) Children participating in early-intervention programs assisted under Part C of the Act, and who will participate in preschool programs assisted under Part B of the Act, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(8) of the Act;

(b) By the third birthday of a child described in paragraph (a) of this section, an IEP or, if consistent with § 300.342(c) and section 636(d) of the Act, an IFSP, has been developed and is being implemented for the child consistent with § 300.121(c); and

(c) Each LEA will participate in transition planning conferences arranged by the designated lead agency under section 637(a)(8) of the Act.

(Authority: 20 U.S.C. 1412(a)(9))

**§ 300.133 Children in private schools.**

The State must have on file with the Secretary policies and procedures that ensure that the requirements of §§ 300.400-300.403 and §§ 300.450-300.462 are met.

(Authority: 20 U.S.C. 1413(a)(4))

# CORRECTION

THE FOLLOWING DOCUMENT(S)  
HAVE BEEN REFILMED TO  
ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

Central Microfilm Services  
Department of Education & Early Development  
State of Alaska

(Authority: 20 U.S.C. 1412(a)(6)(A))

**§ 300.130 Least restrictive environment.**

(a) *General.* The State must have on file with the Secretary procedures that ensure that the requirements of §§ 300.550–300.556 are met, including the provision in § 300.551 requiring a continuum of alternative placements to meet the unique needs of each child with a disability.

(b) *Additional requirement.* (1) If the State uses a funding mechanism by which the State distributes State funds on the basis of the type of setting where a child is served, the funding mechanism may not result in placements that violate the requirements of paragraph (a) of this section.

(2) If the State does not have policies and procedures to ensure compliance with paragraph (b)(1) of this section, the State must provide the Secretary an assurance that the State will revise the funding mechanism as soon as feasible to ensure that the mechanism does not result in placements that violate that paragraph.

(Authority: 20 U.S.C. 1412(a)(5))

**§ 300.131 [Reserved]****§ 300.132 Transition of children from Part C to preschool programs.**

The State must have on file with the Secretary policies and procedures to ensure that—

(a) Children participating in early-intervention programs assisted under Part C of the Act, and who will participate in preschool programs assisted under Part B of the Act, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(8) of the Act;

(b) By the third birthday of a child described in paragraph (a) of this section, an IEP or, if consistent with § 300.342(c) and section 636(d) of the Act, an IFSP, has been developed and is being implemented for the child consistent with § 300.121(c); and

(c) Each LEA will participate in transition planning conferences arranged by the designated lead agency under section 637(a)(8) of the Act.

(Authority: 20 U.S.C. 1412(a)(9))

**§ 300.133 Children in private schools.**

The State must have on file with the Secretary policies and procedures that ensure that the requirements of §§ 300.400–300.403 and §§ 300.450–300.462 are met.

(Authority: 20 U.S.C. 1413(a)(4))

**§ 300.134 [Reserved]****§ 300.135 Comprehensive system of personnel development.**

(a) *General.* The State must have in effect, consistent with the purposes of this part and with section 635(a)(8) of the Act, a comprehensive system of personnel development that—

(1) Is designed to ensure an adequate supply of qualified special education, regular education, and related services personnel; and

(2) Meets the requirements for a State improvement plan relating to personnel development in section 653(b)(2)(B) and (c)(3)(D) of the Act.

(b) *Information.* The State must have on file with the Secretary information that shows that the requirements of paragraph (a) of this section are met.

(Authority: 20 U.S.C. 1412(a)(14))

**§ 300.136 Personnel standards.**

(a) *Definitions.* As used in this part—

(1) *Appropriate professional requirements in the State* means entry level requirements that—

(i) Are based on the highest requirements in the State applicable to the profession or discipline in which a person is providing special education or related services; and

(ii) Establish suitable qualifications for personnel providing special education and related services under Part B of the Act to children with disabilities who are served by State, local, and private agencies (see § 300.2);

(2) *Highest requirements in the State applicable to a specific profession or discipline* means the highest entry-level academic degree needed for any State-approved or -recognized certification, licensing, registration, or other comparable requirements that apply to that profession or discipline;

(3) *Profession or discipline* means a specific occupational category that—

(i) Provides special education and related services to children with disabilities under Part B of the Act;

(ii) Has been established or designated by the State;

(iii) Has a required scope of responsibility and degree of supervision; and

(iv) Is not limited to traditional occupational categories; and

(4) *State-approved or -recognized certification, licensing, registration, or other comparable requirements* means the requirements that a State legislature either has enacted or has authorized a State agency to promulgate through rules to establish the entry-level standards for employment in a specific profession or discipline in that State.

(b) *Policies and procedures.* (1)(i) The State must have on file with the

Secretary policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained.

(ii) The policies and procedures required in paragraph (b)(1)(i) of this section must provide for the establishment and maintenance of standards that are consistent with any State-approved or -recognized certification, licensing, registration, or other comparable requirements that apply to the profession or discipline in which a person is providing special education or related services.

(2) Each State may—

(i) Determine the specific occupational categories required to provide special education and related services within the State; and

(ii) Revise or expand those categories as needed.

(3) Nothing in this part requires a State to establish a specified training standard (e.g., a masters degree) for personnel who provide special education and related services under Part B of the Act.

(4) A State with only one entry-level academic degree for employment of personnel in a specific profession or discipline may modify that standard as necessary to ensure the provision of FAPE to all children with disabilities in the State without violating the requirements of this section.

(c) *Steps for retraining or hiring personnel.* To the extent that a State's standards for a profession or discipline, including standards for temporary or emergency certification, are not based on the highest requirements in the State applicable to a specific profession or discipline, the State must provide the steps the State is taking and the procedures for notifying public agencies and personnel of those steps and the timelines it has established for the retraining or hiring of personnel to meet appropriate professional requirements in the State.

(d) *Status of personnel standards in the State.* (1) In meeting the requirements in paragraphs (b) and (c) of this section, a determination must be made about the status of personnel standards in the State. That determination must be based on current information that accurately describes, for each profession or discipline in which personnel are providing special education or related services, whether the applicable standards are consistent with the highest requirements in the State for that profession or discipline.

(2) The information required in paragraph (d)(1) of this section must be

(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.

(10) "school district" means a borough school district, a city school district, or a regional educational attendance area;

(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

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

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

(C) "vocational education" means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree. (§ 2 ch 120 SLA 1959; am §§ 5, 6 ch 81 SLA 1965; am §§ 13, 14 ch 144 SLA 1970; am § 2 ch 119 SLA 1981; am § 18 ch 147 SLA 1984; am § 38 ch 30 SLA 1992; am §§ 20 — 24 ch 77 SLA 1993)

**Revisor's notes.** — In 1992, former paragraphs (4)-(7) were renumbered as (3)-(6), respectively, to reflect the 1992 repeal of former paragraph (3).

Paragraphs (2), (4), and (6)-(8) were enacted as (7)-(11), respectively, and renumbered in 1993, at which time former (1)-(6) were renumbered accordingly.

**Effect of amendments.** — The 1992 amendment, effective May 16, 1992, repealed former paragraph (3), defining "department."

The 1993 amendment, effective June 30, 1993, rewrote paragraphs (3) and (5); substituted "children with disabilities or gifted children" for "a handicapped or gifted child" and inserted "including rehabilitation counseling" in paragraph (9); in paragraph (11), substituted "exceptional children" for "a handicapped child" in three places and "nonexceptional" for "nonhandicapped" in subparagraph (A); and added paragraphs (6)-(8).

## Article 4. Health and Safety Education.

### Section

360. Curriculum

370. Evaluation

**Collateral references.** — 68 Am. Jur. 2d Schools, § 298 et seq.

78A C.J.S. Schools and School Districts, § 780 et seq.