

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 00 / 2

10539 SENATE HEALTH EDUCATION & SOCIAL SERVICES

Answer: Yes. Evaluations of all children suspected of having disabilities under Part B, regardless of whether their parents have chosen to enroll them in private schools, must be conducted within a reasonable period of time in accordance with requirements at 34 CFR §§300.532-300.535 of the Part B regulations, and the parents must give their informed consent to conduct the evaluation. 34 CFR §300.505(a)(i). Section 300.532 of the Part B regulations sets out minimum evaluation procedures. Among other requirements, evaluations conducted under Part B can be accomplished through tests and other evaluation materials that must be selected and administered so as not to be discriminatory on a racial or cultural basis, and must be provided in the child's native language or other mode of communication unless it clearly is not feasible to do so. 34 CFR §300.532(a)(1)(i)-(ii).

No single procedure can be used as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child. 34 CFR §300.532(f). Also, the child must be assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. 34 CFR §300.532(g). A review of existing data is part of both the initial evaluation, if appropriate, and a reevaluation. This would include evaluations and information provided by the parents of the child. 34 CFR §300.533(a).

Question 7: Following the evaluation, are the requirements the same for parentally-placed private school children as for other children who have been evaluated under Part B?

Answer: As with public school children, following the initial evaluation, an eligibility determination must be made by a group of qualified professionals and the child's parents, and this group must determine whether the child is a child with a disability as defined in Part B of the Act. 34 CFR §300.534(a)(1). The public agency must provide the parent a copy of the evaluation report and the documentation of the eligibility determination. 34 CFR §300.534(a)(2). In making the eligibility and placement determination, that is, in determining whether the child is a child with a disability and what the child's educational needs are, the public agency must 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 ensure that information obtained from all of those sources is documented and carefully considered. 34 CFR §300.535(a).

Question 8: Following the initial determination that a parentally-placed private school child is an eligible child with a disability under Part B, must the public agency develop an IEP for the child?

Answer: If a determination is made that the child needs special education and related services, the general rule in 34 CFR §300.535(b) is that an IEP must be developed for the child in accordance with 34 CFR §§300.340-300.350, with one important exception. If the parents make clear their intention to enroll their child at a private school and that they are not interested in a public program or placement for their child, the public agency need not develop an IEP for the child. If the parents choose not to accept the public agency's offer to make FAPE available to their child, the public agency still must include the child in its eligible population of parentally-

placed private school children with disabilities whose needs must be considered and addressed in accordance with 34 CFR §§300.450-300.462 of the Part B regulations.

Question 9: Are public agencies required to conduct periodic reevaluations of parentally-placed private school children with disabilities, and if so, of which parentally-placed private school children?

Answer: Yes. The requirements for reevaluations that are applicable to children with disabilities served at public agency programs or at public agency placements at private schools apply equally to parentally-placed private school children with disabilities. Part B requires public agencies to conduct reevaluations of a child with a disability, if conditions warrant a reevaluation, or if the child's parent or teacher requests a reevaluation, but at least once every three years. Before additional assessments are conducted, parents must give informed consent. 34 CFR §300.536.

Question 10: Can expenditures for reevaluations be considered in determining whether a public agency has met the expenditure requirements for services for parentally-placed private school children with disabilities?

Answer: No. A reevaluation, as a part of child find, must be conducted at no cost to parents, and expenditures for reevaluations may not be considered in determining whether an LEA has met the requirement at 34 CFR §300.453(a) regarding expenditures for services for parentally-placed private school children with disabilities. 34 CFR §300.453(c). The three-year reevaluation requirement applies to all eligible parentally-placed private school children with disabilities, even to those parentally-placed private school children with disabilities who are not currently receiving special education or related services from a public agency in connection with a parental private school placement. It is essential for public agencies to ensure that required reevaluations of all parentally-placed private school children with disabilities are conducted because they provide current data for use in the annual count of the total number of eligible parentally-placed children with disabilities residing in the LEA's jurisdiction. This annual count of eligible parentally-placed private school children is used in calculating the proportionate share of funds that must be expended on services for this population of children.

Question 11: Which LEA is responsible for child find and in meeting requirements for reevaluation if the private school the child attends is located outside of the LEA of the child's parents' residence?

Answer: SEAs and, consistent with State policy, LEAs, are responsible for ongoing efforts to locate, identify, and evaluate all children residing in the State who are suspected of having disabilities under Part B, so that FAPE is made available to all eligible children. 34 CFR §§300.121, 300.125, and 300.220. Generally, as a matter of State law, children are considered to reside in the home of their parents even if they physically do not live there. This would mean that if a child attends a private school located in an LEA (either in the same State or in another State) other than the LEA in which the child's parents reside, the LEA in which the child's parents reside generally would be responsible for child find, as well as ensuring that required

reevaluations are conducted, unless the State assigns that responsibility to another entity. An LEA has flexibility as to how it ensures these responsibilities are met. For example, it may assume the responsibility itself, contract with another public agency, or make other arrangements. If the LEA through child find identifies a child as a child with a disability, and is not the entity responsible for child find, that LEA should notify the resident LEA of the child's parents so that required evaluations can occur.

Question 12: Do parents who disagree with a public agency's child find determination with respect to their parentally-placed private school child have any recourse?

Answer: Yes. Parents may use the Act's due process procedures at §§300.504-300.515 regarding issues related to the identification and evaluation of children under Part B. 34 CFR §300.457(b). This would include disputes regarding child find, including individual evaluations, of children residing in the LEA's jurisdiction whose parents choose to enroll them in private schools. For example, disagreements between parents and school districts involving the child's eligibility for special education and related services, an LEA's refusal to conduct an evaluation or reevaluation of an individual parentally-placed private school child, or an LEA's refusal to conduct a requested evaluation or reevaluation of an individual parentally-placed private school child within a reasonable period of time, are all issues that could be raised in a due process hearing. In addition, an organization or individual may file a signed written complaint in accordance with the State complaint procedures at 34 CFR §§300.660-300.662 of the Part B regulations, alleging that an SEA or LEA has violated the applicable child find requirement, including individual evaluation and reevaluation requirements.

Question 13: If parents reside in LEA A and enroll their child with a disability at a private school located in LEA B, which LEA is responsible for locating and evaluating that child, including that child in its annual count of eligible parentally-placed private school children with disabilities that is conducted for determining the expenditure requirement, and for determining whether the child should receive services under Part B?

Answer: The LEA of the parent's residence generally would be responsible for child find, unless the State assigns that responsibility to some other entity. 34 CFR §§300.125 and 300.220. If the non-resident LEA identifies a child as a child suspected of having a disability, the non-resident LEA should notify the LEA of the parent's residence so that appropriate evaluations can occur.

The LEA in which the child's parent's reside would also be responsible for including the child in the count of eligible parentally-placed private school children with disabilities, regardless of whether the child has been designated to receive services from that LEA. 34 CFR §300.453. Through consultation conducted in accordance with 34 CFR §300.454, the LEA of the parent's residence must consider the needs of parentally-placed private school children with disabilities residing in the agency's jurisdiction, even though those students have been enrolled by their parents in private schools located outside of the district's boundaries. The LEA of the parent's residence, however, after consultation with representatives of parentally-placed private school children, could elect not to serve those children in light of the available funds that must be expended on services for this population of children.

II. Annual Expenditures for Parentally-placed Private School Children with Disabilities

Question 14: How is the proportionate share for expenditures for services for parentally-placed private school children with disabilities calculated?

Answer: IDEA '97 confirms the Department's longstanding interpretation that each LEA must expend, during the grant period, on the provision of special education and related services for the parentally-placed private school children with disabilities residing in the LEA's jurisdiction an amount that is equal to--

- (1) a proportionate share of the LEA's subgrant under Section 611(g) of the Act for children with disabilities aged 3 through 21. This is an amount that is the same proportion of the LEA's total subgrant under section 611(g) of the Act as the number of parentally-placed private school children with disabilities aged 3 through 21 residing in the LEA's jurisdiction is to the total number of children with disabilities in the LEA's jurisdiction aged 3 through 21; and
- (2) a proportionate share of the LEA's subgrant under section 619(g) of the Act for children with disabilities aged 3 through 5. This is an amount that is the same proportion of the LEA's total subgrant under section 619(g) of the Act as the total number of parentally-placed private school children with disabilities aged 3 through 5 residing in the LEA's jurisdiction is to the total number of children with disabilities in the LEA's jurisdiction aged 3 through 5.
20 U.S.C. §1412(a)(10)(A)(i)(I); 34 CFR §300.453(a).

Consistent with this statutory requirement and the final Part B regulation implementing this requirement, annual expenditures for parentally-placed private school children with disabilities are calculated based on the total number of children with disabilities residing in the LEA's jurisdiction eligible to receive special education and related services under Part B, as compared with the total number of eligible parentally-placed private school children with disabilities residing in the LEA's jurisdiction. 34 CFR §300.453(a). This ratio is used to determine the proportion of the LEA's total Part B subgrants under section 611(g) for children aged 3 through 21, and under section 619(g) for children aged 3 through 5, that is to be expended on services for parentally-placed private school children with disabilities residing in the LEA's jurisdiction.

The following is an example of how the proportionate share is calculated:

Number of eligible children in public schools = 300
Number of eligible children in private school = 20
Total number of eligible children residing in the jurisdiction of the LEA = 320

The number of children served was:

300 public school children + 5 private school children = 305

Federal flow-through funds to School District is \$152,500

Using this formula,

There are 20 eligible parentally-placed private school children within a total number of 320 eligible public and private school children. The number of eligible parentally-placed private school children (20) divided by the total number of eligible public and private school children (320) indicates that 6.25 percent of the LEA's subgrant, or \$9,531.25, must be spent for the group of parentally-placed children residing in the LEA and placed by their parents in private schools.

A graphic representation of the above description on how the proportionate share is calculated is provided in Attachment 1.

Question 15: Is the proportionate share based on the number of children with disabilities receiving special education or related services in accordance with a services plan, or on the total number of eligible private school children with disabilities residing in the LEA's jurisdiction?

Answer: The proportionate share is determined based on the total number of eligible parentally-placed private school children with disabilities residing in the LEA's jurisdiction, and is not limited to the number of those children receiving special education or related services in accordance with a services plan.

Question 16: When must LEAs conduct the annual count of *eligible* parentally-placed private school children with disabilities residing in their jurisdiction (the Count required at §300.453)?

Answer: SEAs must decide, on a Statewide basis, (either December 1 or the last Friday in October) the date on which their LEAs will conduct the annual count of the total number of eligible parentally-placed children with disabilities. LEAs and SEAs are already counting children with disabilities who are receiving special education and related services either on December 1 or the last Friday in October of each year, and the SEA must conduct the annual count of eligible parentally-placed private school children with disabilities on the same date. Using the same date on a Statewide basis should reduce the amount of double counting of private school children with disabilities who move from one location to another, and should give States the same flexibility they have with regard to counting other children with disabilities who are receiving services under Part B of the Act.

Question 17: In meeting the requirement to expend a proportionate share of available Federal funds on services for parentally-placed private school children with disabilities residing in their jurisdiction, may LEAs use funds other than Federal funds?

Answer: Yes. Section 612(a)(10)(A)(i) describes the minimum amount that must be spent on services for parentally-placed private school children with disabilities and does not specify that only Federal funds can be used to satisfy this obligation. Thus, if a State or LEA uses other

funds other than Part B funds to provide special education and related services to parentally-placed private school children with disabilities, those funds can be considered in satisfying the expenditure requirements of 20 U.S.C. §1412(a)(10)(A)(i)(I) and 34 CFR §300.453, so long as the services are provided in accordance with the other provisions of §§300.452-300.462. See Analysis of Comments and Changes, Attachment 1 to the final regulations, 64 Fed. Reg. at 12603 (Mar. 12, 1999).

Question 18: May State or local funds be used to provide services to parentally-placed private school children with disabilities in excess of the services provided for this population of children with the proportionate share of available funds?

Answer: Yes. SEAs and LEAs are not prohibited from providing services to parentally-placed private school children with disabilities in excess of those provided with the proportionate share of Part B funds, if doing so is consistent with State law or local policy. §34 CFR 300.453(d) and Analysis of Comments and Changes, published as Attachment 1 to the final regulations, 64 Fed. Reg. at 12603 (Mar. 12, 1999).

Question 19: How are Part B funds distributed now that the permanent funding formula is in effect?

Answer: Until the appropriation under section 611(j) of the Act exceeds \$4,924,672,200 under the funding formula applicable to the Grants to States program, authorized by §611(g) of IDEA, funds were allocated to States under the interim formula. 34 CFR §300.703(b). Under the interim formula, funds were allocated to States, and through them to LEAs, based on an annual count of children with disabilities receiving special education and related services on the count date, and, in the case of parentally-placed private school children with disabilities, those receiving special education or related services on the count date. Now that the appropriation under section 611(j) of the Act exceeds \$4,924,672,200, funds will be allocated to States, and through them to LEAs, under the permanent formula. Thus, the permanent formula will be used to distribute Part B Grants to States funds to States on or about July 1, 2000, and allocations will no longer be based on an annual count of children receiving special education and related services on the count date. The permanent formula previously has taken effect for the Preschool Grants Program. Under the permanent formula, it will still be important for SEAs and LEAs to maintain accurate data about the number of parentally-placed private school children with disabilities receiving special education or related services and the total number of eligible parentally-placed private school children with disabilities.

The State allocation under the permanent formula to each LEA that has established its eligibility under section 613 of the Act is the total of three amounts:

- a base payment, that is, the amount the agency would have received for the fiscal year prior to the first fiscal year that the appropriation under section 611(j) of the Act exceeds \$4,924,672,200, had the State allocated 75 percent of its grant to LEAs. 34 CFR §300.712(a);

- the population payment which consists of 85 percent of any remaining funds distributed on the basis of the relative numbers of children enrolled in public and private elementary and secondary schools within each agency's jurisdiction 34 CFR §300.712(b)(3)(i); and
- 15 percent of any remaining funds allocated to eligible LEAs in accordance with their relative numbers of children living in poverty, as determined by the SEA. 34 CFR §300.712(b)(3)(ii); 34 CFR §300.712(b)(3).

Therefore, funds generated by LEAs for FFY 1999 for parentally-placed private school children with disabilities who were receiving special education or related services under §§ 300.452-300-462 that meet State standards on the count date were included in calculating an LEA's base payment under the permanent formula. (34 CFR 300.453 (a)(3))

Question 20: Under the permanent formula, will it still be necessary to conduct an annual count of parentally-placed private school children with disabilities?

Answer: Yes. The count still will be required under 34 CFR §300.453 of the part B regulations for purposes of determining the total number of eligible parentally-placed private school children with disabilities residing in the LEA's jurisdiction. This information is required for purposes of calculating the proportionate share that an LEA is required to expend on an annual basis for the provision of special education and related services for its population of parentally-placed private school children with disabilities. In addition, the count of children served that is conducted under 34 CFR §300.751 will still be required.

Question 21: In the permanent formula, 85 percent of funds above the base payment are distributed on the basis of the "relative numbers of children *enrolled* in public and private elementary and secondary schools within each agency's jurisdiction." What does this mean since some parentally-placed private school children *live* in the jurisdiction of the LEA but are *enrolled* in a private school *outside* of the LEA's jurisdiction?

Answer: In allocating 85 percent of any remaining funds to LEAs based on the relative numbers of children enrolled in public and private elementary and secondary schools within each agency's jurisdiction, States must apply on a uniform basis across all LEAs the best data that are available to them. 34 CFR §300.712(b)(3)(iii). It is within the State's discretion to determine whether the LEA where the private school is located or the LEA of the parent's residence should include the child in its private school enrollment count.

A State could determine, for example, that a child whose parents reside in LEA A and attends a private school located in the boundaries of LEA B is enrolled in LEA B in calculating the percentage of funds allocated to an LEA based on the relative numbers of children enrolled in public school and private elementary and secondary schools in the LEA's jurisdiction. While States have flexibility in this area, a uniform rule must be applied on a Statewide basis. These children would then need to be in the group of parentally-placed children with disabilities whose needs must be considered by the LEA in determining which parentally-placed private school children with disabilities will be served and the types and amounts of services to be provided to eligible children.

III. Provision of Services

Question 22: Are there any particular kinds of services, and specified amounts of services, to be provided to parentally-placed private school children with disabilities under Part B?

Answer: No. No parentally-placed private school child with a disability has an individual right to special education and related services under Part B. 34 CFR §300.454(a). Therefore, the responsible public agency is not required to provide a parentally-placed private school disabled child with some or all of the special education and related services that the child would receive if enrolled in a public school. This reflects the Department's longstanding interpretation of the limitations of SEAs' and LEAs' statutory obligations to make services available to the population of eligible parentally-placed private school children with disabilities, in light of the limited amount of funds that LEAs must expend on services for these children.

Question 23: How are decisions made about the services that are to be provided to parentally-placed private school children with disabilities, including the type and location of such services, in light of the limited amount of funds that must be expended annually on services for this population of children?

Answer: Each LEA must consult, in a timely and meaningful way, with appropriate representatives of parentally-placed private school children with disabilities, in light of the minimum amount of Part B funds that must be expended for services for this population of children, on the number of parentally-placed private school children with disabilities, the needs of those children, and their location. Through this consultation process, decisions are made about which parentally-placed private school children with disabilities will receive services, what services will be provided, how and where the services will be provided, including the timing and location of the services provided, and how the services provided will be evaluated. Each LEA must give appropriate representatives of parentally-placed private school children with disabilities a genuine opportunity to express their views regarding each matter that is the subject of the consultation process. However, the LEA makes the final decision about which eligible children will receive services, the services to be provided to eligible parentally-placed private school children with disabilities, and where the services will be provided. 34 CFR §300.454(b)(1), (2), and (4).

Question 24: When must consultation about services occur?

Answer: Consultation about the provision of services must occur, in a timely and meaningful way, before the LEA makes any decision that affects the opportunities of parentally-placed private school children with disabilities to participate in services provided under Part B requirements to those children. 34 CFR §300.454(b)(3). The needs of parentally-placed private school children with disabilities, their number and location, may vary over time, depending on the circumstances in a particular LEA in a particular year. As there is no specific schedule for consultation with appropriate representatives of parentally-placed private school children with

disabilities, States and LEAs are able to determine the appropriate period between consultations based on circumstances in their jurisdictions. Many jurisdictions have found that it works well when consultation takes place, at a minimum, to review the child find process, discuss the child count, and plan the services being offered prior to each school year. The regulations do not include specific requirements regarding matters such as public notice of meetings, public transcripts of meetings, explanations of amounts and frequency of services provided, or explanations of refusals to provide services, changes in the manner in which services are provided, or the manner in which funds are allocated, leaving these issues to State and local authorities.

Question 25: Which individuals are appropriate representatives of parentally-placed private school children with disabilities? What about parents of such children?

Answer: Part B does not specify which individuals are "appropriate representatives" of parentally-placed private school children with disabilities. However, since one aspect of consultation is intended to discuss the needs of children with disabilities placed in private schools by their parents, it would be reasonable for parents to be considered "appropriate representatives" of such children. Other appropriate representatives of parentally-placed private school children might be teachers, principals, and, in the case of private school systems, central office administrators responsible for federal program services and/or special education. Whether parents of home-schooled children or other representatives of home-schooled children should be considered "appropriate representatives" of parentally-placed private school children with disabilities depends on whether under State law, home schooling is regarded as parental placement at private school.

Question 26: Is it possible for an LEA, through consultation with appropriate representatives of parentally-placed private school children with disabilities, to provide only certain direct services to those parentally-placed private school children with disabilities designated to receive services?

Answer: Yes. Based on relevant input from consultation, and in light of available funding, it could be reasonable for an LEA to conclude that providing direct services would ensure that those parentally-placed private school children with disabilities selected to receive services will derive a benefit from the services offered. For example, an LEA could determine through consultation that providing direct services for fewer children would be more beneficial in addressing the needs of its parentally-placed private school children with disabilities than providing consultative services, instructional materials, equipment, or teacher training.

Question 27: Is it possible for an LEA, through consultation with appropriate representatives of parentally-placed private school children with disabilities, to determine that it will provide no direct services to its eligible parentally-placed private school children with disabilities, but that instead, the LEA will provide consultative services, or equipment and teacher training?

Answer: Yes. Through the consultation described above, determinations must be made about how the available amount of funds can be utilized so that the parentally-placed private school children with disabilities designated to receive services can benefit from the services offered.

The regulations specify that the LEA makes the final decision with respect to services to be provided to eligible parentally-placed private school children with disabilities, (34 CFR §300.454(b)(4)), based in part on input provided through the consultation process by appropriate representatives of parentally-placed private school children with disabilities, (34 CFR §300.454(b)(3)). Depending on local circumstances and the amount of funds available for expenditures for this population of children, it could be reasonable for an LEA to conclude that, in lieu of direct services, its parentally-placed private school children with disabilities should be provided with consultative services, equipment and materials, and that training will be provided for private school teachers and other private school personnel.

If consultative services are provided to a private school teacher, as a means of providing special education and related services to a particular private school child with a disability, there may be situations where that teacher uses the acquired skills to provide education to other children as well. However, whatever benefit those other children receive is incidental to the publicly-funded services. As is true if direct services are provided, LEAs that elect to provide consultative services to their parentally-placed private school children with disabilities also must develop a services plan for each child receiving those services in accordance with 34 CFR §300.455(b).

Question 28: How would a services plan be developed for a parentally-placed private school child with a disability receiving consultative services?

Answer: Any parentally-placed private school child with a disability whom an LEA elects to serve must have a services plan. 34 CFR §300.454(c). Each child's services plan must contain, among other elements, a statement of the special education, 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 to advance appropriately toward attaining his or her annual goals, to be involved and progress in the general curriculum, and to participate in extracurricular and other nonacademic programs. Consultation between a regular education teacher and a special education teacher could allow the regular educator to provide special education, which consists of specially designed instruction that meets State education standards and is individually-designed for an individual student, or a related service, if that service is required to assist a child with a disability to benefit from special education. Consultative services also could be considered a supplementary aid or service if provided to facilitate a student's education in regular classes alongside his or her nondisabled peers (see 34 CFR §300.28) or a support for school personnel, if provided to enable the child to advance appropriately toward attaining the annual goals and to be involved and progress in the general curriculum.

Question 29: Could an LEA, through consultation with appropriate representatives of parentally-placed private school children with disabilities, decide to provide services that address some of the needs of parentally-placed private school children with disabilities?

Answer: Yes. As noted previously, an LEA must conduct child find for all children enrolled in private schools by their parents who are suspected of having disabilities, regardless of the category of their suspected disability. However, once determined eligible, an LEA must, through the consultation process previously described, determine, among other matters, which parentally-

placed private school children with disabilities will receive services, what services will be provided, and the manner in which those parentally-placed private school children with disabilities selected to receive services will be served. An LEA could properly conclude that it will provide only certain services which may mean that needs commonly associated with one or more disability categories are not met, and that only some of the needs of a child who is served are met. An LEA could decide, through consultation, not to serve any parentally-placed private school children with disabilities who are enrolled at one or more private schools, but instead to limit the services the LEA is offering with the available amount of funds to parentally-placed private school children with disabilities enrolled at only one private school.

Question 30: Is there any requirement for parentally-placed private school children with disabilities to have IEPs?

Answer: No. Current regulations provide that each parentally-placed private school child with a disability who has been designated to receive services from the LEA must have a services plan that describes the specific special education and related services that the LEA will provide to the child in light of the services that the LEA has determined, through the consultation process, that it will make available to its parentally-placed private school children with disabilities.
34 CFR §300.455(b)(1).

Question 31: Must services plans be in place for all eligible parentally-placed private school children with disabilities residing in the LEA's jurisdiction?

Answer: No. The Part B regulations do not require public agencies to develop services plans for each and every parentally-placed private school child with a disability residing in the LEA's jurisdiction, regardless of whether that child receives services from the LEA. Services plans are required only for those parentally-placed private school children with disabilities whom the LEA has elected to serve, and must reflect only the services that the LEA has determined it will provide to the particular parentally-placed child with a disability.

Question 32: How must a services plan be developed?

Answer: A services plan must be developed, reviewed, and revised consistent with §§300.342-300.346 of the Part B regulations. The LEA is responsible for initiating and conducting meetings to develop a services plan in accordance with these requirements. The LEA must ensure that a representative of the religious or other private school attends each services plan meeting, and if the representative cannot attend, the LEA must use other methods to ensure participation by the private school, including individual or conference telephone calls.

Question 33: What must a services plan contain?

Answer: As noted above, a services plan, which must reflect only the services offered to a parentally-placed private school child with a disability designated to receive services, must, to the extent appropriate, meet the IEP content requirements in 34 CFR §300.347. Since students with disabilities who are entitled to FAPE must receive the full range of services under Part B,

that IEPs generally will be more comprehensive than the more limited services plans developed and implemented for those parentally-placed private school children with disabilities designated to receive services from an LEA. The requirement that a services plan meet the requirements of an IEP, to the extent appropriate, will ensure that the services actually provided to a parentally-placed private school child with a disability will meaningfully address the child's individual needs.

Example: An LEA has elected to serve an individual parentally-placed private school child with a disability who has speech needs through the provision of speech-language pathology services.

The child's services plan would specify the present levels of educational performance in this area, and how the child's speech-language disability affects the child's ability to be involved and progress in the general curriculum. Measurable annual goals for this child would be specific to the speech-language pathology services to be provided, and would enhance the child's ability to be involved in and progress in the general curriculum. The services plan would also specify the amount, frequency, location, and duration of the services to be provided in accordance with 34 CFR §300.347(a)(6) and how the child's parents will be informed of the child's progress, in accordance with 34 CFR §300.347(a)(7). Whether other content requirements at 34 CFR §300.347 would have to be addressed in a services plan would have to be determined on a case-by-case basis, depending on the services that are provided.

Question 34: Are there any remedies available to parents who dispute the services offered or provided to their child in connection with the parental private school placement?

Answer: Since eligible parentally-placed private school children with disabilities do not have an individual entitlement to services under Part B, the due process procedures in Part B of the Act do not apply to complaints that an LEA has failed to meet applicable requirements for serving these children, including an LEA's alleged failure to provide the services specified on a child's services plan. However, an organization or individual may file a signed written complaint under the applicable State complaint procedures at 34 CFR §§300.660-300.662 alleging that an SEA or LEA has failed to meet the requirements in 34 CFR §§300.451-300.462, such as failure to properly conduct the consultation process. On the other hand, as is true with respect to due process complaints, a State complaint alleging that an LEA has failed to offer services to a particular parentally-placed private school child with a disability would not violate Part B, since no parentally-placed private school child with a disability has an individual entitlement to services under Part B. 34 CFR §300.454(a).

IV. Location of Services

Question 35: How are decisions made about the location of services that the LEA has selected through consultation to offer to its parentally-placed private school children with disabilities?

Answer: As is true regarding the services that an LEA has selected to provide its parentally-placed private school children with disabilities designated to receive services, the location of services also is a matter that is determined through the process of consultation between LEA

officials and appropriate representatives of parentally-placed private school children with disabilities. Services offered to parentally-placed private school children with disabilities may be provided on-site at a child's private school, including a religious school, to the extent consistent with law, or at another location. The phrase "consistent with law" is statutory, and means that the provision of services on the premises of a private school takes place in a manner that would not violate the Establishment Clause of the First Amendment to the U.S. Constitution and would not be inconsistent with applicable State constitutions or laws. The provision of services at private school sites will help to minimize the amounts and time spent on transportation. In addition, this should cause the least disruption in the children's education. Since some States do not allow services to be provided at the private school site, LEAs may wish to seek legal advice before making service location determinations.

Question 36: If transportation would be a related service for a child with a disability, had the child been served directly in a public agency program or a public agency placement at a private school, would transportation automatically become a related service for a parentally-placed private school child with a disability who is designated to receive services from the LEA?

Answer: Regardless of whether transportation would be a related service for a child with a disability, transportation may be necessary for an individual child. If services are offered at a site separate from the child's private school, transportation may be necessary to get the child to and from that other site. Failure to provide transportation could effectively deny the child an opportunity to benefit from the services that the LEA has determined through consultation to offer its parentally-placed private school children with disabilities. In this situation, transportation is not a related service, as defined at 34 CFR §300.24(b)(15), but it still is a necessary means of making the services that are offered accessible to the child.

Question 37: Could an LEA refuse to provide transportation to parentally-placed private school children with disabilities who reside in its jurisdiction but who attend private schools located outside of the LEA's boundaries?

Answer: LEAs are encouraged to work in consultation with appropriate representatives of parentally-placed private school children with disabilities to ensure that services are provided at sites that will not require significant transportation costs. Therefore, it may be reasonable for an LEA, through the consultation process, to elect not to provide services to a child who attends a private school outside the district. However, if any child is selected for services and the service is provided away from the school the child attends, the child must be provided transportation to the service if it is necessary for the child to benefit from or participate in the service. Therefore, it may not be unreasonable for an LEA to elect not to provide services to parentally-placed private school children with disabilities who reside in the LEA's jurisdiction but who attend private schools located outside of the LEA's boundaries because of the increased costs involved.

V. Miscellaneous

Question 38: Are the requirements for children with disabilities aged 3 through 5 who are placed by their parents at private preschool programs, including home daycare programs, the same as the requirements for children with disabilities parentally-placed private elementary and secondary schools?

Answer: Yes. The Department interprets the requirements at 20 U.S.C. §1412(a)(10)(A) and 34 CFR §§300.450-300.462 to be fully applicable to children with disabilities aged 3 through 5 who have been placed by their parents at private schools. Many preschool-aged children also attend a broad range of child care settings. Whether a private daycare program conducted in the home or otherwise outside of the administrative control of a public agency can be considered a private preschool depends on the State definition of "private school." That a day care program is licensed under State health and safety and other day care requirements does not make the day care program a "private school" unless the State definition so specifies.

Assuming a child of preschool age is enrolled by his or her parents at a private preschool that satisfies the State definition, the same procedures that govern children with disabilities parentally-placed in private elementary and secondary schools in the State would be applicable. The child would have to be evaluated in accordance with the Part B requirements at 34 CFR §§300.532-300.533, subject to informed parental consent, and determined eligible in accordance with 34 CFR §300.535. Once determined eligible, the affected LEA would offer to make FAPE available at a public agency program or a public agency placement at a private school. In some situations, if the parents were interested in having their child participate in the publicly available services, the public agency could determine that the services specified in the IEP developed for the child could be appropriately implemented in the daycare setting selected by the parent at no cost to the parents.

If the parents choose not to accept the public program or placement offered, and if the parents enroll the child in a private preschool recognized under the State's definition, the public agency must include the child in the group of parentally-placed private school children with disabilities whose needs must be considered through the consultation process at 34 CFR §300.454(a)-(b) described below.

A parentally-placed private preschool-aged child with a disability who attends a program recognized under the State definition of private school and is designated to receive services from a public agency must have a services plan in accordance with 34 CFR §300.454(c) and §300.455 with respect to the services offered. As is true for services offered to parentally-placed private school children with disabilities in other age groups, services offered to preschool-aged children with disabilities may be provided on the premises of the private program, including a religious school, to the extent consistent with law. 34 CFR §300.456(a). Children in that age group who attend programs recognized under the State definition of private school designated to receive services can be served through the proportionate share of available section 611 and 619 funds that must be expended on services for this population of children. The LEA's annual count of parentally-placed private school children with disabilities residing in the LEA's jurisdiction conducted under 34 CFR §300.453(b) must include all children with disabilities who attend private schools recognized under the State definition. However, children with disabilities parentally-placed at private programs that do not meet the State definition of private school

cannot receive services under Part B and cannot be included in the annual count of parentally-placed private school children with disabilities aged 3 through 5.

Question 39: Are children with disabilities placed by their parents at private schools entitled to a free appropriate public education at the private school?

Answer: No. Children with disabilities placed by their parents at private schools are not entitled to a free appropriate public education (FAPE) in connection with their parental private school placements. States receiving funds under Part B of IDEA, as a condition of receipt of those funds, must make FAPE available to all children with disabilities residing in the State in mandatory age ranges. 20 U.S.C. §1412(a)(1)(A); 34 CFR §300.121. States satisfy their FAPE obligation to their resident parentally-placed private school children with disabilities by offering them FAPE either at a public agency or at a public agency placement at a private school. However, LEAs generally must consider and address the needs of eligible parentally-placed private school children with disabilities residing in their jurisdiction.

Question 40: If parents choose to enroll their child with a disability at a private school because of their preference for the private school, are there any circumstances in which a public agency would be required to make FAPE available to such a child in the future?

Answer: The public agency must include these children in its eligible population of parentally-placed private school children with disabilities whose needs must be considered in accordance with 34 CFR §§300.450-300.462 of the Part B regulations.

In addition, as is true for other children with disabilities, the public agency must evaluate every parentally-placed private school child with a disability at least every three years in accordance with the requirements of 34 CFR §§300.532-300.533 to determine a child's continued eligibility for special education and related services. If the parents withdraw their child with a disability from the private school placement that they have selected and return their child to the public school, the public agency again must make FAPE available to the child either in the public agency or a public agency placement at another public school or at a private school.

Question 41: Are there any particular qualifications that are applicable to personnel who provide special education or related services to those parentally-placed private school children with disabilities LEAs elect to serve?

Answer: Yes. Services provided to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing such services in public schools. Funds awarded under Part B, sections 611 and 619, may be used to make public school personnel available in other than public facilities to the extent necessary to provide services to parentally-placed private school children with disabilities under Part B, if those services are not normally provided by the private school. In addition, if private school personnel provide the services that the LEA has determined it will provide to its parentally-placed private school children with disabilities, the private school personnel must meet the same standards as

personnel providing services in public schools, must perform the services outside of his or her regular hours of duty, and must perform the service under public supervision and control. 34 CFR §§300.455(a) and 300.460-300.461.

Question 42: How could a State educational agency monitor to ensure that parentally-placed private school children with disabilities are being served in a manner that complies with Part B?

Answer: Each SEA must exercise general supervision over all education programs for children with disabilities administered by public agencies in the State and must ensure that such programs meet State education standards and Part B requirements. Accordingly, an SEA is required to have a method of monitoring its public agencies to ensure that they are meeting the statutory and regulatory requirements applicable to services for parentally-placed private school children with disabilities. An SEA also would be required to ensure that those parentally-placed private school children with disabilities whom the LEA has elected to serve are receiving special education or related services in accordance with a services plan.

Question 43: How can representatives of parentally-placed private school children with disabilities, including parents of these children, have input into OSEP's reviews of States as part of its continuing improvement monitoring process?

Answer: In monitoring each State, OSEP conducts extensive validation planning activities to help focus its data collection on those issues that are most critical to improving compliance and results for students with disabilities in the State. The validation planning process includes a number of public input forums in which individuals and groups, including parents of parentally-placed private school children with disabilities and other representatives of these children, can provide input regarding the issues that they believe should be a focus of OSEP's data collection in the State. Further, as part of the monitoring process, each State establishes a steering committee that helps the SEA conduct a self-assessment of the State's services for children with disabilities and provides input to OSEP. This committee may, at the State's discretion, include representatives of parentally-placed private school children with disabilities. Further, each State advisory panel on the education of children with disabilities must include representatives of parentally-placed private school children with disabilities. Among the functions of this panel are to advise the SEA in developing corrective action plans to address findings identified in Federal monitoring reports under Part B of the Act. Organizations or individuals that have specific questions or concerns about services for parentally-placed private school children with disabilities in their State should contact their local school district, State Department of Education special education division, or the OSEP State contact for Part B in the Monitoring and State Improvement Planning Division. A list of the OSEP State contacts can be found on the OSEP web page at http://www.ed.gov/offices/OSERS/OSEP/state_contact_list.html

Question 44: Is home school considered a private school? What if a child is below a State's compulsory school age and receiving services from an unapproved or uncertified home day care or other location strictly for childcare purposes?

Answer: Whether home schools are "private schools," including home day care, is determined by the State. If the State recognizes home schools or home day care as private schools, children with disabilities in those home schools or home day care must be treated in the same way as other parentally-placed private school children with disabilities. If the State does not recognize home schools or home day care as private schools, children with disabilities who are home-schooled or in home day care are still covered by the child find obligations of SEAs and LEAs, and these agencies must ensure that home-schooled children and those in home day care who have disabilities are located, identified, and evaluated, and that FAPE is available if their parents choose to enroll them in public schools.

Question 45: If under State law, dual enrollment of a child in both a public agency program and a private school is required in order for the child to receive special education and related services from a public agency in connection with a parental private school placement, does the parentally-placed private school child with a disability have a right to FAPE?

Answer: The Part B regulations make clear that no parentally-placed private school child with a disability has an individual entitlement to services. 34 CFR §300.454(a). Whether dual enrollment alters the rights of a parentally-placed private school child with a disability under State law is a State matter. There is nothing in Part B that would prohibit a State from requiring dual enrollment as a condition of eligibility of a parentally-placed private school child with a disability for services from a public agency.

Attachment 1
Proportionate Share Calculation for
Parentally-Placed Private School Children with Disabilities

FOR FLINTSTONE SCHOOL DISTRICT:

# of eligible children in public schools	=	300
# of eligible children in private schools	=	20
Total # of eligible children	=	320

AT DECEMBER 1 CHILD COUNT:

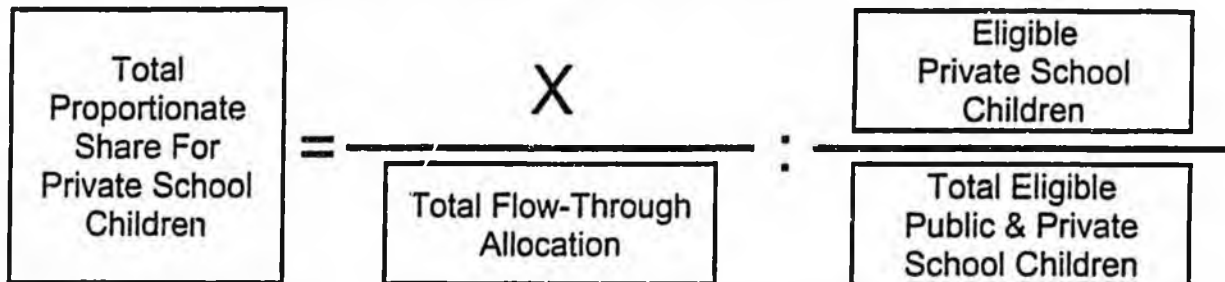
# of children served in public schools	=	300
# of children served in private schools	=	5
Total # of public & private children served	=	305

Note: 305 is the number turned in to OSEP for children served with IEP or service plan.

FEDERAL FLOW-THROUGH FUNDS TO FLINTSTONE SCHOOL DISTRICT:

Total allocation to Flintstone = \$152,500

FORMULA FOR CALCULATING PROPORTIONATE SHARE:



Note: Proportionate share for parentally-placed private school children is based on total children eligible, not children served.

FLINTSTONE SCHOOL DISTRICT OBLIGATION:

$$\frac{X}{\$152,500} : \frac{20}{320}$$

$$X = \$9,531.25$$

(This amount must be spent for the group of parentally-placed children in private schools)

1215 Fifth Street
Douglas, AK 99824
February 7, 2001

Senator Lyda Green
Alaska State Senate

Dear Senator Green,

I am writing in regard to SB 40. I am the parent of a gifted child who is a student in the Juneau School District. First, I want to support the Department of Education's effort to gain some additional funds for a departmental staff with responsibility for gifted education. For too long DOE has refused to provide any support to parents or districts on issues of gifted education, despite statutory responsibility. Their rationale has been lack of funds. I hope that you will recommend funding for a gifted education position. This position is needed because so many districts fail to provide parents with any information about gifted children and too many districts do not live up to their responsibilities to identify gifted children and to provide them with an appropriate public education. Even districts, such as Juneau, which make an effort to identify gifted students do a less than adequate job of providing for their educational needs.

Gifted students need academic challenge and support. Without the challenge, they may become bored and frustrated and act out in classes. An informal survey of local high school teachers in Juneau showed me that a significant number of our most gifted children become school drop-outs or school failures, because they have become so turned off to school. Parents of gifted children often use the summer as a time to provide academic challenge to students who can't be bothered with school during the academic year.

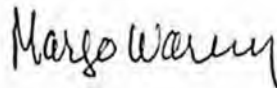
Educational research into the needs of gifted children shows that academic challenge is provided through acceleration and enrichment in settings which maximize the numbers of ability peers learning together.

For this reason, I urge you to substitute the following language for the section of SB 40 which specifies the least restrictive environment for the education of gifted students:

For purposes of gifted education, the least restrictive setting is provision of academically appropriate materials to classes or groups of gifted students with similar educational needs or "pull-outs" where the needs of groups of similarly gifted students are addressed. If instruction is in inclusive classrooms, then the curriculum must be differentiated for gifted students by teachers trained to provide a differentiated curriculum.

Gifted students are frequently "underachievers" in Alaska because their educational needs are not addressed. I appreciate any support you can give to change this situation and assure their educational needs are addressed.

Sincerely,



Margo Waring

Post-It® Fax Note	7671	Date	# of pages 4
To: <i>J. Hess</i>		From: <i>Valdez L10</i>	
Co./Dept.		Co.	
Phone #		Phone #	
Fax #		Fax #	

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LOUISE PARISH

Questions for AkDEED:

Testimony for 2/7/01

Why has the dept. completely ignored my numerous requests to change the word language to speech-language in eligibility regulations, even though IDEA uses the term speech-language? Are you trying to ignore the needs of language impaired kids like my daughter? I have commented on this forever. Does AkDEED read the comments submitted by parents re:their regulations? If so, why haven't they changed that? If their regs are improper, how can I assume their statutes are better? In fact, this bill allows for a child with a disability to be identified with a (Section 29 AS 14.30.350 (2) (1)) "Speech impairment" but not a "Speech-Language Impairment." I have shouted this neglect to the rooftops and in many formal comments to AkDEED regarding their regs. They don't listen. Therefore, why should I trust this bill? IDEA says SPEECH OR LANGUAGE IMPAIRMENT (for the millionth time!!!!) My daughter, despite being referred in for language evaluation in third grade, was not identified as having a language disorder until she was in 7th grade. That was because I took her to a private SLP. THIS LANGUAGE MUST BE FIXED!!!!It seems that everything is stacked against families. We have no voice.

I asked Dr. Johnson why the dept. never invited regular parents to participate in any legislative review of this bill as it was constructed. We were left out of the picture. Dr. Johnson told me it was because the dept. didn't "have to." He said I could REACT after the bill was constructed to the legislature. Why does AkDEED exclude parents?

My reaction is that I have no certainty whatsoever that this bill is adequate or appropriate for our kids. I asked Dr. Johnson and the state board to conferr with private counsel in the construction so that parents could feel that their interests were represented.

Has the Dept. ever conferred as it promised it would do with PRIVATE counsel practicing in this area of LAW BEFORE submitting this bill, and if so, please identify such private counsel?

Why is it that AKDEED never asked its hearing officers for input comment etc on current or proposed state regs or statutes?

Why has the department refused to consider the proposal to set up a hearing panel as adopted by Missouri?

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Why does the bill fail to state Alaskan policy on exceptional children?

I have heard that counsel representing your department stated a year ago that forcing an endorsed teacher to take a special ed. position was unconstitutional though in fact such placement is provided for in statute, how accurate do you believe such counsel is now with respect to this bill?

Didn't the PTPC accept a complaint against Dr. Johnson for violation of numerous portions of state law but then dismissed that complaint based on the PTPC staff's belief that it was because Dr. Johnson was just doing what he was told..... Could Dr. Johnson address whether he disagrees with the PTPC and if not, could he explain from where he received the erroneous information that caused him to violate so many portions of our statutes and regulation?

Why did the department propose regulations that would disqualify a hearing officer who has ever represented a parent in any action against any school district but not put that in the statute?

Why should we believe that the dept. is in favor of maintaining an appropriate cadre of qualified hearing officers when the dept has never complied with the 1993 amendments regarding hearing officers?

I don't like that this bill allows the dept. to establish by regulation "impartial procedures for a school district to follow for due process hearings to comply with 20 USC 1400-1487." After going through due process steps I have reservations about what regs AKDEED may or may not write.

Why does the statute still fail to provide for a hearing officers subpoena power? Parents should not have to have a two-tier system that wastes their time and money with no subpoena power, etc.

Isn't the selection process identified impracticable as it requires both district and parent to simultaneously challenge an appointment, which raises the question of

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whether such simultaneous challenge results in loss of both sides pre-empts... and what about a further appointment which is not mentioned, etc. ?

WHY considering the adamant opposition from parents as well as the fact that every argument in support has been debunked is AKDEED still trying to adopt one set of laws for one set of exceptional children and another set for another set of exceptional children?

Investigation has demonstrated that the department has been unable to comply with state law with respect to the existing lenient statutes and regulations..... isn't it time to make those requirements a bit stricter and place oversight provisions to put an end to the department's gross misconduct with respect to supervising the issuance of credentials?

In 1994 a proposal was put forth that would have required all teachers to be endorsed in special ed to obtain certification by the Millenium. AkDEED scoffed at the proposal then and has proposed nothing remotely similar since (still allowing unqualified staff to be placed for entire years in situations where IEPs require endorsed staff), could you explain why you feel that such training is unwarranted?

Where is the Comprehensive System of Personnel Development statute? There are other items that appear to be unaddressed, but I am not a lawyer. I want a private lawyer to review this. To read more of my concerns, visit

<http://www.akc:ptional.org/cgi-bin/HyperNews/get/akceptionalities.html>

I don't like that AkDEED appears to have no oversight in this important legislation.

ADDITIONAL COMMENTS FOR SB40 FROM PARISH

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IDEA 97 says the act has been....

....."impeded by low expectations, and an insufficient focus on applying replicable research on proven methods of teaching and learning for children with disabilities...." And "Over 20 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by having high expectations for such children and ensuring their access to the general curriculum to the maximum extent possible...." (This does not necessarily mean "mainstreaming" but having the opp to learn the same content...Louise) "supporting high-quality, intensive professional development for all personnel who work with such children in order to ensure that they have the skills and knowledge necessary to enable them to meet developmental goals and to the maximum extent possible, those same challenging expectations that have been established for all children...."

I have quickly reviewed some of IDEA 20 USC 1400.....and 34CFR Part 300 regulations. I have concerns with our proposed statutes. Without writing a huge paper, I'd like to ask that these items be put into statute. It is very hard to fit everything in as a parent with a real life. I have attached refs as I was able. I am again on deadline:

- 1.) State Performance Goals and Indicators – DEED should publicly disaggregate the information about reg kids and sped kids performances. This requirement should be in statute. See 20USC1412 (16)
- 2.) LRE ... allow for kids to be pulled out as needed ...add words "if cannot be achieved satisfactorily." See 20USC1412 (5) (A)
- 3.) Participation in Assessments – DEED should allow for appropriate participation in statewide assessments. See 20USC 1412 (17)
- 4.) Addn'l procedural safeguards 20USC 1412 (6) (B)testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of children with disabilities will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it is clearly not feasible to do so, and no single procedure shall be the sole criteria for determining an appropriate educational program for a child.
- 5.) Evaluation procedures ---Conduct of evaluation - ...LEA shall...."use a variety of assessment tools and strategies to gather relevant functional and developmental information, including information

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- provided by the parent.....abling the child to.....progress in general curriculum...see 20USC 1414 (b) (2)
- 6.) State Advisory Panel – the panel should include parents of kids with disabilities, teachers, with a majority of the panel either those with disabilities or parents of kids with disabilities. See USC 1412 (21) (I, ii and iii) and (21) (c)
 - 7.) Advisory Panel Duties – the advisory board must make public comment on all proposed regs See 20USC 1412 21 (D) (ii)
 - 8.) Comprehensive System of Personnel Development – DEED must have a written plan. See 20USC 1412 (14)
 - 9.) Personnel Standards – Does the state require the educators to have the highest licensing in the state such as Speech Language Pathology? If not, what steps are they taking to ensure that paraeducators are working to that standard? See 20USC (15) (A)
 - 10.) Evaluation Process –DEED must provide notice to parents that describes all evaluation procedures for determination of eligibility. They must use a variety of assessment tools. 20USC 1414 B....
 - 11.) Additional Evaluation Requirements – Districts must review existing evaluation data, including evals and info provided by parents. See 20USC 1412 (6)
 - 12.) ADDN'l requirements for eval and reeval...."Review existing evaluation data on the child...including evaluations and information provided by the parents...." See 1414 5C
 - 13.) IEP team – No unnecessary members...."at the discretion of the parent or the agency other individuals WHO HAVE KNOWLEDGE OR SPECIAL EXPERTISE regarding the child," Parents tell me sometimes reps are there who do not personally know the child are not protecting the child, but others. see 1414 2 B vii
 - 14.) Development of IEP team – the IEP team SHALL...take.....the concerns of parents for enhancing the education of their child....the results of the most recent eval (*parentally obtained or district made.*)
 - 15.) Considering opps for direct instruction – IEP team MUST consider opportunity...for direct instruction....
 - 16.) Form for due process request – regs say nothing about DEED-made form. Parents can just write a letter. Don't make them do a scary form....districts have lawyers on retainer....parents have to struggle...
 - 17.) Childfind – FAPE & GRADE ADVANCEMENT is new. CHILDFIND notices should include that the child may be referred in for evaluation of any suspected disability even though advancing from grade to grade. Write it in statute.

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18.) **DISABILITY DEFINITIONS – 300.7, Child with a disability.**

Change speech impairment to speech or language impairment. Change entire section to include IDEA definitions, not just “names” of categories.

AGAIN, I cannot seem to fit the time in to cite all of these. If we had had an opp for regular PARENTS to participate together with agencies and discuss all of these potential problem areas, perhaps I would not have to expend so much of my personal energy to try to help our kids.

Thank you,

Louise Parish
Box 1182
Valdez, AK 99686

Additions:

- 12 month Due Process should be 24
- Speech changed to speech-language thru/out

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 40
 () Publish Date: _____

Revision Date/Time (Note if correction): 2/6/01 Dept. Affected: Education & Early Dev.
 Title: An Act relating to special education . . . BRU: Teaching & Learning Support
 Component: Special and Supplemental Services
 Sponsor: Rules Committee
 Requester: Governor Component Number: 166

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services	40.4	40.4	40.4	40.4	40.4	40.4
Travel	6.0	6.0	6.0	6.0	6.0	6.0
Contractual	47.0	47.0	47.0	47.0	47.0	47.0
Supplies	10.0	10.0	10.0	10.0	10.0	10.0
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	103.4	103.4	103.4	103.4	103.4	103.4

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	103.4	103.4	103.4	103.4	103.4	103.4
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	103.4	103.4	103.4	103.4	103.4	103.4

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time	1					
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Currently, the department is charged, by state statute, to administer the state's Gifted Education program. This legislation clarifies the state's responsibilities relating to the Gifted Education program. Although the legislation does not add new responsibilities, the department has not had the resources to meet the requirements. Federal special education funds cannot be used for this purpose. The department has requested a general fund increment in the FY2002 budget for the Division of Teaching and Learning Support, Special and Supplemental Services Component to cover the costs for administering this program.

Prepared by: Barbara Thompson, Deputy Director Phone 465-8727
 Division: Teaching & Learning Support Date/Time 2/6/01 12:00 AM
 Approved by: Bruce Johnson, Deputy Commissioner Date 2/6/01
 Agency: Department of Education & Early Development

For distribution information, call the Governor's Legislative Office

SB 40
Fiscal Note Budget Narrative

Current state law and the proposed HB 71 require the state to oversee gifted education programs provided by school districts. Federal special education funding may not be used for these purposes since gifted education is not a federal mandate. Therefore, the following funds are required to enable the state to fulfill its oversight responsibility.

Personal Services

*.5 FTE Education Specialist II, 21 A/B	\$36,200
**10 FTE Admin. Clerk II, 8 B	<u>\$ 4,200</u>
Total	\$40,400

*This fiscal note includes personal services costs for a .5 FTE Education Specialist II. This position is reflected on page 1 of the fiscal note as 1 new full-time position. The other half of this position is reflected in a department increment in the FY2002 budget for the statewide correspondence program.

**An existing position will be used for the Administrative Clerk II position. No new position is being requested in this fiscal note.

Travel

Due Process Training for 2 days @ \$1,000 each	\$ 2,000
Monitoring to accompany contractor for 4 visits @ \$1,000 each	<u>\$ 4,000</u>
Total	\$ 6,000

Contractual

Contractor:	
Training, 10 days @ \$500 per day	\$ 5,000
Due Process Hearings, 4 @ \$5,000 each	\$20,000
Monitoring visits, 2 contractors at \$500 per day, 3 days each, 4 districts per year	\$12,000
Monitoring visits, \$1,000 each trip, 4 trips	\$ 4,000
Postage, phone, copier, printing	<u>\$ 6,000</u>
Total	\$47,000

Supplies

Training materials, other supplies	<u>\$10,000</u>
Total	\$10,000

Grand Total \$103,400

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SB 40
(S) Publish Date: 1/17/01

Revision Date/Time (Note if correction): _____ Dept. Affected: Education & Early Dev.
Title: An act relating to special education... BRU: Teaching & Learning
Sponsor: Rules Committee Component: Special and Supplemental Services
Requester: Governor Component Number: 166

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Currently, the department is charged, by state statute, to administer the state's Gifted Education program. This legislation clarifies the state's responsibilities relating to the Gifted Education program. Although the legislation does not add new responsibilities, the department has not had the resources to meet the requirements. Federal special education funds cannot be used for this purpose. The department has requested an increment of \$177,700 in general funds in the FY2002 budget for the Division of Teaching and Learning Support, Special and Supplemental Services Component to cover the costs for administering this program.

Prepared by: Barbara Thompson Phone 465-8727
Division: Teaching and Learning Support Date/Time 11/14/00 10:00 AM
Approved by: Bruce Johnson, Deputy Commissioner of Education Date 11/14/00
Agency: Dept. of Education & Early Development

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HB 71/SB 40

**An Act Relating to the Education
of Children with Disabilities and
Gifted Children**



• Alaska Department of •
EDUCATION
& EARLY DEVELOPMENT

Highlights of HB 71/SB 40

"An Act Relating to the Education of Children with Disabilities and Gifted Children"

Purpose:

1. To update state special education statutes to conform with the federal Individuals with Disabilities Education Act, as amended in 1997 (IDEA 97). IDEA 97 contains a number of policy amendments and emphasizes the importance of parental rights and parental participation in identifying and serving children with disabilities.
2. To delineate the federal and state requirements for providing educational services to children with disabilities, and the state requirements for providing educational services to gifted children.
3. To ensure that Alaska continues to qualify for federal special education funds.
4. To define Alaska's special education policy in areas where federal requirements provide states with discretion.

Revisions to Current State Law

Changes to the current state law include the following:

- The term "exceptional children" is replaced by the terms "child with a disability" and "gifted child". The statutory sections that pertain to children with disabilities have been separated from those that pertain to gifted children.
- Under current state law, the school district of a student's residence must provide special education and related services for a child with a disability. The revised statute requires state boarding schools and statewide correspondence schools that enroll children with disabilities from outside their districts to provide special education and related services to these students.
- The due process hearing procedure is changed, requiring the department rather than the school district to assign hearing officers. Appeals of hearing officer decisions will be made to superior court rather than the department. Similar hearing procedures will be used for both special education and gifted education.
- Mediation, a voluntary dispute resolution process for school districts and parents of children with disabilities, is added to the state statute in conformance with IDEA 97.
- Currently, children with disabilities enrolled in private schools are entitled to a full range of special education services from their public school district of residence. The revised statute limits district responsibility for providing special education services to children voluntarily enrolled in private schools to match the requirements contained in IDEA 97.

- Districts are required to serve only gifted children enrolled in the school district and attending public school.
- Districts are no longer required to provide related services, such as individualized transportation services, to gifted children.
- Significant changes to definitions include the following:
 - "serious emotional disturbance" is changed to "emotional disturbance" to reflect the federal definition;
 - "preschool developmental delay" is changed to "early childhood developmental delay" to reflect current terminology;
 - "parent" is changed to:
 1. specify that the state cannot serve as the child's guardian in educational matters; and,
 2. include a person with legal responsibility for a child's welfare who is acting in place of a child's natural or adoptive parent;
 - "related services" is changed to incorporate the federal IDEA 97 definition;
 - "school district" is changed to add state boarding schools and the state centralized correspondence study program;
 - "special education" is changed to incorporate the federal IDEA 97 definition;
 - "due process hearing" is added and defined according to AS 14.30.193;
 - "informed consent" is added to provide more specific guidance regarding what informed parental consent constitutes;
 - "gifted education" is added to distinguish gifted education from special education; and,
 - "Individualized gifted education program" is added to distinguish gifted program plans from special education program plans.

Budget Considerations

The department has the responsibility for administering the state's gifted education program under the current law, but has not had the resources to address due process hearings, training, and technical assistance for parents and school districts.

The department has requested an increment of \$177,700 in general funds in the F' 2002 budget to cover the costs for administering this program, since federal special education funds cannot be used for this purpose.

**HB 71 / SB 40: Special Education Statute
Comparison of Current and Proposed Legislation**

Current Statute	Proposed Statute: HB 71/ SB 40	Effect/Rationale
<p>Sec. 14.16.050. Applicability of education laws. (a) The following provisions apply with respect to the operation and management of a state boarding school as if it were a school district: (4) requirements relating to students and educational programs: (A) AS 14.30.180 - 14.30.350 (relating to educational services for exceptional children); (B) AS 14.30.360 - 14.30.370 (establishing health education program standards); (C) AS 14.30.400 - 14.30.410 (relating to bilingual and bicultural education).</p>	<p>Section 1. AS 14.16.050. (a)(4) is amended to read: (4) requirements relating to students and educational programs: (A) AS 14.30.180 - 14.30.350 (relating to educational services for <u>[EXCEPTIONAL] children with disabilities</u>); (B) <u>AS 14.30.351 - 14.30.359 (relating to educational services for gifted children)</u>; (C) AS 14.30.360 - 14.30.370 (establishing health education program standards); (D) [(C)]AS 14.30.400 - 14.30.410 (relating to bilingual and bicultural education).</p>	<p>This section is amended to:</p> <ul style="list-style-type: none"> - replace "exceptional children" with "children with disabilities" and "gifted children"; - to revise the statutory reference to education for gifted children; and, - to update other state statutory references to state boarding school responsibilities for providing educational services.
<p>Sec. 14.30.180. Purpose. It is the purpose of AS 14.30.180 - 14.30.350 to (1) provide an appropriate public education for exceptional children in the state who are at least three years of age but less than 22 years of age; (2) allow procedures and actions necessary to comply with the requirements of federal law, including 20 U.S.C. 1400 - 1485 (Individuals with Disabilities Education Act).</p>	<p>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 <u>each child with a disability [EXCEPTIONAL CHILDREN]</u> in the state who <u>is [ARE]</u> 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 <u>20 U.S.C. 1400 - 1487 [20 U.S.C. 1400-1485]</u> (Individuals with Disabilities Education Act), <u>as amended</u>.</p>	<p>This section is amended to clarify that "exceptional children" refers to "children with disabilities". The reference to the federal statute, the Individuals with Disabilities Education Act (IDEA 97), is also updated.</p>
<p>Sec. 14.30.185. Programs shall be established. [Repealed, Sec. 59 ch 98 SLA 1966]. Repealed or Renumbered</p>		

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<p>Sec. 14.30.186. Coverage. (a) A borough or city school district shall provide special education and related services for exceptional children residing in the district. (b) The board of a regional educational attendance area shall provide special education and related services in a school in the area for exceptional children residing in the area served by the school. (c) [Repealed, Sec. 19 ch 147 SLA 1984]. (d) [Repealed, Sec. 19 ch 147 SLA 1984]. (e) Exceptional children being educated as provided under AS 14.30.010(b) may receive special education and related services as provided under AS 14.30.180 - 14.30.350. The exceptional child of a parent who elects to educate the child as allowed under AS 14.30.010 (b) may not be compelled to receive the special education and related services provided under AS 14.30.180 - 14.30.350.</p>	<p>Section 14.30.186 is amended to read: Sec. 14.30.186. Coverage. (a) <u>Special education and related services shall be provided</u> <u>(1) by a borough or city school district, for a child with a disability residing within the district;</u> <u>(2) by the board of a regional educational attendance area operating a school in the area, for a child with a disability residing in the area served by the school;</u> <u>(3) by the borough, city school district, or regional educational attendance area in which a treatment facility, or a correctional or youth detention facility is located, for a child with a disability placed at the facility;</u> <u>(4) by a state boarding school established under AS 14.16, for a child enrolled at the boarding school; or</u> <u>(5) by a school district that provides a statewide correspondence study program, for a child with a disability who is enrolled in the program.</u> [A BOROUGH OR CITY SCHOOL DISTRICT SHALL PROVIDE SPECIAL EDUCATION AND RELATED SERVICES FOR EXCEPTIONAL CHILDREN RESIDING IN THE DISTRICT]</p>	<p>Subsection (a) is amended to indicate that state boarding schools and school districts' statewide correspondence study programs are responsible for providing special education and related services for children with disabilities enrolled in these programs.</p> <p>Subsection (e) is amended by replacing "exceptional children" with "a child with a disability".</p> <p>A new subsection (f) is added to indicate that the department will establish regulations to guide the coordination of and payment for the provision of special education and related services when more than one of the agencies listed in (a) has responsibility for providing services.</p>
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	<p>AS 14.30.186(e) is amended to read: <u>a child with a disability</u> [EXCEPTIONAL CHILDREN BEING EDUCATED AS PROVIDED UNDER AS 14.30.010(b) MAY RECEIVE SPECIAL EDUCATION AND RELATED SERVICES AS PROVIDED UNDER AS 14.30.180 - 14.30.350. THE EXCEPTIONAL CHILD] of a parent who elects to educate the child as allowed under AS 14.30.010(b) may not be compelled to receive the special education and related services provided under AS 14.30.180 - 14.30.350.</p> <p>AS 14.30.186 is amended by adding a new subsection to read: (f) The department shall establish standards in regulations for the allocation of financial responsibilities and the coordination of the provision of special education and related services among the educational agencies listed in (a) of this section when more than one educational agency is responsible to provide those services.</p>	
<p>Sec. 14.30.190. Establishment of standards by Department of Health and Social Services. [Repealed, Sec. 4 ch 144 SLA 1970]. Repealed or Renumbered</p>		
<p>Sec. 14.30.191. Educational evaluation and placement. (a) A school district shall obtain the consent of the child's parent before an initial evaluation or placement in a program of special education and related services. (b) After initial placement in a program of</p>	<p>AS 14.30.191 is amended to read: Sec. 14.30.191. Educational evaluation and placement. (a) A school district shall obtain the <u>written informed</u> consent of the child's parent before an initial evaluation or placement <u>of a child with a disability</u> in a program of special education</p>	<p>This section is amended to clarify that "consent" means "written informed consent" and to replace "exceptional children" with "a child with a disability". Subsection (d) is amended to</p>

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special education and related services and not less than once every three years for as long as the child is assigned to the program, an exceptional child shall receive an educational evaluation for the identification and classification of exceptional children.

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

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

(e) A parent may obtain an independent educational evaluation by choosing a person from a list provided by the district or by choosing a person by agreement between the parent and the school district, at the expense of the school district, if the parent disagrees with an evaluation obtained by the school district. The school district may initiate a hearing to show that its evaluation is appropriate. If the hearing officer determines that the evaluation is appropriate, the school district may not be required to pay for the independent

and related services.

(b) After initial placement in a program of special education and related services and not less than once every three years for as long as the child is assigned to the program, a [AN EXCEPTIONAL] child with a disability shall receive an educational evaluation [FOR THE IDENTIFICATION AND CLASSIFICATION OF EXCEPTIONAL CHILDREN].

(c) Before a school district initiates or refuses a change in the [A CHILD'S] placement or educational program of a child with a disability, the district shall notify the child's parent.

(d) Upon completion of an [THE] evaluation or reevaluation under this section, [AND BEFORE PLACEMENT,] the school district shall provide to the parent of each [EXCEPTIONAL] child evaluated under this section an opportunity to participate in the determination of the child's eligibility for special education and related services, [FOR CONSULTATION ABOUT THE EVALUATION. A CONSULTATION MUST BE AVAILABLE AFTER EACH REEVALUATION OF THE CONDITION] and to participate in the determination of the educational placement of the [EXCEPTIONAL] child if the child is determined to be eligible for special education and related services.

AS 14.30.193 is amended by adding new subsections to read:

(h) A school district shall provide written notice of its decision under this section to the parent of the

indicate that the requirement to provide parents with the opportunity to participate in the determination of a child's eligibility for special education and related services, as well as the child's placement, includes both initial evaluations and re-evaluations.

A new subsection (h) is added that requires school districts to provide parents with written notice of the evaluation and placement decisions made with regard to the child. The notice must include a description of the procedural safeguards available to the parent. This is in line with IDEA 97 requirements.

A new subsection (i) is added to clarify that "hearing" refers to a due process hearing.

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<p>educational evaluation. (f) If the parent obtains an independent educational evaluation at private expense, the results of the evaluation (1) must be considered by the school district in a decision made with respect to the provision of an appropriate public education to the child; (2) may be presented as evidence at a hearing regarding the child. (g) If a hearing officer requests an independent educational evaluation as part of a hearing, the school district shall pay for the evaluation.</p>	<p>child. The notice shall include a description of the procedural safeguards available to that parent and child under federal law. (i) In this section, "hearing" means a due process hearing under AS 14.30.193.</p>	
<p>Sec. 14.30.193. School district hearings. (a) If a parent refuses to consent, or does not respond within 30 days to the school district's request for consent, under AS 14.30.191 (a) or 14.30.285(f), the school district may appoint an impartial hearing officer to conduct a hearing to determine whether the school district may initiate the evaluation or placement of the child, or transfer the child. (b) If a parent disagrees with the school district's intended placement of a child or program for a child, the parent may request a hearing. If a hearing is requested under this subsection, the school district shall appoint an impartial hearing officer to conduct the hearing.</p>	<p>AS 14.30.193 is repealed and reenacted to read: Sec. 14.30.193. <u>Due process hearing.</u> A school district or a parent of a child with a disability may request a due process hearing on any issue related to identification, evaluation, or educational placement of the child, or the provision of a free, appropriate, public education to the child. A request is made by providing written notice to the other party to the hearing. A request by a parent for a due process hearing under this section must be made not later than 12 months after the date that the school district provides the parent with written notice of the decision with which the parent disagrees. A school district shall make its request for a due process hearing in accordance with the time limit established in regulations of the department. (b) If a due process hearing is requested by</p>	<p>This section amends the due process hearing procedures. The purpose of these changes is to make the process more efficient while still ensuring that the rights of both parents and school districts are protected. This process also allows the department to more effectively track the number of due process hearings requested as well as the issues raised. Proposed changes include the following: - Parents must file a request for a due process hearing</p>

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

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

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

(f) A hearing officer's decision under this section is final and binding on the school

either a school district or a parent, the school district shall contact the department to request appointment of an available hearing officer. The department shall select a hearing officer through a random selection process, from a list maintained by the department under (g) of this section. Within five working days after receipt of the request, the department shall provide to the district and the parent a notice of appointment, including the name and a statement of qualifications of the hearing officer that the department determines is available to conduct the hearing.

(c) The school district and the parent each have the right to reject without statement of cause, one hearing officer appointed under this section. The rejecting party shall notify the department of that rejection in writing within five days after receipt of the department's notice of appointment. If a hearing officer is rejected under this subsection, the department shall, within five working days after receipt of the written rejection, provide a notice of appointment, including the name and a statement of qualifications, of another hearing officer that the department determines is available to conduct the hearing. Each appointment is subject to a right of rejection under the subsection by a party who has not previously rejected an appointment.

(d) After a hearing officer is appointed and the time for rejection under (c) of this section has expired, the hearing officer shall immediately inform the parent and the school district of the availability of the mediation process provided

- with the school district no later than 12 months following the decision with which they disagree; the timeline for districts shall be established in regulation in order to allow the State Board of Education & Early Development to consider the effects of different timeline options;
- The department will appoint a hearing officer through a random selection process;
- The school district and the parent may each reject one hearing officer without stating a reason; after this is exhausted, a hearing officer will be appointed.
- The appointed hearing officer will inform the parent and the school district of the availability of mediation;
- Due process hearings will be conducted according to

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

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

(h) The department shall maintain a list of qualified hearing officers. The department shall qualify hearing officers through a training program that shall be open to all 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.

under AS 14.30.194 and encourage use of that process to attempt to resolve the disagreement between the parent and the school district. If the mediation process does not result in settlement of all of the issues, the hearing officer shall conduct a hearing in compliance with the requirements of federal law, including 34 CFR 300.507 - 509, as amended. After the hearing is completed the hearing officer shall issue a written decision that (1) upholds the school district's decision; or (2) overturns the school district's decision with specific instructions for modification of the identification, evaluation, educational placement, or provision of the education program by the district.

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

(f) A hearing officer's decision under this section is a final administrative order, subject to appeal to the superior court for review in the manner provided under AS 44.62.560.

(g) The department shall maintain a list of qualified hearing officers. The department shall provide for the qualification of hearing officers

- federal requirements, including those contained in 34 CFR 300.507 -- 509 .
- The hearing officer's written decision is final but may be appealed to the superior court. Appeals are no longer made to the department.

Subsection (h) clarifies that students with disabilities aged 18-21 have the same rights and obligations as parents of children with disabilities.

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	<p>through a training program that is open to all individuals who meet the criteria set by the department in regulation. The list of qualified hearing officers shall be maintained as a public record.</p> <p>(h) For purposes of this section, a student with a disability aged 18-21 has the same rights and obligations under this section as a parent of a child with a disability.</p>	
	<p>AS 14.30 is amended by adding a new section to read:</p> <p>Sec. 14.30.194 Mediation (a) The department shall, by regulation, establish and implement a voluntary mediation process in conformance with the requirements of federal law, including 34 CFR 300.506, as amended. The department shall encourage the use of mediation for settlement of disputes under AS 14.30.180 - 14.30.350.</p> <p>(b) The department shall maintain a list of individuals who are qualified mediators knowledgeable in the federal and state statutes and regulations relating to the provision of special education and related services. The department shall provide for qualification of mediators through a training program that is open to all individuals who meet the criteria set by the department by regulation.</p>	<p>Mediation, under IDEA 97, is a voluntary dispute resolution process for school districts and parents that states are required to offer when due process hearings are requested.</p>
<p>Sec. 14.30.195. Hearings. (a) The department shall, by regulation, provide for administrative appeal hearings,</p>		<p>This section has been repealed since the revised due process hearing procedures no longer</p>

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<p>based on the record, of impartial hearing officers' decisions under AS 14.30.193 . An administrative appeal hearing shall comply with all requirements necessary for participation in federal grant-in-aid programs, including 20 U.S.C. 1400 - 1485 (Individuals with Disabilities Education Act).</p> <p>(b) The agency conducting a hearing under this section may issue subpoenas under AS 44.62.430 and may petition the superior court for adjudications of contempt under AS 44.62.590 .</p> <p>(c) After an appeal hearing under this section, the department shall render its decision affirming, reversing, modifying, or remanding the hearing officer's decision under AS 14.30.193 .</p> <p>(d) A parent or the school district may appeal to the appropriate court for review of the department's decision on appeal under (c) of this section.</p> <p>(e) A parent who appeals to the court and who is determined by the court to be an indigent person may be provided with a court appointed attorney at public expense. In this subsection, "indigent person" has the meaning given in AS 18.85.170 .</p>		<p>include an administrative appeal to the department. The department will now conduct the due process hearing through the department-appointed hearing officer. The appeal of the hearing officer's decision is to be made to the superior court.</p>
<p>Sec. 14.30.200. - 14.30.220 Eligibility; budget; forfeiture of right to reimbursement. [Repealed, Sec. 5 ch 70</p>		

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<p>SLA 1963]. :ao;14.30.220 Repealed or Renumbered</p>		
<p>Sec. 14.30.230. Special education. [Repealed, Sec. 6 ch 144 SLA 1970]. Repealed or Renumbered</p>		
<p>Sec. 14.30.231. Advisory committee. The Governor's Council on Disabilities and Special Education established under AS 47.80 shall serve as an advisory committee, the function of which is to provide information and guidance for the development of appropriate programs of special education and related services for exceptional children.</p>	<p>Section 14.30.231 is amended to read: Sec. 14.30.231. Advisory panel [COMMITTEE]. The Governor's Council on Disabilities and Special Education established under AS 47.80 shall serve as the <u>state</u> [AN]advisory <u>panel</u> [COMMITTEE], the function of which is to provide information and guidance for the development of appropriate programs of special education and related services for [EXCEPTIONAL] children <u>with disabilities</u>.</p>	<p>This section is amended by changing "advisory committee" to "state advisory panel" consistent with IDEA 97 terminology. This section is amended to substitute "children with disabilities" for "exceptional children".</p>
<p>Sec. 14.30.235. Withdrawal of consent. If under a provision of this chapter the consent of the parent is required, the parent may withdraw the parent's consent.</p>		
<p>Sec. 14.30.240. Supervisor. [Repealed, Sec. 5 ch 70 SLA 1963]. Repealed or Renumbered</p>		
<p>Sec. 14.30.250. Teacher qualifications. A person may not be employed as a teacher of exceptional children unless that person possesses a valid teacher certificate and, in addition, such training as the department may require by regulation.</p>	<p>Section 14.30.250 is amended to read: Sec. 14.30.250. Teacher qualifications. A person may not be employed as a teacher of [EXCEPTIONAL] children <u>with disabilities</u> unless that person possesses a valid teacher certificate and, in addition, such training as the department may require by regulation.</p>	<p>This section is amended to substitute "children with disabilities" for "exceptional children".</p>

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<p>Sec. 14.30.255. Administrator qualifications. A person may not be employed as an administrator of a program of special education and related services unless that person possesses a valid administrative certificate and, in addition, such training as the department may require by regulation.</p>		
<p>Sec. 14.30.260. Exception to qualifications. [Repealed, Sec. 19 ch 147 SLA 1984]. Repealed or Renumbered</p>		
<p>Sec. 14.30.270. Substitutes. AS 14.30.250 does not prohibit the employment of a person, otherwise qualified to serve as a substitute teacher, to serve as a substitute teacher of exceptional children.</p>	<p>AS 14.30.270 is amended to read Sec. 14.30.270. Substitutes. AS 14.30.250 does not prohibit the employment of a person, otherwise qualified to serve as a substitute teacher, to serve as a substitute teacher of [EXCEPTIONAL] children <u>with disabilities</u>.</p>	<p>This section is amended to substitute "children with disabilities" for "exceptional children".</p>
<p>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</p>	<p>AS 14.30.272 is amended to read: Sec. 14.30.272. Procedural safeguards. (a) A school district shall inform the parent of [AN EXCEPTIONAL] child <u>with a disability</u> 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</p>	<p>This section is amended to substitute "child with disabilities" for "exceptional child".</p> <p>This section is amended to clarify that "impartial hearing" and "hearings" refer to due process hearings.</p>

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<p>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.</p> <p>(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).</p>	<p>district or by choosing a person by agreement between the parent and school district, to request a <u>due process</u> [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.</p> <p>(b) The department shall establish, by regulation, impartial procedures for a school district to follow for <u>due process</u> hearings [UNDER AS 14.30.193] to comply with requirements necessary to participate in federal grant-in-aid programs, including <u>20 U.S.C. 1400 - 1487</u> [20 U.S.C. 1400 - 1485] (Individuals with Disabilities Education Act) <u>as amended</u>.</p>	<p>Subsection (b) is amended by updating the citation to the federal Individuals with Disabilities Education Act as amended in 1997.</p>
<p>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.</p>	<p>AS 14.30.274 is amended to read: Sec. 14.30.274. Identification of [EXCEPTIONAL] children with disabilities. Each school district shall establish and implement written procedures to ensure that all [EXCEPTIONAL] children <u>with disabilities</u> under the age of 22 <u>for whom the agency is responsible under AS 14.30.186 to provide special education and related services</u> [WHO RESIDE IN THE DISTRICT] are identified and located for the purpose of establishing their need for special education and related services.</p>	<p>This section is amended to substitute "children with disabilities" for "exceptional children".</p> <p>This section is amended to clarify that a school district's responsibility for serving children with disabilities is consistent with the criteria listed in AS 14.30.86, rather than based solely on a child's residency.</p>
<p>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</p>	<p>AS 14.30.276 is amended to read Sec. 14.30.276. Least restrictive environment. Each school district shall ensure that to the maximum extent appropriate, [EXCEPTIONAL] children <u>with</u></p>	<p>This section is amended to substitute "children with disabilities" for "exceptional children" and "disability" for</p>

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AK-HC

January 15, 2001

The Honorable Rick Halford
President of the Senate
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear President Halford:

Alaska's responsibility for providing quality educational services for our children extends to all children, including those with unique educational needs. I transmit today a bill clarifying the state's role in the education of our exceptional children.

In 1997, Congress authorized amendments to the Individuals with Disabilities Education Act (IDEA). The subsequent federal regulations related to the IDEA took effect in May 1999. This bill amends inconsistent components of our state statutes to bring Alaska into compliance with these current federal special education mandates, including emphasizing the participation of parents in making decisions relating to special education eligibility and services.

An important protection provided to both school districts and children with disabilities is the due process hearing. This bill clarifies the procedures for requesting a due process hearing and streamlines the process for selecting a hearing officer by having the Department of Education and Early Development (department) randomly assign officers from a list maintained by the department. These procedures will help due process hearings be completed in a fair and timely fashion.

Alaska law presently requires that a school district provide special education services to children with disabilities who reside in the district. State law also exempts children from attending public school if children are enrolled in an alternative education program. This has resulted in confusion regarding which school district or other educational agency is responsible for providing special education services when children are enrolled in

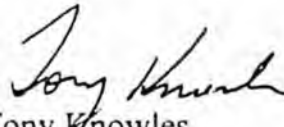
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alternate programs. This bill addresses this problem by providing for allocation of the responsibilities and coordination of the provision of special education services among the various educational agencies.

Present state law provides a combined program of services for gifted children and for children with disabilities. The detailed requirements of the federal IDEA and the federal program financing apply only to the state's educational programs for children with disabilities; federal money for the IDEA may not be used for programs for gifted children. To be consistent with federal requirements, this bill separates statutes regarding special education requirements for children with disabilities from those regarding requirements for gifted children. However, the bill maintains procedural safeguards for both programs.

As part of Alaska's commitment to quality education for all children, including children with disabilities and gifted children, I urge your prompt and favorable action on this bill.

Sincerely,


Tony Knowles
Governor

HB 71/SB 40

**An Act Relating to the Education
of Children with Disabilities and
Gifted Children**



Alaska Department of
EDUCATION
& EARLY DEVELOPMENT

Highlights of HB 71/SB 40

"An Act Relating to the Education of Children with Disabilities and Gifted Children"

Purpose:

1. To update state special education statutes to conform with the federal Individuals with Disabilities Education Act, as amended in 1997 (IDEA 97). IDEA 97 contains a number of policy amendments and emphasizes the importance of parental rights and parental participation in identifying and serving children with disabilities.
2. To delineate the federal and state requirements for providing educational services to children with disabilities, and the state requirements for providing educational services to gifted children.
3. To ensure that Alaska continues to qualify for federal special education funds.
4. To define Alaska's special education policy in areas where federal requirements provide states with discretion.

Revisions to Current State Law

Changes to the current state law include the following:

- The term "exceptional children" is replaced by the terms "child with a disability" and "gifted child". The statutory sections that pertain to children with disabilities have been separated from those that pertain to gifted children.
- Under current state law, the school district of a student's residence must provide special education and related services for a child with a disability. The revised statute requires state boarding schools and statewide correspondence schools that enroll children with disabilities from outside their districts to provide special education and related services to these students.
- The due process hearing procedure is changed, requiring the department rather than the school district to assign hearing officers. Appeals of hearing officer decisions will be made to superior court rather than the department. Similar hearing procedures will be used for both special education and gifted education.
- Mediation, a voluntary dispute resolution process for school districts and parents of children with disabilities, is added to the state statute in conformance with IDEA 97.
- Currently, children with disabilities enrolled in private schools are entitled to a full range of special education services from their public school district of residence. The revised statute limits district responsibility for providing special education services to children voluntarily enrolled in private schools to match the requirements contained in IDEA 97.

**HB 71 / SB 40: Special Education Statute
Comparison of Current and Proposed Legislation**

Current Statute	Proposed Statute: HB 71/ SB 40	Effect/Rationale
<p>Sec. 14.16.050. Applicability of education laws. (a) The following provisions apply with respect to the operation and management of a state boarding school as if it were a school district: (4) requirements relating to students and educational programs: (A) AS 14.30.180 - 14.30.350 (relating to educational services for exceptional children); (B) AS 14.30.360 - 14.30.370 (establishing health education program standards); (C) AS 14.30.400 - 14.30.410 (relating to bilingual and bicultural education).</p>	<p>Section 1. AS 14.16.050. (a)(4) is amended to read: (4) requirements relating to students and educational programs: (A) AS 14.30.180 - 14.30.350 (relating to educational services for [EXCEPTIONAL] children <u>with disabilities</u>); (B) <u>AS 14.30.351 - 14.30.359 (relating to educational services for gifted children)</u>; (C) AS 14.30.360 - 14.30.370 (establishing health education program standards); (D) [(C)]AS 14.30.400 - 14.30.410 (relating to bilingual and bicultural education).</p>	<p>This section is amended to:</p> <ul style="list-style-type: none"> - replace "exceptional children" with "children with disabilities" and "gifted children"; - to revise the statutory reference to education for gifted children; and, - to update other state statutory references to state boarding school responsibilities for providing educational services.
<p>Sec. 14.30.180. Purpose. It is the purpose of AS 14.30.180 - 14.30.350 to (1) provide an appropriate public education for exceptional children in the state who are at least three years of age but less than 22 years of age; (2) allow procedures and actions necessary to comply with the requirements of federal law, including 20 U.S.C. 1400 - 1485 (Individuals with Disabilities Education Act).</p>	<p>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 <u>each child with a disability [EXCEPTIONAL CHILDREN]</u> in the state who <u>is [ARE]</u> 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 <u>20 U.S.C. 1400 - 1487 [20 U.S.C. 1400-1485]</u> (Individuals with Disabilities Education Act), <u>as amended</u>.</p>	<p>This section is amended to clarify that "exceptional children" refers to "children with disabilities". The reference to the federal statute, the Individuals with Disabilities Education Act (IDEA 97), is also updated.</p>
<p>Sec. 14.30.185. Programs shall be established. [Repealed, Sec. 59 ch 98 SLA 1966]. Repealed or Renumbered</p>		

CORRECTION

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



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

Alaska Department of
EDUCATION
& EARLY DEVELOPMENT

Highlights of HB 71/SB 40

"An Act Relating to the Education of Children with Disabilities and Gifted Children"

Purpose:

1. To update state special education statutes to conform with the federal Individuals with Disabilities Education Act, as amended in 1997 (IDEA 97). IDEA 97 contains a number of policy amendments and emphasizes the importance of parental rights and parental participation in identifying and serving children with disabilities.
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- The due process hearing procedure is changed, requiring the department rather than the school district to assign hearing officers. Appeals of hearing officer decisions will be made to superior court rather than the department. Similar hearing procedures will be used for both special education and gifted education.
- Mediation, a voluntary dispute resolution process for school districts and parents of children with disabilities, is added to the state statute in conformance with IDEA 97.
- Currently, children with disabilities enrolled in private schools are entitled to a full range of special education services from their public school district of residence. The revised statute limits district responsibility for providing special education services to children voluntarily enrolled in private schools to match the requirements contained in IDEA 97.

- Districts are required to serve only gifted children enrolled in the school district and attending public school.
- Districts are no longer required to provide related services, such as individualized transportation services, to gifted children.
- Significant changes to definitions include the following:
 - "serious emotional disturbance" is changed to "emotional disturbance" to reflect the federal definition;
 - "preschool developmental delay" is changed to "early childhood developmental delay" to reflect current terminology;
 - "parent" is changed to:
 1. specify that the state cannot serve as the child's guardian in educational matters; and,
 2. include a person with legal responsibility for a child's welfare who is acting in place of a child's natural or adoptive parent;
 - "related services" is changed to incorporate the federal IDEA 97 definition;
 - "school district" is changed to add state boarding schools and the state centralized correspondence study program;
 - "special education" is changed to incorporate the federal IDEA 97 definition;
 - "due process hearing" is added and defined according to AS 14.30.193;
 - "informed consent" is added to provide more specific guidance regarding what informed parental consent constitutes;
 - "gifted education" is added to distinguish gifted education from special education; and,
 - "Individualized gifted education program" is added to distinguish gifted program plans from special education program plans.

Budget Considerations

The department has the responsibility for administering the state's gifted education program under the current law, but has not had the resources to address due process hearings, training, and technical assistance for parents and school districts.

The department has requested an increment of \$177,700 in general funds in the FY 2002 budget to cover the costs for administering this program, since federal special education funds cannot be used for this purpose.

**HB 71 / SB 40: Special Education Statute
Comparison of Current and Proposed Legislation**

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<p>Sec. 14.16.050. Applicability of education laws. (a) The following provisions apply with respect to the operation and management of a state boarding school as if it were a school district: (4) requirements relating to students and educational programs: (A) AS 14.30.180 - 14.30.350 (relating to educational services for exceptional children); (B) AS 14.30.360 - 14.30.370 (establishing health education program standards); (C) AS 14.30.400 - 14.30.410 (relating to bilingual and bicultural education).</p>	<p>Section 1. AS 14.16.050. (a)(4) is amended to read: (4) requirements relating to students and educational programs: (A) AS 14.30.180 - 14.30.350 (relating to educational services for [EXCEPTIONAL] children <u>with disabilities</u>); (B) <u>AS 14.30.351 - 14.30.359 (relating to educational services for gifted children)</u>; (C) AS 14.30.360 - 14.30.370 (establishing health education program standards); (D) [(C)]AS 14.30.400 - 14.30.410 (relating to bilingual and bicultural education).</p>	<p>This section is amended to:</p> <ul style="list-style-type: none"> - replace "exceptional children" with "children with disabilities" and "gifted children"; - to revise the statutory reference to education for gifted children; and, - to update other state statutory references to state boarding school responsibilities for providing educational services.
<p>Sec. 14.30.180. Purpose. It is the purpose of AS 14.30.180 - 14.30.350 to (1) provide an appropriate public education for exceptional children in the state who are at least three years of age but less than 22 years of age; (2) allow procedures and actions necessary to comply with the requirements of federal law, including 20 U.S.C. 1400 - 1485 (Individuals with Disabilities Education Act).</p>	<p>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 <u>each child with a disability [EXCEPTIONAL CHILDREN]</u> in the state who <u>is [ARE]</u> 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 <u>20 U.S.C. 1400 - 1487 [20 U.S.C. 1400-1485]</u> (Individuals with Disabilities Education Act), <u>as amended.</u></p>	<p>This section is amended to clarify that "exceptional children" refers to "children with disabilities". The reference to the federal statute, the Individuals with Disabilities Education Act (IDEA 97), is also updated.</p>
<p>Sec. 14.30.185. Programs shall be established. [Repealed, Sec. 59 ch 98 SLA 1966]. Repealed or Renumbered</p>		

**HB 71 / SB 40: Special Education Statute
Comparison of Current and Proposed Legislation**

<p>Sec. 14.30.186. Coverage. (a) A borough or city school district shall provide special education and related services for exceptional children residing in the district. (b) The board of a regional educational attendance area shall provide special education and related services in a school in the area for exceptional children residing in the area served by the school. (c) [Repealed, Sec. 19 ch 147 SLA 1984]. (d) [Repealed, Sec. 19 ch 147 SLA 1984]. (e) Exceptional children being educated as provided under AS 14.30.010(b) may receive special education and related services as provided under AS 14.30.180 - 14.30.350. The exceptional child of a parent who elects to educate the child as allowed under AS 14.30.010 (b) may not be compelled to receive the special education and related services provided under AS 14.30.180 - 14.30.350.</p>	<p>Section 14.30.186 is amended to read: Sec. 14.30.186. Coverage. (a) <u>Special education and related services shall be provided</u> <u>(1) by a borough or city school district, for a child with a disability residing within the district;</u> <u>(2) by the board of a regional educational attendance area operating a school in the area, for a child with a disability residing in the area served by the school;</u> <u>(3) by the borough, city school district, or regional educational attendance area in which a treatment facility, or a correctional or youth detention facility is located, for a child with a disability placed at the facility;</u> <u>(4) by a state boarding school established under AS 14.16, for a child enrolled at the boarding school; or</u> <u>(5) by a school district that provides a statewide correspondence study program, for a child with a disability who is enrolled in the program. [A BOROUGH OR CITY SCHOOL DISTRICT SHALL PROVIDE SPECIAL EDUCATION AND RELATED SERVICES FOR EXCEPTIONAL CHILDREN RESIDING IN THE DISTRICT]</u></p>	<p>Subsection (a) is amended to indicate that state boarding schools and school districts' statewide correspondence study programs are responsible for providing special education and related services for children with disabilities enrolled in these programs.</p> <p>Subsection (e) is amended by replacing "exceptional children" with "a child with a disability".</p> <p>A new subsection (f) is added to indicate that the department will establish regulations to guide the coordination of and payment for the provision of special education and related services when more than one of the agencies listed in (a) has responsibility for providing services.</p>
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Comparison of Current and Proposed Legislation**

	<p>AS 14.30.186(e) is amended to read: <u>a child with a disability</u> [EXCEPTIONAL CHILDREN BEING EDUCATED AS PROVIDED UNDER AS 14.30.010(b) MAY RECEIVE SPECIAL EDUCATION AND RELATED SERVICES AS PROVIDED UNDER AS 14.30.180 - 14.30.350. THE EXCEPTIONAL CHILD] of a parent who elects to educate the child as allowed under AS 14.30.010(b) may not be compelled to receive the special education and related services provided under AS 14.30.180 - 14.30.350.</p> <p>AS 14.30.186 is amended by adding a new subsection to read: (f) The department shall establish standards in regulations for the allocation of financial responsibilities and the coordination of the provision of special education and related services among the educational agencies listed in (a) of this section when more than one educational agency is responsible to provide those services.</p>	
<p>Sec. 14.30.190. Establishment of standards by Department of Health and Social Services. [Repealed, Sec. 4 ch 144 SLA 1970]. Repealed or Renumbered</p>		
<p>Sec. 14.30.191. Educational evaluation and placement. (a) A school district shall obtain the consent of the child's parent before an initial evaluation or placement in a program of special education and related services. (b) After initial placement in a program of</p>	<p>AS 14.30.191 is amended to read: Sec. 14.30.191. Educational evaluation and placement. (a) A school district shall obtain the <u>written informed</u> consent of the child's parent before an initial evaluation or placement <u>of a child with a disability</u> in a program of special education</p>	<p>This section is amended to clarify that "consent" means "written informed consent" and to replace "exceptional children" with "a child with a disability".</p> <p>Subsection (d) is amended to</p>

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special education and related services and not less than once every three years for as long as the child is assigned to the program, an exceptional child shall receive an educational evaluation for the identification and classification of exceptional children.

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

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

(e) A parent may obtain an independent educational evaluation by choosing a person from a list provided by the district or by choosing a person by agreement between the parent and the school district, at the expense of the school district, if the parent disagrees with an evaluation obtained by the school district. The school district may initiate a hearing to show that its evaluation is appropriate. If the hearing officer determines that the evaluation is appropriate, the school district may not be required to pay for the independent

and related services.

(b) After initial placement in a program of special education and related services and not less than once every three years for as long as the child is assigned to the program, a [AN EXCEPTIONAL] child with a disability shall receive an educational evaluation [FOR THE IDENTIFICATION AND CLASSIFICATION OF EXCEPTIONAL CHILDREN].

(c) Before a school district initiates or refuses a change in the [A CHILD'S] placement or educational program of a child with a disability, the district shall notify the child's parent.

(d) Upon completion of an [THE] evaluation or reevaluation under this section, [AND BEFORE PLACEMENT,] the school district shall provide to the parent of each [EXCEPTIONAL] child evaluated under this section an opportunity to participate in the determination of the child's eligibility for special education and related services. [FOR CONSULTATION ABOUT THE EVALUATION. A CONSULTATION MUST BE AVAILABLE AFTER EACH REEVALUATION OF THE CONDITION] and to participate in the determination of the educational placement of the [EXCEPTIONAL] child if the child is determined to be eligible for special education and related services.

AS 14.30.193 is amended by adding new subsections to read:

(h) A school district shall provide written notice of its decision under this section to the parent of the

indicate that the requirement to provide parents with the opportunity to participate in the determination of a child's eligibility for special education and related services, as well as the child's placement, includes both initial evaluations and re-evaluations.

A new subsection (h) is added that requires school districts to provide parents with written notice of the evaluation and placement decisions made with regard to the child. The notice must include a description of the procedural safeguards available to the parent. This is in line with IDEA 97 requirements.

A new subsection (i) is added to clarify that "hearing" refers to a due process hearing.

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Comparison of Current and Proposed Legislation**

<p>educational evaluation. (f) If the parent obtains an independent educational evaluation at private expense, the results of the evaluation (1) must be considered by the school district in a decision made with respect to the provision of an appropriate public education to the child; (2) may be presented as evidence at a hearing regarding the child. (g) If a hearing officer requests an independent educational evaluation as part of a hearing, the school district shall pay for the evaluation.</p>	<p>child. The notice shall include a description of the procedural safeguards available to that parent and child under federal law. (i) In this section, "hearing" means a due process hearing under AS 14.30.193.</p>	
<p>Sec. 14.30.193. School district hearings. (a) If a parent refuses to consent, or does not respond within 30 days to the school district's request for consent, under AS 14.30.191 (a) or 14.30.285(f), the school district may appoint an impartial hearing officer to conduct a hearing to determine whether the school district may initiate the evaluation or placement of the child, or transfer the child. (b) If a parent disagrees with the school district's intended placement of a child or program for a child, the parent may request a hearing. If a hearing is requested under this subsection, the school district shall appoint an impartial hearing officer to conduct the hearing.</p>	<p>AS 14.30.193 is repealed and reenacted to read: Sec. 14.30.193. Due process hearing. A school district or a parent of a child with a disability may request a due process hearing on any issue related to identification, evaluation, or educational placement of the child, or the provision of a free, appropriate, public education to the child. A request is made by providing written notice to the other party to the hearing. A request by a parent for a due process hearing under this section must be made not later than 12 months after the date that the school district provides the parent with written notice of the decision with which the parent disagrees. A school district shall make its request for a due process hearing in accordance with the time limit established in regulations of the department. (b) If a due process hearing is requested by</p>	<p>This section amends the due process hearing procedures. The purpose of these changes is to make the process more efficient while still ensuring that the rights of both parents and school districts are protected. This process also allows the department to more effectively track the number of due process hearings requested as well as the issues raised.</p> <p>Proposed changes include the following:</p> <ul style="list-style-type: none"> - Parents must file a request for a due process hearing

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<p>(c) A hearing officer may not be appointed under this section unless approved in writing by the parent; however, parent approval of a hearing officer is not required if the parent has been offered and has rejected three different hearing officers. After a hearing officer is appointed under this section, the hearing officer shall conduct an informal prehearing settlement conference and attempt to resolve the disagreement between the parent and the school district. If, after a hearing under this section, the hearing officer determines that the school district's intended action is in accordance with law and is in the child's best interest, the hearing officer shall approve that action.</p> <p>(d) If a parent participates in the hearing but refuses to comply with the decision of the hearing officer, the district shall document in the hearing record the district's attempt to evaluate, place, or transfer the child.</p> <p>(e) If a parent does not participate in the hearing, the district shall document in the hearing record the district's attempt to evaluate, place, or transfer the child and the parent's lack of participation in evaluation, placement, or transfer.</p> <p>(f) A hearing officer's decision under this section is final and binding on the school</p>	<p>either a school district or a parent, the school district shall contact the department to request appointment of an available hearing officer. The department shall select a hearing officer through a random selection process, from a list maintained by the department under (g) of this section. Within five working days after receipt of the request, the department shall provide to the district and the parent a notice of appointment, including the name and a statement of qualifications of the hearing officer that the department determines is available to conduct the hearing</p> <p>(c) The school district and the parent each have the right to reject without statement of cause, one hearing officer appointed under this section. The rejecting party shall notify the department of that rejection in writing within five days after receipt of the department's notice of appointment. If a hearing officer is rejected under this subsection, the department shall, within five working days after receipt of the written rejection, provide a notice of appointment, including the name and a statement of qualifications, of another hearing officer that the department determines is available to conduct the hearing. Each appointment is subject to a right of rejection under the subsection by a party who has not previously rejected an appointment.</p> <p>(d) After a hearing officer is appointed and the time for rejection under (c) of this section has expired, the hearing officer shall immediately inform the parent and the school district of the availability of the mediation process provided</p>	<ul style="list-style-type: none"> - with the school district no later than 12 months following the decision with which they disagree; the timeline for districts shall be established in regulation in order to allow the State Board of Education & Early Development to consider the effects of different timeline options; - The department will appoint a hearing officer through a random selection process; - The school district and the parent may each reject one hearing officer without stating a reason; after this is exhausted, a hearing officer will be appointed. - The appointed hearing officer will inform the parent and the school district of the availability of mediation; - Due process hearings will be conducted according to
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<p>district and parent, unless appealed under (g) of this section. Notwithstanding a decision by the hearing officer, a child may not be evaluated, placed, transferred, or compelled to receive special education or related services from the school district until the period for filing an appeal under (g) of this section has expired or, if an appeal is filed, until the department and court appellate review process has been completed.</p> <p>(g) A parent or a school district may appeal a hearing officer's decision under this section to the department by requesting an appeal hearing under AS 14.30.195 . The appeal hearing request must be in writing and must be received by the department within 30 days after receipt of the hearing officer's decision.</p> <p>(h) The department shall maintain a list of qualified hearing officers. The department shall qualify hearing officers through a training program that shall be open to all 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.</p>	<p>under AS 14.30.194 and encourage use of that process to attempt to resolve the disagreement between the parent and the school district. If the mediation process does not result in settlement of all of the issues, the hearing officer shall conduct a hearing in compliance with the requirements of federal law, including 34 CFR 300.507 - 509, as amended. After the hearing is completed the hearing officer shall issue a written decision that (1) upholds the school district's decision; or (2) overturns the school district's decision with specific instructions for modification of the identification, evaluation, educational placement, or provision of the education program by the district.</p> <p>(e) A hearing officer's decision under this section is final and binding on the school district and parent, unless appealed under (f) of this section. Notwithstanding a decision by the hearing officer, a child may not be evaluated, placed, transferred, or compelled to receive special education or related services from the school district until the period for filing an appeal under (f) of this section has expired or, if an appeal is filed, until the appellate review process has been completed.</p> <p>(f) A hearing officer's decision under this section is a final administrative order, subject to appeal to the superior court for review in the manner provided under AS 44.62.560.</p> <p>(g) The department shall maintain a list of qualified hearing officers. The department shall provide for the qualification of hearing officers</p>	<ul style="list-style-type: none"> - federal requirements, including those contained in 34 CFR 300.507 – 509 . - The hearing officer's written decision is final but may be appealed to the superior court. Appeals are no longer made to the department. <p>Subsection (h) clarifies that students with disabilities aged 18-21 have the same rights and obligations as parents of children with disabilities.</p>
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	<p>through a training program that is open to all individuals who meet the criteria set by the department in regulation. The list of qualified hearing officers shall be maintained as a public record.</p> <p>(h) For purposes of this section, a student with a disability aged 18-21 has the same rights and obligations under this section as a parent of a child with a disability.</p>	
	<p>AS 14.30 is amended by adding a new section to read:</p> <p>Sec. 14.30.194 Mediation (a) The department shall, by regulation, establish and implement a voluntary mediation process in conformance with the requirements of federal law, including 34 CFR 300.506, as amended. The department shall encourage the use of mediation for settlement of disputes under AS 14.30.180 - 14.30.350.</p> <p>(b) The department shall maintain a list of individuals who are qualified mediators knowledgeable in the federal and state statutes and regulations relating to the provision of special education and related services. The department shall provide for qualification of mediators through a training program that is open to all individuals who meet the criteria set by the department by regulation.</p>	<p>Mediation, under IDEA 97, is a voluntary dispute resolution process for school districts and parents that states are required to offer when due process hearings are requested.</p>
<p>Sec. 14.30.195. Hearings. (a) The department shall, by regulation, provide for administrative appeal hearings,</p>		<p>This section has been repealed since the revised due process hearing procedures no longer</p>

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<p>based on the record, of impartial hearing officers' decisions under AS 14.30.193 . An administrative appeal hearing shall comply with all requirements necessary for participation in federal grant-in-aid programs, including 20 U.S.C. 1400 - 1485 (Individuals with Disabilities Education Act).</p> <p>(b) The agency conducting a hearing under this section may issue subpoenas under AS 44.62.430 and may petition the superior court for adjudications of contempt under AS 44.62.590 .</p> <p>(c) After an appeal hearing under this section, the department shall render its decision affirming, reversing, modifying, or remanding the hearing officer's decision under AS 14.30.193 .</p> <p>(d) A parent or the school district may appeal to the appropriate court for review of the department's decision on appeal under (c) of this section.</p> <p>(e) A parent who appeals to the court and who is determined by the court to be an indigent person may be provided with a court appointed attorney at public expense. In this subsection, "indigent person" has the meaning given in AS 18.85.170 .</p>		<p>include an administrative appeal to the department. The department will now conduct the due process hearing through the department-appointed hearing officer. The appeal of the hearing officer's decision is to be made to the superior court.</p>
<p>Sec. 14.30.200. - 14.30.220 Eligibility; budget; forfeiture of right to reimbursement. [Repealed, Sec. 5 ch 70</p>		

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<p>SLA 1963]. :ao;14.30.220 Repealed or Renumbered</p>		
<p>Sec. 14.30.230. Special education. [Repealed, Sec. 6 ch 144 SLA 1970]. Repealed or Renumbered</p>		
<p>Sec. 14.30.231. Advisory committee. The Governor's Council on Disabilities and Special Education established under AS 47.80 shall serve as an advisory committee, the function of which is to provide information and guidance for the development of appropriate programs of special education and related services for exceptional children.</p>	<p>Section 14.30.231 is amended to read: Sec. 14.30.231. Advisory panel [COMMITTEE]. The Governor's Council on Disabilities and Special Education established under AS 47.80 shall serve as the <u>state</u> [AN]advisory <u>panel</u> [COMMITTEE], the function of which is to provide information and guidance for the development of appropriate programs of special education and related services for [EXCEPTIONAL] children <u>with disabilities</u>.</p>	<p>This section is amended by changing "advisory committee" to "state advisory panel" consistent with IDEA 97 terminology. This section is amended to substitute "children with disabilities" for "exceptional children".</p>
<p>Sec. 14.30.235. Withdrawal of consent. If under a provision of this chapter the consent of the parent is required, the parent may withdraw the parent's consent.</p>		
<p>Sec. 14.30.240. Supervisor. [Repealed, Sec. 5 ch 70 SLA 1963]. Repealed or Renumbered</p>		
<p>Sec. 14.30.250. Teacher qualifications. A person may not be employed as a teacher of exceptional children unless that person possesses a valid teacher certificate and, in addition, such training as the department may require by regulation.</p>	<p>Section 14.30.250 is amended to read: Sec. 14.30.250. Teacher qualifications. A person may not be employed as a teacher of [EXCEPTIONAL] children <u>with disabilities</u> unless that person possesses a valid teacher certificate and, in addition, such training as the department may require by regulation.</p>	<p>This section is amended to substitute "children with disabilities" for "exceptional children".</p>

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<p>Sec. 14.30.255. Administrator qualifications. A person may not be employed as an administrator of a program of special education and related services unless that person possesses a valid administrative certificate and, in addition, such training as the department may require by regulation.</p>		
<p>Sec. 14.30.260. Exception to qualifications. [Repealed, Sec. 19 ch 147 SLA 1984]. Repealed or Renumbered</p>		
<p>Sec. 14.30.270. Substitutes. AS 14.30.250 does not prohibit the employment of a person, otherwise qualified to serve as a substitute teacher, to serve as a substitute teacher of exceptional children.</p>	<p>AS 14.30.270 is amended to read Sec. 14.30.270. Substitutes. AS 14.30.250 does not prohibit the employment of a person, otherwise qualified to serve as a substitute teacher, to serve as a substitute teacher of [EXCEPTIONAL] children <u>with disabilities</u>.</p>	<p>This section is amended to substitute "children with disabilities" for "exceptional children".</p>
<p>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</p>	<p>AS 14.30.272 is amended to read: Sec. 14.30.272. Procedural safeguards. (a) A school district shall inform the parent of [AN EXCEPTIONAL] child <u>with a disability</u> 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</p>	<p>This section is amended to substitute "child with disabilities" for "exceptional child".</p> <p>This section is amended to clarify that "impartial hearing" and "hearings" refer to due process hearings.</p>

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<p>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.</p> <p>(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).</p>	<p>district or by choosing a person by agreement between the parent and school district, to request a <u>due process</u> [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.</p> <p>(b) The department shall establish, by regulation, impartial procedures for a school district to follow for <u>due process</u> hearings [UNDER AS 14.30.193] to comply with requirements necessary to participate in federal grant-in-aid programs, including <u>20 U.S.C. 1400 - 1487</u> [20 U.S.C. 1400 - 1485] (Individuals with Disabilities Education Act) <u>as amended</u>.</p>	<p>Subsection (b) is amended by updating the citation to the federal Individuals with Disabilities Education Act as amended in 1997.</p>
<p>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.</p>	<p>AS 14.30.274 is amended to read:</p> <p>Sec. 14.30.274. Identification of [EXCEPTIONAL] children with disabilities. Each school district shall establish and implement written procedures to ensure that all [EXCEPTIONAL] children <u>with disabilities</u> under the age of 22 <u>for whom the agency is responsible under AS 14.30.186 to provide special education and related services</u> [WHO RESIDE IN THE DISTRICT] are identified and located for the purpose of establishing their need for special education and related services.</p>	<p>This section is amended to substitute "children with disabilities" for "exceptional children".</p> <p>This section is amended to clarify that a school district's responsibility for serving children with disabilities is consistent with the criteria listed in AS 14.30.86, rather than based solely on a child's residency.</p>
<p>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</p>	<p>AS 14.30.276 is amended to read</p> <p>Sec. 14.30.276. Least restrictive environment. Each school district shall ensure that to the maximum extent appropriate, [EXCEPTIONAL] children <u>with</u></p>	<p>This section is amended to substitute "children with disabilities" for "exceptional children" and "disability" for</p>

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<p>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.</p>	<p><u>disabilities</u>, including children in public or private institutions or other care facilities, are educated with children who are not [EXCEPTIONAL] children <u>with disabilities</u>, and that special classes, separate schooling, or other removal of [EXCEPTIONAL] children <u>with disabilities</u> from the regular educational environment occurs only when the nature or severity of the child's <u>disability</u> [EXCEPTIONALITY] is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.</p>	<p>"exceptionality".</p>
<p>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</p>	<p>AS 14.30.278 is amended to read Sec. 14.30.278. Individualized education program. <u>A school district shall develop an individualized education program for special education and related services for each child with a disability. The plan must be completed no later than 30 days after the determination of the child's eligibility. Each individualized education program shall be developed and periodically reviewed and revised as necessary in conformance with federal requirements, including 34 CFR 300.340 - 350, as amended.</u> [(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;</p>	<p>This section is amended to specify that a child's IEP must be in effect no later than 30 days after the determination of eligibility. The section is amended to include citations for federal IDEA 97 requirements that guide the development and content of an individualized education program.</p>

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<p>objectives are being achieved.</p> <p>(b) Each meeting concerning an exceptional child must include</p> <p>(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;</p> <p>(2) the child's teacher;</p> <p>(3) at least one of the child's parents;</p> <p>(4) the child, when appropriate;</p> <p>(5) other individuals selected by the parent or school district.</p> <p>(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.</p>	<p>(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;</p> <p>(4) THE PROJECTED DATES FOR INITIATION OF SERVICES AND THE ANTICIPATED DURATION OF THE SERVICES;</p> <p>(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.</p> <p>(b) EACH MEETING CONCERNING AN EXCEPTIONAL CHILD MUST INCLUDE</p> <p>(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;</p> <p>(2) THE CHILD'S TEACHER;</p> <p>(3) AT LEAST ONE OF THE CHILD'S PARENTS;</p> <p>(4) THE CHILD, WHEN APPROPRIATE;</p> <p>(5) OTHER INDIVIDUALS SELECTED BY THE PARENT OR SCHOOL DISTRICT.</p> <p>(C) EACH SCHOOL DISTRICT SHALL</p>	
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	<p>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.]</p>	
<p>Sec. 14.30.280. Psychologist qualifications. [Repealed, Sec. 19 ch 147 SLA 1984]. Repealed or Renumbered</p>		
<p>Sec. 14.30.285. Transfers of exceptional children. (a) The department shall institute a statewide program for the education of exceptional children, to ensure that whenever possible children are educated in the state at locations in or near their resident school district. (b) An identified exceptional child may be sent to an educational program or residential school outside the child's community or school district if the child resides in a community or school district where an appropriate educational program cannot reasonably be made available and if the department determines that provision of special education and related services in another educational program or residential school is appropriate. If the school district and the department approve the enrollment of the exceptional child in another educational program or residential school outside the child's community or</p>	<p>AS 14.30.285 is amended to read: Sec. 14.30.285. Transfers of [EXCEPTIONAL] children <u>with disabilities</u>. (a) The department shall institute a statewide program for the education of [EXCEPTIONAL] children <u>with disabilities</u>, to ensure that whenever possible children are educated in the state at locations in or near their resident school district. (b) An identified [EXCEPTIONAL] child <u>with a disability</u> may be sent to an educational program or residential school outside the child's community or school district if the child resides in a community or school district where an appropriate educational program cannot reasonably be made available and if the <u>school district</u> [DEPARTMENT] determines that provision of special education and related services in another educational program or residential school is appropriate. If the school district <u>approves</u> [AND THE DEPARTMENT APPROVE] the enrollment of a [THE EXCEPTIONAL] child <u>with a disability</u> in another educational program or residential school outside</p>	<p>This section is amended to substitute "children with disabilities" for "exceptional children".</p> <p>This section is amended to indicate that it is the school district, with parental consent, that determines if it is appropriate for a child with a disability to receive special education and related services outside of his/her district of residence.</p> <p>Subsection (f) is amended to specify that a parent's consent must be informed consent.</p>

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<p>school district and the child is enrolled, the child's education expenses shall be paid as follows:</p> <p>(1) except as otherwise provided by (2) of this subsection, the sending district shall pay all costs associated with the transfer;</p> <p>(2) the department may provide financial assistance to the district for a child's education provided for in (1) of this subsection under regulations adopted by the department.</p> <p>(c) [Repealed, Sec. 19 ch 147 SLA 1984].</p> <p>(d) For the purposes of this section a child's education expenses are limited to the actual cost of necessary care, transportation, and special education and related services, including room and board.</p> <p>(e) The educational assessment of an exceptional child that indicates that the educational program that is locally available is inappropriate for the needs of the child must conform to the standards set out in AS 14.30.191.</p> <p>(f) A school district shall obtain the consent of the child's parent before a child may be transferred to a school outside the district in which the child resides.</p> <p>(g) The withholding of consent by a parent or departmental approval for the transfer of an exceptional child under this section does not relieve a school district of the obligation to provide special education and related</p>	<p>the child's community or school district and the child is enrolled, the child's education expenses shall be paid as follows:</p> <p>(1) except as otherwise provided by (2) of this subsection, the sending district shall pay all costs associated with the transfer;</p> <p>(2) the department may provide financial assistance to the <u>school</u> district for a child's education provided for in (1) of this subsection under regulations adopted by the department.</p> <p>(c) [Repealed, Sec. 19 ch 147 SLA 1984].</p> <p>(e) The educational assessment of a [AN EXCEPTIONAL] child <u>with a disability</u> that indicates that the educational program that is locally available is inappropriate for the needs of the child must conform to the standards set out in AS 14.30.191.</p> <p>(f) A school district shall obtain [THE] <u>informed</u> consent of the child's parent before a child may be transferred to a school outside the district in which the child resides.</p> <p>(g) The withholding of <u>informed</u> consent by a parent [OR DEPARTMENTAL APPROVAL] for the transfer of a [AN EXCEPTIONAL] child <u>with a disability</u> under this section does not relieve a school district of the obligation to provide special education and related services to <u>the</u> [AN EXCEPTIONAL] child. [UNDER AS 14.30.186.]</p>	
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<p>services to an exceptional child under AS 14.30.186.</p>		
<p>Sec. 14.30.290. Purposes of appropriations. [Repealed, Sec. 5 ch 70 SLA 1963]. Repealed or Renumbered</p>		
<p>Sec. 14.30.295. Special education outside state. [Repealed, Sec. 4 ch 79 SLA 1974]. Repealed or Renumbered</p>		
<p>Sec. 14.30.300. Nonresident apportionment. [Repealed, Sec. 5 ch 70 SLA 1963]. Repealed or Renumbered</p>		
<p>Sec. 14.30.305. State support of programs for children hospitalized or confined to their homes. A child who is hospitalized or confined to home and who receives at least 10 hours of special education and related services per week may be counted as a pupil in average daily membership when computing state support under the public school funding program.</p>		
<p>Sec. 14.30.310. Hospitalized and homebound children. [Repealed, Sec. 5 ch 70 SLA 1963]. Repealed or Renumbered</p>		

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<p>Sec. 14.30.315. State support of programs for gifted children. (a) [Repealed, Sec. 39 ch 83 SLA 1998]. (b) Nothing in this section prohibits the department from requiring approval of programs of special education and related services for other categories of exceptional children.</p>		<p>Subsection (b) is repealed since the term "exceptional children" is no longer used.</p>
<p>Sec. 14.30.320. Reimbursement for hospitalized or homebound children. [Repealed, Sec. 5 ch 70 SLA 1963]. Repealed or Renumbered</p>		
<p>Sec. 14.30.325. Surrogate parents. (a) The department may by regulation provide for the appointment of surrogate parents to represent exceptional children in matters relating to the provision of an appropriate public education. (b) A surrogate parent is not liable for civil damages as a result of an act or omission committed in the surrogate parent's official capacity, except that a surrogate parent may be liable for civil damages as a result of gross negligence or intentional misconduct.</p>	<p>AS 14.30.325 is amended to read: Sec. 14.30.325. Surrogate parents. (a) The department <u>shall</u> [MAY] by regulation provide for the appointment of surrogate parents to represent <u>a child with a disability</u> [EXCEPTIONAL CHILDREN] in matters relating to the provision of an appropriate public education.</p>	<p>This section is amended to substitute "child with a disability" for "exceptional children". This section is amended to indicate that the department is required to provide for the appointment of surrogate parents.</p>
<p>Sec. 14.30.330. Application for enrollment. [Repealed, Sec. 19 ch 147 SLA 1984]. Repealed or Renumbered</p>		

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<p>Sec. 14.30.335. Eligibility for federal funds. Notwithstanding any other provision of AS 14.30.180 - 14.30.350, the department may do all things necessary to qualify for federal funds that are available to the state for the education of exceptional children.</p>	<p>AS 14.30.335 is amended to read: Sec. 14.30.335. Eligibility for federal funds. Notwithstanding any other provision of AS 14.30.180 - 14.30.350, the department may do all things necessary to qualify for federal funds that are available to the state for the education of [EXCEPTIONAL] children <u>with disabilities</u>.</p>	<p>This section is amended to substitute "children with disabilities" for "exceptional children".</p>
<p>Sec. 14.30.340. Provision of special education in a private school, home, or hospital setting. (a) If a parent of an exceptional child enrolls the child in a private school at the parent's expense or teaches the child at home, the school district in which the child is located shall make special education and related services available in conformance with an individualized education program under AS 14.30.278 . (b) If a physician certifies in writing, and if the child's individualized education program team then determines that a child's bodily, mental, or emotional condition does not permit attendance at a school and the child's parents do not elect to teach the child at home as permitted under AS 14.30.010 (b), the school district in which the child is located shall enroll the child in public school and provide the child with special education and related services in conformance with an individualized</p>	<p>AS 14.30.340 is amended to read: Sec. 14.30.340. Provision of special education in a private school, home, or hospital setting. (a) If a parent of a [AN EXCEPTIONAL] child <u>with a disability</u> enrolls the child in a private school, <u>including a religious school</u>, at the parent's expense or teaches the child at home, the school district in which the child <u>resides</u> [IS LOCATED] shall make special education and related services available in conformance with <u>federal requirements, including 34 CFR 300.450 - 462 as amended. Parents teaching their children at home may refuse special education and related services for their children</u> [AN INDIVIDUALIZED EDUCATION PROGRAM UNDER AS 14.30.278]. (b) If a physician certifies in writing, and if the child's individualized education program <u>under AS 14.30.278 then provides</u> [TEAM THEN DETERMINES] that a child's bodily, mental, or emotional condition does not permit attendance at a school and the child's parents do not elect to teach the child at home as permitted under AS 14.30.010(b), the school district in which the child is</p>	<p>This section is amended to substitute "children with disabilities" for "exceptional children". Subsection (a) is amended to clarify that religious schools are included in the category of private schools. Subsection (a) is changed to align the requirements for districts to provide special education and related services to children with disabilities with federal IDEA 97 requirements, which are not as comprehensive as the requirements for children with disabilities enrolled in publicly funded educational agencies. Subsection (b) is changed to state that along with written certification by a physician, it is</p>

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<p>education program under AS 14.30.278 at the child's home or at a medical treatment facility.</p>	<p>located shall enroll the child in public school and provide the child with special education and related services in conformance with <u>the child's</u> [AN] individualized education program [UNDER AS 14.30.278] at the child's home or at a medical treatment facility.</p>	<p>the individualized education program created by the school district under state statutory requirements that determines whether a child's condition does not permit school attendance.</p>
<p>Sec. 14.30.345. Regulations. [Repealed, Sec. 59 ch 98 SLA 1966]. Repealed or Renumbered</p>		
<p>Sec. 14.30.347. Transportation of exceptional children. When transportation is required to be provided as related services, an exceptional child shall be carried with other children if the district provides transportation to other children in the district except when the nature of the physical or mental disability is such that it is in the best interest of the exceptional child, as determined by the school district, that the child be transported separately. State reimbursement for transportation of exceptional children shall be as provided for transportation of all other pupils except that eligibility for reimbursement is not subject to restriction based on the minimum distance between the school and the residence of the exceptional child.</p>	<p>AS 14.30.347 is amended to read: Sec. 14.30.347. Transportation of [EXCEPTIONAL] children with disabilities. When transportation is required to be provided as a related service[S], a <u>child with a disability</u> [AN EXCEPTIONAL] shall be <u>transported</u> [CARRIED] with <u>children who are not children with disabilities</u> [OTHER CHILDREN] if the district provides transportation to other children in the district, except when the nature of the physical or mental disability is such that it is in the best interest of the <u>child with a disability</u> [EXCEPTIONAL CHILD], as <u>provided in the child's individualized education program</u> [DETERMINED BY THE SCHOOL DISTRICT], that the child be transported separately. State reimbursement for transportation of [EXCEPTIONAL] children <u>with disabilities</u> shall be as provided for transportation of all other pupils except that eligibility for reimbursement is not subject to restriction based on the minimum distance between the school and the residence of</p>	<p>This section is amended to substitute "child with a disability" for "an exceptional child". This section is amended to specify that "other children" refers to children who do not have disabilities.</p>

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	the [EXCEPTIONAL] child <u>with a disability</u> .	
<p>Sec. 14.30.350. Definitions. In AS 14.30.180 - 14.30.350, (1) "appropriate education" means personalized instruction with sufficient support services to permit a child to benefit educationally from the instruction; (2) "children with disabilities" means children with mental retardation; hearing impairments, including deafness; speech or language impairments; visual impairments, including blindness; serious emotional disturbance; orthopedic impairments; autism; traumatic brain injury; other health impairments; specific learning disabilities; or preschool developmental delays; (3) "consent" means the parent has been fully informed of all information relevant to the activity or the release of records for which consent is sought and the parent understands and voluntarily agrees to the activity or release of records; (4) "educational records" means those files, documents, records, and other material that contain information directly related to a student and are maintained by a school district or a person acting for a school district; the term "educational records" does not include the personnel records of the school district, maintained in the normal course of business, that relate exclusively to a person's capacity as an employee, or other</p>	<p>AS 14.30.350 is amended to read: Sec. 14.30.350. Definitions. (2) "child with a disability" means a child with one or more of the following: (A) mental retardation; (B) learning disabilities; (C) emotional disturbance; (D) deafness; (E) deaf-blindness; (F) hearing impairment; (G) orthopedic impairment (H) other health impairment; (I) speech impairment; (J) visual impairments; (K) multiple disabilities; (L) early childhood developmental delay; (M) autism; (N) traumatic brain injury; (8) "parent" means a (A) child's natural or adoptive parent; (B) child's guardian, but not the state if the child is in the legal custody of the state; (C) person who is acting in the place of a child's natural or adoptive parent, such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare; and (D) child's surrogate parent who has been appointed under AS 14.30.325;</p>	<p>The following changes are made to the definitions section: (2) is changed as follows: - "children with disabilities" is changed to "child with a disability"; - the category "serious emotional disturbance" is changed to "emotional disturbance" to reflect the federal definition; and - "preschool developmental delay" is changed to "early childhood developmental delay" to reflect current terminology; (8) "parent" is changed to specify that the state cannot serve as the child's guardian in educational matters, and to include a person with legal responsibility for a child's welfare who is acting in place of a child's natural or adoptive parent; (9) "related services" is changed to adopt the definition of "related services" contained in the federal IDEA 97 regulations; (10) "school district" is changed</p>

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<p>records as designated by the department in regulation;</p> <p>(5) "exceptional children" means children with disabilities, and gifted children, who differ markedly from their peers to the degree that special facilities, equipment, or methods are required to make their educational program effective;</p> <p>(6) "gifted children" means children who exhibit outstanding intellect, ability, or creative talent as determined under regulations adopted by the department;</p> <p>(7) "individualized education program team" means a group of people that translates child assessment information regarding a child into a practical plan for specially designed instruction and delivery of services for the child, and includes the following:</p> <p>(A) a representative of the school district, other than the child's teacher, who is qualified to provide or supervise the provision of special education;</p> <p>(B) the child's teacher;</p> <p>(C) the child's parent;</p> <p>(D) the child, if appropriate;</p> <p>(E) other individuals, at the discretion of the child's parent or the school district;</p> <p>(8) "parent" includes a guardian, a person acting as a parent of a child, and a surrogate parent appointed under AS 14.30.325 .</p>	<p>(9) "related services" means services that are considered as "related services" in 34 CFR 300.24, as amended;</p> <p>(10) "school district" means a borough school district, a city school district, a regional educational attendance area, a state boarding school, and the state centralized correspondence study program;</p> <p>(11) "special education" means an educational program that is considered as "special education" in 34 CFR 300.26, as amended;</p> <p>(12) "due process hearing" means a hearing conducted under AS 14.30.193;</p> <p>(13) "informed consent" means that</p> <p>(A) a child's parent has been fully informed, in the parent's native language or other mode of communication, of all information relevant to the activity for which consent is sought;</p> <p>(B) the parent understands and agrees in writing to the carrying out of the activity for which the parent's consent is sought;</p> <p>(C) the consent describes that activity and lists any records that will be released and to whom; and</p> <p>(D) the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.</p>	<p>to add state boarding schools and the state centralized correspondence study program;</p> <p>(11) "special education" is changed to incorporate the federal definition of special education under IDEA 97;</p> <p>(12) "due process hearing" is added to this section and provides the state statutory reference;</p> <p>(13) "informed consent" is added to this section to specify the conditions under which appropriate written consent may be obtained from parents.</p>
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<p>(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;</p> <p>(10) "school district" means a borough school district, a city school district, or a regional educational attendance area;</p> <p>(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</p>		
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<p>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.</p>		
	<p>AS 14.30 is amended by adding new sections to read: Article 3A. Education for Gifted Children</p>	<p>The following sections have been added to clarify the statutory requirements for providing gifted education programs.</p>