



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Health and Social Services

GOVERNOR'S COUNCIL ON DISABILITIES
& SPECIAL EDUCATION
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March 29, 2016

RE: HB 102 and SB 103 An Act Relating to Education in Residential Psychiatric Treatment Centers

The Governor's Council on Disabilities and Special Education (the Council) is the Special Education Advisory Panel (SEAP) for Alaska as required under Part B of the Individuals with Disabilities Education Act (IDEA). Our role is to involve stakeholders to advise and assist the state on special education and related services. Members are former special education students, parents of students with disabilities, disability rights legal advocates, special education teachers and paraprofessionals, school administrators, staff from the Department of Education & Early Development (EED), and other state agencies including child care, Title I and the Office of Children's Services, and others involved in the early intervention and education of students with disabilities.

We are writing to express our concern and opposition to HB 102/SB 103. We first became aware of this bill in 2014 when Evelyn Alsup brought a draft for our review. The SEAP was very sympathetic to the concerns she voiced; several of our members had personal experience with NorthStar Behavioral Health System, from both the parent and the educator perspective. This legislation was allegedly developed to address legitimate concerns regarding the Anchorage School District (ASD) educational program at NorthStar in Anchorage relating to parental involvement, alignment of curriculum with the student's current course of study, delivery of educational services, and communication between ASD and the student's school district. We have already seen a detailed plan of correction implemented by the Anchorage School District, but we did not see these changes being welcomed by NorthStar and that has raised a lot of questions.

Can the issue be solved without legislation?

Our first question was, if this legislation was a solution to the ASD/NorthStar problem, why had the draft legislation arrived in Alaska already written and with no sponsors? When we asked Ms. Alsup, Director of Education at NorthStar about this, she informed us that United Health Services (UHS), the Fortune 500 parent company that owns NorthStar had brought forward similar bills in several other states. We assumed that the legislation would bring to light what we primarily saw as a communication problem and that ASD and NorthStar would then need to work together to correct and improve the situation, and then the bill would not be necessary. While we have seen a detailed plan of correction implemented by ASD, we did not see these changes being welcomed by NorthStar and that further concerned us.

ASD has developed and is implementing a very comprehensive, collaborative 16 point plan to address these concerns. They have created a "Special Schools" department with significantly increased highly qualified teaching, counseling, transition, and administrative staff. They have increased the number of computers and reinstalled the ASD wireless network, as well as increasing the school day, at NorthStar's request. Specific procedures were implemented to better involve the student's parents/guardians and home school district. The design is for communication between team members to be on-going. Preceding a student's discharge date, a counselor contacts the parent/guardian and school to schedule a transition meeting. There are procedures for monitoring for compliance and potential improvements.

Critical to this plan is open and transparent communication and collaboration between all parties involved. This seems like a very workable locally developed and implemented improvement plan. After reviewing the ASD plan and reviewing testimony and comments, several other important questions have jumped out at us that we feel need to be answered.

Is an RPTC better at delivering educational services than a school district?

The Council only had to look at how UHS is providing education in RPTCs in other states that have passed their legislation. UHS has struggled to be able to employ enough qualified staff, and there have been several court cases and citations involving understaffing and underqualified staff in UHS educational settings. Most notably, in California, the parents of a former student with autism, along with teachers and administrators [sued UHS](#). The three year-long lawsuit grew to include other UHS schools and California school districts. The suit alleged that UHS employed several teachers who were either inappropriately credentialed or not credentialed at all. The plaintiffs alleged that the company's practice was to "warehouse" students with any available salaried or hourly employee and then invoice the respective school districts as though the contracted services had been properly performed. They alleged that UHS falsely attested to its compliance with the contract terms, created false records, and submitted false claims to the California State Department of Education for reimbursement. In 2012, UHS entered a settlement agreement of \$4.25 million to settle the case. Similar violations of understaffing have occurred in Virginia, where [UHS was also cited](#) for billing Medicaid for therapy during school hours and for not sending students' periodic review of IEP goals to their parents.

Will this legislation restrict parental access to their children?

The complaints about the ASD/NorthStar relationship have come from NorthStar, not from parent's groups or parent legal advocates. There have been instances that parents in Alaska have been denied access to their children and unable to obtain information about them while in RPTCs because of a misuse/misunderstanding of Health Insurance Portability and Accountability Act (HIPAA). We know of an Alaskan family who was only able to access information about their child while in a RPTC through the public school program she was attending while in treatment. They were unable to get information about their child from the RPTC until they hired an attorney, but they were able to get information about her health and wellbeing from the school, since by law, educational records are available to a parent/guardian anytime from a public school district. The loss of this additional check-and-balance is devastating to families.

Is this legislation legal under our state constitution and under Federal IDEA?

This legislation may not even be legal under IDEA, where it is stated that only a school district can be responsible for developing and implementing an Individualized Educational Program (IEP). The IDEA states that school districts cannot delegate that responsibility to another entity. The Council consulted with attorneys familiar with both educational and disability law as well as Special Education Administrators. Under IDEA only a school district can be responsible for developing and implementing an IEP and they can't delegate that responsibility to anyone else. We at the Council ask, what happens if an RPTC does not deliver the IEP services and supports?

In Section 1 Finding (1) it states that students who are admitted to RPTCs are a "special class of students," which is concerning to the Council. To separate one group as a "special class" implies that something unique can be done with regard to their rights. Many children are educated in alternative settings; students who are medically fragile and are homebound or in a hospital, those enrolled in special education day schools, or who are in juvenile detention, or in prisons. While all these students' needs are affected by the constraints of their respective educational settings, their rights are consistent across settings. These students are protected by a long-standing and well-developed body of law, which describes in detail what services school districts are obligated to provide in alternate settings. To create a so-called "special class" of students in a private RPTC is to create a distinction that serves no other purpose besides

requiring their home districts and school boards to enter into contracts to be privately served with public education dollars. RPTCs would be able to argue that as a “special class” with unique needs, these students' IEPs and their daily services must primarily serve the institutional therapeutic purpose, which may not be necessarily aligned with the existing legal guarantee of a Free and Appropriate Public Education (FAPE) in the Least Restrictive Environment (LRE) as guaranteed by IDEA.

Is misuse of terminology in this legislation misleading and damaging?

In Section 1 Finding (4) it is erroneously stated that "students admitted to RPTCs are entitled to FAPE comparable to the education received by other students enrolled in public schools." FAPE is not an entitlement of all students in public education; “free appropriate public education” is a legal term used to describe unique sets of rights which are defined by the IDEA, federal regulations, federal case law, state statutes, and administrative agency decisions which are due to students who are eligible for special education. Other students who experience disabilities that require reasonable accommodation, but who don't require specialized instruction in order to get benefit from their education, are also entitled to a FAPE under Section 504 of the Rehabilitation Act of 1973. There are students in RPTCs that are not eligible for a FAPE, under either of the two federal laws described. By confusing these terms, the proposed finding blurs important distinctions between the equal access rights of students with disabilities and the educational rights of the general education population.

This use of special education terms applied to the entire public education population exposes an important problem with HB 102/SB 103. In IDEA and its implementing regulations, the federal government has created a comprehensive scheme to protect rights, and define legal relationships and obligations among parties. IDEA is very clear that the development, review, implementation, reporting, and revision of an IEP are the responsibility of the Local Education Agency (LEA). This responsibility cannot be reassigned to another agency. CFR 300.325(c) specifically states that “even if a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the public agency and the LEA” [Local Education Agency]. This is of tremendous concern to Special Education Administrators across the state. They know that if NorthStar is not able to implement the requirements of a student's IEP, that the LEA will be held accountable because it is the responsible party under the law. These services include evaluation and re-evaluation, timely IEP development and progress reports, specialized instruction and curriculum, specific staff/student ratios, and related services including occupational therapy, speech, audiology, physical therapy, modified physical education, post-secondary transition, interpreting including sign language, orientation and mobility, and medical services. If NorthStar cannot provide these services, the district is liable. The \$4.25 million dollar case in California started out as a parent filing due process against their son's school district for not having highly qualified teachers as stated in his IEP.

Will this legislation have a disproportionately negative impact on rural Alaska?

And this brings us to the actual special circumstances in Alaska. HB 102/SB 103 will potentially have a disproportionately negative impact on rural Alaskan school districts. Most school boards in Alaska are not aware of this legislation and the requirement for them to enter into a binding contract with a for-profit company, like UHS. According to the draft legislation, the districts must enter into a contract and the only appeals granted are for the RPTC, not for our cash-strapped rural school districts. It is interesting to note that NorthStar appears to be stepping around the Alaska constitutional prohibition of using public education dollars for private schools by claiming they are “contracted services,” yet give themselves the appeal process of public charter schools. Smaller Alaskan school districts work with a tight budget and the impact of one child going to a residential facility and being billed at any time of the year for educational services creates a high degree of financial uncertainty. We foresee that rural districts may dis-enroll students once they enter into NorthStar, placing the contractual obligation for that child squarely on the shoulders of the Anchorage School

District. Not only do we see this as a tremendous disconnect from a student's home, community, and school, we also wonder if this legislation would result in state overreach and run counter to Alaska's commitment to educational planning in the hands of local school districts and school boards.

Conclusion

In conclusion, the Council urges the legislature not to pass HB 102/SB 103 because the current communication issue between ASD and NorthStar can be solved without legislation that takes educational programming out of the hands of the school districts, who are legally required to provide it. These RPTC facilities are likely not better suited to provide such education, as demonstrated by several lawsuits in other states and an overall shortage in the qualified Alaskan workforce. Such governmental overreach is likely to be met with public outcry, as parental access could be restricted to their children's education in such facilities. Not only is this legislation likely illegal under both state and federal law, but it will have a disproportionately negative affect our small rural schools.

Thank you for your time and the opportunity to provide feedback on this legislation.

Sincerely,

A handwritten signature in black ink, appearing to read "David Kohler". The signature is fluid and cursive, with the first name "David" and last name "Kohler" clearly distinguishable.

David Kohler, Chair
Education Committee
Governor's Council on Disabilities & Special Education