

STATE OF ALASKA

Department of Education & Early Development

Division of Teaching & Learning Support

SARAH PALIN, GOVERNOR

GOLDBELT PLACE
801 WEST 10TH STREET, SUITE 200
P. O. BOX 110500
JUNEAU, ALASKA 99811-0500
(907) 465-2972
(907) 465-2806 FAX
art.arnold@alaska.gov

To: Special Education Directors / Coordinators

From: Art Arnold, Director of Special Education

Date: September 26, 2007

Subject: Guidance Memorandum: Correlation between Federal Statute and Federal Regulations

The following list of changes and revisions to the Alaska Special Education Handbook took place following the reauthorization of IDEA 2004 on December 4, 2004 and again with the introduction of the federal regulations on August 14, 2006. All revisions noted here have been made and incorporated into the most current version of the Alaska Special Education Handbook, September 2007 Revision.

Each revision becomes necessary to reflect changes, revisions and additions or deletions in state or federal regulation. The following changes occurred due to the reauthorization of IDEA 2004. These changes reflect the work of the special education staff with the Alaska Department of Education & Early Development.

This Guidance Memorandum highlights the changes that have taken place since January 2004 (issuance of federal statute), as well as changes that are reflected since August 15, 2006 (issuance of the federal regulations).

The following format is presented to highlight the changes:

- **The “Part” and “Section” that was changed, added, deleted or otherwise revised**
 - Correlation with Federal Statute and Federal Regulation
 - A brief description of any change that was made and noted from the Federal Statute
 - When needed, a brief description of any significant change that was made and noted in the Federal Regulation

Please let me know of any concerns that you may have with the following changes. Please be assured that the changes will be reflected in the next revision of the Alaska Special Education Handbook and will be discussed at the State Special Education Directors’ Conference.

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➤ **Part I – Introduction**

Section 4 – Basic Concepts

- 20 USC 1412 a 11 A 34 CFR §300.149
 - New Provision: Homeless Children added to IDEA

- 20 USC 1412 a 25 34.CFR §300.174
 - New Provision: Prohibition of Mandatory Medications

➤ **Part II – Identification**

Section 5 – Screening Programs

- 20 USC 1414 a 1 E 34 CFR §300.302
 - New Provision: Screening for instructional strategies.

➤ **Part III – Evaluations and Eligibility**

Section 2 – Initial Evaluation

- 20 USC 1414 c 1 B ii 34 CFR §300.305a2Bii
 - Revised to require academic achievement and related developmental needs.

- 20 USC 1414 c 4 34 CFR §300.305d1
 - Revised to add reference to the child’s educational needs.

- 20 USC 1414 c 4 A ii 34 CFR §300.305d1ii
 - Revised to expand parent’s right to receive an evaluation about the child’s educational need.

Section 3 – Parental Consent

- 20 USC 1414 a 1 C ii 34 CFR §300.301d
 - New Provision: The timeline for initial evaluation will not apply in two situations: Moving to a new district, and when the parent fails or refuses to produce the child for evaluation.

- 20 USC 1414 a 1 d i II 34 CFR §300.300a
 - New Provision: Clarifies that the public agency must seek parental consent before providing special education services, in addition to seeking consent before evaluation

- 20 USC 1414 a 1 d ii I 34 CFR §300.300a3i
 - New Provision: If parents refuse to provide initial consent for services, the agency will not be considered to have failed to provide FAPE to the child and shall not be required to convene IEP meetings about the child.

➤ **Part III – Evaluations and Eligibility – CONTINUED**

Section 5 – Evaluation Procedures

- 20 USC 1414 b 5 A 34 CFR §300.306b1
 - Revised to include the essential components of reading instruction as defined by Reading First.

- 20 USC 1414 b 3 A ii 34 CFR §300.304c
 - Revised to provide additional requirements for assessments and other evaluation materials used to assess children.

Section 6 – Evaluation Summary & Eligibility Report

- 20 USC 1414 b 4 A 34 CFR §300.306
 - Revised and expanded to include the educational needs of the child.

Section 7 – Re-evaluation Procedures

- 20 USC 1414 c 1 B ii 34 CFR §300.305a2Bii
 - Revised to require consideration of whether additional data are needed about the child’s present level of achievement and related developmental needs.

Section 8 – Eligibility Criteria for Disability Categories

- 20 USC 1412 a 24 34 CFR §300.173
 - New Provision: States must have in effect policies and procedures designed to prevent inappropriate over-identification or disproportionate representation by race or ethnicity of children with disabilities, including particular disability categories.

- 20 USC 1414 b 6 34 CFR §300.307
 - New Provision: Provides that LEAs are not required to consider whether a child has a severe discrepancy between achievement and intellectual ability when determining whether a child has a learning disability...permits LEAs to use the response to research-based intervention as a part of the evaluation process.

Section 9 – Overidentification and Disproportionality

- 20 USC 1418 d 1 34 CFR §300.173 and §300.646
 - Revised to add the requirement that states examine data at both the SEA and LEA level and determine if disproportionality is occurring.

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➤ **Part IV - IEP Development, Implementation, Review & Revision**

Section 1 - Overview

- 20 USC 1414 c 5 B I-II 1 34 CFR §300.305e2
 - New Provision: Clarifies that an evaluation is not required before terminating a child's eligibility due to graduation with a regular diploma or due to exceeding the age of eligibility for FAPE. The LEA must provide a summary of the child's academic achievement and functional performance.

Section 4 – Participants in IEP Meetings

- 20 USC 1414 d 1 B ii 34 CFR §300.321a
 - Revises the IEP Team to include not less than 1 regular teacher and not less than 1 special education teacher. (The prior law referred to “at least one” in both places.)
- 20 USC 1414 d 1 B – d 1 D 34 CFR §300.321b3
 - New Provision: Invited participants to IEP Team meetings.
- 20 USC 1414 d 1 C 34 CFR §300.321e1
 - New Provision: Permits an IEP Team member to be excused from attending the meeting if the parties agree that the individual's attendance is not necessary because of the member's curriculum or the service is not being discussed.
- 20 USC 1414 d 1 C ii 34 CFR §300.321e2
 - New Provision: Permits the excusal of a team member if the request is made in writing prior to the meeting and the parent and agency agree to the absence.
- 20 USC 1414 d 1 D 34 CFR §300.321f
 - New Provision: The public agency at the request of the parent must invite Part C program to the IEP meeting for a child transitioning from Part C to Part B services.

Section 5 – Parent Participation

- 20 USC 1415 f 3 B 34 CFR §300.511d
 - New Provision: Requires that a party requesting a Due Process Hearing can not raise issues in a hearing that were not raised in the notice unless the other party agrees.

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➤ **Part IV - IEP Development, Implementation, Review & Revision - CONTINUED**

- 20 USC 1415 k 4 34 CFR §300.533
 - Revised to add the requirement that during an appeal the child remains in the interim alternative setting until the hearing officer decision or expiration of the removal period.

- 20 USC 1415 k 5 A 34 CFR §300.534
 - Revised to add protections for children not yet eligible for special education and related services.

Section 8 – Content of the IEP

- 20 USC 1415 n 34 CFR §300.305
 - New Provision: Parents can elect to receive notices required by 20 USC 1415 through email if the agency makes such an option available.

- 20 USC 1414 d 1 A i. I 34 CFR §300.305e3
 - Revised to require a statement of Present Level of Academic Achievement and Functional Performance.

- 20 USC 1414 d 1 A i. II 34 CFR §300.320a2
 - Revised to refer to both academic and functional goals, to delete the requirement for the use of short term objectives or benchmarks for all children with disabilities, and to refer to general education curriculum.
 - In Alaska, every student’s IEP must have goals and short term objectives.

- 20 USC 1414 d 1 A i. III 34 CFR §300.320a3
 - Revised to require a statement of how the child’s progress will be measured, determining when periodic report or progress are provided.

- 20 USC 1414 d 1 A i. IV 34 CFR §300.320a4
 - Revised to provide the statement of special education and related services and supplementary aids and services are based on peer reviewed research to the extent practicable and to refer to the general education curriculum.

- 20 USC 1414 d 1 A i. VI 34 CFR §300.320a6i
 - Revised to require a statement of any accommodations that are necessary to measure the academic achievement and functional performance on assessments. Must contain a statement why a child cannot participate in regular assessments.

➤ **Part IV - IEP Development, Implementation, Review & Revision - CONTINUED**

- 20 USC 1414 d 1 A i. VIII aa bb 34 CFR §300.320b
 - Replaces previous transition requirements with one that states that beginning not later than when the child turns 16...the IEP must contain measurable post secondary goals and services needed to assist the child in reaching those goals.

- 20 USC 1414 d 1 A ii 34 CFR §300.320d
 - Provided that the IEP team need not include information under a component of the IEP that is already included elsewhere in the IEP.

Section 12 – Discipline Procedures

- 20 USC 1412 a 22 34 CFR §300.170
 - Revises the provision to require that the data on suspension and expulsion rates also be disaggregated by race and ethnicity.

- 20 USC 1415 k 1 A 34 CFR §300.530a
 - New Provision: Permits school personnel to consider any unique circumstances on a case by case basis when deciding to order a change in placement for a child violating school conduct code.

- 20 USC 1415 k 1 B 34 CFR §300.530b
 - New Provision: Permits school personnel to move a child with a disability for not more than 10 school days for any violation of school code of conduct.

- 20 USC 1415 k 1 C 34 CFR §300.530c
 - New Provision: Permits school personnel to discipline a child with a disability for the same length of time and in the same manner as non-disabled children for behavior found not to be a manifestation of the child's disability, except educational services must continue, although in another setting.
 -

- 20 USC 1415 k 1 D (new subsection) 34 CFR §300.530d
 - New Provision: Adds that a student receive as appropriate a functional assessment, behavioral intervention services and modifications that are designed to address the behavior violation so that it does not re-occur.

- 20 USC 1415 k 1 E 34 CFR §300.530e
 - Revises and establishes a new standard for Manifestation Determination. Team to determine if the conduct in question was caused by or is in relationship to the child's disability, or is the direct result of the LEAs failure to implement the IEP.

➤ **Part IV - IEP Development, Implementation, Review & Revision - CONTINUED**

- 20 USC 1414 k 1 F 34 CFR §300.530f
 - New Provision: If behavior was a manifestation of the child’s disability the IEP Team must conduct an FBA and implement a Behavior Intervention Plan. The child must be returned to the placement from which they were removed unless the parent and the LEA agree otherwise.

- 20 USC 1415 k 1 G 34 CFR §300.530g
 - New Provision: Permits removal of a student for not more than 45 school days under special circumstances involving weapons, drugs, and serious bodily injury.

- 20 USC 1415 k 2 34 CFR §300.531
 - Provides that the interim alternative education setting for removal of more than 10 school days for behavior that is not a manifestation or subject to the 45 school days removal is determined by the IEP Team.

- 20 USC 1414 k 5 C 34 CFR §300.534c
 - New Provision: Adds exception that an LEA will not be deemed to have a basis of knowledge if the parent has not allowed an evaluation or has refused services under Part B.

Section 15 – Assistive Technologies Devices & Assistive Technology Services

- 20 USC 1412 a 23 A 34 CFR §300.172
 - New Provision: Requires states to adopt the NIMAS of the provision of instructional materials to blind and others with print disabilities in a timely fashion. SEAs must work with the State agency for assisted technology in carrying out these requirements.

- 20 USC 1413 a 6 34 CFR §300.17221
 - New Provision: Requires that not later than 2 years after the enactment of IDEA 2004 an LEA must acquire the print material in the same manner and condition as the SEA. LEA must assure the SEA that they will provide instructional materials in a timely manner.

Section 16 – Statewide and District Assessments

- N/A
 - All changes compliant with Noon vs. Alaska decision. Changes reflect the revision of the Participation Guidelines.

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➤ **Part IV - IEP Development, Implementation, Review & Revision - CONTINUED**

Section 20 – Private Schools

- 20 USC 1412 a 10 A 34 CFR §300.129-139
 - Revised to add the requirement for LEAs to consult about child find, use of state and local funds, and keep records on numbers of children evaluated and number of children found eligible. The LEA must obtain written affirmation that consultation occurred. Private Schools can complain to the SEA. Services must be secular, neutral, and non-denominational.

- 20 USC 1412 10 C iv 34 CFR §300.148e
 - Revised to add the requirement to separate out the exceptions to the reduction in reimbursements that apply automatically if found that those that are discretionary on the part of a court or hearing officer.

Section 22 – Review / Revision of IEP

- 20 USC 1414 d 1 A i. I aa 34 CFR §300.320a1i
 - Revised to change the general curriculum to “general education curriculum.”

- 20 USC 1414 d 3 D 34 CFR §300.324a4
 - New Provision: Changes to the IEP after the annual IEP meeting can occur without a meeting if the parents and the LEA agree and develop a written document to amend or modify the IEP.

- 20 USC 1414 d 3 E 34 CFR §300.324a5
 - New Provision: Requires that LEAs encourage the consolidation of re-evaluation meetings and other IEP meetings.

- 20 USC 1414 d 3 F 34 CFR §300.324a6
 - New Provision: Clarifies that amendments to IEPs can be made by the entire team or by just the parent and LEA and that the IEP can be amended rather than completely redrafted unless the parent requests a revised copy with amendments incorporated.

- 20 USC 1414 d 4 A i. N/A
 - Revised to refer to general education curriculum rather than “general curriculum” in prior law.

➤ **Part V – Placement in the Least Restrictive Environment**

There are no changes to Part V of the Alaska Special Education Handbook

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➤ **Part VI – Program Exit**

Section 1 – Discontinuation of Services

- 20 USC 1414 c 5 B I&II 34 CFR §300.305e2
 - New Provision: Clarifies that an evaluation is not required before terminating a child’s eligibility due to graduation with a regular diploma or exceeding the age of eligibility. The LEA shall provide a summary of the child’s academic achievement and functional performance including how to assist with post school goals.

➤ **Part VII – Procedural Safeguards and Confidentiality**

Section 4 – Mediation

- 20 USC 1415 i. 3 B i.-ii 34 CFR §300.517a1iii
 - New Provision: incorporates into IDEA the standard of Fed. R. Civ. Pro 11 and case law providing for public agencies to recover attorney’s fees if the case was frivolous, unreasonable or without foundation or was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the costs of litigation.

Section 5 – Administrative Complaint Procedure

- 20 USC 1415 b 6 A 34 CFR §300.507
 - Revised to provide that any party has a right to a hearing (previous only parents) and adds a new provision that a request for hearing be filed within two years of when the parents or agency knew or should have known, unless the state has an explicit timeline for presenting complaints. Alaska’s timeline is 1 year.
- 20 USC 1415 b 7 A 34 CFR §300.508
 - Revises the content of the due process complaint notice to refer to available contact information for homeless children and adds a new requirement that a party or their attorney must file a notice before a party can have a due process hearing.
- 20 USC 1415 f 3 C 34 CFR §300.511e
 - New Provision: Creates a federal default of 2 years time limit to file a due process hearing unless the state has established an explicit timeline for requesting a hearing. (Alaska’s timeline is 1 year as noted in 4 AAC 52.500 – Complaint Procedure)

Section 6 – Impartial Due Process Hearings

- 20 USC 1415 b 6 A 34 CFR §300.507
 - Revised to provide that any party has a right to a hearing (previous only parents) and adds a new provision that a request for hearing be filed within two years of when the parents or agency knew or should have known,

➤ **Part VII – Procedural Safeguards and Confidentiality - CONTINUED**

unless the state has an explicit timeline for presenting complaints. Alaska’s timeline is 1 year.

- 20 USC 1415 c 2 A 34 CFR §300.508
 - New and detailed requirements that a due process complaint notice be considered to be sufficient unless the receiving party notifies the hearing officer and the complainant within 15 days of receipt that the notice does not meet the content requirements. The agency must provide prior written notice within 10 days if the agency has not provided prior written notice about the issues in the complaint: that a non complaining party respond within 10 days specifically addressing the issues of the complaint; or that a hearing officer make a determination about sufficiency of the due process complaint notices within 5 days; or that a complaint notice may be amended with the written consent of the other party and a resolution meeting, that a hearing officer grant permission to amend the due process complaint notice but not within the 5days of the due process hearing; and that the due process hearing timelines recommence upon the filing of the amended notice.
- 20 USC 1415 b 7 A 34 CFR §300.508c
 - Revises the content of the due process complaint notice to refer to available contact information for homeless children and adds a new requirement that a party or their attorney must file a notice before a party can have a due process hearing.
- 20 USC 1415 f 1 B i. 34 CFR §300.510a
 - New Provision: Requires that prior to a due process hearing the LEA convene a meeting with the parent and the relevant members of the IEP team with specific knowledge of the facts in the complaint within 15 days of receipt of the complaint, to discuss and attempt to resolve the complaint.
- 20 USC 1415 f 3 C 34 CFR §300.511e
 - New Provision: Creates a federal default of 2 years time limit to file a due process hearing unless the state has established an explicit timeline for requesting a hearing. (Alaska’s timeline is 1 year.)
- 20 USC 1415 f 3 D 34 CFR §300.511f
 - New Provision: The timeline shall not apply to a parent if the parent was prevented from filing.

➤ **Part VII – Procedural Safeguards and Confidentiality - CONTINUED**

- 20 USC 1415 f 3 E 34 CFR §300.513
 - New Provision: Adds new requirement that FAPE was not provided only if those inadequacies impeded the child’s right to FAPE, significantly impeded the parents opportunity to participate in the decision making regarding FAPE, or caused a deprivation of education benefits.

- 20 USC 1415 f 1 B i. II 34 CFR §300.510a1i-ii
 - New Provision: The meeting must include someone from the agency with decision making authority on behalf of the agency and may not include an LEA attorney unless the parents bring an attorney. The parties may agree in writing to waive the meeting and agree to Mediation.

- 20 USC 1415 f 1 B ii 34 CFR §300.510b
 - New Provision: If the LEA has not resolved the complaint to the satisfaction of the parents within 30 days of receipt of the complaint the due process hearing may occur.

- 20 USC 1415 f 1 B iii 34 CFR §300.510d
 - New Provision: If there is a resolution the parties shall execute written signed document that is enforceable in any state court of competent jurisdiction or in federal court.

- 20 USC 1415 f 1 B iv 34 CFR §300.510e
 - New Provision: A party can void a written agreement within 3 business days.

- 20 USC 1415 k 4 34 CFR §300.533
 - New Provision: Permits school personnel to consider any unique circumstances on a case-by-case basis when deciding to order a change in placement for a child violating a school conduct code.

Section 7 – Surrogate Parents

- 20 USC 1415 b 2 A ii 34 CFR §300.519a4 and 34 CFR §300.519f
 - New Provision: Requires that a child who is the ward of the state, the Surrogate parent may be appointed by the judge overseeing the child’s care provided that person meets the non-employee standard.

➤ **Part VIII – Personnel**

Section 1 – Teachers

- 20 USC 1412 a 14 A 34 CFR §300.156a
 - Revised to add requirement that qualifications to ensure that personnel have the content knowledge and skills to serve children with disabilities.

➤ **Part VIII – Personnel - CONTINUED**

- 20 USC 1412 a 14 C 34 CFR §300.156c
 - New Provision: Requires that each special education teacher meet the definition of highly qualified by the 2005-2006 school year.

Section 7 – Personnel Development

- 20 USC 1412 a 14 D 34 CFR §300.156d
 - New policy requirement that states shall have a policy that includes a requirement that LEAs take measurable steps to recruit, retain and train highly qualified personnel.

- 20 USC 1412 a 14 E 34 CFR §300.156e
 - New Provision: Provides that failure of personnel to meet these standards does not create a right of action or prevent a complaint to the SEA about the staff qualifications.

➤ **Part IX - Funding**

Section 3 – Federal Special Education Funding

- 20 USC 1413 a 4 A 34 CFR §300.208
 - Revised to provide for additional use of funds without regard to excess cost and commingling requirements for early intervening.

Section 6 – Methods of Ensuring Services

- 20 USC 1413 a 2 C 34 CFR §300.205
 - New Provision: that requires LEA may reduce the amount of local fiscal effort by not more than 50% of any increase in the amount of federal allocation as long as the LEA uses an equal amount of local fund to carry out the activities authorized by ESEA.

➤ **Part X – Compliance Monitoring**

Section 4 – Continuous Improvement Monitoring Process (CIMP)

- 20 USC 1412 a 15 34 CFR §300.157
 - Revised to connect more closely with the performance goals under ESEA to require annual as opposed to biannual reporting. Also deleted reference to modifications to a State Improvement Plan under prior law.

➤ **Part XI - Parent Information**

There are no changes to Part XI of the Alaska Special Education Handbook

➤ **Part XII – State Performance Plan / Annual Performance Report (NEW PART)**

Section 1 – Overview of State Performance Plan and IDEA Requirements

- Section 616(b) 34 CFR §300.601

➤ **Part XII – State Performance Plan / Annual Performance Report (NEW PART) - CONTINUED**

Section 2 – Explanation of the Twenty Required Indicators

- 20 USC 1412 a 22
- 20 USC 1416 a 3 A
- 20 USC 1416 a 3 B
- 20 USC 1416 a 3 C

Section 3 – Explanation of Public Reporting Requirements

- Section 616 b 2 C ii I

Section 4 – Federal Guidance on Determination Settings

- Section 616 b
- 34 CFR §300.601
- 34 CFR §300.602
- 34 CFR §300.603
- 34 CFR §300.604
- 34 CFR §300.605

Section 5 – Alaska’s Procedures for Determination Setting

- Section 616 b
- 34 CFR §300.601
- 34 CFR §300.604 a 3
- 34 CFR §300.604 b 2 v

➤ **Appendix A – Miscellaneous Forms**

- Aligned Referral form to Consent for Evaluation
- Aligned Title VI-B and Section 619 Grant Applications to current fiscal year

➤ **Appendix B – Child Identification Forms**

- Aligned Consent for Evaluation with Referral form.

➤ **Appendix C – Evaluation and Eligibility Forms**

- Aligned Evaluation Summary and Eligibility Report to Consent for Evaluation Referral form.

➤ **Appendix D – IEP and Placement Forms**

Section 3 – IEP Form

- 20 USC 1414d 3 A iv 34 CFR §300.324a1iv
 - Revised to add the requirement that the IEP Team consider the academic, developmental and functional needs of the child. Significant changes to IEP form.

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➤ **Appendix D – IEP and Placement Forms - CONTINUED**

Section 10 – Exit Form

- Aligned to IDEA 2004

Section 11 – Summary of Performance Form (NEW SECTION)

- Aligned to IDEA 2004

➤ **Appendix E – Procedural Safeguards**

Section 1 – Prior Written Notice

- 20 USC 1415 d 1 A 34 CFR §300.504
 - Revised to provide Procedural Safeguards Notice to be given to parents once a year except a copy must also be provided on initial referral, or when a parent requests evaluations, or at the parent request, or at the initial filing of a Due Process Hearing.
- 20 USC 1415 d 1 B 34 CFR §300.504b
 - New Provision: Notes that a Local Education Agency may place a current copy of the Procedural Safeguards Notice on its internet Website.

Section 11 – Resolutions Sessions Forms (NEW SECTION)

- Aligned to IDEA 2004.

➤ **Appendix F – Personnel Forms**

There are no changes to Appendix F of the Alaska Special Education Handbook

➤ **Appendix G – Secondary Transition**

All changes related to the Secondary Transition Plan are noted in the IEP section of the Handbook.

➤ **Appendix H – Assistive Technology**

There are no changes to Appendix H of the Alaska Special Education Handbook

➤ **Appendix I – Classroom Accommodations**

There are no changes to Appendix I of the Alaska Special Education Handbook

➤ **Appendix J – Behavioral Interventions and Discipline**

- Functional Behavioral Assessment, Behavior Intervention Plan and the Manifestation Determination are significantly changed to comply with IDEA 2004.

➤ **Appendix K – Parent Information**

There are no changes to Appendix K of the Alaska Special Education Handbook

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➤ **Appendix L – Assessments**

There are no significant changes to Appendix L of the Alaska Special Education Handbook

➤ **Appendix M – State Performance Plan / Annual Performance Report Forms -
(NEW APPENDIX)**

➤ **Glossary of Commonly Used Terms**

There are no significant and substantive changes to Glossary of Commonly Used Terms of the Alaska Special Education Handbook

➤ **Resources**

Additional Resources have been added to the Alaska Special Education Handbook