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Lieutenant Governor
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**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

MEMORANDUM

TO: Eric Fry, Department of Education and Early Development

FROM: Scott Meriwether, Office of the Lieutenant Governor 
465.4081

DATE: August 11, 2016

RE: Filed Permanent Regulations: Board of Education and Early Development

Board of Education and Early Development Regulation re: Diagnosis of Fetal Alcohol Spectrum Disorder (4 AAC 52.130(k))

Attorney General File:	JU2015200752
Regulation Filed:	August 10, 2016
Effective Date:	September 9, 2016
Print:	219, October 2016

cc with enclosures: Linda Miller, Department of Law
Dianne Blumer, Administrative Regulation Review Committee
Judy Herndon, LexisNexis

ORDER CERTIFYING THE CHANGES TO
REGULATIONS OF THE STATE BOARD OF EDUCATION
& EARLY DEVELOPMENT

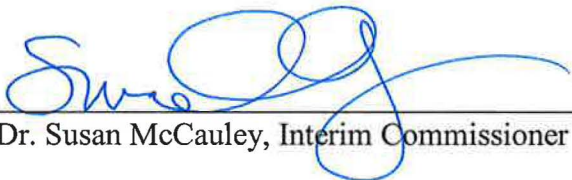
The attached one page of regulations, dealing with criteria for the determination of eligibility for special education services, is certified to be a correct copy of the regulation changes that the State Board of Education & Early Development adopted at its December 11, 2015, meeting, under the authority of AS 14.07.020 and AS 14.07.060 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

On the record, in considering public comments, the State Board of Education & Early Development paid special attention to the cost to private persons of the regulatory action being taken.

The regulation changes described in this order take effect on the 30th day after they have been filed by the lieutenant governor, as provided in AS 44.62.180.

Date: 3-11-16




Dr. Susan McCauley, Interim Commissioner

FILING CERTIFICATION

I, Byron Mallott, Lieutenant Governor for the State of Alaska, certify that on

August 10, 2016 at 1050A m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.



Lieutenant Governor

Effective: September 9, 2016

Register: 219, October 2016

4 AAC 52.130(k) is amended to read:

(k) To be eligible for special education and related services as a child with other health impairments, a child must

(1) exhibit limited strength, vitality, or alertness due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, **fetal alcohol spectrum disorder**, [OR] diabetes, or a heightened alertness to environmental stimuli, due to attention deficit disorder [(ADD)] or attention deficit hyperactivity disorder [(ADHD)]; **for a child** to be eligible, a health impairment must adversely affect that child's educational performance;

(2) require special facilities, equipment, or methods to make the child's ^{bold} educational program effective;

(3) be diagnosed by a licensed physician or licensed advanced nurse ^{practice registered} practitioner as having a health impairment described in (1) of this subsection; and

(4) be certified by the group established under 4 AAC 52.125(a)(2) as qualifying for and needing special education services.

(Eff. 7/1/83, Register 86; am 6/9/85, Register 94; am 7/16/89, Register 111; am 11/28/92, Register 124; am 11/26/93, Register 128; am 8/22/2001, Register 159; am 9/29/2005, Register 175; am 8/30/2007, Register 183; am 8/19/2009, Register 191; am 11/28/2009, Register 192; am 9/9/2016, Register 219)

Authority: **AS 14.07.020**

AS 14.30.180

AS 14.30.335

AS 14.07.060

AS 14.30.274

MEMORANDUM

State of Alaska Department of Law

To: Hon. Byron Mallott
Lieutenant Governor

Date: August 3, 2016

File No.: JU2015200752

Tel. No.: 465-3600

From: Susan R. Pollard *SRP*
Chief Assistant Attorney General
and Regulations Attorney
Legislation and Regulations Section

Re: Board of Education and Early
Development Regulation re: 4 AAC
52.130(k): Diagnosis of Fetal
Alcohol Spectrum Disorder

The Department of Law has reviewed the attached regulation against the statutory standards of the Administrative Procedure Act. Based upon our review, we find no legal problems. This memorandum and the attached duplicate memorandum dated August 3, 2016, constitute the written statement of approval under AS 44.62.060(b) and (c) that authorizes your office to file the attached regulations.

The regulations were adopted by the board after the close of the public comment period. The regulation would add "fetal alcohol spectrum disorder" to the list of conditions that may be considered for the purpose of determining eligibility for special education services and allow an advanced practice registered nurse in addition to a physician to be a person authorized to make the diagnosis.

The September 26, 2015 public notice and the March 3, 2016 certification of adoption order both state that this action is not expected to require an increased appropriation. Therefore, a fiscal note under AS 44.62.195 is not required.

We have made some technical corrections to conform the regulation to the updated term "advanced practice registered nurse" (ch. 33, SLA 16) in accordance with AS 44.62.125. The corrections are shown on the attached copy of the regulations.

SRP:jc

cc: Hon. Dr. Michael Johnson, Commissioner
Department of Education and Early Development

MEMORANDUM

State of Alaska
Department of Law

To: Hon. Dr. Michael Johnson
Commissioner
Department of Education and Early
Development

Date: August 3, 2016

File No.: JU2015200752

Tel. No.: 465-3600

From: Susan R. Pollard *SRP*
and Regulations Attorney
Legislation and Regulations Section

Re: Department of Education and Early
Development: 4 AAC 52.130

Under AS 44.62.060, we have reviewed the Department of Education and Early Development changes to this regulation and approve the changes for filing by the lieutenant governor.

You might wish to contact the lieutenant governor's office to confirm the filing date and effective date of the attached regulations changes.

The September 26, 2015 public notice and the certification of adoption order both state that this action is not expected to require an increased appropriation. Therefore, a fiscal note under AS 44.62.195 is not required.

We have made some technical corrections to the regulations in accordance with AS 44.62.125 by making a deletion for consistency with the other subsections of 4 AAC 52.130 and to update terminology for advance practice registered nurses, as shown on the attached copy.

SRP:jc

cc w/ enclosures:

Eric Fry, Regulations Contact
Department of Education and Early Development

Luann E. Weyhrauch, Assistant Attorney General
Labor and State Affairs Section

AFFIDAVIT OF BOARD ACTION

I, Shawn Sypeck, Executive Secretary to the State Board of Education & Early Development, being duly sworn, state the following:

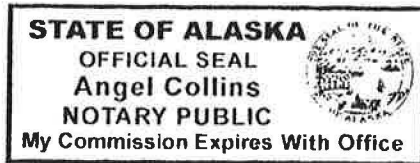
The attached motion dealing with the criteria for the determination of eligibility was passed by the State Board of Education & Early Development during its December 11, 2015, meeting.

Date: 12/21/15

Shawn Sypeck
Shawn Sypeck, Executive Secretary

Subscribed and sworn to before me at Juneau, AK on

12/21/15



Angel Collins
Notary Public in and for the State of Alaska

State Board of Education and Early Development Meeting
December 11, 2015
Excerpt from Unapproved Minutes

Board member John Harmon moved and member Kathleen Yarr seconded the following motion:

After considering all public comment, I move the State Board of Education & Early Development adopt the proposed amendments to 4 AAC 52.130(k) Criteria for the determination of eligibility.

The motion carried unanimously.

NOTICE OF PROPOSED CHANGES ON DIAGNOSING FETAL ALCOHOL SPECTRUM
DISORDER IN THE REGULATIONS OF
THE DEPARTMENT OF EDUCATION & EARLY DEVELOPMENT

The Department of Education & Early Development proposes to adopt regulation changes in Title 4 of the Alaska Administrative Code dealing with diagnosing fetal alcohol spectrum disorder, including the following:

4 AAC 52.130(k) is proposed to be changed as follows:

1. Add fetal alcohol spectrum disorder to the list of health impairments that may render a student eligible for special education and related services as a child with other health impairments; and
2. Allow advanced nurse practitioners with certification in psychiatry or family practice to diagnose fetal alcohol spectrum disorder in determining a student's eligibility for special education and related services as a child with other health impairments.

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to the Commissioner's Office, Department of Education & Early Development, Attn: Regulations Review, 801 West Tenth Street, Suite 200, PO Box 110500, Juneau, Alaska 99811-0500. Additionally, the Department of Education & Early Development will accept comments by facsimile at (907) 465-4156; by electronic mail at shawn.sypeck@alaska.gov; and at <https://education.alaska.gov/regs/comment.cfm>. Comments also may be submitted through the Alaska Online Public Notice System by accessing this notice on the system and using the comment link. The comments must be received not later than 4:30 p.m. on October 30, 2015.

Oral comments may be submitted at a hearing to be held on December 10, 2015, at the Anchorage School District's board room at 5530 E. Northern Lights Blvd., Anchorage, Alaska. The hearing will be held from 8:15 a.m. to 9:00 a.m. and might be extended to accommodate those present before 7:55 a.m. who did not have an opportunity to comment.

You also may comment at this hearing, during this time only, via the Legislative Information Office streaming by calling **1-844-586-9085** if you are outside of Juneau. **For participation from Juneau, call 586-9085. This meeting will be streamed through the Legislative Information Office over <http://www.alaskalegislature.tv/> beginning at 8:00 a.m. December 10, 2015, and 8:30 a.m. December 11, 2015 (audio only).**

Persons also may comment at the oral hearing via the following Legislative Information Offices: Anchorage, 716 W 4th Ave., Suite 100; Barrow, 119 Bank Building.; Bethel, 301 Willow Street; Fairbanks, 1292 Sadler Way, Suite 308; Juneau, Suite 111, Terry Miller Building, State Capitol; Kenai, 145 Main Street Loop, Suite 217; Ketchikan, 1900 First Avenue, Suite 310; Kodiak, 305 Center Ave., Suite 1; Kotzebue, 373 2nd Street, Pillautuq Centre; Mat-Su, 600 East Railroad Ave.; Nome 103 Front Street; Seward, 302 Railway, Suite 107; Sitka, 201 Katlian Street, Suite 103; Unalaska, 029 Airport Beach Road., No. 03-01.

You may submit written questions relevant to the proposed action to Shawn Sypeck at shawn.sypeck@alaska.gov or Department of Education & Early Development, Attn: Shawn Sypeck, 801 West Tenth Street, Suite 200, PO Box 110500, Juneau, Alaska 99811-0500. The questions must be received at least 10 days before the end of the public comment period. The Department of Education & Early Development will aggregate its response to substantially similar questions and make the questions and responses available on the Alaska Online Public Notice System and <https://education.alaska.gov/regs/comment.cfm>.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Ms. Shawn Sypeck at (907) 465-2802 or shawn.sypeck@alaska.gov not later than December 4, 2015, to ensure that any necessary accommodation can be provided.

A copy of the proposed regulation changes is available on the Alaska Online Public Notice System, at <https://education.alaska.gov/regs/comment.cfm>, and by contacting Shawn Sypeck at shawn.sypeck@alaska.gov or 907-465-2851.

After the public comment period ends, the Department of Education & Early Development will either adopt the proposed regulation changes or other provisions dealing with the same subject, without further notice, or decide to take no action. The language of the final regulation may be different from that of the proposed regulation. You should comment during the time allowed if your interests could be affected.

Statutory authority: AS 14.07.060

Statutes being implemented, interpreted, or made specific: AS 14.30.274

Fiscal information: The proposed regulation changes are not expected to require an increased appropriation.

Date: 9/23/15



Les Morse, Deputy Commissioner

ADDITIONAL REGULATION NOTICE INFORMATION
(AS 44.62.190(d))

1. Adopting agency: Department of Education & Early Development
2. General subject of regulation: Diagnosis of fetal alcohol spectrum disorder
3. Citation of regulation (may be grouped): 4 AAC 52.130(k)
4. Department of Law file number, if any: JU2015200752

5. Reason for the proposed action:

- ☐ Compliance with federal law or action (identify):
- ☐ Compliance with new or changed state statute
- ☐ Compliance with federal or state court decision (identify):
- ☒ Development of program standards
- ☐ Other (identify):

6. Appropriation/Allocation: None

7. Estimated annual cost to comply with the proposed action to:

A private person: No cost

Another state agency: No cost

A municipality: No cost

8. Cost of implementation to the state agency and available funding (in thousands of dollars):

	Initial Year FY <u>16</u>	Subsequent Years
Operating Cost	\$ <u>0</u>	\$ _____
Capital Cost	\$ <u>0</u>	\$ _____
1002 Federal receipts	\$ <u>0</u>	\$ _____
1003 General fund match	\$ <u>0</u>	\$ _____
1004 General fund	\$ <u>0</u>	\$ _____
1005 General fund/ program	\$ <u>0</u>	\$ _____
Other (identify)	\$ <u>0</u>	\$ _____

9. The name of the contact person for the regulation:

Name: Dr. Susan McCauley
Title: Director, Teaching & Learning Support
Address: 801 W. 10th Street, Suite 200, Juneau, Alaska
Telephone: 907-465-2803
E-mail address: susan.mccauley@alaska.gov

10. The origin of the proposed action:

☒ Staff of state agency
☐ Federal government
☐ General public
☐ Petition for regulation change
☐ Other (identify): _____

11. Date: September 10, 2015 Prepared by: Eric Fry

Name (printed): Eric Fry
Title (printed): Public Information Officer
Telephone: 907-465-2851

AFFIDAVIT OF NOTICE OF PROPOSED REGULATION
AND FURNISHING OF ADDITIONAL INFORMATION

I, Shawn Sypeck, Executive Secretary to the State Board of Education & Early Development, being sworn, state the following:

As required by AS 44.62.190, notice of the proposed changes to criteria for the determination of eligibility has been given by being

- (1) published in a newspaper or trade publication;
- (2) furnished to interested persons;
- (3) furnished to appropriate state officials;
- (4) furnished to the Department of Law, along with a copy of the proposed regulation;
- (5) furnished electronically to incumbent State of Alaska legislators;
- (6) furnished to the Legislative Affairs Agency, Division of Legal and Research Services;
- (7) posted on the Alaska Online Public Notice System as required by AS 44.62.175(a)(1) and (b) and 44.62.190(a)(1);
- (8) furnished electronically, along with a copy of the proposed regulation, to the Legislative Affairs Agency, the chair of the Education Committee of the Alaska Senate and House of Representatives, the Administrative Regulation Review Committee, and the legislative council.

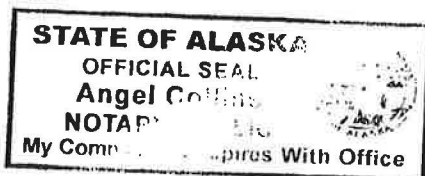
As required by AS 44.62.190, additional regulation notice information regarding the proposed adoption of the regulation changes described above has been furnished to interested persons and those in (5) and (6) of the list above. The additional regulation notice information also has been posted on the Alaska Online Public Notice System.

Date: 12/21/15

Shawn Sypeck
Shawn Sypeck, Executive Secretary

Subscribed and sworn to before me at Juneau, Ak on 12/21/15

Angel Collins
Notary Public in and for the State of Alaska



AFFIDAVIT OF ORAL HEARING

I, Shawn Sypeck, Executive Secretary to the State Board of Education & Early Development, being sworn, state the following:

On December 10, 2015, at 8:15 a.m. in the Anchorage School District's board room at 5530 East Northern Lights Boulevard in Anchorage, Alaska, a public hearing was held under AS 44.62.210 for the purpose of taking oral testimony in connection with the adoption of changes to criteria for the determination of eligibility, and via telephone by 1-844-586-9085, and through the following LIO sites: Anchorage, 716 W 4th Ave., Suite 100; Barrow, 119 Bank Building.; Bethel, 301 Willow Street; Fairbanks, 1292 Sadler Way, Suite 308; Juneau, Suite 111, Terry Miller Building, State Capitol; Kenai, 145 Main Street Loop, Suite 217; Ketchikan, 1900 First Avenue, Suite 310; Kodiak, 305 Center Ave., Suite 1; Kotzebue, 373 2nd Street, Pillautuq Centre; Mat-Su, 600 East Railroad Ave.; Nome 103 Front Street; Seward, 302 Railway, Suite 107; Sitka, 201 Katlian Street, Suite 103; Unalaska, 029 Airport Beach Road., No. 03-01.

Date: 3/18/16

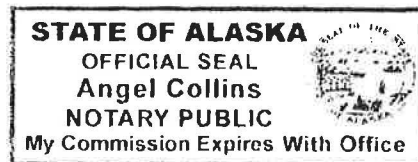
Shawn Sypeck

Shawn Sypeck, Executive Secretary

Subscribed and sworn to before me at Juneau, AK on 3/18/16

Angel Collins

Notary Public in and for the State of Alaska



AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

I, Shawn Sypeck, Executive Secretary to the State Board of Education & Early Development, being duly sworn, state the following:

In compliance with AS 44.62.215, the Department of Education & Early Development has kept a record of its use or rejection of factual or other substantive information that was submitted in writing or orally as public comment and that was relevant to the accuracy, coverage, or other aspect of the Department of Education & Early Development regulation on the criteria for the determination of eligibility.

Date: 12/21/15

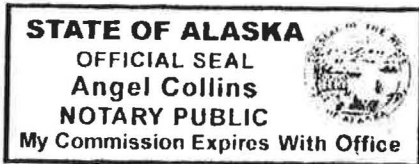
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Subscribed and sworn to before me at Juneau, Ak on 12/21/15.

Angel Collins

Notary Public in and for the State of Alaska



OCT 03 2015

Commissioner's Office

AFFIDAVIT OF PUBLICATION

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STATE OF ALASKA
THIRD JUDICIAL DISTRICT

KAYLA LAVEA

being first duly sworn on oath deposes and says that he/she is a representative of the Alaska Dispatch News, a daily newspaper. That said newspaper has been approved by the Third Judicial Court, Anchorage, Alaska, and it now and has been published in the English language continually as a daily newspaper in Anchorage, Alaska, and it is now and during all said time was printed in an office maintained at the aforesaid place of publication of said newspaper. That the annexed is a copy of an advertisement as it was published in regular issues (and not in supplemental form) of said newspaper on

September 26, 2015

and that such newspaper was regularly distributed to its subscribers during all of said period. That the full amount of the fee charged for the foregoing publication is not in excess of the rate charged private individuals.

Signed

Kayla Lavea

Subscribed and sworn to before me
this 28th day of September, 2015

Britney Thompson

Notary Public in and for
The State of Alaska.
Third Division
Anchorage, Alaska
MY COMMISSION EXPIRES

2/23/2019

Notary Public
BRITNEY L. THOMPSON
State of Alaska

My Commission Expires Feb 23, 2019

NOTICE OF PROPOSED CHANGES ON DIAGNOSING FETAL ALCOHOL SPECTRUM DISORDER IN THE REGULATIONS OF THE DEPARTMENT OF EDUCATION & EARLY DEVELOPMENT

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You may submit written questions relevant to the proposed action to Shawn Syeck at shawn.syeck@alaska.gov or Department of Education & Early Development, Attn: Shawn Syeck, 801 West Tenth Street, Suite 200, PO Box 110500, Juneau, Alaska 99811-0500. The questions must be received at least 10 days before the end of the public comment period. The Department of Education & Early Development will aggregate its response to substantially similar questions and make the questions and responses available on the Alaska Online Public Notice System and <https://education.alaska.gov/regs/comment.cfm>.

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A copy of the proposed regulation changes is available on the Alaska Online Public Notice System, at <https://education.alaska.gov/regs/comment.cfm>, and by contacting Shawn Syeck at shawn.syeck@alaska.gov or 907-465-2851.

After the public comment period ends, the Department of Education & Early Development will publish the proposed regulation changes.