ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON EDUCATION
February 28, 2001
8:04 a.m.

MEMBERS PRESENT

Representative Con Bunde, Chair
Representative Brian Porter
Representative Joe Green
Representative Peggy Wilson
Representative Gary Stevens
Representative Reggie Joule
Representative Gretchen Guess (via teleconference)

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 99
"An Act relating to school discipline and safety programs; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 94
"An Act relating to initiatives for quality schools; relating to pupil competency testing and the issuance of secondary school diplomas; relating to certain reports regarding academic performance of schools; and providing for an effective date."

- HEARD AND HELD

PREVIOUS ACTION

BILL: HB 99
SHORT TITLE:SCHOOL DISCIPLINE AND SAFETY
SPONSOR(S): REPRESENTATIVE(S)MCGUIRE

Jrn-Date	Jrn-Page		Action
01/31/01	0212	(H)	READ THE FIRST TIME - REFERRALS
01/31/01	0212	(H)	EDU, HES, FIN
01/31/01	0212	(H)	REFERRED TO EDU
02/28/01		(H)	EDU AT 8:00 AM CAPITOL 106

BILL: HB 94
SHORT TITLE:PUPIL COMPETENCY TEST;ANNUAL EDUC. REPORT
SPONSOR(S): RLS BY REQUEST OF THE GOVERNOR

Jrn-Date	Jrn-Page		Action
01/26/01	0171	(H)	READ THE FIRST TIME - REFERRALS
01/26/01	0171	(H)	EDU, HES
01/26/01	0172	(H)	FN1: ZERO(EED)
01/26/01	0172	(H)	GOVERNOR'S TRANSMITTAL LETTER
01/26/01	0172	(H)	REFERRED TO EDU
02/14/01		(H)	EDU AT 8:00 AM CAPITOL 106
02/14/01		(H)	Heard & Held
02/14/01		(H)	MINUTE(EDU)
02/28/01		(H)	EDU AT 8:00 AM CAPITOL 106

WITNESS REGISTER

REPRESENTATIVE LESIL McGUIRE
Alaska State Legislature
Capitol Building, Room 418
Juneau, Alaska 99801
POSITION STATEMENT: Sponsor of HB 99.

SANDY ANDERSON, Teacher
and Co-Facilitator of Conflict Resolution
Chugiak High School
PO Box 770218
Eagle River, Alaska 99577
POSITION STATEMENT: Testified on HB 99.

MELODY RADCLIFF, Teacher
Chugiak High School
P.O. Box 770218
Eagle River, Alaska 99577
POSITION STATEMENT: Testified on HB 99.

JUDY MATHEWSON, Teacher
and Co-Facilitator of Conflict Resolution at
Chugiak High School
P.O. Box 770218
Eagle River, Alaska 99577
POSITION STATEMENT: Testified on HB 99.

ROBERT BUTTCANE, Legislative & Administrative Liaison
Division of Juvenile Justice

Department of Health & Social Services
P.O. Box 110635
Juneau, Alaska 99811
POSITION STATEMENT: Testified in support of HB 99.

VERNON MARSHALL, Executive Director
National Education Association-Alaska
114 2nd Street
Juneau, Alaska 99801
POSITION STATEMENT: Testified in support of HB 99.

PHILIP REEVES, Assistant Attorney General
Human Services Section
Civil Division (Juneau)
Department of Law
P.O. Box 110300
Juneau, Alaska 99811
POSITION STATEMENT: Testified on HB 94.

BRUCE JOHNSON, Deputy Commission of Education
Office of the Commissioner
Department of Education & Early Development
801 West 10th Street
Juneau, Alaska 99801
POSITION STATEMENT: Answered questions of HB 94.

ACTION NARRATIVE

TAPE 01-10, SIDE A
Number 0001

CHAIR CON BUNDE called the House Special Committee on Education meeting to order at 8:04 a.m. Members present at the call to order were Representatives Bunde, Porter, Wilson, Stevens, Joule, and Guess (via teleconference). Representative Green joined the meeting as it was in progress.

HB 99-SCHOOL DISCIPLINE AND SAFETY

CHAIR BUNDE announced the committee would hear testimony on HOUSE BILL NO. 99, "An Act relating to school discipline and safety programs; and providing for an effective date."

Number 0163

REPRESENTATIVE LESIL MCGUIRE, Alaska State Legislature, came forth as sponsor of HB 99. She explained:

> HB 99 ... amends Title 14 of the Alaska Statutes to include policies that will seek to initiate student conflict resolution curriculum. It seeks to recognize and enforce existing behavior standards by giving students alternatives to solving problems besides the use of violence. It is our hope that students learn valuable lessons that will result in a safer education environment, by integrating this way of learning [into] schools' core curriculum. These policies are [targeted] at helping students resolve problems before they escalate.

Number 0231

REPRESENTATIVE MCGUIRE stated that the need for this bill has been brought to light through a series of incidents across the state, beginning with the taping of a fight at Service High School [in Anchorage] that was observed by approximately 150 spectators. In Representative McGuire's district, at Dimond High School, there was a fight in which one [student] used an aluminum bat and rendered [another student] unconscious. He was in a coma for a couple of weeks. She said that two students at East High School were recently in a fight in which one student used a knife, and this past Saturday, in Soldotna, two teenagers were arrested after fighting each other with a knife and a hammer. She added that this bill is a meager attempt at trying to allow schools to focus on the problem of dispute resolution and violence. She noted that her original bill would have set up an actual program, but that is not possible now with the lack of finances. Therefore, she seeks to amend the bill and replace it with language that would allow [schools] to implement policies.

[In packets was a document marked "sponsor's Proposed CS Language", which read: "(7) Policies for implementing student conflict resolution strategies that include the nonviolent resolution or mediation of conflict and must provide procedures for reporting and resolving conflicts." This was later adopted as Amendment 1.]

Number 0328

REPRESENTATIVE MCGUIRE stated that one success story is the [Chugiak High School Peaceable Program]. Chugiak, without the help of legislation, sought ways to help train its students in

nonviolent conflict resolution, and has received a federal grant to create a pilot program.

Number 0406

REPRESENTATIVE GREEN shared that his oldest daughter led a conflict resolution program in a high school in Orange County, California, for about five years. The program was dropped [because of financial difficulties]. He remarked that when the program was instituted, [gangs and violence] significantly decreased. He added that since the program was dropped, fighting has gone back up. He stressed that the program does work; however, it is expensive.

Number 0495

CHAIR BUNDE asked why the bill is necessary if [schools] are already able to [have conflict resolution programs].

REPRESENTATIVE MCGUIRE answered that HB 99 amends HB 253 that was instituted last year. She remarked that some of the same questions were asked about HB 253, such as: Why put into law something that some schools are already doing? She expressed that the point [of HB 99] is to raise awareness, both on a public level and an individual school level. While some schools do take the initiative, most do not. She added that even with the lack of resources to create a program, this is a step in the right direction for schools to focus on existing resources, counseling staff, and teachers who might have a dispute resolution background. One of the things that Chugiak has done is to use peers who have been involved in conflicts. She added that her other hope is that [HB 99] will encourage schools to be innovative and seek grants.

Number 615

CHAIR BUNDE remarked that he is sensitive to unfounded mandates. He clarified that the bill, as originally written, would cost somewhere between $20 and $100 for the conflict resolution materials for each teacher, and about $30,000 for staff training. He added that although [HB 99] doesn't have a fiscal note for the state, it would have a fiscal impact for school districts. He asked: If a school voluntarily decides to do this, what would [teachers], whose days are already so full, have to give up?

REPRESENTATIVE MCGUIRE replied that she thinks some of those concerns were addressed when HB 253 was passed last year. She noted that it was encouraging when the Anchorage School District newsletter had a profile on HB 253, which brought to light what schools were required to do. Many of the schools "waived out" and many already had policies in place that addressed these concerns. She said that she feels the safety of children and developing skills to help them prevent violence are important enough topics to require some innovation from the schools. She said in the event that it is not possible for schools to seek federal and state grants, perhaps students could be briefed with something as simple as Chugiak's basic policy. She added that, at a minimum, this would start a conversation at the school level. She stated that she is not proposing that schools dramatically take away teachers from other coursework, or create programs that would drain resources from other required areas. By the same token, she said, any effort to raise awareness in schools is going to be helpful.

Number 0847

REPRESENTATIVE GREEN made a motion to adopt the sponsor's proposed language [provided previously] Amendment 1. There being no objection, Amendment 1 was adopted.

Number 0890

REPRESENTATIVE JOULE remarked that he took a class [in high school] called Social Studies, which dealt with conflict resolution. He asked whether this could be something put into the curriculum at minimal cost so it would just be a matter of course for students.

REPRESENTATIVE MCGUIRE responded that when she took Social Studies at Dimond High School, [conflict resolution] was not a component. She added that many of the programs in schools, such as student government, already encourage student leaders and incorporate some of these methods. However, in her opinion, they are not reaching a broad enough base.

Number 1049

REPRESENTATIVE GREEN stated that he is concerned that if something is being put into statute that is merely a suggestion, without some form of incentive, it won't be accepted. He asked whether Chugiak's response could be administered throughout the school districts without having to change that statute.

REPRESENTATIVE MCGUIRE answered that it is complicated. She said that in the past month and half she has explored many of the ideas Representative Green has suggested and can't come up with one that works. She remarked that Representative Dyson, last year, faced the same challenge when he presented HB 253. He sought to find a way to implement basic values in the school systems in order to keep students and educators safe; however, there wasn't any success. She added that it is wrong to say that because [HB 99] won't accomplish everything, it's not a worthy effort. Any step that will raise the level of awareness about violence and alternative dispute resolution is positive. She said it is necessary to think realistically; it is going to be more effective if schools can find grants and ways for funding.

Number 1229

SANDY ANDERSON, Teacher and Co-Facilitator of Conflict Resolution, Chugiak High School, testified via teleconference. She said that [Chugiak High School] implemented the [conflict resolution program] through references or requests for mediation from the discipline office, the security office, and the teachers. Through education on how the process works and how effective it could be in the classroom, [the staff] have learned that it can be used as an early intervention to classroom conflicts and disruptions.

MS. ANDERSON stated that school districts do need some incentive on implementing this program. She said that working with the teachers in the classroom and with the discipline principle has helped to infuse the [conflict resolution] program in the school so that it is part of the every day operating schedule. She said that the program receives requests on a daily basis, and staff members plan and utilize their lunch hour and conference periods to help supervise mediations. She added that Chugiak has over 20 trained [student] mediators this year who will give up their lunch hour to help mediate or to work with their peers to help settle a problem. Through this process, a lot of potential suspensions have been eliminated.

Number 1334

CHAIR BUNDE asked if the remediation requests come from the students, the teachers, or both.

MS. ANDERSON answered that they can come from both. She noted that the percentage of requests coming from teachers and students has increased this year. She remarked that students are seeing this as a way of interacting more appropriately with their peers when they have a confrontation regarding a rumor, name-calling, or pushing and shoving. Teachers are looking at it as, "I've got a couple of kids in my class that are interacting inappropriately. It's not to the point that it's a disciplinary issue, but it is distracting. I don't have time to deal with it; I'm doing academic things. Can you handle this situation?" Therefore, [these students] are referred [to mediation]. In those instances, many teachers, afterward, say that the entire classroom atmosphere is more pleasant and more positive.

Number 1394

REPRESENTATIVE PORTER asked if this is being done with peer counseling, with students, or with just counselors.

MS. ANDERSON answered that this is being done with peer mediators, students who have been trained in a special workshop so that they can lead the process. She said that this is more effective, peer relating to peer, because they can relate on the same level.

CHAIR BUNDE asked whether [the mediations] are done under adult supervision.

MS. ANDERSON replied that they are. She said that there are five teachers who have helped with mediations who are able to sit in with the student mediators. She added that there is also adult supervision for the teacher-to-student disputes.

CHAIR BUNDE asked if she knew the cost to the district per year.

MS. ANDERSON replied that right now it is costing approximately $5,000 to $6,000.

Number 1450

REPRESENTATIVE STEVENS asked if she could be more specific as to what the costs are.

MS. ANDERSON answered that part of the cost has to do with the training workshop and part has to do with reimbursing time for teachers who give up their time to do the training and

mediation. She said she shares the concern that teachers already have a full load. She added that she and Judy Mathewson, co-facilitator, have flexible schedules so that they are able to give up their conference and lunch period on a daily basis to help set up the mediation, attend the mediations when necessary, talk with parents and students regarding the mediations, and go into the classroom and work with the teachers. She said that the principal supports the program "110 percent" and is willing to take grant money to compensate the sponsors and provide financial support. She stated that in the spring she and Judy Mathewson will be teaching a class, open to all Anchorage School District employees, that will teach other schools in the school district how to set up a program like the one in Chugiak. Two high schools [whose representatives will be attending] the class have received grants to carry through the Peaceable School Program in their schools.

Number 1551

CHAIR BUNDE said that the committee has been led to believe that it would cost $30,000 or $40,000 or $50,000 a year per school, depending on the school.

MS. ANDERSON replied that she had only addressed the cost of the peer mediation, which is just one portion of the Peaceable Schools Program. [Peer mediation] is the most visible and active portion; however, there are other programs, such as the Positive Action Committee.

Number 1610

MELODY RADCLIFF, Teacher, Chugiak High School, testified via teleconference. She stated that the Drug-Free Schools Program receives a grant that is distributed to the various high schools. Chugiak High School has received about $4,500 for various aspects. She said that the Positive Action Committee is a committee of representatives from each of the school's clubs and activities that meets four times a year for scheduled meetings as well as during a crisis situation. The purpose of this body is to make sure that when there is a problem, accurate information is distributed among the student body. Another committee that was created is the Student Forum, which is a governing body that has homeroom representatives who work on problems in the school.

Number 1714

REPRESENTATIVE STEVENS remarked that this is a very important program, and he said it seems to him that it is crucial for every student to understand how conflict resolution works before a crisis arises. He asked how [Chugiak High School] ensures that every student has an opportunity to learn about how to resolve conflicts before they occur, how it is worked into the curriculum, and which curriculum it is worked into.

Number 1745

JUDY MATHEWSON, Teacher and Co-Facilitator, Chugiak High School, testified via teleconference. She answered that student mediators go into the homerooms every other week and give a presentation about conflict resolution and peer mediation, not only to educate all the teachers but also to educate all the students on how to deal with conflicts. She added that there is also in-service training for the staff members.

Number 1797

MS. RADCLIFF added that there is a curriculum, written by Carol Leiber (ph,) who is affiliated with Partners in Learning in the Chicago area. The Anchorage School District has invited her at least four times to help train staff and students on the principles of having a peaceable classroom and running a peaceable school. There is a 36-lesson curriculum to pull from. Ms. Radcliff stated that there is not a separate class for teaching these skills at this point but several teachers are using parts of the curriculum in their classroom to solidify those peaceable principles with their students.

Number 1853

ROBERT BUTTCANE, Legislative & Administrative Liaison, Division of Juvenile Justice, Department of Health & Social Services, came forth to testify in support of HB 99. He said that the Office of Juvenile Justice and Delinquency Prevention has developed a conflict resolution program guide. He explained:

> The tenets of conflict resolution present a new model of interacting with, and thinking about, other people, one that challenges us to go beyond stereotypes, to consider the other's point of view, and to reach a mutually satisfactory agreement in which all parties win. If we can succeed in teaching our youth this framework for resolving their disputes, the results for them and for our society could be profound.

MR. BUTTCANE said that by the time kids get into the juvenile justice system, the damage has already been done. He said that it is his job to "pull bodies out of the river" and then fix [the damage] if he possibly can, but the better solution is to keep them from getting in the river in the first place. He stated that programs like this will do that.

CHAIR BUNDE asked if it is possible for a school to take the information already available from the state and try to implement a peer-mediation program.

MR. BUTTCANE replied that using the ingenuity and the energy of students works to everyone's advantage, which was part of the success of Alaska's youth courts. He stated that peer mediation is another example of a how something can happen when a teen talks to a peer that doesn't always happen when an adult talks to a young person. That might help minimize some of the expense. He added that he thinks in the long term the rewards from these kinds of programs will far exceed the costs needed to be borne today.

Number 1989

REPRESENTATIVE PORTER asked if it would be helpful, with the amendment now [Amendment 1], to use this as a basis for applying for grants for these kinds of programs.

MR. BUTTCANE answered yes, that there are a number of grants available that support mediation programs for adults, victim offenders as well as students. He stated that creating policies within the school is one demonstration to a granting agency that there is the interest, and they could move forward and possibly consider a funding request.

Number 2030

VERNON MARSHALL, Executive Director, National Education Association-Alaska (NEA-Alaska), came forth to testify in support of HB 99. He said that NEA-Alaska has been dealing with legislation regarding safe schools and discipline for four years. National Education Association-Alaska believes that the schools will be better when the communities get better. Oftentimes, the schools are reflecting what is actually going on in communities. He said this has caused NEA-Alaska to redefine its budget to deal with the issue of school safety from the perspective of students, teachers, administrators, and parents.

Number 2100

MR. MARSHALL stated that the incident that occurred in Bethel caused NEA-Alaska to see that there was a need to do things differently. He said that NEA-Alaska is deploying more dollars relative to the whole issue of parent involvement and student discipline. He added that NEA-Alaska has a number of training programs and people on staff who spend a considerable amount of time working with school management, school districts, and teachers to deal with the implementation of the statute passed last year. He said establishing a policy that deals with the issue of how to address and handle anger is something that is woefully needed.

MR. MARSHALL continued, stating that there are probably more personnel in districts who are addressing this issue, and that more money is being spent on situations in which anger and disruption occur in schools [than ever before]. He stated that the whole issue is for kids and parents dealing with aggression to divert their anger in more productive means. He added that NEA-Alaska has training in programs that address conflict resolution and programs for teachers dealing with classroom management and discipline. He concluded, saying NEA-Alaska hopes that HB 99 will encourage the [University of Alaska] to take a look at how teachers are trained for classroom management and discipline.

TAPE 01-10, SIDE B

CHAIR BUNDE remarked that the committee will not be taking any action on HB 99. [House Bill 99 was held over.]

HB 94-PUPIL COMPETENCY TEST;ANNUAL EDUC. REPORT

CHAIR BUNDE announced the committee would hear testimony on HOUSE BILL NO. 94, "An Act relating to initiatives for quality schools; relating to pupil competency testing and the issuance of secondary school diplomas; relating to certain reports regarding academic performance of schools; and providing for an effective date."

Number 2124

PHILIP REEVES, Assistant Attorney General, Human Services Section, Civil Division (Juneau), Department of Law, came forth to address HB 94. He told the committee that a number of states

are looking at high-stakes examinations that must be passed in order for [students to receive] their high school diplomas. He stated that the Department of Law believes the challenges to Texas's and Florida's examination, both discussed and decided in detail by federal courts, may be helpful for Alaska. Both those cases were challenged under the Civil Rights Act, [under the theory] that there was a disproportionate effect on a particular minority group. However, the focus of the courts was on the due process issue of whether there was a fair opportunity to learn.

MR. REEVES remarked that the issue [on the opportunity to learn] is divided into two sections. One is content validity, which asks whether the test accurately measures the test-takers knowledge in the content area being tested. Mr. Reeves said that the Department of Law feels good about the program's effort in developing this examination and hopes the program addresses the question about whether there might be cultural bias in certain questions. The other major issue is instructional validity, which asks whether the curriculum and total educational program offer each student a reasonable opportunity to gain the knowledge and skills that are tested. He mentioned that in the Texas case there was a fairly significant state-mandated remedial program that was applied, which [resulted in] an increase in the passage rate of the plaintiff class.

Number 2016

MR. REEVES stated that in Alaska there is a program that uses the exit examination as a culmination of the educational program. Testing begins with the third-, sixth- and eighth-grade benchmark tests, which identify those children who need particular instruction or remediation along the way so that they don't fall below the curve. He added that this information [from the benchmark tests] could also be used to assist the districts and schools in determining whether a different emphasis needs to be placed on the curriculum.

MR. REEVES said he is concerned with the timing of the implementation. The results from the [2000] benchmark and high school competency exams were available to the districts and the schools for the first time in the fall of 2000. He stated that those results are being used to identify children who need specific assistance, as well as educational programs that need to be "tweaked." He questioned whether there is [adequate] time between the receipt of those results and the current date of 2002, at which time a diploma would be withheld. He also

questioned whether the children were given an opportunity to learn under the curricula provided.

Number 1943

MR. REEVES stated that the requirement for an exam was enacted in 1997. He said Representative Green had asked, "Why didn't we develop a curriculum based on the [exam] then?" He stated that according to the requirements of the courts, in order for n exam to be valid, it must be aligned with the curriculum. He said the first question that would be raised, as to whether an exam could have been developed in 1997, would be whether there was a uniform curriculum across the state and in all the schools in 1997. He remarked that it takes time to develop a test that is considered to be valid under the type of standards that are now applied. He stated that it's the [EED's] position to offer the districts and schools some time to utilize [the test] results to effect their programs as necessary in order to provide children with the opportunity to learn, and to bring the curriculum into alignment.

Number 1869

MR. REEVES pointed out that there have been many articles and considerations nationally about this high-stakes testing issue. The office of the civil rights of the U.S. Department of Education published a fairly major set of guidelines in December 2000. He said that he had read comments from [Education Law Reporter, May 1999] that helped him capture one of the problems seen across the state. He read:

> Where policy makers use high-stakes tests to "lead" changes in curriculum and instruction, there is inevitably -- by design -- a gap between what the test measures and what students have been taught. - Tests should be used for high-stakes decisions about individual mastery only after implementing changes in teaching and curriculum that ensure that students have been taught the knowledge and skills on which they will be tested.

MR. REEVES said the concern is not whether a good and fair testing system has been developed, but whether the testing system has been in place long enough for the districts to provide their students reasonable opportunity to learn the material.

Number 1778

MR. REEVES stated that a whole other area is the question of special education students. Briefly, he mentioned that there are two federal statutes that set the standards that have to be met. One is the Rehabilitation Act of 1973, which requires that any state program that accepts and expends federal funds may not discriminate on the basis of a person's disability. He mentioned that the major case on this Act is Brookhart v. Illinois State Bd. of Ed., from 1983. In this, he said, case the court held:

> Denial of diplomas to handicapped children who have been receiving the special education and related services required by the Act, but are unable to achieve the educational level necessary to pass the [graduation exam], is not a denial of a "free appropriate public education".

MR. REEVES clarified that the foregoing was particularly referring to the precursor of the Individual Disability Education Act (IDEA). He continued, stating that on the Rehabilitation Act, [the court] stated:

> A student who is unable to learn because of his handicap is surely not an individual who is qualified in spite of his handicap. Thus denial of a diploma because of inability to pass the examination is not discrimination under the Rehabilitation Act.

Number 1697

MR. REEVES stated that this does not imply, as a policy measure, that the legislature and the EED aren't concerned with how high-stakes requirements impact children with disabilities and children who are taught under and Individualized Education Program (IEP). He explained that the courts have said if [schools] wish to set a separate standard that's within the discretion of the legislature, then [the Rehabilitation Act and IDEA] do not require that a separate standard be met. He added that this does not mean there would not be a potential challenge [on behalf of] children with disabilities.

MR. REEVES suggested that challenges would come in two areas. One area would be the challenge to a denial of a particular testing accommodation that the student had requested. For instance, an accommodation provided under the student's IEP,

such as the use of a calculator, may affect the validity of the test itself. He remarked that the state may be required to allow the use of a calculator in an area of the test that is not directly testing computational ability. The EED has developed participation guidelines so that [tests with accommodations] are available for review based on input from parents, students, and schools in an attempt to ensure that the appropriate accommodations are allowed.

Number 1651

MR. REEVES stated that the other area in which there could be a challenge from a special education student would be on the same grounds that any student would have regarding the content or instructional validity. However, the instructional validity question would be applied to the IEP of that child; since a child with a disability receives an education under an individualized program, the question would ask whether that program provided a reasonable opportunity to learn what's been tested on the examination.

Number 1565

CHAIR BUNDE remarked that he and the committee have discussed how to deal with people with disabilities as far as this test is concerned. He added that no one wants to treat anyone unfairly; however, whether there's a test or not will not impact the reality of some folks' disabilities or abilities. He said it appears, from Mr. Reeves' testimony, that the governor's proposal for an IEP diploma that acknowledges that people may be working nearly or at full capacity in their IEP would be legally defensible.

MR. REEVES responded that the main requirement under the IDEA is to include all children in all assessment programs. He said, however, that he doesn't believe this carries over in the use of the results of the exam in determining whether somebody receives a diploma or not. He said there would be a problem in not including children who are educated under an IEP in the assessment itself, but he is not aware of any legal prohibition of having a separate standard as far as what a passing grade or what the requirements would be to allow a diploma to be issued to those students.

Number 1485

CHAIR BUNDE asked if there were limitations in the law for a diploma to indicate accommodations, such as the use of a computer or a calculator.

MR. REEVES answered that to his understanding, there is not a legal decision against that; however, that is a focus of some current challenges that are going on across the country.

CHAIR BUNDE clarified that this is not just a legal discussion but is also a policy discussion. He said that parents, whose children have IEPs, have told him that they are concerned that school districts may be giving students IEPs just because they are difficult to educate. Chair Bunde said that an argument could be made that a high school competency test could not be implemented without a 12-year delay, and people could argue that these students had their entire school career to prepare for this. He asked if that would hold sway in the courts and require the full 12 years.

MR. REEVES responded that that argument was presented in the [Florida and Texas] cases. He said, as a lawyer, he would not suggest to his client that there must be a 12-year period in order to survive a court challenge. He stated that it is important to look at the educational program that was provided, as opposed to how long the program must be in place.

CHAIR BUNDE asked if it has been ten years or so [for the Florida and Texas cases].

MR. REEVES replied that in Florida's initial case, the court immediately issued a four-year injunction and said to the state: "You will not withhold a diploma for four years." At the end of the injunction, a new suit was brought and the court looked at it and said: "OK, now we can see, based on this list of information, such as we discussed at your last hearing, that we believe there was an education program in effect that provided the opportunity to learn." He added that that was not a 12-year program.

Number 1322

CHAIR BUNDE remarked that because of the local-control policy issue, some school districts have chosen to, or have been able to, align the curricula and feel that [the curricula is] now defensible; others either haven't been able to or have chosen not to. He asked, if HB 94 goes forward and there is a district

that chooses not to [align its curriculum], whether the lawsuits would be focused at the districts and not at the state.

MR. REEVES answered that he believes since it is a state statutory requirement that a diploma not be required, the state cannot avoid being part of a lawsuit, particularly at an early stage of the program. He added that a lot of the focus would be that the state first offered the test in 2000, and first offered the results to the districts in the fall of 2000. The argument will be that that's the first time definitive information was given to the districts, parents, and students as to what they needed to meet.

CHAIR BUNDE asked: Suppose ten years down the road there is a district that chooses not to align its curriculum?

MR. REEVES responded that this relates to another portion of the program with the high school exam, which is a school-by-school determination as to how the schools are doing. As long as the state has this program in place and is using efforts to require that schools move into compliance, then that would be important to the defensibility challenge down the road.

CHAIR BUNDE stated that one concern is the delay in getting the results from the test. He asked Bruce Johnson, Deputy Commission of Education, what he anticipates as turn-around time for results from the tests being implemented today.

Number 1240

BRUCE JOHNSON, Deputy Commission of Education, Office of the Commissioner, Department of Education & Early Development, responded that the publishing company CTB/McGraw Hill is guaranteeing a 60-day turnaround. Therefore, the [EED] will be receiving the results for the test taken right now in early May in time for planning for summer programming and fall scheduling.

REPRESENTATIVE STEVENS asked whether Alaska would be liable or subject to lawsuits if a military family arrived in Alaska for a student's senior year [of high school] and the student, who had been progressing well in [the state he or she moved from], didn't get his or her diploma.

MR. REEVES responded that he is not aware of any lawsuits in that area and feels that based on the decisions in the [Florida and Texas] cases, it is up to the legislature or the state board of education of each state to determine what a diploma standard

will be. He remarked that the state would be defensible if a student who arrived very late didn't have the opportunity to participate in the program offered.

Number 1169

REPRESENTATIVE PORTER asked if it is the position of the EED that accommodations should be available for students in areas that would not negate the area being tested.

MR. JOHNSON replied that the participation guidelines are attempts to accomplish that and to identify the types of accommodations [the EED] feels are appropriate, given a particular disability. A big change from last year is providing a tape with oral directions and questions for the writing and mathematics [portions of the test]. He added that this is not done in reading because, obviously, that changes the "playing field" altogether. He stated that one of the challenges in the instructional program and through the IEP is that there is no distinction between accommodations and modifications. He said that once there are modifications, complex policy issues arise that would have to be sorted out. He stated that some people are advocating for allowing modifications that go far beyond that, for example, having somebody read the reading exam to a child. This would test comprehension through oral communication, but not the capacity of a young person to read.

REPRESENTATIVE PORTER said he was told that one of the test's criteria would be its ability to predict success as it relates to a child's future. He asked if Mr. Reeves had every heard of an extension of test validity going this far.

Number 0984

MR. REEVES replied that he had not heard of this. He stated that [the Florida and Texas] cases didn't focus on the potential outcome in life.

REPRESENTATIVE JOULE mentioned that about two weeks ago a lady had gone to different communities in rural Alaska and found out that although English was being spoken, it was a different dialect, often referred to as Village English. He asked if the [EED] has taken a look at where the use of the language in many parts of the state intersects with the test.

Number 0863

MR. JOHNSON answered that this is part of the data analysis [EED] is gathering and will be examining. He added that districts are not very good at having students fill in the appropriate keys [on the test]. For instance, if students were considered bilingual, there may be underrepresentation in that year's high school qualifying exam. He remarked that a researcher toured Western Alaska and looked at those kinds of issues. Mr. Johnson stated that the test and the law clearly indicate that it will be conducted in English; therefore, the [EED] has not focused much energy beyond that.

MR. JOHNSON remarked that accommodations have been provided for young people involved in a first language program other than English, primarily in rural Alaska, to delay the benchmark assessment at the third grade until the fourth grade, when English is taught as a formal language. He stated that there was some consideration that some of those communities might desire not to test their young people in the English language until the sixth grade benchmark; however, these communities wanted a check as soon as possible for diagnostic purposes.

Number 0698

AMY HEADRICK, Disability Law Center of Alaska, testified via teleconference. She noted that the Disability Law Center of Alaska supports including students with disabilities in statewide assessments. The IDEA requires that [students with disabilities] be included. She expressed that if [schools] raise the expectations of these students, they will perform to the level of their abilities rather than the low expectation that falls under their disabilities. She stated that President Bush has referred to this as a "soft bigotry of low expectations", and is a motivating factor behind his initiative to not leave any child behind. If children are held to low expectations, they will only perform to that level; therefore, they never reach their full potential. The IDEA needs to raise the level of expectation, to bring those students the full opportunity to learn. She stated, as the First Lady had noted recently: "We must do more than say all children can learn; we have to believe it."

Number 0511

MS. HEADRICK stated that a diploma is defined by Webster's Dictionary as a document signed by confident authority conferring some power, privilege, or honor that's given to graduates of colleges and universities upon completion of

graduation requirements - an official document. She said it is the same [requirement] for a high school diploma as it is for a college or university diploma, yet it might even be more for a high school diploma. She explained that for 12 years [high school] students work hard to meet all the requirements in order to receive that official seal of completion, and students with disabilities often work even harder.

MS. HEADRICK said that because the IDEA is intended to provide all students with the equal opportunity to learn, school districts must provide students with disabilities appropriate education in order for them to meet the same graduation requirements as for students without disabilities. She said she has heard a lot of people ask: "What is a diploma, really?" She recounted that in Bethel, the LKSD (Lower Kuskokwim School District) has recently implemented a policy whereby every employee must have a high school diploma. Two janitors who attended LKSD have learning disabilities and were not able to obtain a diploma, but have worked there for many years. She expressed that now the very school district that failed them is going to take away their jobs as well.

MS. HEADRICK continued, stating that every year the IEP teams review whether a [special education] student will be included in the statewide and districtwide assessments, as well as what accommodations, if any, will be used. Those students who won't participate, which the EED determined to be less than 2 percent, will take an alternate assessment. The remaining students in special education will take the exam, whether it is with or without the accommodations. She stated that accommodations are required under federal law and are designed to take away the test's potential to measure the disability rather than the ability. Therefore, she said, [the Disability Law Center of Alaska] feels it is blatant discrimination to flag a diploma to reflect legally entitled accommodations. She said this issue has been raised in other cases in other states, but mostly in regard to pre-entrance exams, such as the SAT (Scholastic Aptitude Test), the MCAT (Medical College Admissions Test), and the LSAT (Law School Admissions Test). She said the difference with a high school diploma is that students have accommodation rights under the law. Ms. Headrick stressed that by flagging diplomas and saying that [students] have exercised their right it says to the world that they have a disability, which is not acceptable under the laws.

Number 0173

MS. HEADRICK remarked that another issue, related to that of the flagging, is the creation of different levels of diplomas. She said that [the Disability Law Center of Alaska] has heard that there may be an IEP diploma, a certificate of mastery, a certificate of attendance, and possibly a vocational or occupational diploma. She explained that the problem is that it takes away the accountability of the schools as to what the exam is supposed to be doing. In the states that have had [these different diplomas], students had been referred to special education way beyond the time that most students [in other schools] with disabilities had been referred. She remarked that this is a strong indication that schools are grabbing students that they know won't be able to pass the test and putting them into an IEP program in order for the school's accountability to stay intact.

MS. HEADRICK stated that for the students who are so severely disabled that they take alternative assessments, an IEP diploma is OK. She stated that [these students] are not on track to receive a regular diploma. The idea is that the schools are supposed to be accountable and teach these children at the same level of education as every other student, just by different means.

MS. HEADRICK stated that the biggest concern that [the Disability Law Center of Alaska] has is that students with disabilities have not been given the opportunity to learn or been provided with the same curriculum. She said that the school districts have failed these students.

TAPE 01-11, SIDE A
Number 0048

MS. HEADRICK continued, stating that it is necessary to take the time to develop an appropriate IEP. She shared that she is involved in a situation in which an IEP team has put hours and hours, since last November, into an IEP for a student in seventh grade who is reading at a first-grade level, and it still is not ready. She said it is going to take a lot of money and a lot of effort to get him back on track, and that there is no way he can pass the exam. She stated that the school district typically wouldn't put in that much time, unless there is an advocate or an attorney with the parent to try to work on the IEP. She remarked that the school district spends 15 minutes or an hour developing these programs; teachers read what they are going to do with the student, then shove it in front of the parents to sign. The parents aren't aware of their rights, of what they

can advocate for, or that they can push for the different methods of teaching that are out there. By the time [the Disability Law Center of Alaska] gets involved, it is often too late to catch the student up.

MS. HEADRICK stressed that year after year parents fight in IEP meetings and get the same responses from the school district: They cost too much, we can't do that, we're not obligated. By the time these kids are in high school they can't be caught up without incredible sums of money. Eventually, they drop out of school, develop poor study habits, have behavior problems, and many end up in juvenile detention centers. She expressed that all of these kids have the ability to learn, but because the failures of the school districts, year after year, they feel stupid. She reiterated that it is incumbent that these students are given a real opportunity to learn and to pass this exam.

MS. HEADRICK stated that out of all the students who took the exam in the spring of 2000, 75 percent passed the reading, 48 percent, passed the writing, and 33 percent, overall, passed the math. Out of the community of students with disabilities who took the exam, only 31 percent passed the reading, only 6 percent passed the writing, and only 4 percent passed the math. She remarked that those [numbers] show a very large, disparate impact on students with disabilities.

Number 0333

MS. HEADRICK remarked that there are two possibilities [for the numbers]: the test itself is invalid as to these students, which would be unintentional, or the exam could be testing a particular [inability] as opposed to the ability. If so, it can be examined, improved, and changed within a year or two to remove the bias. However, she said she thinks that the real problem is that these students haven't been taught or given the opportunity to learn the curriculum. When [students] don't meet the goals, instead of finding new ways to teach them, schools lower the goals and expectations, which is exactly what the IDEA and state laws work against. She said she understands that the main purpose of the benchmark exam and the exit exam was to hold schools accountable and to make sure that the amount of money [schools] have been given is used to provide an appropriate education to students. It is a great goal and one that [the Disability Law Center of Alaska] fully supports, but the idea of giving different diplomas or flagging for accommodations undermines this exact goal.

Number 0482

CHAIR BUNDE asked if an [IEP] diploma would be acceptable if it were given to someone who has a severe disability.

MS. HEADRICK replied that it would still [abide by] the federal law. She stated that these students are so severely disabled that cognitively they aren't able to perform up to the same level of other students. They are caught at an early level, and their IEP determines that they won't be participating in the statewide assessment. However, she added that this should account for less than 2 percent of all students.

CHAIR BUNDE added that [the committee] shares her concern that the IEP would become a "dumping ground" for less-defined learning disabilities.

Number 0655

REPRESENTATIVE JOULE asked Ms. Headrick to what she would attribute the IEP being a "dumping ground."

MS. HEADRICK answered that there is a lack of special education aides who might be able to help these students in their mainstream classes, or be available for extra help during the school day. She said she thinks that the main problem is the lack of the school districts' willingness to adopt a different methodology of teaching from an early level.

REPRESENTATIVE PORTER asked if she thinks it is appropriate or legally invalid to deny an accommodation for a learning disability such as reading, if reading is the subject of the test.

MS. HEADRICK answered that this is a big concern of hers. She said she thinks that, in general, students who have learning disabilities that affects their ability to read can be taught to read if the right method of teaching is used. The reading portion of the exam is only testing between a seventh- to eighth-grade level. She remarked that she does have an issue with regard to deaf students whose first language is ASL (American Sign Language). She said she thinks it invalidates the test somewhat to have an interpreter read the reading portion to those students because, again, those students could be taught to read. However, their first language is not the same form of language that most are used to; the grammatical structure and their arranged vocabulary is different. She

stressed that the focus needs to be on teaching [students] to read.

Number 0918

REPRESENTATIVE PORTER asked if she was assuming that there is not one person who can't be taught to pass these tests with a significant amount of individualized instruction.

MS. HEADRICK replied that she is not suggesting that there are no individuals who could not learn. She explained that those would be the individuals whose IEP teams would determine they are so severely disabled that they would not be able to participate in the statewide assessments.

REPRESENTATIVE PORTER remarked that that's the "rub": how to determine where that level is.

MS. HEADRICK responded that that's the reason why a group of people makes these determinations. She said that a proper IEP team is made up of parents, regular education teachers, special education teachers, school district administrators, school psychologists, and other experts who have the range and ability to make that determination. The IEP is reviewed every year and the student is reevaluated every three years through psychological and educational testing. [The IEP team] should be able to determine if students are making progress or if they were assessed wrong.

Number 1072

MR. JOHNSON clarified that the statistic on the reading ability portion of the test had been attributed to a district that looked at the field-test version of the exam. He said in the final analysis, 40 percent of the questions that were field questions were eliminated from Alaska's pool.

CHAIR BUNDE stated that the committee has been asking that the test demonstrate minimum competencies, and that's why math apparently needs to be revisited, because in some people's views, it was mastery. He said that it has been his view that math will be "off the table" as far as denying a diploma if a student fails that portion of the test.

MR. JOHNSON answered that there is discussion about math having higher-level concepts than the legislation intended, and perhaps higher than what is reasonable to expect of all students. He

stated that continues to be [reviewed]. He added that the same process is going on in writing and reading.

Number 1247

REPRESENTATIVE WILSON asked Mr. Reeves whether [the state] would withstand lawsuits with the timeline as it is right now.

MR. REEVES replied that he thinks that with the timeline now, it is difficult to say that the current program provides the 2002 graduates with the assistance [the EED] is seeking to provide to people in the future. He said he thinks that the focus of where [the state] is going with the whole program and the benchmark testing now would be used against [the state].

CHAIR BUNDE remarked that he thinks it is fair to say that whether the implementation date is 2002, 2004, 2006, 2010, there will be lawsuits. [HB 94 was held over.]

ADJOURNMENT

Number 1348

There being no further business before the committee, the House Special Committee on Education meeting was adjourned at 10:00 a.m.