

**ALASKA STATE LEGISLATURE
HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES
STANDING COMMITTEE**

April 5, 2001
3:02 p.m.

MEMBERS PRESENT

Representative Fred Dyson, Chair
Representative Peggy Wilson, Vice Chair
Representative John Coghill
Representative Gary Stevens
Representative Vic Kohring
Representative Sharon Cissna
Representative Reggie Joule

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 219

"An Act relating to mental health treatment facilities; repealing the termination date of the mental health treatment assistance program; and providing for an effective date."

- MOVED HB 219 OUT OF COMMITTEE

CS FOR SENATE BILL NO. 133(HES) am

"An Act relating to a two-year transition for implementation of the public high school competency examination and to establishing a secondary student competency examination as a high school graduation requirement; and providing for an effective date."

- HEARD AND HELD

PREVIOUS ACTION

BILL: HB 219

SHORT TITLE: REPEAL SUNSET OF MENTAL HEALTH ASSISTANCE

SPONSOR(S): REPRESENTATIVE(S) FATE

Jrn-Date	Jrn-Page		Action
03/28/01	0758	(H)	READ THE FIRST TIME - REFERRALS

03/28/01 0758 (H) HES, FIN
 04/05/01 (H) HES AT 3:00 PM CAPITOL 106

BILL: SB 133

SHORT TITLE: SB 133-PUBLIC SCHOOL COMPETENCY EXAM

SPONSOR(S): HEALTH, EDUCATION & SOCIAL SERVICES

Jrn-Date	Jrn-Page		Action
03/09/01	0598	(S)	READ THE FIRST TIME - REFERRALS
03/09/01	0598	(S)	HES, FIN
03/09/01	0600	(S)	HES WAIVED PUB HEARING NOTICE, RULE 23
03/10/01		(S)	HES AT 10:30 AM BUTROVICH 205
03/10/01		(S)	Heard & Held
03/10/01		(S)	MINUTE(HES)
03/12/01		(S)	HES AT 1:30 PM BUTROVICH 205
03/12/01		(S)	Heard & Held
03/12/01		(S)	MINUTE(HES)
03/14/01		(S)	HES AT 1:30 PM BUTROVICH 205
03/14/01		(S)	Heard & Held MINUTE(HES)
03/16/01		(S)	HES AT 0:00 PM BELTZ 211
03/16/01		(S)	Moved CS(HES) Out of Committee MINUTE(HES)
03/20/01	0732	(S)	HES RPT CS 5DP NEW TITLE
03/20/01	0732	(S)	DP: GREEN, LEMAN, WILKEN, WARD, DAVIS
03/20/01	0732	(S)	FN1: (EED)
03/26/01		(S)	FIN AT 6:00 PM SENATE FINANCE 532
03/26/01		(S)	Moved CS(HES) Out of Committee MINUTE(FIN)
03/27/01	0819	(S)	FIN RPT CS(HES) 6DP 1NR
03/27/01	0819	(S)	DP: DONLEY, KELLY, HOFFMAN, LEMAN
03/27/01	0819	(S)	GREEN, OLSON; NR: WILKEN
03/27/01	0819	(S)	FN1: (EED)
03/28/01	0838	(S)	RULES TO CALENDAR 3/28/01
03/28/01	0840	(S)	READ THE SECOND TIME
03/28/01	0840	(S)	HES CS ADOPTED UNAN CONSENT
03/28/01	0840	(S)	AM NO 1 ADOPTED UNAN CONSENT
03/28/01	0841	(S)	ADVANCED TO THIRD READING UNAN CONSENT
03/28/01	0841	(S)	READ THE THIRD TIME CSSB

			133(HES) AM
03/28/01	0841	(S)	PASSED Y19 N- E1
03/28/01	0841	(S)	EFFECTIVE DATE(S) SAME AS PASSAGE
03/28/01	0844	(S)	TRANSMITTED TO (H)
03/28/01	0844	(S)	VERSION: CSSB 133(HES) AM
03/28/01		(S)	RLS AT 10:45 AM FAHRENKAMP 203
03/29/01	0767	(H)	READ THE FIRST TIME - REFERRALS
03/29/01	0767	(H)	EDU, HES, FIN
04/02/01		(H)	EDU AT 8:00 AM HOUSE FINANCE 519
04/02/01		(H)	Heard & Held
04/02/01		(H)	HES AT 8:00 AM HOUSE FINANCE 519
04/02/01		(H)	Joint with EDU MINUTE(EDU) MINUTE(HES)
04/04/01		(H)	EDU AT 8:00 AM HOUSE FINANCE 519
04/04/01		(H)	Moved HCS CSSB 133(EDU) Out of Committee
04/04/01		(H)	HES AT 8:00 AM HOUSE FINANCE 519
04/04/01		(H)	Joint with EDU -- Meeting continued from 4/2/01 MINUTE(EDU) MINUTE(HES)
04/05/01	0858	(H)	EDU RPT HCS(EDU) NT 2DP 1DNP 1NR 2AM
04/05/01	0858	(H)	TITLE CHANGE PENDING HCR 14
04/05/01	0859	(H)	DP: PORTER, BUNDE; DNP: WILSON;
04/05/01	0859	(H)	NR: STEVENS; AM: GUESS, JOULE
04/05/01	0859	(H)	FN1: (EED)
04/05/01	0859	(H)	REFERRED TO HES
04/05/01		(H)	HES AT 3:00 PM CAPITOL 106

WITNESS REGISTER

REPRESENTATIVE HUGH FATE
Alaska State Legislature
Capitol Building, Room 416
Juneau, Alaska 99801

POSITION STATEMENT: Testified as sponsor of HB 219.

ELMER LINDSTROM, Special Assistant
Office of the Commissioner
Department of Health & Social Services
PO Box 110601
Juneau, Alaska 99811
POSITION STATEMENT: Testified on HB 219.

KARL SANFORD
384 Snowy Owl Lane
Fairbanks, Alaska 99712
POSITION STATEMENT: Testified in support of HB 219.

BRUCE JOHNSON, Deputy Commissioner of Education
Office of the Commissioner
Department of Education and Early Development
801 West 10th Street
Juneau, Alaska 99501
POSITION STATEMENT: Answered question on SB 133.

REPRESENTATIVE GRETCHEN GUESS
Alaska State Legislature
Capitol Building, Room 112
Juneau, Alaska 99801
POSITION STATEMENT: Testified on SB 133.

KAREN McCARTHY, Staff
to Representative Con Bunde
Alaska State Legislature
Capitol Building, Room 501
Juneau, Alaska 99801
POSITION STATEMENT: Testified as committee aide for the House
Special Committee on Education on HCS CSSB 133(EDU).

HANS NEIDIG, Staff
to Senator Lyda Green
Alaska State Legislature
Capitol Building, Room 125
Juneau, Alaska 99801
POSITION STATEMENT: Testified on behalf of Senator Lyda Green,
chair of the Senate Health, Education and Social Services
Standing Committee, sponsor of SB 133.

REPRESENTATIVE CON BUNDE
Alaska State Legislature
Capitol Building, Room 501
Juneau, Alaska 99801

POSITION STATEMENT: As the chair of the House Special Committee on Education, testified on HCS CSSB 133(EDU).

ED McLAIN, Assistant Superintendent
Kenai Peninsula Borough School District
148 North Binkley
Soldotna, Alaska 99669

POSITION STATEMENT: Testified on SB 133.

GREG MALONEY, Director
Special Education
Department of Education and Early Development
801 West 10th Street
Juneau, Alaska 99501

POSITION STATEMENT: Answered question on SB 133.

AMY HEADRICK, Attorney
Disability Law Center
3330 Arctic Boulevard
Anchorage, Alaska 99503

POSITION STATEMENT: Testified on SB 133.

JANEL WRIGHT, Legal Director
Disability Law Center
3330 Arctic Boulevard
Anchorage, Alaska 99503

POSITION STATEMENT: Testified on SB 133.

PHILIP REEVES, Assistant Attorney General
Human Services Section
Civil Division (Juneau)
Department of Law
PO Box 110300
Juneau, Alaska 99811

POSITION STATEMENT: Testified on SB 133.

TIM WEISS
Parents, Inc.
4743 East Northern Lights Boulevard
Anchorage Alaska 99508
POSITION STATEMENT: Testified on SB 133.

ACTION NARRATIVE

TAPE 01-41, SIDE A
Number 0001

CHAIR FRED DYSON called the House Health, Education and Social Services Standing Committee meeting to order at 3:02 p.m. Members present at the call to order were Representatives Dyson, Coghill, Stevens, Kohring, and Cissna. Representatives Wilson and Joule joined the meeting as it was in progress.

HB 219-REPEAL SUNSET OF MENTAL HEALTH ASSISTANCE

CHAIR DYSON announced that the first order of business would be HOUSE BILL NO. 219, "An Act relating to mental health treatment facilities; repealing the termination date of the mental health treatment assistance program; and providing for an effective date."

Number 0064

REPRESENTATIVE HUGH FATE came forth as sponsor of HB 219. He stated that [HB 219] was requested by Senator Kelly, who is offering a companion bill [SB 154]. He explained that Section 1 of the bill repeals the sunset provisions in Sections 2, 4, 6, and 9 of chapter 87 of SLA 1999. Those current sections that would be removed would cover: the clarification of liability for expenses of placement in a treatment facility; the clarification of the definition of "designated treatment facility"; and the definition of the eligibility and procedures of the DET (Designated Evaluation and Treatment program) including the applicability, eligibility for assistance, application for assistance, decision on eligibility, eligible services rates, payment, appeal, regulations, and definitions. And, he said, it removes an effective date of sunset, July 1, 2001.

REPRESENTATIVE FATE read to the committee:

Those individuals who are working for people who have no insurance nor do they have any Medicaid coverage would still be afforded hospitalization if they meet certain eligibility requirements.

He stated that these are people who are in a mental crisis. He added that it further goes on to describe how these patients would have to be removed if the sunset provision is not repealed. They would then be moved to API (the Alaska Psychiatric Institute), which is already crowded and would entail movement costs.

Number 0322

ELMER LINDSTROM, Special Assistant, Office of the Commissioner, Department of Health & Social Services (DHSS), came forth and stated that this allows the DET program to continue beyond July 1 in its current configuration. He remarked that it is far better, therapeutically, for people to remain in their home communities and receive these services. He explained that the attached fiscal note shows the entire cost for the DET program in fiscal year 2002 is \$2.6 million. Those funds are included in both the House and the Senate versions of the fiscal year 2002 operating budget. In the middle of the form there is a box [that is checked, which notes] that this bill is included in the governor's budget, as it was and is in the House and Senate budgets. He clarified that it is actually a zero fiscal note in the sense that [DHSS] is not looking for additional funds.

REPRESENTATIVE COGHILL asked what the source of the funding is.

MR. LINDSTROM answered that there are a variety of funding sources. He stated that two years ago, when Senator Kelly introduced a bill that modified the program, one of the primary funding sources was a federal grant [DHSS] received courtesy of the delegation, which is not a continuous source of funds. He said he believes the sunset was put on the bill recognizing that those funds would not continue. He added that [DHSS] has been able to construct a mechanism using other non-general funds to pick up the slack from that lost federal grant. This involves the disproportionate share payments through the Medicaid program and a non-general fund source. He stated that while there is about \$1.1 million in general funds, the fiscal year 2002 budget was only a \$200,000 increase in general fund and [DHSS] has been able to pick up the rest of the cost with the other non-general funds.

KARL SANFORD testified via teleconference. He stated, on behalf of the hospital in Fairbanks, that he was in support of HB 219.

Number 0616

REPRESENTATIVE COGHILL made a motion to move HB 219 from committee with individual recommendations and attached fiscal notes. There being no objection, HB 219 moved from the House Health, Education and Social Services Standing Committee.

SB 133-PUBLIC SCHOOL COMPETENCY EXAM

[Contains discussion relating to HB 94; part of proposed CSHB 94, Version J, had been incorporated into HCS CSSB 113(EDU).]

Number 0668

CHAIR DYSON announced that the final order of business would be CS FOR SENATE BILL NO. 133(HES) am, "An Act relating to a two-year transition for implementation of the public high school competency examination and to establishing a secondary student competency examination as a high school graduation requirement; and providing for an effective date." [Before the committee was HCS CSSB 133(EDU).]

Number 0735

REPRESENTATIVE COGHILL made a motion to adopt Amendment 1, which read [original punctuation included]:

1. Page 4, Section 4, line 15

Delete "January" and insert "February" to read

"Sec. 14.03.078. Report. The department shall provide to the legislature by **February** 15 of each year an annual report regarding the progress of each school and school district toward high academic performance by all students..."

2. Page 7, Section 9, line 11

Delete "January" and insert "February"

CHAIR DYSON asked Bruce Johnson if the [Department of Education and Early Development] has a problem with [the proposed amendment].

BRUCE JOHNSON, Deputy Commissioner of Education, Office of the Commissioner, Department of Education and Early Development (EED), answered no.

REPRESENTATIVE WILSON asked if this means that this legislation will not be dealing with [the reports].

REPRESENTATIVE COGHILL responded that the reports will be back February 15 instead of January 15.

Number 0880

CHAIR DYSON announced that there being no objection, Amendment 1 was adopted. He stated that he would like to deal with another inconsistency, referring to paragraph 5 on page 6 and Section 9 on page 7.

Number 0933

REPRESENTATIVE JOULE made a motion to adopt Amendment 2, which read:

Page 7, line 12-14

Delete

Representative Joule stated that this would take out contradictory language.

REPRESENTATIVE COGHILL objected.

REPRESENTATIVE GRETCHEN GUESS, Alaska State Legislature, stated that report language was included on page 7, lines 22-27, when the House Special Committee on Education passed its Amendment 6, which is consistent with the Senate version. She remarked that, afterward, it didn't seem correct to have two reports back from the EED. She noted that the House Special Committee on Education had discussed deleting this on page 7, line 12-14; however, they forgot to delete it.

REPRESENTATIVE COGHILL said he is in favor of the section's being deleted and suggested, in Section 5 that is being added, to propose regulations rather than adopt regulations. He added that he wants to make sure that [the regulations] are coming back to this legislative body before they are implemented. He withdrew his objection.

CHAIR DYSON asked, if this amendment passes, whether the paragraphs would be renumbered.

REPRESENTATIVE GUESS replied yes.

Number 1136

CHAIR DYSON stated that he thinks Representative Coghill could accomplish his desires by adding a new sentence on page 6, line 15, that says "the regulations implementing the waiver will be presented to the legislature date X, 2002."

REPRESENTATIVE GUESS responded that she thinks it might be cleaner if Representative Coghill were to edit page 7, lines 22-27.

CHAIR DYSON asked [whether there would be any legal implications] if the words "for legislative review" were inserted after the word "report" on page 7, line 23.

REPRESENTATIVE COGHILL responded that he thinks that would be understood [without the added language].

Number 1242

CHAIR DYSON announced that there being no further objection, Amendment 2 was adopted.

Number 1277

REPRESENTATIVE CISSNA made a motion to adopt Amendment 3, which read:

Page 2, line 5:
Delete "sec. 7"
Insert "sec. 4"

Page 2, line 13, through page 4, line 12:
Delete all material and insert:
"* **Sec. 2.** AS 14.03.075, added by sec. 1, ch. 58, SLA 1997, is repealed and reenacted to read:

Sec. 14.03.075. Academic standards for high school graduation. (a) Before graduating from high school, each student is required to

(1) be tested in a graduation examination in the areas of reading, English, and mathematics; and

(2) meet academic requirements established by the state and the governing body.

(b) The department shall determine the form and contents of the graduation examination and shall score completed examinations.

(c) Based on the results of the graduation examination, each student receiving a high school diploma shall receive an endorsement on the diploma as follows:

- (1) a student who exhibits proficiency in mathematics - a mathematics endorsement;
- (2) a student who exhibits proficiency in reading - a reading endorsement;
- (3) a student who exhibits proficiency in writing - a writing endorsement; and
- (4) a student who is not eligible for an endorsement under (1) - (3) of this subsection - and endorsement consisting of the Alaska flag symbol.

(d) The department shall establish by regulation uniform standards for awarding and endorsement required under (c) of this section."

Renumber the following bill sections accordingly.

Page 5, line 9, through page 6, line 15:

Delete all material.

Renumber the following bill sections accordingly.

Page 7, lines 8-29:

Delete all material.

Renumber the following bill sections accordingly.

Page 7, line 30:

Delete "except as provided in sec. 11 of this Act, this"

Insert "This"

REPRESENTATIVE JOULE objected.

REPRESENTATIVE CISSNA noted that Mike Ford, from Legislative Legal and Research Services, said this [amendment] would not change the title. She stated that it maintains the purpose and intent of the quality schools initiative but eliminates Section 2 on page 2, line 13, and replaces it with what essentially allows for academic standards for high school graduation that are not linked to the exit exam itself. She further explained that the benchmarks are exactly as they have been proposed, the report is exactly as it is in [SB 133], and the competency testing is in place, but the link to the graduation diploma is severed. She added that this is similar to Senator Ward's bill that gives a diploma with the high scores of the tests, and if a student failed one portion [of the test], it would show the state flag.

CHAIR DYSON announced that he was going to hold [Amendment 3] in order to hear an explanation of HCS CSSB 133(EDU).

Number 1475

KAREN McCARTHY, Staff to Representative Con Bunde, Alaska State Legislature, came forth as committee aide for the HEDU committee to explain HCS CSSB 133(EDU). She stated:

House committee substitute (HCS) for CSSB 133(EDU), Version R, is a combination of the Senate-passed version and the Education Committee's [proposed CS for] HB 94. It maintains accountability for the state performance standards. It also addresses the public's concerns about opportunity to learn, children with disabilities, and students who transfer into an Alaskan high school from another state. The work that has gone into this effort, by both the Senate and the House to date, is intended to make the High School Competency Test fair to all students and legally defensible.

The bill includes the following provisions: It delays the effective date of the High School Competency Test until February 1, 2004; the legislature's commitment to improving education through the state performance standards and the intent that the High School Competency Test is part of an evolving process; the student must demonstrate mastery of the State Performance Standards in reading, English, and math in order to receive a diploma; receive a waiver from the governing body; or have passed a competency test in another state. If a student cannot demonstrate mastery of the standards, he or she would receive a certificate of achievement, which would note which portions of the test the student had passed, his or her attendance record, and any other qualifications the district felt were appropriate.

MS. McCarthy continued explaining the provisions of the bill.

Special-education students may demonstrate mastery by a combination of passing the test without accommodations, with accommodations, or through a portfolio of work; a requirement that the Department of Education [and Early Development] will provide the

legislature with an annual report showing indicators of the progress that schools are making toward high achievement is included; it rewards students, between 2002 and 2004, for passing the High School Competency Test; and asks the department to make recommendations to the legislature regarding waivers, an appeals process, and portfolios.

CHAIR DYSON asked Hans Neidig, Staff to Senator Lyda Green, to explain what the House Special Committee on Education had done to the Senate version that the sponsor takes exception to.

Number 1613

HANS NEIDIG, Staff to Senator Lyda Green, Alaska State Legislature, spoke on behalf of Senator Lyda Green, Chair of the Senate HES committee, which had sponsored SB 133. He stated that there are a couple of concerns. He referred to language on page 1, line 13, and page 2, line 11, which states "minimum competency". He said the Senate feels that this language could send the wrong message that the legislature is suggesting the [EED] lower the standards for the exam. He said the Senate has come up with language stating "focus on essential skills".

CHAIR DYSON asked why the House Special Committee on Education felt "minimum competency" was preferable to "essential skills."

Number 1689

REPRESENTATIVE CON BUNDE, Alaska State Legislature, asked how "essential skills" would be defined.

ED McLAIN, Assistant Superintendent, Kenai Peninsula Borough School District, testified via teleconference. He stated that he also co-chairs the state's math content review committee, which has representatives from businesses, schools, and the community from around the state. He said this review committee is tackling the question of what the essentials are from the perspectives of people who are reflective of Alaska. The kind of common-sense question that [the review committee] asks is, "Is this something that a person [needs] to operate in our society at an introductory level, and would really need to know or be able to do?"

CHAIR DYSON asked if the essential skills will be uniform across the state.

MR. McLAIN responded that rather than thinking of minimal skills, which really connotes lowering the standard, [the review committee] likes "focusing on."

REPRESENTATIVE BUNDE clarified that if the committee is going to talk about essential skills for a variety of young people who may be college-bound, trade-school-bound, or military-bound, the common skill to look at would be a minimum competency - the trade school might be different from the graduate school.

Number 1867

MR. McLAIN stated that he believes the wording is critical in terms of the message. The [review committee] is not envisioning, necessarily, testing the minimum or very elementary types of skill levels, but believes that "essential skills" does provide a more accurate focus than simply saying "minimum".

REPRESENTATIVE STEVENS remarked that he is comfortable with "minimum competency" and thinks that it says exactly what [this legislation] is asking - to be competent at a minimum level. He stated that he sees no reason to change [the language] at this time.

REPRESENTATIVE COGHILL stated that he would be in favor of striking "minimum" and letting the debate go through the reporting process being demanded in the bill.

CHAIR DYSON stated that his own view is that Representatives Stevens and Bunde are logically correct. If the tests are going to be a criterion for graduation, then there is a standard.

REPRESENTATIVE BUNDE suggested the language, "minimum competency of essential skills".

Number 1993

REPRESENTATIVE KOHRING made a motion to adopt [conceptual Amendment 4] on page 1, line 13, to read "minimum competency in essential skills".

REPRESENTATIVE STEVENS asked what it means to add "essential skills" and asked what essential skills were.

REPRESENTATIVE BUNDE responded that much that is done in the legislature needs to involve a good deal of comfort level and awareness in the public. As [the legislature] has gone through

the process of discussing this [bill], one of the concerns has been, "This is a college-prep experience, and you are penalizing the vast majority of kids that don't go on to college." The other [concern] is, "You're expecting too much." He stated that he thinks "minimum competency" says, "We're not expecting too much; this is the base, and we expect a good bit more than this." He stated that for a young person to face the world in whatever he or she does, these are essential skills.

Number 2080

REPRESENTATIVE COGHILL stated that one of the things that [this legislation] is trying to do is get secondary education criteria. He suggested adding that this competency exam allows the measure of secondary competency.

REPRESENTATIVE JOULE asked if this would present any new challenges to the [EED].

MR. JOHNSON responded that he doesn't think that this would present any challenges to the [EED] and thinks the intent is clear. He added that [the EED] is working with a group of Alaskans in an effort to try to determine the competencies necessary in the essential skills.

REPRESENTATIVE STEVENS withdrew his objection.

Number 2152

CHAIR DYSON announced that there being no further objection, conceptual Amendment [4] was adopted.

Number 2185

REPRESENTATIVE COGHILL made a motion to adopt a conceptual amendment on page 2, line 11, to read "minimum competency in essential skills". There being no objection, conceptual Amendment 5 was adopted.

MR. NEIDIG stated that another concern [that the Senate had] was found in the IEP (Individual Education Program) section of the bill on page 3, lines 18-19. The House Special Committee on Education had added language that seems to dramatically change the Senate's version of the bill. He said the House language would deny some special-needs [students] the ability to attempt to earn a diploma. The intent of the Senate, he said, was to

ensure that every student is reasonably given the opportunity to earn a diploma.

CHAIR DYSON asked what wording he or [Senator Green] would propose.

MR. NEIDIG responded that he believes that Representative Stevens is offering an amendment for the committee to consider.

REPRESENTATIVE BUNDE, in response to Mr. Neidig, stated that he doesn't see it that way, that this somehow precludes special-needs [students] from an opportunity to receive a diploma.

CHAIR DYSON asked Representative Bunde what it would do to the process if the committee were to adopt Representative Cissna's amendment [Amendment 3].

TAPE 01-41, SIDE B

REPRESENTATIVE BUNDE responded that he would do all that he could to defeat the bill, because it would create an empty diploma.

MR. NEIDIG stated that there was a piece of legislation in the Senate that was very much like [Representative Cissna's] proposed amendment and that's not what [the Senate] ended up going forward with.

Number 2300

REPRESENTATIVE CISSNA stated that her constituents want to test the school. She mentioned accountability, something they can understand easily, high expectations, hope for their kids, and fairness. She continued, stating that they want to make sure schools attain the highest standard they possibly can and make sure that their kids get the best education that they can. She said [her constituents] want their kids to put in 12 years following instructions and then get a diploma, whether or not they had to struggle with disabilities or coming into the school late. She stated that this amendment makes that possible without missing any steps.

Number 2190

REPRESENTATIVE STEVENS made a motion to adopt [Amendment 6, labeled in packets as Amendment 8] which read [original punctuation is included]:

Page 2, following line 12:

Insert a new subsection to read:

"(d) It is the intent of the legislature that the Department of Education and Early Development, through its existing federally required monitoring program of district special education programs, review the potential for an individualized education program team's inappropriate lowering of individualized education program goals and objectives for the purpose of providing a diploma to a student who has not achieved the state performance standards to the maximum practicable and take appropriate corrective action."

Page 3, lines 10-19:

Delete all material and insert:

(1) a student who is a child with a disability and who does not achieve a passing score on the examination required under (a) of this section is eligible to receive a diploma if the student successfully completes and [sic] alternative assessment program required by the student's individualized program or required in the education plan developed for the student under 19 U.S.C. 794; alternative assessment program must, to the maximum extent possible, conform to state performance standards established for the competency examination required under (a) of this section;"

Page 4, following line 7:

Insert new subsections to read:

"(f) A student shall receive an endorsement on the student's diploma and transcript identifying the areas of the examination successfully passed.

(g) The department shall by regulation establish uniform standards for an alternative assessment program required under (c)(1) of this section. The alternative assessment program under (c)(1) of this

section may not be changed after February 1 of the student's junior year of study."

Page 7, lines 16-18

Delete

CHAIR DYSON objected for discussion purposes.

REPRESENTATIVE CISSNA withdrew her previous amendment [Amendment 3].

REPRESENTATIVE STEVENS stated that [Amendment 6] speaks directly to the issue of special-education students. He explained that the first [part of the amendment] deals with not lowering standards; the second portion provides an alternative program, through the IEP, to those who did not pass the test; and the third portion has to do with the endorsements and the timing of the alternative assessment program.

Number 2139

CHAIR DYSON called for an at-ease at 4:12 p.m. The meeting was called back to order at 4:16 p.m.

MR. JOHNSON stated that the [EED] believes strongly in creating winners out of all children. He remarked that the [EED] does not want students to be sorted into two buckets: "winners" and "losers." He said the issues before the committee today have that potential.

GREG MALONEY, Director, Special Education, Department of Education and Early Development, came forth to outline the current status of the special-education population in relation to their success rate with the High School Qualifying Exam. He stated that the spring of 2000 was the first administration and when the largest number of people took the test. The fall administration was for those students who either missed the test or retook the test. He stated that in spring 2000, 644 students took all three sections of the test, and of that number, 16 passed, with a passing rate of 2.5 percent or a failing rate of 97.5 percent. He remarked that in the spring of 2000, 32 percent of the students with disabilities who took the reading test passed, 7 percent passed the writing test, and 5 percent passed the math test.

REPRESENTATIVE STEVENS asked if accommodations were allowed in the reading portion.

MR. MALONEY responded that appropriate accommodations designed by the IEP team were available throughout all portions of the test for students with disabilities.

REPRESENTATIVE CISSNA asked if the students took advantage of the [available accommodations].

MR. MALONEY answered that the [EED] has some reasons to believe that not all students were provided appropriate accommodations. He added that [the EED] believes that even with appropriate accommodations, students with disabilities are going to struggle on these exams.

Number 1903

REPRESENTATIVE COGHILL asked how many of the students [with disabilities who took the test] would be considered severely [disabled].

MR. MALONEY stated that [the EED] does not break [statistics] down by disability yet. He added that there is the alternate assessment for students with severe cognitive impairments. He explained that these are students who are not taking this test but are completing a portfolio assessment that has been determined and approved by the State Board of Education. Less than 1 percent of the students on a yearly basis are expected to take that assessment. He added that [the EED's] goal and the federal management on IDEA [Individual with Disabilities Education ACT] 97 is that all kids participate in the assessments, including students with disabilities. Currently, students can participate either with or without appropriate accommodations or, if the IEP team determines it's appropriate, they can participate in the alternate assessment.

REPRESENTATIVE JOULE asked why there is a big disparity in the number of students that took the test in the spring of 2000 and the fall of 2000.

MR. MALONEY answered that in the spring of 2000 the test was available for all kids with disabilities who were in tenth grade. In the fall, the test was only for students who either had not taken the test or were retesting.

REPRESENTATIVE JOULE asked if federal law allows for modification as well as for accommodation.

MR. MALONEY responded that federal law does allow modifications, both in a student's instructional program and on assessments. He added that the federal law also states that modified assessments do not have to be considered as valid assessments. The federal law is trying to balance the rights and needs of kids with disabilities to participate in assessments with the recognized need for a valid, reliable assessment. He continued, stating that in the fall of 2000, 285 [disabled students] took all sections of the test and three passed. For the sectional results, 19 percent passed the reading section, 4 percent passed the writing section, and 7 percent passed the math section. He stated that the concern is that a large number of students with disabilities are not going to be able to receive a diploma.

MR. MALONEY noted that in the instructional programs of many students with disabilities it is not unusual for modifications such as spell-check or a calculator to be allowed. That kind of modification is introduced frequently in either the later elementary grades or early middle school grades. He said the concern is that when these students are required to take the test without those accommodations, the type of preparation that they have for the test has not been the same.

MR. JOHNSON stated that he would urge the committee to adopt the philosophy of doing no harm and avoiding unintended consequences. He remarked, "If we can project that special-education students will not fare well by mandating that they meet identical requirement despite their identified ability, let's err on the side of caution and fairness in these early stages of our accountability reform effort." He said the evidence being presented is that this population certainly is at risk, and will probably always be at risk to a certain extent, and that [schools] must always strive to teach these kids to the highest standards possible. However, he said he thinks the unintended consequences are very significant for this group.

CHAIR DYSON asked if the [EED] prefers the amendment that Representative Stevens or Representative Cissna has offered.

MR. JOHNSON replied that it is a tough call. [The EED] has focused from the early stages on not holding young people accountable before holding the systems accountable. Therefore, [the EED] has proposed an effective date of 2006. He stated that Representative Cissna's amendment [Amendment 3, withdrawn]

moves toward that and gets the onus off of individual students and more on the system. In regard to the amendment being proposed by Representative Stevens [Amendment 6], [the EED] believes that if a student has a disability, it does not make sense to hold that student to the same standard as a student without a disability.

CHAIR DYSON asked Representative Bunde if Representative Stevens' amendment is essentially what the House Special Committee on Education ruled out of order.

REPRESENTATIVE BUNDE responded yes.

CHAIR DYSON asked if Representative Bunde felt at that time that taking that route would make [the legislation] vulnerable to legal challenges.

REPRESENTATIVE BUNDE stated that 10 percent of high school seniors do not get a diploma. He remarked that it is safe to assume that many of those [students] are special-education kids. Parents of special-needs children have said that they don't want the standards "dumb-downed." He expressed that the problem is that the system is not bringing those kids up. He said the notion that "we" can hold the school accountable first and then the kids later escapes his logic. He remarked that, to him, this amendment allows modifications, which would not be legally defensible, and he said he still harbors concern for the endorsements on page 4, line 7, subsection (f). If only special-education students are getting endorsements, then that is "flagging," and he thinks that this invites lawsuits.

Number 1270

AMY HEADRICK, Attorney, Disability Law Center, testified via teleconference. She clarified that [the Disability Law Center] believes all students, with or without disabilities and regardless of the severity of their disabilities, are entitled to a diploma if they fulfill what they are supposed to fulfill for graduation. For many students with disabilities that would be passing the exam without accommodations; for many it would be passing it with accommodations; and for those for whom the IEP team has determined it is appropriate, it would be the alternate assessment.

CHAIR DYSON asked if she was talking about alternate assessments that still demonstrate the students' competency in passing all three portions of the test without modification.

MS. HEADRICK replied that the alternative assessment would be as required under IDEA, which would be whatever the State Board of Education would set as the minimal competency standards that [students] are supposed to demonstrate.

CHAIR DYSON asked if [students] would still have to demonstrate competency on exactly the same material as those without disabilities, but with accommodations and alternative assessments.

MS. HEADRICK stated that she doesn't understand that to be the law. The IDEA provides that all students with disabilities should participate in the same exam, and for the majority of the students that would mean the regular exam, with or without accommodations. For a very select few, approximately 2 percent whose cognitive functioning is so severely disabled that they can't pass those tests, the State Board of Education is supposed to set specific standards that students are supposed to demonstrate and then participate in an alternate assessment program.

Number 1073

MS. HEADRICK continued, stating that [the Disability Law Center] does not support anything that would undermine the high expectations, such as the districts' lowering the expectations.

CHAIR DYSON asked for her view on Representative Bunde's point that having endorsements uniquely flags the kids with disabilities.

MS. HEADRICK replied that Representative Cissna's amendment would address endorsements that would apply to kids with or without disabilities. She said [the Disability Law Center] would not see this as having a conflict with the federal law. If the bill is written so that only those students with disabilities that can't pass sections of the test still get a diploma but have endorsements as to the sections that they pass, and the other students wouldn't, then the students with disabilities would be treated differently from the students without disabilities. This would undermine the federal law.

REPRESENTATIVE BUNDE remarked that as he reads Representative Stevens' amendment, special-education kids are the only ones that get endorsements.

MS. HEADRICK remarked that she is not sure if [Representative Stevens' amendment] would apply to all kids, with or without disabilities.

Number 0857

REPRESENTATIVE GUESS explained that with the amendment there are three different ways to get a diploma and not get all of the endorsements: through an IEP, through a waiver, or through an appeals process. If someone looked at the diploma of a student who had one endorsement, he or she would not know which one of those three would be the reason [that student received the diploma]. She added that it had been [the House Special Committee on Education's] understanding, from the Office of the Attorney General, that that would take care of the flagging problem.

Number 0804

JANEL WRIGHT, Legal Director, Disability Law Center, testified via teleconference. She remarked that with [Representative Guess's] explanation, she is questioning whether or not students without disabilities would also be under the same endorsement requirements.

REPRESENTATIVE GUESS replied that they would be.

MS. WRIGHT asked if the appeals process would be the only process that would apply to students without disabilities, unless there's some type of extreme circumstance where they would get a waiver.

REPRESENTATIVE GUESS responded no, that students without disabilities could get a diploma without all three endorsements through either the waiver process or an appeals process. The waiver process is a separate process to examine for students who come in to the system late or have rare or unusual circumstances.

MS. WRIGHT asked whether a student who is getting a diploma through his or her IEP could not get any endorsements.

REPRESENTATIVE GUESS answered that if the student successfully passes the exam, and the exam comes with accommodations, then he or she would get the endorsements. If there was an alternative assessment for the math only, but the student passed the

competency exam in reading and writing, he or she would get endorsements in reading and writing.

Number 0699

MS. HEADRICK asked if a student would not participate in a standards-based test at all if he or she were to take alternative assessment.

PHILIP REEVES, Assistant Attorney General, Human Services Section, Civil Division (Juneau), Department of Law, clarified that the federal law refers to an alternate assessment, which is what applies to severely disabled children who essentially don't have the cognitive ability to even recognize the test. The majority of children who are identified with disabilities and operate under an IEP are required by federal law to be included in the assessment. He added that this is required for the purpose of accountability, and to ensure that the [EED] has a record of how those children are doing in comparison to other students. The federal law does not say that everyone is required to receive a diploma or that a different standard should be set for children with disabilities. He said the federal law is actually silent about diploma requirements.

MR. REEVES, regarding flagging, stated that accommodations that were used cannot be defined on the diploma. However, [the committee] is talking about endorsements, which show whether or not a student has passed individual sections of the test. He noted that on page 3, starting on line 9, it states, "notwithstanding (a) ... a child with a disability". Then beginning on line 20 he read from the bill, "(2) a student who transfers into public high school in this state shall receive a diploma if the student (A) meets graduation requirements imposed by the governing body and the state; and (B) has passed a competency examination in the state from which the student transferred." He explained that this student would not get any endorsements if he or she did not choose to also take the Alaska examination.

NUMBER 0507

MR. REEVES referred to the IDELR (Individuals with Disabilities Education Law Report), which collects administrative decisions from across the country. He remarked that in the [IDELR's] special report number 18, Testing and Granting Diplomas to Special Education Students, which is copywrited in 2000, it states:

May a district use different diploma wording for students with disabilities. ... The OCR (Office for Civil Rights) guardedly stated, "Yes, so long as the diploma for each student is similar in all significant respects. The OCR did not define those terms. As for wording on the diploma, [the] OCR stated, "Variations in wording may not necessarily be in violation of Section 504 or Title 2 so long as the wording is not based on disability as a category of students. The wording should be based on objective criteria and each possibly be available to students on a non-discriminatory basis.

MR. REEVES stated that the concept of endorsements, in his opinion, is not illegal. He said he would be concerned if the only person who could get a diploma without an endorsement was a child with disabilities, because then that would be a flag. He said as long as there is a waiver in the provision, then federal requirements on that issue would be met.

MS. WRIGHT asked whether a student who took all portions of the exam but only passed two and was given endorsements in those two sections would still receive a diploma.

MR. REEVES responded that under this bill, unless that student was either in the waiver section or was a child with disabilities, he or she would not receive a diploma. He or she would have to pass all three sections.

Number 0301

CHAIR DYSON asked Mr. Reeves if it is his opinion that Representative Bunde's bill [HCS CSSB 133(EDU), which gives students who don't demonstrate competency on the test with accommodations or alternative assessments a certificate of achievement, would violate federal law.

MR. REEVES responded that he believes that is legal and the state has the ability to set a standard even though some children don't have the cognitive ability to meet it. The issue is whether the educational program has provided the students the opportunity to learn.

REPRESENTATIVE BUNDE stated that it is his understanding that those severely cognitively disabled children are currently denied a diploma, and he doesn't know if under this bill they

would be awarded a diploma, which would be a change of the status quo. He asked if alternative assessments constitute modifications. He added, for the committee's information:

This notion about waivers, ... the sideboards are for rare and unusual circumstances. So the vast majority of people, I think, in reading this, that would get endorsements would be special [education] kids, and there would be very few that are waived. Does that constitute flagging? Well, I'm sure the lawyers will have an interesting time discussing it.

Number 0174

CHAIR DYSON asked Mr. McLain if he would comment on the specific issues being discussed.

MR. McLAIN responded that he reads Representative Stevens' amendment, referring to page 4, line 7, as being for all students, and that he would argue that there would be no way to know whether or not that student had only one or two or all three [endorsements]. [The student] could be a "transfer kid" who didn't take a math course or a special-education kid. On the larger issue of allowing modifications, he stated:

Just as the general Alaska standards were designed by community teachers, experts, parents, etcetera from across the state as the goal for all kids ... is analogous to the IEP team, ... just as we say for the general [education] kid, if they do all they're supposed to do to a level of what's expected, they will get a diploma., the way they do that - the regular [education kid] - is by passing the exam at the appropriate levels and taking their courses, etcetera So the kid who is fulfilling the IEP, if that student meets all that's been asked of him and does all that he or she's supposed to have done, it seems to me to be an issue of fairness and of rightness and of doing the intent of this bill ... to encourage excellence and to encourage the best performance.

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Number 0027

MR. McLAIN continued, stating that the accountability piece is important and that his district has passed its own certified diploma requirements prior to the states. He added that [his district] is committed to the idea of having documented levels of achievements. The accountability piece comes in with the requirements for reports. He suggested that along with providing on the reports how many kids graduate with waivers, the [districts] could be required to report how many kids graduate with modifications or other categories to make sure the IEP team is being used appropriately.

Number 0142

TIM WEISS, Parents, Inc., testified via teleconference. He stated that what he is hearing about Representative Stevens' amendment falls in line with what parents around the state have told [Parents, Inc.] in forum. It is also in line with what Parents, Inc., believes in, which is having multiple methods for students with disabilities to achieve what their potential is and have a shot at getting a diploma.

CHAIR DYSON asked Mr. Weiss if [Parents, Inc.] wants not only accommodations and alternative assessments, but a modification that allows the child with disabilities to get a diploma even though he or she may not be able to demonstrate competency in all three of the tests.

MR. WEISS responded yes. He said as the state improves the system and school districts improve performance standards, he is sure that students with disabilities will be included in both special-education programs. The system and procedures for students with disabilities to graduate will also increase as years go by.

Number 0276

REPRESENTATIVE BUNDE stated that the way he reads this amendment, a child with an IEP who does not pass the test would be allowed an alternative assessment; therefore, there would probably be as many tests as there are IEPs in that category. He said the concern he has heard from parents with children with disabilities is that there would be a tendency to shuffle more kids into IEPs because now they get an alternative way to get a diploma. He asked if this would be correct.

MR. WEISS responded that he has heard that argument before, that there will be a rush of students into special-education

programs; however, the federal OSEP (Office of Special Education Programs) has been monitoring states extremely carefully to try to prevent that sort of thing. He added that he doesn't see this as something that is likely to happen.

REPRESENTATIVE BUNDE asked if Mr. Weiss has any concern about lowering the standards so that the standards go down to the student rather than the student coming up to the standards.

MR. WEISS answered that he thinks more attention and programs should be put in place to try to raise the students up to the standards. He said right now many parents have difficulty getting school districts to provide them with the very basics that they need to meet a minimal standard so that [their kids] can compete with non-disabled peers. He said because of situations like that, he thinks [students with disabilities] should be given some sort of equity in the way that they are assessed.

Number 0476

REPRESENTATIVE STEVENS referred to his amendment and explained that the first section deals with the inappropriate lowering of IEPs, and the final section states that an IEP cannot be changed after February 1 of the student's junior year. Therefore, this would provide that [an IEP] could not be easily or readily changed at the last minute if things didn't work out. He added that he would like to draw the committee's attention to the figure provided by the [EED] that 97.5 percent of disabled children fail. He said that's a figure that should stick in everyone's head.

CHAIR DYSON asked Representative Coghill for the general subject of [another] amendment he is going to propose.

REPRESENTATIVE COGHILL responded that the general subject is to include in one of the reports to the legislature the number and percentage of students who received a diploma under a waiver.

CHAIR DYSON announced that [Representative Stevens'] amendment [Amendment 6] will "die" and will be taken up as the first order of business at the next meeting.

[SB 133 was held over.]

ADJOURNMENT

There being no further business before the committee, the House Health, Education and Social Services Standing Committee meeting was adjourned at 5:10 p.m.