

ALASKA STATE LEGISLATURE
SENATE HEALTH, EDUCATION & SOCIAL SERVICES COMMITTEE

March 14, 2001

1:34 p.m.

MEMBERS PRESENT

Senator Lyda Green, Chair
Senator Loren Leman, Vice Chair
Senator Gary Wilken
Senator Jerry Ward
Senator Bettye Davis

MEMBERS ABSENT

All Members Present

OTHER LEGISLATORS PRESENT

Representative Gretchen Guess

COMMITTEE CALENDAR

SENATE BILL NO. 133

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

HEARD AND HELD

SENATE BILL NO. 67

"An Act relating to assisted living homes and to liability for acts or omissions in the licensing, monitoring, or supervision of assisted living homes; and providing for an effective date."

BILL POSTPONED TO 3/16/01

SENATE BILL NO. 91

"An Act relating to information and services available to pregnant women and other persons; and ensuring informed consent before an abortion may be performed, except in cases of medical emergency."

BILL POSTPONED TO 3/16/01

PREVIOUS COMMITTEE ACTION

SB 133 - See Senate HESS Committee minutes dated 3/7/01 and 3/10/01.

SB 67 - No previous Senate committee action.

SB 91 - No previous Senate committee action.

WITNESS REGISTER

Mr. Hans Neidig
Staff to Senator Green
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Explained the changes made to CSSB 133(HES).

Dr. Ed McLain
Kenai Peninsula Borough School District
210 Fidalgo Ave.
Kenai, AK 99611

POSITION STATEMENT: Supports CSSB 133(HES) and requested two amendments.

Dr. Bruce Johnson
Deputy Commissioner
Department of Education &
Early Development
801 W 10th St.
Juneau, AK 99801-1894

POSITION STATEMENT: Answered questions regarding CSSB 133(HES).

Mr. Phil Reeves
Assistant Attorney General
Department of Law
PO Box 110300
Juneau, AK 99811-0300

POSITION STATEMENT: Answered questions regarding CSSB 133(HES).

Mr. Greg Maloney
Director of Special Education
Department of Education &
Early Development
801 W 10th St.
Juneau, AK 99801-1894

POSITION STATEMENT: Answered questions regarding CSSB 133(HES).

Mr. Rich Kronberg
President, NEA-Alaska
114 2nd Street
Juneau, AK 99801

POSITION STATEMENT: Supports CSSB 133(HES).

ACTION NARRATIVE

TAPE 01-21, SIDE A

Number 001

CHAIRWOMAN LYDA GREEN called the Senate Health, Education & Social Services Committee meeting to order at 1:34 p.m. Present were Senators Leman, Wilken and Green. CHAIRWOMAN GREEN announced the committee would take up SB 133 first, and that she had a committee substitute (CS) prepared. She informed participants that the committee will meet on Friday, and any bills that are not heard today due to time constraints will be heard at that time.

#SB 133

SB 133-PUBLIC SCHOOL COMPETENCY EXAM/REPORTS

SENATOR LEMAN moved to adopt CSSB 133(HES), Version L, as the working document of the committee. There being no objection, the motion carried.

MR. HANS NEIDIG, staff to Chairwoman Green, explained the changes made to the committee substitute as follows.

- On page 1, line 14, "essential skills" was changed to "competency" in regard to the examination. That language is in current statute. That same change was made on page 2, line 4, and in the title of the bill.
- On page 2, line 7, "or receive a waiver from the governing body" was added. The "governing body" is used in AS 14.60.010; it applies to school districts and Rural Education Attendance Areas (REAs) and will make those bodies the granters of the waivers.
- On page 2, line 16, language was put back in to address a concern by a committee member. It reads, "A re-examination may not be offered more often than once every three months and must occur within three years after the date the student is no longer in attendance." That language will clarify how many times a student may take the examination.
- On page 2, line 24, language was added that reads, "An examination required under (a) of this section shall be administered during days approved by the commissioner for in-service training of teachers under AS 14.03.030." That language was suggested by the department to meet Chairwoman Green's desire to administer the exam on in-service days and/or days in which students are not in session.
- On page 2, line 26, language was added stating that students will receive an endorsement on their diplomas and transcripts identifying the areas of the examination passed. Rather than

listing the exam scores on the transcript, the endorsements will appear on the student's transcript and the diploma.

SENATOR LEMAN said he believes placing the endorsement on the diploma makes more sense in that it will provide for easy viewing, but he liked the idea of putting the scores on the transcript and would like to continue that discussion at another time.

Mr. Neidig continued.

- On page 2, beginning on line 31, the word "successfully" was added and the word "team" was deleted so that it reads, "successfully completes an alternative assessment program required by the student's individualized education program or required in the education plan developed for the student under 29 U.S.C. 794;". Those two changes were suggested by the Department of Education and Early Development (DOEED).
- On page 3, lines 27-29, the following was added, "including the criteria and procedure under which a governing body uses the waiver to grant a diploma to a student." Section 4 deals with giving the board the ability to carry forth its duties. This language will allow the board to stipulate and develop the regulations and procedures around which the waivers will be given by the governing bodies.
- On page 3, line 31, and in other places where appropriate, the date was changed to February in order to capture those students who might graduate in January.
- On page 4, lines 18-20, the language was added, "A competency examination shall be administered during days approved by the commissioner for in-service training days." This is meant to mirror other language having to do with when the exams could be given.
- On page 4, lines 23-24, language was added by the drafter, "Individualized education program is a program described under AS 14.30.278" for the purpose of making the definition tighter.
- On page 4, line 27 through page 5, line 1, language was added at DOEED's request to facilitate development of the transition regulations.

CHAIRWOMAN GREEN noted that all committee members were present. She then asked Dr. McLain to address the committee.

DR. ED MCLAIN, Assistant Superintendent for the Kenai Peninsula Borough School District, informed the committee he served on the original math content review committee and is on the current committee. He is also a member of the technical review committee

advisory board on the high school graduation qualifying and benchmark exams. He asked the committee to look at page 2, line 24, and asked that the word "shall" be changed to "may" so that schools be allowed, rather than required, to administer the test on in-service days for the reasons that very small schools will need that flexibility and in-service training is very important.

CHAIRWOMAN GREEN asked if a school wanted to give the test on an in-service day, the school could request permission to have that in-service day designated as a test day.

DR. MCLAIN said there may be issues from DOEED's perspective in terms of security of the test and what day it is administered.

CHAIRWOMAN GREEN asked if the bill did not make any mention of in-service days, and that was left to the districts, whether a district could request of DOEED that it give the test on an in-service day.

DR. BRUCE JOHNSON, Deputy Commissioner of DOEED, said yes because DOEED does not control the individual calendars of school districts. Those calendars are submitted to DOEED but DOEED's concern is that they meet the minimum requirements of 170 days of instruction and up to 10 in-service days. Additional days beyond that are of no concern to DOEED. As it stands today, there is nothing to prevent a district from scheduling an in-service day on the testing dates.

SENATOR LEMAN asked, regarding security, if enough versions of the exam are available so that the exam can be administered on different days.

DR. JOHNSON said DOEED has identified six days per year on which the exam can be given. There is only a single version of the exam at this time. The most cost-effective way to do this is to use a single version during each administration of the test. That helps with the scoring and administration.

SENATOR LEMAN expressed concern that if certain school districts and schools want some flexibility, it may not work on a statewide basis to administer the exam on the same day.

DR. JOHNSON said there is nothing in current law to prevent a district from holding an in-service day or holding a regular day of instruction when this test is given. Most districts have not used the in-service concept but it is being talked about as the logistics of the test administration become more problematic. He suggested that in the larger schools, when the vast majority of

teachers will be engaged in in-service, the certified support staff could be assigned to proctor the exam.

CHAIRWOMAN GREEN asked if that would be possible if it is not addressed in this legislation.

DR. JOHNSON said it would.

SENATOR LEMAN asked if the exam is being administered on the same day in all school districts at this time.

DR. JOHNSON said that is correct.

DR. MCLAIN continued his testimony. The same change (change shall to may) would need to be made on page 4, line 19. On page 2, lines 17-18, he asked that the language, "and must occur within three years after the date the student is no longer in attendance" be deleted because it might limit what happens to a young adult who wants to return to school to get a high school diploma.

DR. MCLAIN said regarding waivers, DOEED will be setting the conditions and criteria under page 2, lines 26-29. Regarding accountability of schools, current regulations make it possible for school districts to report the number of students who graduate with and without modifications and the number of students who use an alternative assessment or get a waiver. Any anomalies will show up on that report so that if suddenly a huge number of students receive waivers in a particular district, DOEED could investigate. The Kenai district appreciates the inclusion of the waiver provision, not as a loophole but as a necessary safety valve.

On the issue of changing the name of the exam, DR. MCLAIN said he is very comfortable with whatever language the committee wishes to use. The change refocuses the exam to a specific subset of the full performance standards. He prefers that route.

Number 1330

SENATOR WILKEN thanked Dr. McLain for his participation in this project. He then expressed concern that some parents of children who are not likely to pass the exam may try to manipulate school districts by requesting waivers. He noted his wife was on a school board for six years and that school board increased its meeting time every other week to deal with disciplinary problems. He said he does not want to set in place an additional burden for school boards to where they have to increase meeting hours regularly to deal with waiver requests that are manipulative. He asked Dr. McLain if he is aware of any other states that have used waivers

and whether they have been successful.

DR. MCLAIN said when he referred to the need for a safety valve, he did not mean that districts should be provided with a paved superhighway. The current legislation calls for the parameters to be developed by DOEED and he believes that will be done in a healthy and thoughtful way to assure that waivers don't become a misused tool. On the flip side, providing for no waiver at all would be equally as problematic because there will be students who transfer in at the end of high school. It is his understanding that waivers or an appeal process are common throughout the states and he is not aware of any state that does not provide for some allowance. He repeated that DOEED would be able to see if the waivers were being abused through the school report card system. He pointed out the Kenai district has a process that only brings the few disciplinary problems that cannot be resolved by the administration before the school board. The district has reduced those numbers and he believes with practice and training, that same process could occur with waivers.

SENATOR WILKEN asked if what amounts to a de facto waiver is built in because students can attempt to take the test 11 times.

DR. MCLAIN said the scenario that came before the technical review committee was the military transfer student. He does not believe that type of student will return 11 times to take the exam. He does not envision the student who continually fails the exam as being the primary seeker of a waiver. He urged that the parameters for a waiver be tightly controlled in regulation rather than through legislation.

CHAIRWOMAN GREEN commented that when the legislature gets very specific in legislation the opposite of what was intended often happens because the one thing the legislature failed to mention becomes the exception and cannot be considered. She asked what procedure a district would use to grant a waiver and whether DOEED will require in regulation that a document be on file to justify every waiver.

DR. JOHNSON said he thinks it is fair to assume the state board of education will consider a paper trail for the purpose of accountability when it develops the regulations. He noted, in answer to Senator Wilken's question, other states do have a waiver process for extraordinary circumstances and DOEED will try to learn from them but Alaska's law will be the tightest. He anticipates this conversation taking place over a 12 to 18 month time period by the board.

SENATOR WILKEN asked Dr. McLain if he is comfortable with the special education component of the legislation.

DR. MCLAIN said the special education staff in his district are very comfortable with the language in CSSB 133(HES). He pointed out, in response to Senator Leman's comment about putting test scores on transcripts or diplomas, he believes, if that is the case, students will want to retake the test to get a higher score and that will create cost and management issues. He advised the committee that the transcript will contain the classes and grades of the student so he asked that a pass-fail notation for the exam be used.

Number 1861

SENATOR DAVIS asked a representative from DOEED to tell her of a few states that grant waivers and whether each district will decide if a waiver should be granted.

DR. JOHNSON said each district will be responsible for applying the regulations that are developed by the state board to see whether or not the student qualifies for a waiver.

SENATOR DAVIS asked what criteria he anticipates the regulations to use and whether DOEED will publish draft regulations for public comment.

DR. JOHNSON said the regulatory process will be used.

SENATOR DAVIS asked if DOEED will grant final approval of the waivers or whether the districts will.

DR. JOHNSON said the districts will determine whether students will get a waiver based on the parameters of the regulation and the school report card can be refined so that the numbers of students who are granted a waiver will be shown. He noted the state board may want each district to submit a report to DOEED as a means of accountability.

SENATOR DAVIS asked Dr. Johnson if he anticipates that DOEED will grant final approval for waivers.

DR. JOHNSON said he does not, and that would be a nightmare for DOEED.

SENATOR DAVIS asked for clarification of the pass/fail score.

DR. JOHNSON replied that any score above the cut score will be

considered a passing score. The score will not be scaled.

SENATOR WARD commented that Senator Wilken brought up the fact that some parents may try to manipulate the system on behalf of their children who are at risk of not graduating because they have not passed the exam, and some parents will hire an attorney, but he noted there are students at the other end of the spectrum who do not have anyone to advocate for them.

DR. JOHNSON said he is sure the state board will consider that scenario. He believes the waiver boundaries will have to be applied fairly across all children, regardless of family affluence.

SENATOR WARD said he wanted to make sure DOEED was aware of that possibility.

CHAIRWOMAN GREEN noted that Representative Guess had joined the committee.

Number 2025

SENATOR DAVIS asked DOEED to speak to allowing districts to give the test on an in-service day because she does not believe most districts will want to do that.

DR. JOHNSON said DOEED was responding to the fact that the state board only has control over 180 days and 10 of those can be approved by the commissioner as in-service days. Chairwoman Green was hoping the exam could be given outside of the 170 instructional days and within the 10 in-service days or beyond those 10 days. DOEED believes those students taking the test could attend school on an in-service day to take the exam and that certificated and support staff could serve as test proctors. He pointed out the logistics of administering the test are becoming very complex and a solution has to be found. Another possibility would be to have a minimum school day so that all students taking the test arrive at 8:00 a.m. and the other students arrive at 11:00 a.m. He added if the test was given on a Saturday, districts would have to provide bus transportation and hire proctors so a cost would be involved but that may be the most cost-effective approach in the long run.

SENATOR DAVIS felt that school districts will appreciate having the flexibility to decide when to administer the test. She said she believes it is important that school districts get more money so that they can budget for buses or another location outside of the school.

CHAIRWOMAN GREEN asked Mr. Reeves to address the language on page

2, lines 24 to 25, and on page 4, lines 18 to 20.

MR. PHIL REEVES, Assistant Attorney General, Department of Law, said no such language is in existing statute. He suggested deleting the first sentence after subsection (c) on page 2 so that it does not discuss the administration. Right now the test is being administered without such language.

CHAIRWOMAN GREEN said the sentence, "An examination required under (a) of this section shall be administered during days approved by the commissioner for in-service training of teachers under AS 14.03.030." She asked Dr. Johnson if this topic has been discussed thoroughly enough so that the state board and DOEED would know that there is great latitude and great expectation on behalf of DOEED and the board to encourage local districts to be a little more creative.

TAPE 01-21, SIDE B

CHAIRWOMAN GREEN said the purpose is to prevent great disruption in the schools and to figure out alternatives within the correct time frame.

SENATOR DAVIS moved to delete the language referred to by Senator Green [Amendment 1].

SENATOR WILKEN asked for clarification because he thought Dr. Johnson said this test has to be given on a specific date.

DR. JOHNSON said there is no provision in current statute and that is the way DOEED has been doing business. The state board establishes those dates in the fall and the spring. The board believes it has the authority to do so. If a district wants to build its calendar around those dates in order to offer in-service on that date, he believes the commissioner would approve that.

SENATOR WILKEN asked if the state board will continue to provide specific dates on which the test can be given.

DR. JOHNSON said it will.

CHAIRWOMAN GREEN clarified that the amendment will delete the language on page 2, line 24 through line 26, and on page 4, beginning at the end of line 18 that reads, "A competency examination may not be administered during a day in session." [Amendment 1]

SENATOR WARD objected and asked if Amendment 1 will free the

administration up to set a date and then work in conjunction with all school districts.

[Dr. Johnson nodded yes.]

CHAIRWOMAN GREEN interjected to inform the audience that the committee will not be able to get to SB 67 and SB 91 today. She noted those bills would be heard on Friday.

SENATOR WARD removed his objection therefore Amendment 1 was adopted.

DR. JOHNSON clarified that Senator Ward "hit the nail on the head." The state board and the department would establish the testing dates. DOEED also approves the calendar so districts can decide whether to have an instructional or in-service day on those testing dates.

SENATOR WARD said it would also not rule out the possibility that DOEED will come back to the legislature and request additional funding so that districts can administer the tests on Saturdays.

DR. JOHNSON said he believes as DOEED gains some experience it will come back with suggestions on how best to do this.

SENATOR WILKEN questioned whether there would be any circumstances in which a person who lacked proficiency in the English language could pass the test without provisions.

DR. JOHNSON said that is a question the state board will take up as part of the waiver discussion.

SENATOR WILKEN asked if a lack of proficiency and the ability to communicate in English may be reason for a waiver.

DR. JOHNSON said he cannot speak for the board but he is certain it will consider whether or not a student who does not speak the English language should be denied a diploma in Alaska.

SENATOR WILKEN suggested the committee consider that option and that they are making that available if the committee doesn't do something about that. He then asked if a waiver would apply only at the high school level or whether it would apply at the benchmark level.

DR. JOHNSON said a waiver would apply only at the high school level. The benchmark exams are mandatory.

SENATOR DAVIS asked that a representative from DOEED explain the special education component of the legislation to the committee.

Number 2143

MR. GREG MALONEY, Director of Special Education, DOEED, said nothing in SB 133 is inconsistent with the federal requirements for special education services. The Individual with Disabilities Education Act as amended in 1997 (IDEA 97) contains provisions for students with disabilities to participate meaningfully in statewide assessments. The goal is to have those students, as much as possible, participate in the regular assessments. Under Alaska's current system, students could participate in one of three ways: taking the regular assessment without accommodations; taking the regular assessment with accommodations; or taking an alternate assessment. The alternate assessment is for a relatively small percentage of students who have significant cognitive impairments. The alternate assessment is a portfolio assessment based on things the student can or cannot do as determined by alternate standards.

MR. MALONEY said under CSSB 133(HES), students would still take the test, but it is only after the student does not pass the test that the IEP team would have the option of looking at an alternative or different way of assessing the student's progress. That could be a portfolio assessment, a review of the IEP goals, or other ways as determined by the IEP team. He anticipates the state board will be involved in developing the guidelines under which those kinds of assessments would be developed. The goal of IDEA 97 is not so much how a student performs on the test but to make sure the student receives instructional programming that is tied to standards, that holds the student to high standards, and allows the student access to the general curriculum.

Regarding accommodations, MR. MALONEY said the question would be what the student needs to allow the student to have access to and make progress on the general curriculum. Under IDEA 97, there are no specific requirements regarding a student with a disability and graduation but there are requirements that DOEED has to maintain to assure that students with disabilities do participate in statewide assessments. At a minimum, DOEED has to report to the federal government the number of students with disabilities who participate, the performance of students with disabilities on these regular assessments, and the graduation rate of those students. One of the concerns is whether SB 133 will affect the numbers of students determined eligible for special education. DOEED currently monitors that anyway. DOEED's goal is not to have more students identified but to have instructional programs able to handle larger groups of students, thereby making special education

unnecessary for a larger group of students.

Number 1970

SENATOR DAVIS asked if, under CSSB 133(HES), students could use the same accommodations they use under their IEP plan when they take the test.

MR. MALONEY said the students could still take the test with or without accommodations and if the student did not pass, the IEP team would have the prerogative to determine a different way of assessing, which may include using a calculator.

SENATOR DAVIS said that bothers her. She asked whether the student can take the test the first time with the accommodations that are given to the student with the IEP. She expressed concern about setting special education students up for failure by allowing them to use accommodations only after they have failed the test.

MR. MALONEY clarified that under the current system, students have the opportunity to have all of the accommodations that are contained in CSSB 133(HES) for their participation so that a student with a disability would have the option, as determined by the IEP team, to take the test with as many appropriate accommodations as possible. Some accommodations are not listed in CSSB 133(HES); they are considered to be modifications, such as use of a calculator for the math test.

SENATOR DAVIS suggested adding the modifications to the legislation.

DR. JOHNSON said it would be the committee's choice as to whether to broaden the accommodations to include modifications. The current thinking behind CSSB 133(HES) is to give students an opportunity with approved accommodations that are outlined by the state. If the student cannot pass the test that way, the IEP team can look at other aids that may be necessary to assist that child given the child's specific disability. Regarding whether special education students will be set up for failure, Dr. Johnson said there are probably some students with disabilities that don't fall into the alternate assessment category, the best example being non-readers. If a reader is appointed for that student, there is a possibility the student could answer the comprehension questions and get a score determined by the IEP team to be appropriate for that individual child. He believes it can work the way it is right now without damaging students. The goal is to have every child with a disability challenge the test with approved accommodations and if they can't achieve a passing score, then give them other

opportunities through additional accommodations that would be approved on an individual basis.

SENATOR WILKEN referred to language on page 7 that reads, "All IEP meeting members must understand that alternative assessments *do not lead to a high school diploma.*" He asked if that means that the two percent of students that would have an alternative assessment will not receive a diploma.

MR. MALONEY said that is correct under the current system. The only students under the current system to receive a diploma would be those who pass all three components of the exam.

SENATOR WILKEN asked if a person could tell from looking at a diploma whether a student passed the competency test with accommodations.

MR. MALONEY said no, those accommodations are allowed because they do not change the validity or reliability of the exam. They allow the disability to not penalize the student unfairly.

SENATOR WILKEN asked if there would be anything on any diploma that would indicate some different level of learning or achievement, other than the three endorsements.

MR. MALONEY said under the bill, it would depend on how the results of the test are marked. For example, if the IEP team determined a different process for a student to receive a diploma, then that student would not have passed through the traditional methods the reading, writing and math components of the exam. At that point, it would be determined how the endorsements are noted on the diploma. He pointed out that confidentiality is another issue. It cannot be clear from the diploma that students are in special education. He does not see anything under CSSB 133(HES) that talks about a change in how a student with a disability or a modified assessment would be represented, but to his understanding, the student would have the diploma without the endorsements added to it.

Number 1659

DR. MCLAIN asked Chairwoman Green to consider deleting the language on page 2, line 18, that reads, "and must occur within three years after the date the student is no longer in attendance."

CHAIRWOMAN GREEN asked committee members if maintaining the sentence, "A reexamination must not be offered more often than once every three months" would be satisfactory because it would give the

district room to allow a returning adult to take the test.

DR. JOHNSON said he thinks that is workable but that says a 27 year old could come back and challenge the test. He said he sees no reason to deny a person that opportunity and that it makes good sense from a state perspective.

DR. MCLAIN added the student would still have to meet other district requirements so there would be some quality control.

SENATOR WILKEN moved to delete the words "and must occur within three years after the date the pupil is no longer in attendance" on page 2, lines 18 and 19 [Amendment 2].

CHAIRWOMAN GREEN announced that with no objection, Amendment 2 was adopted.

MR. RICH KRONBERG, President of NEA-Alaska, thanked the committee and commented on two aspects of CSSB 133(HES). Regarding the use of in-service days, NEA-Alaska recognizes that the six days of testing definitely impact instructional time. NEA-Alaska also recognizes that in-service days are very valuable as they provide an opportunity for professional development. The key issue is who can proctor the test. If the test must be proctored by certificated staff, then the use of in-service days is more problematic. He suggested that changes be made to regulations to allow classified staff or others to proctor the tests. The second issue of concern is the granting of waivers. NEA-Alaska supports that provision and it supports the concept that the state board and DOEED will have to adopt guidelines to promote uniformity and accountability. NEA-Alaska believes in addition to reporting requirements in the school report card, it would be advisable to require districts to submit to DOEED a written explanation each and every time they grant a waiver.

CHAIRWOMAN GREEN said the issue of who can proctor the test is worth further investigation.

SENATOR LEMAN asked why the phrase "high school student" is used on page 6 yet "secondary student" is used elsewhere throughout the bill.

CHAIRWOMAN GREEN said that in statute, Section 14.03.060, refers to elementary, junior high and secondary schools. Section 14.03.075 refers to secondary pupil competency testing. She noted it distinguishes between the elementary grade students and secondary students and those terms were used to conform to current titles.

CHAIRWOMAN GREEN thanked all participants and announced that CSSB 133(HES) will be first on the agenda on Friday. She then adjourned the meeting at 2:50 p.m.
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