

ALASKA STATE LEGISLATURE
SENATE HEALTH, EDUCATION & SOCIAL SERVICES COMMITTEE

March 18, 2002

1:37 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

COMMITTEE CALENDAR

SENATE BILL NO. 346

"An Act relating to statewide school district correspondence study and state supported home schooling programs."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

SB 346 - See HESS minutes dated 3/15/02.

WITNESS REGISTER

Mr. Jim Foster
Assistant Superintendent
Galena City Schools
Galena, AK

POSITION STATEMENT: Supports SB 346

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

POSITION STATEMENT: Expressed concern about SB 346

Mr. Ken Truitt
Assistant Attorney General
Department of Law
PO Box 110300

Juneau, AK 99811-0300

POSITION STATEMENT: Addressed legal concerns with SB 346

Ms. Joan D'Angeli

Juneau, AK

POSITION STATEMENT: Supports SB 346

Ms. Pat Chapman

Ketchikan, AK

POSITION STATEMENT: Supports SB 346 but asked that it be amended

Ms. Leba Griswold

HC 60 Box 4493

Delta Junction, AK 99737

POSITION STATEMENT: Supports SB 346

Mr. Mike Wilcox

PO Box 198

Delta Junction, AK 99737

POSITION STATEMENT: Supports SB 346

Ms. Ruth Abbott

HC 60 Box 4225

Delta Junction, AK 99737

POSITION STATEMENT: Supports SB 346

Ms. Jeanne Wilcox

PO Box 198

Delta Junction, AK 99737

POSITION STATEMENT: Supports SB 346

Mr. Phil Holbrook

HC 60, Box 3240

Delta Junction, AK 99737

POSITION STATEMENT: Supports SB 346

Mr. Art Griswold

HC 60, Box 4493

Delta Junction, AK 99737

POSITION STATEMENT: Supports SB 346

Ms. Svetlana Malyk

PO Box 258

Delta Junction, AK 99737

POSITION STATEMENT: Supports SB 346

Mr. Russ Bowdre

PO Box 1048

Delta Junction, AK 99737

POSITION STATEMENT: Supports SB 346 but suggested amendments

Ms. Beth Abbott
HC Box 60 Box 4225
Delta Junction, AK 99737
POSITION STATEMENT: Supports SB 346

Mr. Dan Beckman
Superintendent
Delta Junction School District
Delta Junction, AK 99737
POSITION STATEMENT: Supports SB 346

ACTION NARRATIVE

TAPE 02-21, SIDE A
Number 001

CHAIRWOMAN LYDA GREEN called the Senate Health, Education & Social Services Committee meeting to order at 1:37 p.m. Present were Senators Leman, Wilken, Davis and Green.

#SB 346

SB 346-SCHOOL DISTRICT CORRESPONDENCE STUDY

CHAIRWOMAN GREEN stated that the committee began discussing SB 346 on Friday but was unable to hear from all participants who wished to testify, therefore testimony was extended to today. She informed members that a proposed committee substitute (CS), Version C, is before the committee. Version C includes Amendments 1 and 3, which were adopted on Friday.

SENATOR LEMAN moved to adopt Version C as the working document of the committee. There being no objection, the motion carried.

SENATOR LEMAN told members that Version C also contains Amendment 2 and, because Alyeska Central School is included in the bill and is governed by DOEED instead of a school board, the words "governing body" were substituted for "school board" on page 2, line 2.

1:40 p.m.

CHAIRWOMAN GREEN said she received a letter from Greg Miller of Family Partnership expressing concern about the previous reference to "home school." She asked if that concern was taken care of in Version C.

SENATOR LEMAN said it was. He indicated that Version C has a parallel construction to existing statute so, to the best of his

knowledge, the provisions in Version C should be consistent with existing practice.

CHAIRWOMAN GREEN took public testimony.

MR. JIM FOSTER, Assistant Superintendent of the Galena City School District, stated support of the bill. He noted that he has been working with Dr. Holloway and Dr. McLain and has had a lot of input into the proposed regulations. He said the Galena City School District is in close to 100 percent agreement with the proposed regulations. He said he does not believe this legislation strays as far as some have cautioned.

DR. ED MCLAIN, Deputy Commissioner of the Department of Education and Early Development (DOEED), informed members that he asked Mr. Truitt, the assistant attorney general, to prepare some comments on concerns he stated at the last meeting. He thanked Mr. Foster and Mr. Knutsen (ph) and staff for the work they have done on the proposed regulations. He believes the new regulations address various concerns that have been raised yet provide guidance for excellence in correspondence studies.

MR. KEN TRUITT, assistant attorney general, Department of Law (DOL), said that Senator Leman stated it is his intent to make the current workdraft consistent with, and mirror, existing statute, but DOL does not believe it does so. Version C is placed in a section of the statutes in Title 14 that deal with the state board's powers and duties. The language in Version C asks the state board to allude to powers and duties of the local school district boards. DOL believes it would be more consistent with existing statutes to put some of this language in the provisions that deal specifically with school district powers and duties.

CHAIRWOMAN GREEN asked where that would be.

MR. TRUITT said in AS 14.08.111 - the duties of the regional school board, paragraph 9; or AS 14.14.090 - the duties of school boards, paragraph 7. He pointed out those two statutes are identical to each other. He noted the most recent statute that deals with charter schools, AS 14.03.255, exempts a charter school from a local school district's textbook program, curriculum and scheduling requirements.

CHAIRWOMAN GREEN asked if any section of statute pertains strictly to statewide correspondence.

MR. TRUITT said the only place a district-offered, statewide correspondence program is mentioned in existing statute is in the

finance statute, AS 14.17.430, which specifies that those types of programs receive 80 percent funding.

CHAIRWOMAN GREEN maintained that the committee should either create a new section or dovetail it into something that distinguishes that it is for statewide correspondence.

MR. TRUITT said that would be one way of doing it. He then said:

This bill is kind of like instructing myself to say that I can only say that Dr. McLain has a red car and, if in fact, he has a green car, the fact that I have to acknowledge that he has a red car doesn't change the color of his car. We're talking about in this bill the powers and the duties of local school boards and it would be more proper, more consistent, to put this kind of language in their statutes that deal with their powers specifically. Here it's just kind of an allusion to - that the state board has to take into account certain powers that aren't right now in those existing statutes.

SENATOR LEMAN said he agrees this language could be placed elsewhere in statute, but the point of the bill is to give direction to the board and DOEED. The bill was drafted to respond to a direction that many in this legislature believe is inappropriate. He stated:

Doing it where it is - it's just making a very specific statement. I don't disagree but we could go into other areas of statutes and probably - makes a little more sense, does to me too, to put those in there but in this particular case it makes it fairly easy just to direct the board as to what it's powers and authorities and what it can do. I don't think it does disservice to the other sections and I don't think it's inconsistent with existing practice and I don't believe it creates ambiguities that would cause any problems with - even though you didn't mention it, it was mentioned last Friday - with accreditation. So then I say, what's the problem? I don't think there's a problem with having it here even though we could pull it and put it somewhere else equally as well.

CHAIRWOMAN GREEN asked Senator Leman if he prefers that it remain as is.

SENATOR LEMAN said he doesn't particularly care but it works the way it is drafted and gives direction to and puts restraints on

the board, which he feels is appropriate.

1:52 p.m.

CHAIRWOMAN GREEN asked if there is anything through line 8 of Section 1 that is inappropriate for the state board to be doing. She then commented that she believes everyone knows what the committee is trying to do but she does not know the best place in statute for the new language.

MR. TRUITT said this bill will create two different sets of statutes that deal with the powers of a school district and they don't match up. The rest of the statutes that he mentioned earlier do not specifically deal with home designed courses. SB 346 will say the state board must acknowledge that this power exists and the statutes that create those other powers do not mention these types of courses.

CHAIRWOMAN GREEN asked if Mr. Truitt is referring to AS 14.08.111.

MR. TRUITT said that is correct, as well as AS 14.14.090 - duties of school boards. He indicated that AS 14.03.255(a)(1) probably best describes what this process is about - it says that charter schools are exempt from a local school district's textbook, program, curriculum, and scheduling requirements.

CHAIRWOMAN GREEN asked Mr. Truitt if he is suggesting that a separate statute be set up.

MR. TRUITT said no but, if he had a magic wand, the language in the charter school statute is the clearest of the statutes that deal with this topic. He also recommended that the committee amend AS 14.14.090 and AS 14.08.111 to incorporate this language.

CHAIRWOMAN GREEN asked Mr. Truitt to explain why keeping Version C as is will create confusion. She noted that Version C provides instructions to the state board of education.

SENATOR LEMAN added, "On how to write regulations, on how to implement the law."

MR. TRUITT replied that Version C instructs the state board to take certain school district board powers into account when it adopts regulations that deal with correspondence schools. He further explained that it instructs the state board regarding the powers of local school boards. He noted Version C contains material that is not in the statutes that create the powers, duties, and responsibilities of school districts. Therefore, in the statutory scheme, the most appropriate place to discuss what duties and powers the local school districts have is in those

specific provisions that deal with school district powers and duties. He added this bill is a hybrid that alludes to powers that are not currently on the books in those other sections so that is where the inconsistency comes into play.

CHAIRWOMAN GREEN asked what the downside of doing it this way would be.

MR. TRUITT said if this gets enacted into law, the statutory scheme in Title 14 will be inconsistent and ambiguous.

SENATOR LEMAN disagreed that this bill will create inconsistency within the statutes because some of the powers are implied through powers that already exist.

DR. MCLAIN said this bill was introduced in response to the public comments received about the proposed regulations. A large number of those comments pertained to dissatisfaction with board review or approval of textbooks and materials. He said he is still not clear about whether the new section (a) is meant to replace the local board approval process. He held it will be very unfortunate if, in six months from now, there are misunderstandings about the duties of local boards.

2:03 p.m.

CHAIRWOMAN GREEN asked how placing that language in another statute will address the problem of a deluge of questions about the proposed regulations to implement statewide correspondence schools.

DR. MCLAIN said the large number of comments received by DOEED is what led the department to further amend the proposed regulations. He said the regulation process is designed to get to that level of detail. He said DOEED wants to use the regulations and statute to foster the very best programs. He is concerned, however, that SB 346 minimizes regulation to make it possible to run programs that are not in the best interest of Alaskans. He added that DOEED intentionally put those regulations out for an extended period of time to allow for public debate and get a lot of input. The amendments that DOEED intends to put out will be substantial and he will recommend to the state board that the comment period be extended again to make sure DOEED has it right the second time.

SENATOR LEMAN maintained that the language in SB 346 is no different from what is in AS 14.14.090 so he sees no ambiguity.

CHAIRWOMAN GREEN asked where, in statute, the primary powers of the state board are listed.

MR. TRUITT replied AS 14.07.170.

DR. MCLAIN suggested that if the duties in the bill are meant to simply mirror what already exists, they do not need to be restated. Local districts already have an implied authority to approve courses so replication is confusing. He said in 133 of 150 comments, the writers did not want local school boards to do the approval yet that is a basic thing that boards do. If the intent of SB 346 is to not require local school board approval, it runs afoul of AS 14.07.050. He explained that he fully understands that boards do the approval through whatever process they set up, but that is already stated in AS 14.11.090. He repeated that to duplicate that duty makes it appear that SB 346 is different and creates an ambiguity.

MR. TRUITT stated that AS 14.07.060 provides the board with regulation adopting authority; AS 14.07.075 creates the board as the head of the department; and AS 14.07.030 describes the powers of DOEED.

CHAIRWOMAN GREEN said that she understands the issue and intent and will find a resolution. She then took public testimony.

MS. JOAN D'ANGELI, a home school parent, stated disappointment with DOEED's regulatory process for the following reasons. Her home school (Cyber Link) was given an application to renew under the proposed regulations before the hearings had begun or the comment period had closed. After legislators found out, DOEED required Cyber Link to reapply under last year's regulations. In addition, two months ago, she received a statement from Cyber Link saying that students should be immunized immediately or leave the program. She had previously been given a two-year exemption and then was told to rush to a clinic. She said her son has no in-class exposure. She has been concerned because Dr. McLain told Cyber Link that his long term goal is to align Alaska with Pennsylvania's home school laws. She said she would feel better about DOEED's proposed regulations if Cyber Link was allowed to be part of their creation.

MS. D'ANGELI stated support for SB 346 and informed the committee that she had some proposed amendments to the bill. Regarding the purchase of curriculum items, Ms. D'Angeli clarified that Cyber Link is not allowed to purchase anything until an individual education plan that describes what is to be purchased is signed. Materials with any religious significance are not allowed. She said she was upset with an onsite review because DOEED did not want Cyber Link to use Calvert because of religious overtones. She said Calvert provides a complete curricular package that helps students on benchmark exams. She said she did not know it had religious content until she was told by Dr. McLain. She found the religious part to be on music tapes, which she does not use.

She said she was shocked when DOEED protested its use. She offered to show the manual to committee members. She then explained that one of the proposed amendments would require immunizations for students who take one or more classes in a public setting, but not for students who learn at home.

2:20 p.m.

MS. PAT CHAPMAN, a parent of an IDEA student living in Ketchikan, stated support for SB 346 but said the local board has set up a procedure in which the contact teacher and parent work together to choose curriculum. She asked committee members to amend the bill to say that DOEED cannot impose regulations on a statewide school district, home school, or correspondence study program that are not imposed on the regular school district.

MS. LEBA GRISWOLD, testifying from Delta Junction, stated support for the home school program. As a senior, she has found that home schooling has more to offer than public school.

MR. MIKE WILCOX, testifying from Delta Junction, stated strong support for SB 346.

MS. RUTH ABBOTT, testifying from Delta Junction, said she has been a home school parent for 12 years and strongly supports SB 346.

MS. JEANNE WILCOX, testifying from Delta Junction, stated support for SB 346.

MR. PHIL HOLBROOK, a home school parent from Delta Junction, stated support for SB 346 and said he speaks for the other members of the Holbrook family who were prepared to testify.

TAPE 02-21, SIDE B

MR. ART GRISWOLD, testifying from Delta Junction, said he believes the position stated by Dr. McLain and the assistant attorney general, is an attempt to destroy the home school program and regulate it out of existence. He believes the concerns expressed are a smokescreen to delay the bill so that it cannot pass this session. He asked members to take action on the bill and clean it up later if necessary.

MS. SVETLANA MALYK, testifying from Delta Junction, stated support for SB 346.

MR. RUSS BOWDRE, testifying from Delta Junction, said he likes what SB 346 does to retain parental responsibility. He believes that parental responsibility is being eroded through regulations. He suggested adding the words "state funded" between the words

"statewide" and "correspondence" on page 1, line 5 and on page 2, line 7.

MS. BETH ABBOTT, a home schooled senior, stated support for SB 346.

MR. DAN BECKMAN, superintendent of schools in Delta Junction, informed members that he appreciates the attention given to statewide correspondence programs. His district operates the Delta Cyber School, a charter school, and an in-district correspondence program. He believes the direction is clear from the Legislature, Congress and President Bush that the most critical issue facing correspondence programs and public schools in general is that programs must be accountable, which requires assessments to be done. He pointed out that he has learned from extensive experience with correspondence schooling that parental involvement is vital to student success. He said he believes accountability of the curriculum is the responsibility of the local school board. Regarding immunization, he said he believes the intent of the Legislature was to have all children immunized, not only those who attend school. In addition, he noted that the Delta School Board has approved Calvert as an acceptable curriculum. He noted the State of Alaska used Calvert in the 1950s and 1960s. He offered to answer questions.

MR. MICHAEL DAMMEYER, testifying from the Mat-Su, said he listened to Dr. McLain's testimony on Friday about Amendment 2, and believes that DOEED is deliberately twisting the situation by requesting the contents of SB 346 be moved from a statute that does not require school boards to select the curriculum directly into a statute that does. [Much of Mr. Dammeyer's testimony was inaudible.] Currently, a school board can let anyone select curricular materials. He said that most people do not realize how bad the education system has become over the last few years, which is why a lot of correspondence schools have come into existence. He said that over half of the engineers in Alaska are from foreign countries because we are unable to produce the local talent. He said he believes DOEED is trying to stifle innovation and stated support for SB 346 and the amendments.

SENATOR WILKEN asked Mr. Dammeyer to elaborate on his comment about test scores.

MR. DAMMEYER said that test scores across the country show that the education system is not doing well.

SENATOR WILKEN said he would send Mr. Dammeyer a report of the statewide test scores on the high school qualifying exam and how students who attend correspondence schools compare. He pointed out that the Fairbanks school district graduates 98 percent of its students and scores on all benchmark exams exceed statewide

and nationwide averages. He maintained that the Legislature's job is to make sure that every child in Alaska has an education when they leave high school that enables them to perform in society. He indicated that he wants to encourage innovation but he does not want to find 20 years from now that the experiment was a failure, which is what the proposed regulations are about.

MR. DAMMEYER said that over half of the engineers that he currently works with are from other countries. These people were imported because the talent is not available in the United States.

The committee took a brief at-ease.

SENATOR WILKEN said when he worked on education reform three years ago, he was involved in discussions about the authority of school districts. He asked where a school board would get statutory authority to represent students residing outside of that district.

2:40 p.m.

MR. TRUITT said there is no statutory duty requiring a school district to provide education services outside of the district. Districts are permitted to offer optional programs through DOEED's regulations. The only reference to statewide correspondence programs is in the finance statutes (AS 14.17.430).

SENATOR WILKEN asked if the lack of explicit authority does not prevent local school boards from representing students outside of the district.

MR. TRUITT said that is one of the "sticking points" that Dr. McLain has been addressing. He noted that AS 14.09.070 speaks about the introduction of textbooks and materials into the school curriculum, so to the extent that school services are offered to students outside of the district, he would assume that the district's correspondence program undergoes the same procedure as in-district programs. He acknowledged that Senator Wilken's question about where the duties reside is a good one.

SENATOR WILKEN commented that during previous work on education reform two years ago, there was talk of auditing out-of-district correspondence schools because those programs had grown from 1500 to 9,000. One out-of-district school had jumped from zero to 1700 in two years. He noted that DOEED did the audit and published a white paper and from DOEED's concerns came the proposed regulations. He said it seems like the Senate HESS Committee is starting at the end. He pointed out that legislators are not hearing from the people who feel the system is working fine -

legislators are hearing from 100 well-intentioned, well equipped home school parents. He indicated there are 8,900 other students and the regulations are designed to make sure no child is left behind.

DR. MCLAIN explained that his involvement in this issue began when he was assistant superintendent of the Kenai Peninsula. That district had become rather aggressive in terms of trying to do something new with its correspondence program to become responsive to some of the issues discussed today. He was then asked by DOEED to join its team to review two programs that differed in key ways - size and structure. He was not a district employee at that time but he did have experience evaluating and accrediting learning experiences outside of the school walls in both Wrangell and Kenai. During the review, two sets of concerns were raised. The first surrounded mechanical issues, perhaps because of the fast growth of the programs. The second involved philosophical issues. It became apparent that the program went far beyond what was originally conceived. The issue of responsibility of instruction was raised, which is the responsibility of the parent, but also a responsibility of the state.

He was named as deputy commissioner of DOEED in July of 2001, and in September a meeting was held. Two competing forces became apparent - one group said it did not want to be treated differently from others and one claimed a need for special allowances because of its uniqueness. DOEED wants to allow for both but is concerned that as programs go forth with innovation to new grounds, standards be in place to assure accountability. He believes accreditation is valuable for any school but more valuable for home schools. He encouraged programs to adopt procedures that would assure or be consistent with accreditation. He repeated that he became concerned that safeguards be put in place.

DR. MCLAIN said he has heard repeated stories of how well home school students are doing, and he believes that many are, but he was surprised to find students from the three largest correspondence programs, Alyeska, Galena-IDEA and Nenana Cyber Links, had a lower percentage of students who scored in the proficient range than the statewide average. He believes Alaska is on the edge of a very good set of programs and options, but maintained that the portrayal that correspondence programs are the panacea is not accurate. He stated that his interest is not to restrict.

CHAIRWOMAN GREEN asked if all public schools in Alaska are accredited.

DR. MCLAIN said the majority of Alaska's elementary schools are

not accredited, as well as the overwhelming majority of smaller schools throughout the nation. There are two ways to get accreditation. A regional association looks at the inputs - teacher quality, the library collection, policies and procedures, and other accreditation agencies look at outcomes. In either case, an accredited school has real advantages, particularly for home schools. When a student attends an accredited school, that transcript carries unquestioned weight when transferring or applying to another school. School administrators know that transcript is one of quality. He pointed out that many elementary schools in Alaska are not accredited so there is general acceptance when students are transferred. There have been cases where parents whose children used correspondence programs found out after the fact that those credits were not acceptable to other institutions because the correspondence program was not accredited.

CHAIRWOMAN GREEN asked if accreditation is required in Alaska.

DR. MCLAIN said it is not.

CHAIRWOMAN GREEN asked if every high school in Alaska is accredited.

DR. MCLAIN said, "Certainly not the smaller ones."

CHAIRWOMAN GREEN said she does not want to hold up a standard that is not held by others. She then asked Senator Leman and Dr. McLain to discuss the issue and come back in a few days with a resolution to either leave the controversial language as is or place it in another statute. She then announced that DOEED will give a presentation on Wednesday about the minimum expenditure for instruction requirement placed in SB 36 several years ago. DOEED will update the committee on the waiver process and other information. On Friday, DOEED will give an overview on the ESEA implementation and the McQueen School issue.

SENATOR LEMAN asked that DOEED provide a response to his concern about DOEED's fiscal note in the near future.

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With no further business to come before the committee, CHAIRWOMAN GREEN adjourned the meeting at 3:02 p.m.