**ALASKA STATE LEGISLATURE**
**SENATE HEALTH, EDUCATION AND SOCIAL SERVICES STANDING COMMITTEE**
March 31, 2004
1:38 p.m.

**TAPE (S) 04-16&17**

**MEMBERS PRESENT**

Senator Fred Dyson, Chair
Senator Lyda Green, Vice Chair
Senator Gary Wilken
Senator Bettye Davis
Senator Gretchen Guess

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

SENATE BILL NO. 372
"An Act relating to secondary school assessments for students with disabilities; and providing for an effective date."
HEARD AND HELD

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 248
"An Act relating to secondary school competency examinations, graduation requirements, and diplomas; and providing for an effective date."
HEARD AND HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 372
SHORT TITLE: SECONDARY SCHOOL ASSESSMENTS
SPONSOR(s): HEALTH, EDUCATION & SOCIAL SERVICES

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| 03/19/04 | (S) | READ THE FIRST TIME - REFERRALS |
| 03/19/04 | (S) | HES, FIN |
| 03/31/04 | (S) | HES AT 1:30 PM BUTROVICH 205 |

BILL: SB 248
SHORT TITLE: HIGH SCHOOL COMPETENCY EXAMS/DIPLOMAS
SPONSOR(s): SENATOR(s) GUESS

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| 01/12/04 | (S) | PREFILE RELEASED 1/2/04 |

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| 01/12/04 | (S) | READ THE FIRST TIME - REFERRALS |
| 01/12/04 | (S) | HES, FIN |
| 02/13/04 | (S) | SPONSOR SUBSTITUTE INTRODUCED-REFERRALS |
| 02/13/04 | (S) | HES, FIN |

**WITNESS REGISTER**

Les Morris
Director of Teaching and Learning Supports
Department of Education & Early Development
801 W 10th St.
Juneau, AK 99801-1894
**POSITION STATEMENT:** Responded to questions on SB 372 and SB 248

Neil Slotnick
Assistant Attorney General
Civil Division
Department of Law
PO Box 110300
Juneau, AK 99811-0300
**POSITION STATEMENT:** Responded to questions on SB 372 for Department of Education and Early Development

Roger Sampson, Commissioner
Department of Education & Early Development
801 W 10th St.
Juneau, AK 99801-1894
**POSITION STATEMENT:** Testified on SB 372 and SSSB 248

**ACTION NARRATIVE**

**TAPE 04-16, SIDE A**

**CHAIR FRED DYSON** called the Senate Health, Education and Social Services Standing Committee meeting to order at 1:38 p.m. Present were Senators Green, Wilken, Davis and Guess. Senators Gary Stevens and Con Bunde were also in attendance.

## SB 372-SECONDARY SCHOOL ASSESSMENTS

CHAIR FRED DYSON announced SB 372 to be the first order of business. He stated he intended to have both SB 372 and SB 248 presented and hear responses from the Departments of Education and Law, but no action would be taken on either bill that day. He noted that a lawsuit was filed on the issue and he wanted to make sure that the committee deliberations didn't interfere with the suit.

SENATOR LYDA GREEN, sponsor of SB 372, said one of her primary concerns with regard to the exit exam has been the testing of learning-disabled students that are on IAP [individualized assessment program]. During an earlier conference she thought they had reached a point in existing statute, which was SB 133, to resolve the issue and make the intention clear. Originally, they took exception to some action the board took, but have since learned that they did work within the framework of what they were given. She continued to say:

> One of the things that we also discovered in the course of talking about this is there is an alternate assessment, an alternative assessment and there is similar language in NCLB that brings about a great deal of confusion so we have changed, in our legislation, the title of the test for the learning disabled child on IAP with Individualized Assessment. This legislation makes clear that with regard to students with disabilities, assessment opportunities must expand beyond modified versions of the secondary school competency exam. It creates a new term - individualized assessment. It resolves ambiguity in statute regarding availability of assessment options available for our disabled students - especially with regard to students with severe cognitive disabilities and the ambiguities that result in a manor that incorporates state standards as required by federal law, and allows students with a severe cognitive disability to receive a diploma without having to take the exit exam.
>
> If the student is eligible, under board regulations, to participate - as you recall, the board adopted a three year window for severely disabled students because there was a posting on the web site that led to some misunderstanding and assurance that in actuality was questionable, but the error it was felt by the department justified a waiver so that those who were in high school would be waived from the exam and hence there is a three year time limit on that. We extend that deadline into the future.
>
> The other issue is that it is for those students who have a disability and are under an IEP. There would be a one year extension of the effective date of the exit exam on their behalf and that would allow the [Alaska]

> State Board of Education an additional year to put into play, what we consider to be, the correct exit exam for this population.

CHAIR DYSON noted that under current practice children with disabilities that are severe enough that they are not part of a standard academic program could obtain a diploma and he questioned whether this legislation would allow that practice to continue.

SENATOR GREEN replied, "I stand to be corrected if someone from the department wants to respond to that."

CHAIR DYSON asked Senator Green whether she had seen the fiscal note on her bill and whether it seemed reasonable.

SENATOR GREEN said of course it seems reasonable because the state would be involved in the review at some point, just as they do now when questions arise. SB 372 wouldn't change that, but there would probably be greater responsibility at the local level. She added,

> I've always been somewhat perplexed - before the exit exam special educators worked with students on IAP in a way that they tested regularly and used whatever standards were in place in their district or that the State required and of course they were testing anyway and this would be another of those assessments so it would not be an exceptional test that has to be created by contract that the State would go into - as we previously experienced with the original exit exam for the general population. I think it would just be a continuation of the work that a teacher and faculty staff does now.

CHAIR DYSON asked for verification that the bill doesn't require the department to approve a number of additional testing systems for students.

SENATOR GREEN said that is her understanding.

CHAIR DYSON asked Commissioner Sampson to come forward.

ROGER SAMPSON, Commissioner of the Department of Education and Early Development (DEED), introduced himself and remarked that the fiscal note probably needed some explanation. He opined that Senator Green did a very good job of articulating the key

difference between this bill and what they have addressed in the past.

CHAIR DYSON asked if he meant existing law.

COMMISSIONER SAMPSON said yes and added that SB 372 asks that the individualized assessment or the alternate assessment for those children that are severely impaired cognitively be based on the goals of their IEP instead of alignment with the exit exam. That oversight would be at the local level and is something that the IEP teams, particularly special education teachers, are used to working with and under federal statute are required to review annually at a minimum and sometimes a number of times per year to measure progress toward the standards that are on the IEP. To the maximum possible, those standards must be based on the state standards. That's why the fiscal note isn't large and actually there's potential for a reduction because there isn't the level of state oversight on approval. There's still oversight, but it deals with accommodation and modification on the first time students may take the exam for full participation.

CHAIR DYSON asked if the department takes the position that students should receive a diploma if they are able to meet the goals of their IEP even though they can't meet the standards of the high stakes exit exam.

COMMISSIONER SAMPSON said the department hasn't taken a position on that. "It has been difficult as both the Legislature and the Board [of Education] and the public as a whole has tried to work through this. There isn't a magic wand that will be a fix for every student when we're trying to apply a single measure to it." They're trying to develop a system that would protect the majority of the student population without punishing those with special needs.

SENATOR GREEN said she interpreted page 2, lines 5 through 9 to mean that it would be the same standards as the scope of the curriculum, it's just the method of testing that would be different.

CHAIR DYSON acknowledged that he saw the words. Addressing his comments to the commissioner, he said he recalls that of the 6,000 to 7,000 students that graduate every year about 600 hadn't passed the exit exam and at least half of those hadn't taken any part of the test. This led to the projection that

between 200 and 300 students couldn't pass the test. He asked the commissioner if his memory served him correctly.

COMMISSIONER SAMPSON said that could be, but they have yet to establish a baseline, so they're still dealing with estimates. They do know that approximately 600 students haven't passed the exit exam, but they don't know how many are students with disabilities and IEPs and how many aren't scheduled to graduate because parents haven't put them on a graduation track or because they haven't met other local requirements.

CHAIR DYSON commented that regardless of the reason, this is an effort to accommodate about five percent of the senior population.

COMMISSIONER SAMPSON said the assessment director was probably available on line to answer the question, but the other way to look at the numbers is that the majority of the students that aren't passing the exit exam are students with disabilities.

LES MORSE, director of assessment and accountability for DEED, explained that as of last fall about 1,400 seniors hadn't passed all three parts of the exam and they know that slightly more than 600 of those were special education students. They don't know whether those 600 students would have met local graduation requirements or were on track to meet the local requirements, but since they are seniors, they must have met some of the local requirements. They don't know how many of the 600 might qualify for a waiver and they don't know how many might receive a diploma under an alternate assessment, but they speculate it would be less than 2 percent.

CHAIR DYSON asked how many of the 1,400 hadn't taken any part of the exam.

MR. MORSE apologized that he didn't have the data, but he recalled that they were looking at data from students who had attempted one or more parts of the exam.

SENATOR GARY WILKEN asked for an explanation of the difference between an alternative assessment and an individual assessment.

SENATOR GREEN replied,

> The individualized assessment is the name. We came up with this legislation because of the confusion, previously, between alternative and alternate on the

state level and another one called an alternate exam on the federal level. Each of which meant something slightly different from the other, but were very confused. So we switched for that population of learning disabled children who were probably, in many ways, high functioning, but test out on psycho-education testing two grade levels below their ability level. It's an individualized assessment.

For the cognitively disabled child who is on a very different course of study and generally would be very easily recognized and would have a very different career path throughout their school years - that is the alternate assessment.

SENATOR WILKEN asked if alternate would be the severely disabled child that's federally recognized as such; it's the student that's identified in the formula as five times the student dollar. He concluded that an autistic child would provide an example.

SENATOR GREEN told him that's not the case; autism is a cognitive disability whereas the learning disabled child wouldn't be recognized as such unless you followed them in the classroom or by examining their test results.

CHAIR DYSON asked whether students that fall into the category of individualized assessment would likely have an IEP.

SENATOR GREEN replied absolutely.

CHAIR DYSON questioned whether anyone would be in the individualized assessment category and not have an IEP.

SENATOR GREEN thought that was correct.

SENATOR WILKEN asked whether individualized used to be called something else.

SENATOR GREEN told him they were alternative.

SENATOR WILKEN noted that must be why alternative is changed to individualized on page 4, line 4.

SENATOR GREEN agreed.

SENATOR WILKEN focused on "student's individualized education program" from page 2, line 8 and then turned to page 3, lines 1 and 2 and asked if it means that the department will be responsible for establishing regulations for over a thousand different programs.

COMMISSIONER SAMPSON explained that the individualized program referenced on line 8 would drive the assessment and the assessment would be designed to determine whether or not the student is meeting the goals that are identified on their IEP.

At the top of page 3 it says, "The department shall by regulation establish uniform standards for the individualized assessment program..." and they are discussing the development of a process by which that could occur. He asked Mr. Slotnick to expand on that explanation.

NEIL SLOTNICK, assistant attorney general representing DEED, agreed with Commissioner Sampson's interpretation of how the department would implement the regulation requirement. The regulations would be procedural rather than substantive. They would establish timelines for when the individualized assessment must be completed, how it must be processed and how the state would be notified. The IEP teams would be charged with determining the content of each individualized assessment program. The department certainly would have no way of doing that for over 1,000 students per year.

SENATOR WILKEN asked whether the regulations would address the appeal process if a student were denied an IEP.

MR. SLOTNICK said that would be a typical procedural regulation that the state board would consider putting into regulations.

SENATOR WILKEN asked for verification that an appeal process would be part of Section 3(f).

MR. SLOTNICK said he would anticipate that an appeal process would be a local process because the IEP and the individualized assessment are local issues, but the state board might put something like that into regulation.

SENATOR WILKEN asked if the local school board would be the arbiter in the appeal process.

MR. SLOTNICK said yes.

SENATOR WILKEN then asked if each school district would have a different standard for acceptance or denial of IEPs.

MR. SLOTNICK clarified that the IEP is a federal law and there would be a special education due process hearing

SENATOR WILKEN interrupted to say he meant to say IAP.

MR. SLOTNICK continued to say that some of the same issues might come up with the IAP as well and they might be resolved through the current framework for resolving that type of issue. There are already trained hearing officers for special education adjudications as well as many procedural safeguards to ensure that special education students receive a free and appropriate education.

SENATOR WILKEN admitted that he got his letters confused then restated his question. "Would we have 53 different standards for individualized assessment program, each determined by 53 different school boards?"

MR. SLOTNICK told him there would probably be a body of regulation on the issue, but each IAP will be individualized and tailored to determine whether or not a student met their IEP requirements. That would have to be an individual process but right now he didn't know whether there would be an appeal process for a child who failed the IAP. There might not be any more opportunity for an appeal than for the student who doesn't meet all the graduation requirements that are in regulation. That is a local matter that is determined by the local principal, the superintendent and the school board.

SENATOR WILKEN said that's what concerns him and asked Commissioner Sampson whether the regulations that are referenced on page 3, lines 1 and 2 would be specific enough so that there wouldn't be 53 different interpretations of who gets an IAP.

COMMISSIONER SAMPSON countered that he expects that there would be more than 53 different interpretations. Because IAPs are developed from IEPs, he believes there would be an IAP for every student that has an IEP. He did, however, think it was likely that the state board would establish just one procedural process for developing IAPs. "It would be those individual IEP teams that would establish what is appropriate for that student, based on the disability and what has been in that IEP for as long as the student has had that designation."

SENATOR WILKEN asked whether IEP standards approach or meet the standards of the exit exam.

COMMISSIONER SAMPSON said IEP standards run the gamut. There will be IEPs that clearly don't meet the standards of the exit exam and there will be IEP standards that exceed the exit exam. They would hope that there would be close alignment in many cases, but there is no assurance that the two would be equivalently rigorous.

SENATOR WILKEN said, "I'm not very trusting of our school districts. In my short eight years, they've taken advantage of loose rules and I suspect this may be another loose rule." He questioned how you would know that school districts were granting IAPs as a matter of convenience rather than as a matter of necessity.

COMMISSIONER SAMPSON acknowledged that when addressing children with disabilities he has heard that some people fear that the number of students that are moving into special education is ballooning. "I personally don't share that fear," he said, because there are rigid federal guidelines that determine whether or not a child is eligible to be certified as disabled and then the process for establishing an IEP is very extensive.

In conclusion he said, "Even though I may share a feeling that we can't monitor those consistently as a state or an agency or even as a school, the federal guidelines are very clear that they indeed have special rights as disabled children and that's why they have special programs."

SENATOR WILKEN expressed concern that there wouldn't be any effort to correct or help a disability; an IAP might simply provide an alternative path to circumvent the exit exam. He said there should be some way to monitor that.

SENATOR GREEN emphasized:

> It's one thing to have a first or second grader who qualifies for special services, but after age 10 there's some resistance in every fiber of the being of the average child to not ever be tested or qualify for a special education program. This is not something you opt into so you can't don't have to take a test.

SENATOR GREEN reminded members of the provision that requires students to qualify for any kind of exam exemption before

February of their junior year. This certainly won't be used as an opt-out provision because vying for an IEP is certainly not something that anyone would voluntarily try to qualify for. She continued to say:

> This is not out of the realm of what special educators do every day they work with a student with special needs. To me this is the conclusion of the work they have done with that child. This isn't new ground. she said.
>
> We need a continuation. If we can figure out the continuation of what we trust every special education teacher and require them to do every time they do the IEP process, which is highly regulated. If we're going to allow that process to have any credibility, we have to let that same process continue and to evolve into a final assessment program, which is what they've done for eternity since special education courses were offered and required. They'd be doing something similar to this, regardless of the form and certainly the department can structure it to be consistent with all other test giving.

CHAIR DYSON asked who has the responsibility of ensuring that IEPs are only given to students with demonstrated special needs.

COMMISSIONER SAMPSON explained that the state sends teams out periodically to ensure that both state and federal dollars are used according to statute and federal requirements. In addition to that, the federal government monitors the state oversight. He cautioned that although there is substantial oversight, it wouldn't be accurate to say that every child's IEP is checked for due process every year.

CHAIR DYSON asked whether the student is actually tested in this oversight process or do the teams simply review pieces of paper.

COMMISSIONER SAMPSON said the state team doesn't actually test the students and he didn't believe the federal government does either. But there are advocacy and oversight groups in the state that operate independently from DEED that become involved in a number of the issues to advocate for children with disabilities to make sure they are receiving appropriate services.

CHAIR DYSON asked who ensures that the classification isn't given to students that don't need it.

COMMISSIONER SAMPSON said he didn't believe anyone did that, but as Senator Green alluded, it's not a status symbol to be in that classification. The school districts that are administering the programs say they aren't receiving adequate resources so they would only be interested in following state and federal regulations to meet the requirements for students in such programs. There is tremendous expense and responsibility associated with children that are in the disability category, he said.

CHAIR DYSON remarked that under the foundation formula, special education students qualify the district for more money to take care of their special needs.

COMMISSIONER SAMPSON disagreed saying that would only be correct for the children that are in the most cognitively severe category. They qualify as intensive students, but all others are a .20 factor.

SENATOR GREEN told Chair Dyson it used to be that way when she was first in the Legislature but it isn't any longer.

Drawing on personal experience, she made it clear that there is mandatory and extensive testing and review for children with disabilities to determine whether or not they are meeting their goals.

COMMISSIONER SAMPSON agreed adding that there are two thresholds for children with disabilities. There is an annual review to ensure that the student's goals are appropriate and that the instructional procedures are meeting the needs for growth. Then there are federal regulations that require that the student be reevaluated at least once every three years to make sure that they still meet the federal requirements to remain in that category of disability and that the process is being utilized as outlined by regulation.

CHAIR DYSON asked if there might be a lack of consistency between schools or districts, which could lead to lawsuits.

MR. SLOTNICK agreed that any time you treat people differently you have to ask that question, but there is a large body of federal law that creates a special status for disabled children that are on IEPs and the state must adhere to that federal law and provide those students with special protections. It's a policy call for the Legislature to decide how much protection to

provide children on IEPs. Once that call is made, the courts aren't going to second guess the Legislature unless there is evidence of discrimination.

CHAIR DYSON noted that some people feel that the state has significant exposure to lawsuits under existing law and the regulations that the state school board has promulgated. He questioned whether the state is vulnerable.

MR. SLOTNICK replied there are several areas where there are legal challenges to the existing system. The current system is being implemented by regulation, which must follow existing statute and the intent of the regulation must implement the intent of the Legislature. He continued to say:

> One of the issues out there is, does the existing system, where we require all kids with disabilities to take a high school exit exam - a modified version of it but it's still the standardized version where you bubble in your answers...

**TAPE 04-18, SIDE B**
**2:23 pm**

> Is that consistent with the intent of the Legislature when it adopted SB 133? That is a question that is out there. If this Legislature acts to adopt this bill some other bill or to affirm the current system, that question goes away. That gives policy guidance from the ultimate policy maker in this state, which is this body - to the state board and to the department and we know how it is implemented this alternative or individualized assessment to the disabled kids. So that's a very good thing that we have an opportunity to do here because I will tell you right now, the intent of the Legislature, in adopting SB 133 isn't clear based on the record - based on the language of the actual statute and so if we bring clarity to that that's helpful. That's one area that we need to address.
>
> A second area is the issue of time. Federal law requires that we give all students sufficient time to prepare for a requirement that impacts their ability to achieve a diploma. That's the due process clause; you have to have fairness, you have to have notice. So there's a real question out there. Did we give kids

enough notice as to what the requirements for passing this exam would be? Now that's an open question out there. There's lots of case law that says that kids with disabilities need yet more time. And here we've got a situation where - SB 133 was passed just three years ago - it's taken the state board some time to implement it and we've got some confusion and some changes on how it's being implemented. That's another question that's out there. Does the whole time and fairness give people time - especially children that are disabled - the time to prepare for this change in law?

Now there's a third question that is out there regarding the current system. Remember I said that the current system is a modified high school exit exam. There is an argument to be made that that doesn't give disabled children an opportunity to demonstrate their competence. In my opinion, that is a policy question for the Legislature. Now, others may see it differently. Others may see that as a legal question - that the courts could step in and say that exam is not sufficient. But I will tell you that in my opinion, if that's the policy choice of this Legislature, then I think that is consistent with the requirements of federal law.

CHAIR DYSON said that was helpful and he understands there is vulnerability in terms of court challenges if there is a disparity between the regulations that have been promulgated and the law. If there is a need to bring clarity to the existing law, he asked whether one or both could help the committee to understand where the existing law lacks clarity.

COMMISSIONER SAMPSON said two state school boards have made three attempts to move regulation forward to meet the intent of the statute. It's because when the statute speaks about the flexibility - the need to address children with disabilities - providing them options to display that they are proficient at the skills that are on the exit exam, there are at least two ways to get there. One path is narrow and one path is wide. Furthermore:

I believe it is very emotional. There's not a right or wrong answer, but there are two paths to address meeting the needs as it pertains to the exit exam for children with disabilities. There could be SB 372's

approach, which is a wider path. There could be our current regulation and statute interpretation that is a narrower approach. It has not been clear with the Legislature. That is why there have been many meetings and a great deal of emotion on both approaches and the same thing has occurred with the general public as they testify before you and the state board. And in fact the state board has been split on that.

We know we need to address the differences for children with disabilities, but how wide of breadth that they're given is very different on how we get there. That is the part of the statute that we need a policy call on or clarity on from the Legislature to make it very clear how we deal with children with disabilities as it pertains to the exit exam.

CHAIR DYSON asked if it's fair to say that a broad way would be Senator Green's bill that allows an individual assessment process for every child that has an individual education plan.

COMMISSIONER SAMPSON agreed that would be a broad approach.

CHAIR DYSON asked if there were other areas where the existing law isn't clear.

SENATOR GREEN questioned whether the issue of the cognitively disabled needed a legislative fix or whether it could be left to the state board.

MR SLOTNICK opined that the state board probably couldn't continue to provide diplomas to the severely disabled child without a change in statute. If that was the intent of the Legislature in SB 133 then it was lost in translation because he could find nothing in statute that would give the state board that authority. It was done for three years under the waiver process because there was a mistake that occurred where children were given notice that they would be on a diploma track. As a consequence, they felt that was enough of a rare and unusual circumstance to justify a waiver for those kids who were currently in high school and might have relied on that posting on the department web site. But, if that was the intent it's not reflected in the statute.

COMMISSIONER SAMPSON added that he didn't want to mix things, but there may be other issues that should be addressed through statute as a result of the litigation.

CHAIR DYSON commented that that is an interesting observation. Turning to Mr. Slotnick, he asked if he just said that the existing statute might not allow enough time for children with IEPs or the disability community to transition to kind of a new regime that is dictated by SB 133.

MR SLOTNICK agreed that he said that.

CHAIR DYSON asked if that comment is based on his interpretation of the federal law.

MR SLOTNICK said yes, there is a body of case law that speaks to that issue and cases that say that disabled students must be given more time to prepare for this high stakes requirement.

CHAIR DYSON asked if it's logical to infer that his understanding of current statute is that it doesn't give enough time and if that's true, how much time is reasonable.

MR SLOTNICK replied they are considering that because it is an issue in the current litigation and they've discussed the issue with the plaintiffs and they've indicated they're likely to file for an injunction on the issue of delay unless there's agreement. Furthermore:

> I don't believe there's time for this body to act in time for the commissioner to get the word out to the districts so they can prepare kids for graduation this spring. It might be an issue that is better left for resolution in the court in something that - and I know the attorney general is considering agreeing to a request for a one year delay through the court system. That is an issue that is out there. I wouldn't necessarily fault the statutory time line; it's one of those issues that the commissioner was describing as the problem with implementing the statute more than the timeline that you initially adopted in SB 133. But because we've had some confusion in interpreting and implementing the statute it seems to me there is a good argument that being very fair and giving lots of time to disabled kids is something that should be carefully considered by the state.

CHAIR DYSON said he appreciates that then asked what timeline SB 133 set for implementation for students with disabilities.

MR SLOTNICK replied it is the same as for all students, spring 2004.

CHAIR DYSON asked if three years were allotted.

MR SLOTNICK said it was three calendar years from when the exit exam became high stakes, but for the first time, under SB 133 they could offer an alternative assessment program to kids with disabilities - something that hadn't been out there. It took over a year to get that program started and more time to work out the bugs. This was a promise made to disabled students by the Legislature. The time it has taken to fine tune creates the basic fairness argument that should be given careful consideration, he said.

CHAIR DYSON recapped saying SB 133 anticipated three years preparation time because of difficulties and a regime shift that didn't happen until January or February of 2004 when regulations were in place.

MR SLOTNICK said the original set of regulations did go into place in the spring of 2002 in time to allow for an alternate assessment program. Since then it's undergone some changes and even the spring of 2002 isn't too many administrations of the alternative assessment program before getting to the high stakes.

CHAIR DYSON repeated that the first regulations providing for an alternative assessment were in 2002 after which there were additional alternations to the regulations.

MR SLOTNICK agreed.

CHAIR DYSON asked when the alterations were finished.

MR SLOTNICK replied the last evolution was in December 2003 when they made the decision to broaden the modifications that would be available to disabled students as they sit for the optional exam.

CHAIR DYSON questioned if it was December 2003 when people in the disabled community and their representatives knew what was required then under federal law, what is the reasonable time for the preparation and transition.

MR SLOTNICK said he would argue that the following year is sufficient time to make it high stakes because the change that

was made in December 2003 was to broaden rather than to restrict.

CHAIR DYSON said if the date that the community, the students and the IAP teams could plan on was spring 2002, then under federal guidelines or case law what is a defensible amount of time for that preparation transition?

MR SLOTNICK replied because they are broadening there is no case law that speaks directly to that. There are cases that say that three years notice to children with disabilities are sufficient while others have different times. He repeated that he feels that one year is defensible, but it's a policy choice if the Legislature wants to give more time. "When I say give one year, I feel it's very defensible, but if this body wants to give more time, that again is a policy choice that I certainly would defer to you. You can give more time than what we would say is minimally required by federal law and I'm not even conceding that we need an additional year from the December day but I know there are good arguments and I know my client, the State Board of Education, is very interested in being very fair to disabled students."

CHAIR DYSON remarked that he heard that "with regard to the spring 2002 and when we should have started, you said maybe not because that broadened in terms of providing more alternatives for the assessment. Did I miss-hear or did we miss-communicate?"

MR SLOTNICK said no; he thought he was asking about a hypothetical question about getting off the mark in 2002 with being able to deliver a finished product that everyone agreed comported with the legislation. Then it became a high stakes exam in spring 2004. That seems to be sufficient time, he said.

CHAIR DYSON said then whatever action happened in December 2003 isn't really limiting because it was an even broader path and shouldn't be seen as a starting date for the new regulations.

MR SLOTNICK said that's correct, "but the argument on the other side would be that they should have had that accommodation earlier and is giving it to them at that late date really giving them notice that they can take in the graphing calculator into that exam and is it giving them every advantage and every possible benefit of the doubt."

SENATOR GREEN said she wanted it clarified that when speaking about federal and/or case law that federal law does not pertain to the exit exam.

MR SLOTNICK replied:

> It is true that special education laws do not address the diploma requirements and there have been challenges to high stakes exams under the IDEA and they have always failed because the IDEA doesn't guarantee the special education student a diploma or interfere with state policy on what the state requirements are for a diploma. However, when talking about federal cases, I was talking about cases that interpret the due process laws of the U.S. Constitution that say you have to give students due process before you deprive them of property interests. And students who have been working toward a diploma have a property interest in that diploma and so there are procedural requirements, which have to do with notice and adequate time to prepare and that's what those cases speak to. So there are two different lines of cases here.

CHAIR DYSON said he's always astonished that it all seems to revolve around a student receiving a piece of paper as opposed to getting skills and knowledge. He asked, "Have there been law suits brought based upon a student not getting what he could argue, his parents contracted for?"

MR SLOTNICK replied some of the high stakes exit exam cases have brought up the opportunity to learn about arguments some of which are in Alaska. There are also the school funding cases in other states where there is disparity between districts. It's an area of education law that courts are reluctant to enter.

CHAIR DYSON remarked he'd like to hear further discussion but he wanted to give Senator Guess time to introduce her bill so barring any objection, he would set the bill aside.

SENATOR BETTE DAVIS asked whether he would take public testimony on SB 372 the next time it was heard and when that might be.

CHAIR DYSON replied he would take public testimony at the next hearing, but he didn't know when that would be.

SENATOR DAVIS said she was pleased to hear Senator Green's introduction and thought it sounded like a good bill. She had looked forward to hearing from the department so she could clear up some questions she had, but she heard the department say that they weren't taking any stand on the bill. They're simply accepting that it is coming forward.

COMMISSIONER SAMPSON replied they are simply trying to describe the advantages or disadvantages to the committee and give an example of a wider approach. What they really need is clarification of the intent of the statute. If a wide approach is desired to address what they believe the intent of SB 133 was, then SB 372 is one approach.

SENATOR DAVIS said she preferred to talk about the bill that was before the committee and asked if there was anything in SB 372 that needed further clarification so they wouldn't have to return and say the same thing about it as they're saying about SB 133.

COMMISSIONER SAMPSON said, "Not that I'm aware of, but I do want to state that as we move through this litigation, we could be forced to make changes based on decisions of the judges."

CHAIR DYSON stated that part of his indecision relates to the choice the attorney general makes and what he negotiates in the current lawsuit. "It may be that that agreement may buy some time and it may be that we'll have to put wheels under one or more of these bills and move them rapidly."

CHAIR DYSON held SB 372 in committee.

**2:55 pm**

## SSSB 248-HIGH SCHOOL COMPETENCY EXAMS/DIPLOMAS

CHAIR FRED DYSON announced SSSB 248 to be up for consideration.

SENATOR GRETCHEN GUESS, sponsor, stated that SSSB 248 concerns children with disabilities, but it doesn't compete with SB 372. They could easily work in concert. She explained that SB 248 takes a broad approach and makes it unnecessary to ask whether or not a child has a disability because not all students with disabilities have been diagnosed whether they have been tested or not.

The purpose of SB 248 is to ensure that the high stakes exit exam minimizes "false negatives" and clarifies the legislative intent regarding severe cognitively disabled students. It proposes using the portfolio system, which is similar to a system developed in Indiana and provides an alternate method for students to demonstrate proficiency.

With this approach, students are required to attempt the high stakes test and retake it if necessary. But once the student is a senior, they have the option of retaking the parts of the test that they failed or developing a portfolio to show that they have mastered the skills that are on the part(s) of the test that they failed. In the portfolio the student must demonstrate or include the following:

- That they have a 95 percent attendance record
- That they have a 2.0 GPA in all courses that are required for graduation
- That the student has enough credits to graduate
- That the student has attempted and failed to pass the exam
- That the student completed remedial class in the failed area(s) if available
- Letter(s) from the student's teacher(s) in the failed subject area(s) stating that the student knows the material required by the exam
- Documentation regarding the student's competency in the failed area(s)

The student submits the portfolio to the principal and he or she certifies that the material is valid and that the student meets the competency standards on the exam.

SENATOR GUESS said that the state of Indiana simply monitors how many of the portfolios are given to determine whether or not there are any problems with the program but SB 248 has two additional steps. First, the portfolio goes to the superintendent who repeats the certification process and then a state board panel reviews the portfolio. This final step is to address the concern expressed by Senator Wilken about district level decisions. The panel would be composed of the commissioner, a state board member, and a governor appointed at-large member. They would make the final determination as to whether the portfolio demonstrates that the student knows the material that's on the exam that they failed.

The portfolio would be just as high stakes as the exam, but it would provide an alternate method of demonstrating competency. "We're denying diplomas so I think it's important for this body to realize the enormity of this task and take it seriously in terms of trying to put together a statute and a process that works for all students."

CHAIR DYSON asked how a portfolio would enable a student to demonstrate reading or math skills.

SENATOR GUESS replied that she would look to educators for a definitive answer, but the exam is about one way of giving information back and there are multiple methods. Videotaping might be included for example. In Indiana, the state issues guidelines and then it's up to the student and their family to figure out a way of demonstrating competency. If the school elects to provide resources, that's a local decision.

CHAIR DYSON asked whether a student that is trying to demonstrate reading competency, might read to a teacher or proctor in some stress free environment.

SENATOR GUESS replied if the three experts all say that the contents of the portfolio demonstrate the ability, she would say yes. However, for ages 15 to 18 there is no requirement to be able to read out loud. It says, "Analyze and evaluate how authors use narrative elements and tone in fiction for specific examples of purposes."

CHAIR DYSON commented that would demonstrate comprehension and reading and discussion of the material with a proctor could demonstrate that. But with regard to math, he asked how an alternative method would be demonstrated in a portfolio.

SENATOR GUESS reiterated that she would certainly like to hear from an educator, but her interpretation is that class tests and schoolwork could be evaluated. She pointed out that although tests used to be just one way, we now know that students don't give the material back using the same method so most teachers and professors provide multiple ways to show mastery of the material.

SENATOR GUESS added that in addition to the portfolio, the teacher has to sign off saying they taught the student and he or she knows the standards.

CHAIR DYSON questioned whether both were required.

SENATOR GUESS replied the student has to have letter(s) from the teacher(s) and they have to demonstrate that they know the material.

CHAIR DYSON asked Commissioner Sampson to comment on the bill.

ROGER SAMPSON, Commissioner of the Department of Education & Early Development, said the bill takes the broad approach of addressing not only children with recognized disabilities but also children with disabilities that aren't identified and other special needs that don't fall under AS 94.142. He continued:

> It is the broadest view that we have seen so far, but with rationale as to why. It may be difficult to get some level of consistency, it may not, but would require substantial training on behalf of the department and other recognized experts to both teachers, administrators and parents if parents were going to have a significant responsibility for building those portfolios. And if we have turnover, which we frequently do, that training would have to be ongoing, annually at least. It's certainly very strong support and advocacy for children. It just may be difficult to get the consistency that we also desire.

SENATOR GREEN noted that when they originally discussed SB 133 this was one of the discussion points. They tried to address the entire picture of the student's readiness to graduate because there are other benchmarks for determining that there may be undiagnosed special needs and the portfolio was one of many methods that were discussed. This isn't a new idea, but perhaps it’s a good idea to discuss this approach again.

SENATOR GUESS responded to Commissioner Sampson's comments saying that the best example for her is Indiana. They haven't spent money on substantial amounts of training and there haven't been court challenges requiring training. Although training would be good, the bill doesn't require it in a legal sense, she said.

With regard to consistency, she said there wouldn't be consistency with the portfolio method because every portfolio would look different. Consistency would be provided by the fact that they must all meet the standards that are on the current exam.

CHAIR DYSON asked if it's correct that SB 248 doesn't address the cognitively disabled students that aren't able to obtain a diploma under state law.

SENATOR GUESS pointed to page 4, lines 17-23 and said that waivers are provided for students with severe cognitive disabilities. "If a student with a cognitive disability did everything that their district told them to do, they would get a diploma," she said.

CHAIR DYSON asked for an explanation of the transitional provision.

SENATOR GUESS replied the transitional language was her best effort to accommodate her colleagues who don't want to postpone the exam this year. Just as seniors are able to retake the exam if it's necessary, this bill provides one year for this year's seniors to develop a portfolio. A final decision on the portfolio would be made not more than six months after it is submitted.

CHAIR DYSON asked Mr. Morse when he would have updated numbers on how many seniors haven't passed all portions of the test.

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LES MORSE, director of Teaching and Learning Supports with the Department of Education and Early Development, replied they should have the results by late April. With regard to a previous question, [SB 372] he said it would take just a few days to analyze the data and determine how many of the disabled students who have not passed the exam have actually attempted one or more parts.

CHAIR DYSON said he would appreciate that. He then told the commissioner he had difficulty believing the DEED fiscal note and if he wanted to make any revisions before the next hearing he would appreciate that.

He asked committee members to let him know who they would like to hear from and what additional information they would like when the bill is heard next.

SENATOR GUESS said she'd like the public to have an opportunity to testify.

SENATOR GARY WILKEN said he would like a day by day account of what happened in March with regard to the exit exam and the time line and how things are moving ahead with the new contractor. He was aware that early in March a group of 60 met in Anchorage to decide on grade level expectations. That information was given to the board in Juneau and they will pass it on to the new testing contractor to come up with the new questions. He said he was particularly interested in the process to evaluate and validate the results of the meeting in Anchorage. He said everyone should be aware of the timeline and the affect that it may or may not have on the quality of the test.

COMMISSIONER SAMPSON said Mr. Morse would be the one to do that.

CHAIR DYSON asked Mr. Morse if he understood what Senator Wilken wanted.

MR. MORSE said there has been a lot of activity in March.

SENATOR WILKEN said he wanted the information in writing, but he could give a verbal summary.

MR. MORSE continued to say that in early March about 60 educators looked at grade level expectations. They also had consultants from the National Center for the Improvement of Educational Assessment who helped guide them through the process. He said that Alaskans primarily drove this but there were also three content specialists from the testing company. Also, earlier that week he met with the testing company to lay out timelines for the rest of the fiscal year for when things had to be done in terms of the whole test development. The grade level expectations that were reviewed by the 60 Alaskans were sent to the State Board of Education on March 16 for approval after which they were transmitted to Data Recognition Corporation. He and a group of Alaskans that make up a technical advisory committee representing several districts would meet with Data Recognition Corporation in Anchorage over the next two days. On Monday about 52 educators would meet with the company to begin writing items for the test using the grade level expectations.

CHAIR DYSON reiterated Mr. Slotnick's view that there is a need to bring clarity to the existing law. It is likely that there is a problem with the time for preparation and the Legislature needs to make a policy call to give direction to the department on alternative ways to demonstrate competency. He asked Commissioner Sampson if he would like to add anything.

COMMISSIONER SAMPSON emphasized that clarity is needed on the interpretation of the statute as to how to deal with children with disabilities as it pertains to the exit exam.

CHAIR DYSON held SB 248 in committee and adjourned the meeting at 3:25 pm.