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FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 94
(H) Publish Date: 01/26/01

Revision Date/Time (Note if correction): _____ Dept. Affected: Education & Early Dev.
Title: An Act relating to initiatives for quality schools... BRU: Teaching & Learning
Sponsor: Rules Component: Quality Schools
Requester: Governor Component Number: 2147

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill delays the effective date of the high school competency examination graduation requirement until 2006. There is no additional cost related to this delay.

Prepared by: Barbara Thompson, Deputy Director Phone 465-8727
Division: Teaching & Learning Support Date/Time 1/24/01 12:00 AM
Approved by: Bruce Johnson, Deputy Commissioner Date 1/24/01
Agency: Department of Education & Early Development

For distribution information, call the Governor's Legislative Office

(Rev 11/2000 OMB)

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COMMITTEE COPY

FISCAL NOTE

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OFFICE OF THE GOVERNOR
JUNEAU

HB 94
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January 24, 2001

The Honorable Brian Porter
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Speaker Porter:

As the next step in continuing the progress of the Quality Schools Initiative, which calls for higher academic standards and improved student achievement in Alaska, I am transmitting this bill relating to fair and responsible timelines for the high school graduation qualifying exam.

A date change from current law, which sets the effective date of the graduation exam at January 1, 2002, is necessary for several reasons. School districts need to make sure their lesson plans teach the standards being tested. Students need more time to learn those standards and to get help if they are not on track for a diploma. Proper resources must be in place to provide that help. In short, any final decision to deny a high school diploma must be made fairly, thoughtfully, compassionately and legally.

Under this bill, the effective date of the statutory provision requiring high school students to pass the graduation exam in order to receive a diploma would be changed to January 1, 2006. That means the class of 2006 - today's seventh graders - will have the benefit of two benchmark exams before taking the graduation exam. They took benchmark tests in reading, writing and math last year as sixth graders. They'll take them again next year as eighth graders. Then, as sophomores three years from now, they'll take the high school graduation exam for the first time.

This will allow parents and teachers the time to help students who need it well before the graduation exam. This is not the case with the current effective date, or for the students who are now in high school and will be denied diplomas next year if the law does not

GOVERNOR'S TRANSMITTAL LETTER

HB 94

The Honorable Brian Porter

January 24, 2001.

Page 2

change. To recognize the unique needs of our special education students, the bill provides for those students' graduation requirements to be developed by the state Board of Education and Early Development.

The bill also requires regular reports from the Department of Education and Early Development to the Legislature on the progress each school is making in helping students achieve high academic performance. The state Board of Education and Early Development will use these reports to recommend to the Legislature whether a different effective date should be used to implement the graduation exams.

Finally, the bill makes it clear the graduation qualifying test will be given, scored and counted in the interim between 2002 and 2006. Diplomas will be awarded to those students who complete their coursework but do not pass the test. However, the test results will appear on transcripts so that teachers, prospective employers and colleges can review students' proficiency in reading, writing, and math.

I urge your prompt and favorable action on this measure.

Sincerely,



Tony Knowles
Governor

HB 94

February 5, 2001

Con --

Here are the notes from my conversation with Bruce Johnson re: the results of the Content Review Team's decision to adjust the content of the test.

Three background pieces of information:

- 1) The content review team cannot work over the summer because of teachers' summer scheduling difficulties. In addition, DoE gets most of the teachers to work on the Team for free, because the school districts pay for their salaries if the Team meets during the school year. In some cases, DoE picks up the tab for the substitutes.
- 2) The process is delayed because sophomores do not take the Fall tests. They need the widest possible group of test takers to validate the questions, so the test questions are tried out during the Fall test administration only.
- 3) Bruce Johnson believes that the Competency Test will be indefensible if there is not a delay because the Department's Content Review Team members want to change it.

Conversation in a nutshell:

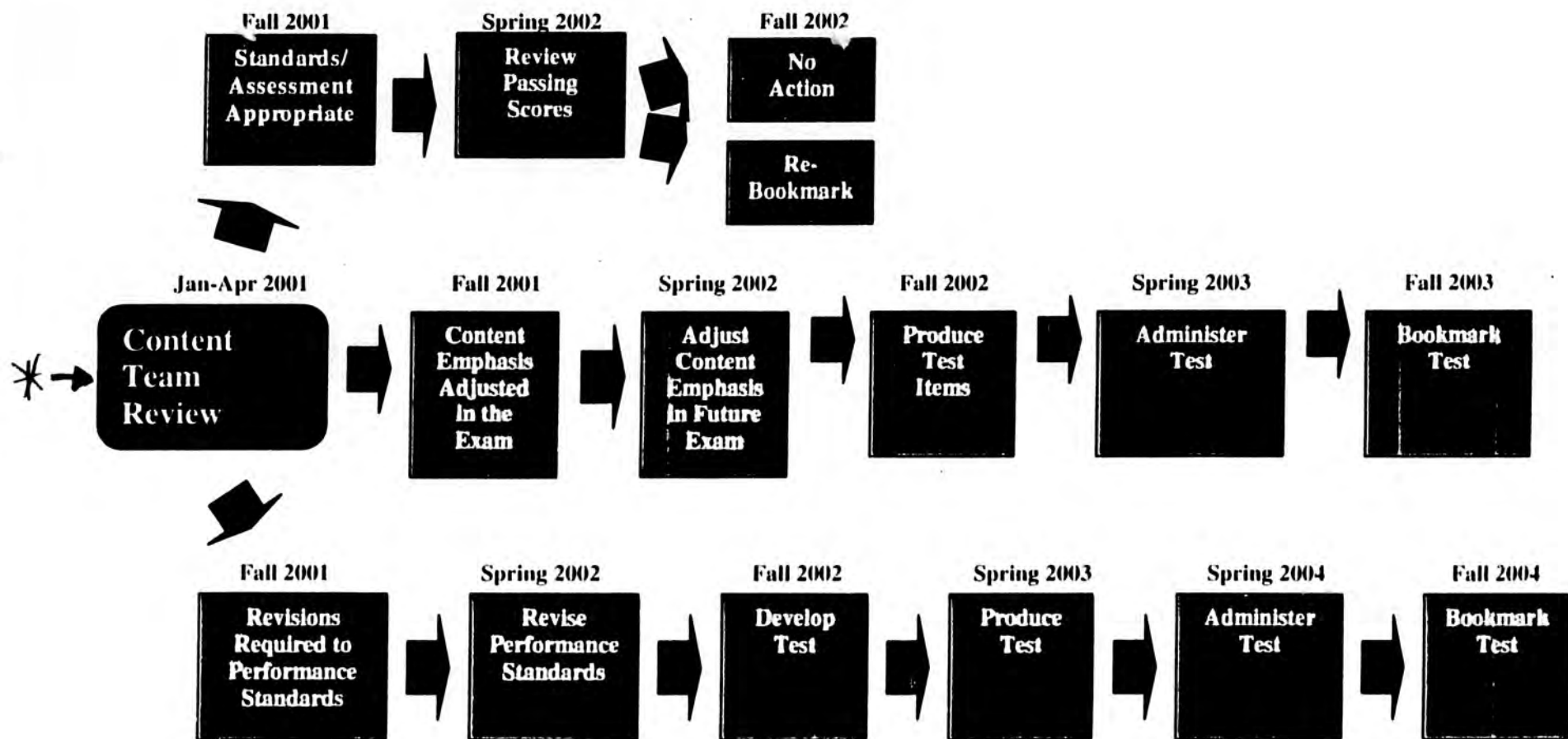
- 1) The Content Review Team (now with lots of businessmen and an essentially new team) has decided that they need to change the emphasis of which standards are tested most heavily on all three portions of the test.
- 2) They just met and will meet again in April. They will look at the standards and decide which standards will get many questions and which will not.
- 3) The State Board of Education will vote on the Review Team's recommendations in June.
- 4) In the Fall of 2001, they will determine the new emphasis of the standards through a series of meetings with Alaskans, then send their results to the publisher of the test.
- 5) In the Spring of 2002, the questions will come back from the publisher and there will be another meeting to tweak what they did. They will then send the approved changes back to the publisher.
- 6) In the Fall of 2002, nothing will happen because the new questions cannot be tried out.
- 7) In the Spring of 2002, the new test questions will be tried out. These new questions are embedded in the regular test, but are not graded. Those questions which many people get wrong are discarded. The Spring test is given in March. The results are available 90 days later (June).
- 8) In the Fall of 2003, the Content Review Team will be brought back together to bookmark new passing scores.

During the first drafting of the current test questions, the former Content Review Team picked good questions that went with the standards. This time, the current Content Review Team will identify the standards to be passed and then ask for questions to be developed from those standards.

I asked if the current test is valid. Bruce Johnson said, "Yes." But then he asked if it tests the right skills. The test does what was intended, but now a different group has determined that some other questions should have been intended. So now, it is highly unlikely that the current test would be defensible in court because the Department hired people who want to change it.

Alaska Standards-Based Assessment Initiative

FRAMEWORK FOR CONTINUOUS RENEWAL



* Content Review Team's decision.

The attached information was presented to the Finance Subcommittee on Education by the Department of Education.

10,217 students were enrolled statewide as of October 1999 who were supposed to take the first, mandatory, administration of the High School Competency Test.

Only 8,371 of those students did take that test. The Department of Education (DoE) does not know what happened to the missing students. They have not identified them.

Only the first administration of the test was mandatory. DoE and Representative Mulder expressed concern about the diagnostic aspect of the test not being fully realized.

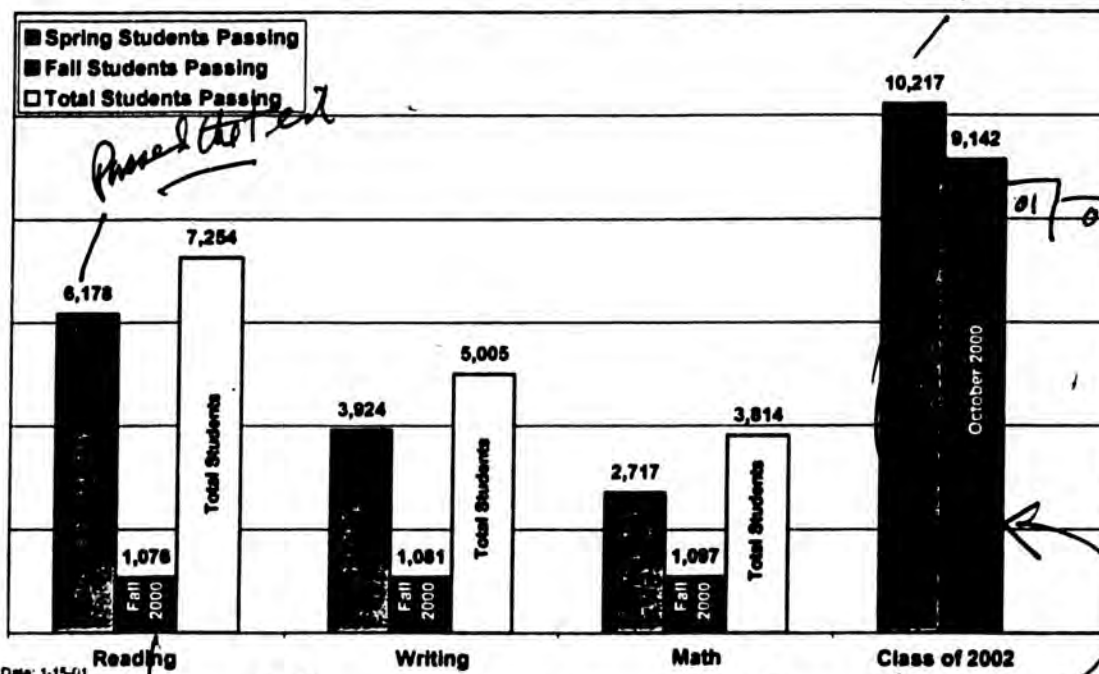
The State Board of Education does not want the test to be mandatory. It was even difficult for DoE to get them to make the first administration of the test mandatory.

DoE is reporting test results this way (including reports to the press) -- who passed as a percentage of enrollment, not as who passed as a percentage of those who took the test. They will, however, be providing the information both ways in subsequent years. They will also report the information by class for sophomores, juniors and seniors. This was added as a new measurement of DoE's mission.

Please see the attached sheet.

measuring student performance for the class of 2002. The exam will be offered in October and March of each year. Students are eligible to take the exam for the first time in the spring of their sophomore year.

High School Class of 2002 Number of Students Passing the HSGQE



Background and Strategies:

State law requires a comprehensive system of student assessments including a developmental profile for students entering kindergarten or first grade, benchmark assessments in reading, writing, and mathematics at grades 3, 6, and 8, and passage of the High School Graduation Qualifying Exam in order to receive a high school diploma beginning in 2002. The department has:

1. Provided school districts with state performance standards in reading, writing, and mathematics.
2. Developed the graduation qualifying examination in reading, writing, and mathematics.
3. Provided professional development opportunities for standards based instruction.
4. Provided technical assistance to school districts in aligning curriculum to state standards.

The following pages contain Year 2000 Alaska State Assessment Results for grades 3, 6, and 8, and the high school graduation qualifying examination by school district:

Handwritten note: Fresh between Soph. is greatest attention

Side by Side Comparison of HB 94 and CSHB 94 (EDU) Version F

HB 94 (Governor)		CSHB 94 (EDU)	
Section 1	Intent Language	Section 1	Intent Language
Section 2	Requires DoE to submit a report to the Legislature by January 15 of each year regarding the progress of each school toward high academic performance for all students.	Section 4	Requires same report and lists seven indicators that must be included that show the progress of schools toward high academic performance for all students and the Department's assistance to that goal.
Section 3	Allows the Board of Education to determine the requirements for a special education student with an I.E.P. to qualify for a diploma.	Section 3	A special education student with an I.E.P. will qualify for a diploma if the student passed the Competency Test without accommodations, with accommodations, or by demonstrating mastery of the state performance standards through a portfolio of work.
	No similar provision in HB 94.	Section 3	Provides that students who transfer into high school from another state to be granted a diploma if they have passed the competency test in the state from which they transferred and fulfilled the Alaskan district's requirements.
	No similar provision in HB 94.	Section 3	Establishes a Certificate of Achievement for students who do not pass all sections of the test. The Certificate may include the portions of the test that were passed, the student's attendance record, other information indicating the qualifications of the student as the district sees as appropriate.
Section 4	Students will be required to pass the Competency Test by January 1, 2006 in order to be granted a diploma .	Section 5	Students will be required to pass the Competency Test by February 1, 2004 in order to be granted a diploma .
Section 5	The Board of Education shall recommend a different effective date than January 1, 2006 if they feel that would be reasonable, fair and in the best interest of Alaska students.		This provision is deleted in CSHB 94 (EDU).
Section 6	Interim Competency Testing - the results of the test shall be reflected in the student's transcript as directed by the Board of Education.	Section 6	Interim Competency Testing - the results of the test shall be reflected in the students transcript and on the diploma as directed by the Board of Education. The student will be re-tested once per year unless the student's I.E.P. team recommends against that.
	No similar provision in HB 94.	Section 2	Deletes language from original law limiting the number of times the test may be given per year and for how many years after a student leaves school. Adds language requiring students to take the test at least once a year unless the student's I.E.P. team recommends against that.

Note - CSHB 94 (EDU) Version F is exactly the same as CSHB 166 (EDU) Version J.

KM 3/27/2001

Side by Side Analysis
HB 94 and CSHB 94 (EDU) Version F

22-GH1006\C

Ford

3/19/01

CS FOR HOUSE BILL NO. 94(EDU)**IN THE LEGISLATURE OF THE STATE OF ALASKA****TWENTY-SECOND LEGISLATURE - FIRST SESSION****BY THE HOUSE SPECIAL COMMITTEE ON EDUCATION****Offered:****Referred:****Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR****A BILL****FOR AN ACT ENTITLED**

1 **"An Act relating to pupil competency testing, the issuance of secondary school diplomas,**
2 **and to certain reports regarding academic performance of schools; and providing for an**
3 **effective date."**

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 *** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
6 to read:

7 **PURPOSE.** (a) As part of the state's quality schools initiative, the purpose of this Act
8 is to maximize the opportunity for the success of all public school pupils by (1) continuing to
9 measure pupil performance through appropriate testing based on specific standards; (2)
10 allowing the Department of Education and Early Development to continue to develop and
11 perfect the testing method; and (3) ensuring that school districts and families receive
12 performance data from standards-based assessments of pupils. The performance data is to be
13 used to better determine appropriate academic intervention and support for pupils.

14 (b) The purpose of the change of date made by sec. 5 of this Act is to

(1) allow for specific high standards to be set and maintained for public schools in the state; and

(2) ensure maximum opportunity for all pupils to learn and for school districts to improve.

* **Sec. 2.** AS 14.03.075(a), enacted by sec. 1, ch. 58, SLA 1997, is amended to read:

(a) A pupil may not be issued a secondary school diploma unless the pupil passes a competency examination in the areas of reading, English, and mathematics. The department shall determine the form and contents of the examination and shall score completed examinations. [A PUPIL WHO FAILS TO PASS THE EXAMINATION REQUIRED UNDER THIS SUBSECTION AND WHO IS NO LONGER IN ATTENDANCE SHALL RECEIVE A CERTIFICATE OF ATTENDANCE FROM THE SCHOOL DISTRICT INDICATING THE YEARS OF ATTENDANCE AND THAT THE PUPIL HAS NOT PASSED A COMPETENCY EXAMINATION OR RECEIVED A DIPLOMA.]

* **Sec. 3.** AS 14.03.075, enacted by sec. 1, ch. 58, SLA 1997, is amended by adding new subsections to read:

(c) Notwithstanding (a) of this section,

(1) a ^{pupil} child with a disability who is receiving educational services through an individualized educational program under AS 14.30.278 may qualify for the issuance of a secondary school diploma by

(A) passing all portions of the examination described under (a) of this section;

(B) passing all portions of the examination described under (a) of this section with the accommodations approved by the pupil's individualized education program team; ^{and} or

(C) demonstrating, through a portfolio of work, mastery of ^{educational} performance standards ^{as} established by ^{State Bd of Ed.} the pupil's individualized ~~education program team~~; and

^{Old Sec. 7.} (2) a pupil who transfers into a public high school in this state shall receive a diploma if the pupil

(A) meets graduation requirements imposed by the governing

body and the state; and

(B) has passed an examination that is the equivalent of the examination required under (a) of this section.

(d) A pupil who fails to pass the examination required under (a) of this section or a reexamination under (b) of this section shall be awarded a certificate of achievement. A certificate of achievement may include the following information:

(1) the portions of the examination described under (a) of this section that were passed;

(2) the pupil's attendance record; and

(3) other information indicating the qualifications of the pupil that the governing body determines appropriate.

(e) In this section,

(1) "child with a disability" has the meaning given "children with disabilities" in AS 14.30.350;

(2) "individualized education program team" has the meaning given in AS 14.30.350.

* **Sec. 4.** AS 14.03 is amended by adding a new section to read:

Sec. 14.03.078. Report. The department shall provide to the legislature by January 15 of each year an annual report regarding the progress of each school toward high academic performance by all pupils.

* **Sec. 5.** Section 3, ch. 58, SLA 1997, is amended to read:

Sec. 3. Section 1 of this Act takes effect **February 1, 2004** [JANUARY 1, 2002].

* **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to read:

INTERIM PUPIL COMPETENCY TESTING. (a) Beginning February 1, 2002, and ending January 31, 2004, and as directed by the state Board of Education and Early Development, the governing body of each school district in the state shall give the competency examination described in sec. 1, ch. 58, SLA 1997, at least twice each school year. The results of the examination of a pupil under this section shall be reflected in that pupil's transcript as directed by the state Board of Education and Early Development.

1 (b) A pupil shall be retested at least once during a school year on those portions of the
2 competency examination described in sec. 1, ch. 58, SLA 1997, that the pupil has not passed.
3 This subsection does not apply to a pupil who is a child with a disability if the pupil's
4 individualized education program team recommends that the pupil not be tested. In this
5 subsection,

6 (1) "child with a disability" has the meaning given "children with disabilities"
7 in AS 14.30.350;

8 (2) "individualized education program team" has the meaning given in
9 AS 14.30.350.

10 * **Sec. 7.** This Act takes effect immediately under AS 01.10.070(c).

*All pupils must
... unless,
before each
test admin*

BILL ANALYSIS -- HB 94
4th Hearing March 14, 2001

Sponsor: House Rules by Request of the Governor

Bill Title: Pupil Competency Test; Annual Education Report

Today's Scope: The Plan to use any delay of the effective date wisely
Information on the time line necessary for the Content Review Team to
adjust the math test.

Questions:

Content Review Team Information:

- 1) In the Senate HES Committee hearing on Monday, Deputy Commissioner Johnson testified that the revised math test would be ready to go possibly in 2003, at the latest 2004. Is this your position?
- 2) Is a Content Review Team working on the Benchmark Exams? Have they decided which route to take - change standards, change questions, or change cut scores?

The Plan:

- 1) Page 2 - Why has DoE not decided, since the law went into effect in 1997, how to address the needs of ESL, special education, and transient students?
- 2) Page 3 - Why does the Foundation Formula need to be increased for curriculum alignment when this has been funded through Quality Schools Grants, Eisenhower Grants, etc? Last year's Quality Schools Grants totaled \$9.45 million alone.
- 3) Page 7 - If the exam were to be delayed until 2004, the Class of 2004 would have taken the 8th Grade Benchmark Exams. Is four years not enough time for districts to identify students who are struggling with basic, foundational level skills? These students have probably already been identified by their teachers without the Benchmarks.

Present in Juneau:

Deputy Commissioner Bruce Johnson	Department of Education
Special Education Director Greg Maloney	Department of Education

Teleconference Sites: Anchorage, Wrangell and Valdez as "Listen Only".

School Accountability In Alaska

Department of Education & Early Development

March 2001

Teacher & Administrator Evaluation—The legislature passes a law (Chapter 31 SLA 1996) that requires school boards to design and periodically review a teacher and administrator evaluation system with the involvement in the design and review by students, parents, community members, classroom teachers, collective bargaining units and administrators. The evaluations of teachers and administrators are to be conducted annually.

High School Exit Exam—In 1997, the Legislature passes the secondary pupil competency testing law, which becomes AS 14.03.075. The new law requires all high school students to pass an exit exam in order to receive a diploma. Those who do not pass get a certificate of attendance. Effective date is January 1, 2002. The governor announces he will introduce legislation in 1998 that will implement a complete school system of accountability based on measurable student performance standards.

Teacher Testing—In 1998, the Legislature passes a law requiring all teachers applying for their first Alaska teaching certificate to pass a nationally recognized competency test. The new law is codified as AS 14.20.020(i).

Quality Schools Initiative—In 1998, the Governor signs into law Senate Bill 36, of which the accountability portion becomes AS 14.07.020(b). The new law sets a requirement for the department to develop student performance standards in reading, writing and mathematics and to develop benchmark exams at designated grade levels. The QSI portion of SB 36 required the following:

- **Academic Standards**—Mandated the State Board of Education to adopt academic standards in reading, writing and math at four levels; ages 5-7; 8-10; 11-14 and 15-18. The high school and benchmark exam questions are to measure whether students have met the standards.
- **Alaska Benchmark Examinations**—Mandated the department to assess students at the 3rd, 6th and 8th grades beginning in March 2000, in order for schools to check whether students are meeting the reading, writing and math standards and are on course to pass the high school exam.
- **Developmental Profile**—Required schools to complete a developmental profile on all entering kindergarten and first grade students.
- **QSI Grant**—Gave school districts additional dollars through the Quality Schools Grant program if they establish plans to adopt standards, intervene with additional services for children who are not meeting the standards, and train educators how to teach students in a results-based

system of public education. The QSI Grant program became part of the state's school funding program.

- **School Designators**—Requires the State Board to develop an annual system of rating schools, and designate each school by August 2002 in one of the four categories, *distinguished*, *successful*, *deficient*, and *in crisis*. The categories are to be based on a school's student test scores and other indicators of student performance.
- **School Report Cards**—Requires each school to annually report specific information about student performance to their communities and the State of Alaska beginning July 1, 2000. The information required includes school accreditation status, results of norm-referenced achievement tests, results of state standards-based assessments in reading, writing and mathematics, description of student, parent, community and business involvement in student learning, and rates of student attendance, K-8 retention, grade 7-12 dropout and graduation. The department is required to issue its first school-by-school report card on January 15, 2001.

Performance Standards—In 1999, the State Board of Education & Early Development adopts in regulation performance standards in reading, writing and mathematics, as required by SB 36. The high school exam and benchmark exam questions are based on these standards.

Education Funding Task Force—In December 2000, Gov. Knowles appoints 11 Alaskans to an Education Funding Task Force. In February 2001, the task force recommends the governor and State Board urge the legislature to fund a five-year plan to fulfill the goals of the QSI and improve education in Alaska. Governor Knowles accepted the task force report and introduced HB 138 and HB 189, and SB 113 and SB 114, to enact the five-year plan. The task force recommended \$42.4 million in programs and services in year one of the plan, and 1.5% increases in years two, three, four and five. Overall, the task force recommends spending \$100.3 million more in 2006 than today. All new funding recommended by the task force is rigorously linked to school performance and accountability measures. The Department of Education & Early Development makes the report available to the public on its web site at www.eed.state.ak.us under "In the News."

Work Plan 2002-2006—In March 2001, the Department of Education & Early Development this week released a work plan for 2002-2006 to give the state time to get student's prepared to pass the High School Graduation Qualifying Exam. The work plan includes the recommendations of the Governor's Education Funding Task Force and more tasks that need to be undertaken in order for schools to give and students to pass the high school exam. Tasks in the work plan are driven by student achievement data obtained since the Alaska high school and benchmark exams were first administered in March 2000. From the data, EED has determined that it will take until 2006 to

complete all the tasks outlined in the EED work plan, and that the State of Alaska and local school districts need to accomplish the following:

- Verify Student Standards, State Exams & Passing Scores;
- Resolve Issue of Special Need Students;
- Align Curriculum to State Reading, Writing & Math Performance Standards;
- Upgrade & Align Performance Standards to Classroom Instructional Material;
- Build Through Professional Development the Capacity of Teachers to Teach in Standards- and Data-driven Schools;
- Build Through Professional Development Leadership Capacity for Superintendents & Principals to Administer in Standards- and Data-driven Schools;
- Design & Implement Academic Intervention Strategies for Students Not Meeting Benchmark or High School Exam Standards;
- Develop & Implement Core Courses in Small Schools with Expert Teachers in Reading, Writing & Math;
- Identify School Models that Work in Alaska & Other States & Design Strategies to Assist Low- Performing Schools;
- Strengthen Legal Validity of Alaska High School Graduation Qualifying Exam; and
- Build, Field Test & Implement School Designator System.

The Department of Education & Early Development makes the report available to the public on its web site at:

www.eed.state.ak.us/tls/assessment/pdf_files/WorkPlan2002to2006.pdf .

How to Fix America's Schools

If you take it for more than a political slogan, President Bush's motto for education reform--"no child left behind"--is a wildly ambitious goal. It is every bit as audacious as Lyndon B. Johnson's War on Poverty or John F. Kennedy's race to the moon. Since the U.S. first embraced universal public education decades ago, there has been a largely unspoken assumption that some children will never earn a high school degree. Now, says National Urban League President Hugh B. Price, Bush is "asking our schools to do something that no society has ever done, to educate all children well, regardless of their circumstances." In effect, Bush is declaring that in the Information Age, a solid education is a fundamental civil right. The President's pronouncement is the culmination of nearly twenty years of mounting efforts to fix America's schools. The educational crusade began in earnest with *A Nation at Risk*, a 1983 report commissioned by the Reagan Administration warning that "a rising tide of mediocrity [in our schools] threatens our very future as a

nation." In 1989, then-President George Bush and the nation's governors held the first-ever national education summit, where they set sweeping goals--from eliminating illiteracy to vaulting U.S. students to No. 1 in the world in math and science.

There has been scant progress toward meeting those goals (tables). Less than half of America's schoolchildren read proficiently at their grade level. U.S. 12th-graders still score well below teenagers in almost every other developed country on mathematics and science tests. The 74% of students who have completed high school by the age of 18 rank the U.S. No. 17 in graduation rates after decades of leading the world, according to the Education Trust, a research group in Washington. "While we've certainly made some improvements, they're not nearly enough to keep up," says Milt Goldberg, who headed the commission that produced *A Nation at Risk*.

NOT SO GLOOMY. Low-income and minority students fare the worst. Only 29% of all fourth-graders read proficiently at their grade level, but among low-income kids, the figure is 13%. By the end of high school, black and Hispanic children perform only at the level whites do in eighth grade. "This achievement gap is the most important issue of social justice in our society," says Tom Vander Ark, executive director for education at the Bill & Melinda Gates Foundation, which doles out \$100 million a year for education reform. The problem is an economic issue, too, since white kids will fill fewer than half of U.S. school seats by 2040, down from 65% today and 85% in 1950.

Still, the prospects are not quite so hopeless as the gloomy report card suggests. Many schools in prosperous, upper-middle-class suburbs have always done a good job, as have certain schools in solid middle-class districts. The real challenge lies with the continuing mediocrity that plagues too many of America's schools--and the disastrous state of education for kids at the bottom. The good news: The past two decades have seen an explosion of local reform efforts aimed at even the most intransigent problems. "We now have abundant evidence that there are strategies that can make a significant difference," says the Urban League's Price.

As discussion begins on Bush's education plan, to be debated in the Senate the week of Mar. 12, *BusinessWeek* set out to identify the best of these strategies. We posed a simple question: What would it take to achieve the President's goal of "no child left behind"? A broad range of experts and educators helped us draw up seven strategies that, pursued together, would go a long way toward fixing America's schools. The list isn't exhaustive. We left aside such pedagogical questions as how best to teach math or reading. Instead, we focused on changes in the system that would create an environment in which schools could succeed with far more regularity.

In evaluating solutions, we had one basic test: There must be compelling evidence that they work. The ideas that follow have all been battle-tested. In seeking them out, we went to schools, districts, and states that have beaten the odds, often in some of America's toughest neighborhoods. Among them: Humanities Preparatory Academy in New York's Chelsea neighborhood, a high school that often takes students who floundered elsewhere yet sends 91% of its graduates to college, including Harvard University and Northwestern University. At KIPP Academy, which runs middle schools in Houston and New York's South Bronx, more than 90% of students are Latino or African American, and virtually all are poor. Last year, 98% of KIPP's students in Houston passed the Texas Assessment of Academic Skills (TAAS) test, ranking it among the state's best.

Even more impressive are the states that have made large-scale improvements. In the 1980s, Kentucky ranked dead last in the country in its share of adults with a high school or college degree. But 11 years after the courts forced the state to redesign its entire system, 78% of adults now have a high school diploma, up from 53% in 1980. The share holding college degrees has doubled. And the Bluegrass State has leapfrogged other states into the middle ranks of academic performance. Similarly, sweeping reforms have helped North Carolina and Texas make strides, outpacing the gains of all other states on the National Assessment of Educational Progress (NAEP), the primary test used to measure students nationally.

One clear lesson of all the reform efforts is that no single idea can solve the many ills of America's schools. "Schools are complicated institutions, which means you need a comprehensive approach that deals with everything at once," says former Yale University President Benno C. Schmidt Jr., now chairman of Edison Schools (EDSN), the nation's largest operator of for-profit schools. That's why President Bush's program is just a downpayment on all that's needed.

True, he wants to tackle several areas at once, including technology, school choice, and mandatory testing. But because Washington plays a relatively minor role in education, Bush's proposal doesn't come close to providing the radical action required. Most reforms, from tougher accountability to pay-for-performance for teachers, face stiff opposition that can only be overcome by the states, the highest level of government with leverage over the country's 90,000 schools.

HEFTY OUTLAYS. At the same time, however, the U.S. must also pony up more money for serious reform. Bush wants a \$2 billion, or 10%, boost in federal K-12 spending. But that's pennies out of the \$360 billion total the U.S. shells out annually on public education. No one has tried to figure out what it would take to provide every child with an adequate education. Wyoming took a shot at it and came up with \$7,400 per student a year, or 18% more than what it had been spending. The cost would certainly be higher in many states with big cities and many poor families.

Still, as a starting point, a national increase like Wyoming's would run an extra \$60 billion a year. Even half that, if used wisely, could make a dent. But real change will require everyone--Washington, the states, and school districts--to dig deep into their pockets. For that, the political environment has never been more conducive. "Almost every governor has an agenda to improve the schools," notes Ted Sanders, president of the Education Commission of the States. The question now is whether it's enough to give every American child a real education.

1. PAY TEACHERS FOR PERFORMANCE

Few factors affect students' performances more than the quality of their teachers. A Tennessee study in 1996--to cite just one of many making the same point--found that fifth-graders who had three years of effective teaching improved their math scores by 83%, vs. a 29% gain for students with ineffective teachers. Yet many teachers are unqualified. One-third of secondary school math teachers and roughly half of physical science teachers didn't major or minor in the subjects they teach. Often, "the most

senior teachers opt for the nicest schools, while we put our weakest teachers in the hardest locations," says Robert T. Jones, president of the National Alliance of Business (NAB), which backs training and education initiatives.

The appalling shortage of quality teachers stems in part from chronically low pay. Any college grad who wants to teach must be willing to endure a lifetime of subpar wages (chart). Now schools face the near-impossible mission of filling the 2.2 million teaching vacancies expected over the next decade.

Aggravating the problem is an outdated salary structure unrelated to what teachers do in the classroom. Most teachers are still paid under the so-called single-salary system developed in Des Moines 80 years ago. Everyone with the same seniority and degree is paid the same. That approach marked a step forward in 1921, when it corrected the practice of paying male teachers more than female ones. But the system has become a straitjacket that's stifling schools, which can't reward the best teachers or pay more to lure math and science graduates. "It doesn't offer teachers any real opportunity for professional advancement," argues Lowell Milken, chairman of the Milken Family Foundation.

The solution: Pay teachers more, and scrap single salaries for a system that rewards teachers for what they contribute to student learning. On Jan. 30, four leading business groups--the NAB, the U.S. Chamber of Commerce, the Business Roundtable, and the National Association of Manufacturers--endorsed a plan along these lines. These groups would, in return for higher teachers' pay, raise the bar for new teachers. Educators would be paid according to how well they perform in class and mentor other teachers, with the chance to reach a max of \$100,000. Meanwhile, professional development would be expanded.

Connecticut has shown that such reforms can work. Starting in 1986, it raised teacher salaries by nearly one-third. Today, they're still among the nation's highest, averaging around \$53,000 and peaking at more than \$80,000. Simultaneously, the state hiked requirements for new teachers, including passing an exam in their subject area. New teachers work with a mentor to improve their technique. Then they are evaluated. The review covers lesson plans and teaching techniques and "evaluates their ability to foster learning," says Raymond Pecheone, who oversees teacher evaluation for the state. Those who don't cut it by their third year are out.

UP THE LADDER. The payoff has been great. It has avoided the teacher shortages of other states. "We turn away three [applicants] for every one we let into our teaching program, and the grade-point average of those accepted is 3.4," brags Richard L. Schwab, dean of the Neag School of Education at the University of Connecticut. Teacher attrition is down, and Connecticut has made huge gains in student achievement, especially in reading, where it ranks first in the nation.

Now reformers elsewhere are adding more rungs to a career ladder teachers can climb. Last fall, Cincinnati negotiated a new system with the local union in which teachers may ascend five rungs in their career--from apprentice to accomplished. Advances are based on a sophisticated measure of performance. Educators will undergo periodic evaluations, "and if you don't measure up, you can drop a rung and actually lose pay," says Kathleen Ware, the city's associate superintendent. Iowa is close to adopting a similar statewide career ladder.

Teachers themselves are one of the most difficult obstacles to such schemes. The country's two teachers unions, the National Education Assn. (NEA) and the American Federation of Teachers (AFT), support higher pay to attract more qualified talent to teaching. And "we support different ways of providing compensation to teachers," says AFT President Sandy Feldman, who notes that her union backed the Cincinnati plan. But the unions are skeptical about some aspects of reform. NEA President Robert F. Chase, for example, opposes paying more to attract math and science teachers. "Is their work really more important than teaching kindergarten or first grade?" he asks. Such thinking ignores the marketplace reality that those trained in math and science have many other opportunities.

Teachers at the Vaughn Next Century Learning Center in Los Angeles even had to withdraw from the union to keep working there after the school adopted a pay-for-performance ladder. In 1990, 70% of Vaughn teachers had less than three years experience. The school serves 1,300 Hispanic elementary kids in one of the city's poorest neighborhoods. Turnover was high, and Vaughn ranked among L.A.'s worst schools.

Three years later, Principal Yvonne Chan converted Vaughn into a charter school (which means it receives public funds but is otherwise largely autonomous). In 1998, she set up a system that bases pay on a teacher's ability to help kids meet California's standards and gives bonuses to high achievers. Top performers can earn \$68,000 a year, 20% more than in other L.A. schools. But the local union insisted that Vaughn teachers return to a regular public school. Some did, but after an ugly debate, most left the union and endorsed the plan.

Today, most of Vaughn's 69 teachers seem to enjoy the challenge. "When I was in the union, I didn't feel teachers were being asked to work up to their full potential," says Jose Salas, who quit the union to teach at Vaughn. Now, "there's a feeling of controlling one's destiny." Test scores are soaring, and the state ranks Vaughn in roughly the top 10% of schools serving similar inner-city students.

Improving teacher effectiveness also requires professional development. Today, the average U.S. teacher receives just eight hours of training a year, less than 10% of what teachers get in Japan, for example. But look what happened in New York's District 2, which serves 23,000 students in Manhattan. In the mid-1980s, it began devoting 8% of its budget to teacher instruction, compared with less than 3% spent at the typical U.S. school. At P.S. 130, in Chinatown, Principal Lily D. Woo began holding breakfast meetings, Saturday workshops, and summer sessions to train her staff in more effective methods for teaching literacy. Today, District 2 ranks second among 32 districts in test scores, up from 17th in 1985.

More pay and training cost big bucks. Still, warns the January report by the NAB and the three other business groups, "without high-quality teachers, our efforts to improve student achievement are destined to fail." It's a question of paying now or paying later.

2. MAKE SCHOOLS SMALLER

Two years ago, Yrcania Castillo was kicked out of Hunter College High School in New York. Although the school is highly regarded, Yrcania found it too competitive and impersonal. "My attendance and grades were terrible," she admits. Then she discovered Humanities Prep, a small school in Manhattan that specializes in giving kids a second chance. Yrcania blossomed in the intimate environment of the 175-student school, where she's now a senior. "At Hunter, they didn't care, but here they're really concerned," says Yrcania, 17, who has applied to college. Without Humanities, "I would likely have ended up on welfare," she says.

For decades, U.S. education has operated under the assumption that bigger is better, especially in high schools. After former Harvard President James B. Conant advocated eliminating smaller schools in favor of large, comprehensive ones in the 1950s, most urban high school students began attending factory-like schools with 1,000 students or more. Today, many have become cauldrons of violence, pitiful achievement, and high dropout rates.

It's time for a 180-degree turn. New construction should favor "small neighborhood schools, with 200 to 500 students," says Jack Clegg, CEO of Nobel Learning Communities Inc. (NLCI), a for-profit school operator. It's too costly to dismantle large dysfunctional schools, but they can be turned into several schools-within-schools, allowing kids and teachers to form closer bonds.

Several cities are already downsizing schools. New Visions for Public Schools, a reform group, has helped to create some 40 small schools in New York, including Humanities Prep. Chicago has 150 small schools after a decade of effort by the Small Schools Workshop at the University of Illinois at Chicago. "None is bigger than 350 kids, and all are run more like communities than factory schools," says Workshop Director Michael Klonsky.

REBORN. The movement is proving that the intimacy long offered by elite prep schools can work minor miracles in disadvantaged districts. Student attendance climbs, and dropout rates fall, according to a new study of Chicago's small schools by the Bank Street College of Education in New York. The schools in the study are located in Chicago's poorest neighborhoods. "It's like a village, where all of the teachers know the students," says Alice Perry, whose daughter, Mary, is a student at Best Practice High, a new Chicago small school.

The school-within-a-school concept makes smallness work even in cavernous buildings. Look at the Julia Richman Education Complex on New York's Upper East Side, or the Cregier Multiplex, a block from Chicago's United Center. As large schools, both had epitomized all that was wrong with urban education. Then they were reborn. Each now houses several specialized small schools, such as Julia Richman's Urban Academy, whose intensive liberal arts program is regarded as among the best in the nation.

There's a similar movement to slash class size. While there has been some controversy about the value and cost of smaller classes, a landmark 1980s study in Tennessee called Project star found that they're especially helpful for young children who often need extra individual attention. Students in kindergarten through third grade were randomly assigned to classes of 12 to 17 pupils, of 22 to 26 pupils, and to large classes with an aide helping the teacher. The result: Those in the small classes did better. The gains persisted even after students left third grade. The star project has fueled efforts to reduce class sizes in the early grades. But overcrowding remains a problem.

3. HOLD EDUCATORS ACCOUNTABLE

Lucy McVey took over as principal of Blanton Elementary in Austin, Tex., in 1996 with one mission: to remove it from the state's list of low-performing schools. Blanton earned the stigma after its mostly Hispanic immigrant students scored poorly on the TAAS. To shake things up, McVey required teachers to attend staff development sessions that ran till 8 p.m. She enticed 600 working-class parents to attend a baked-potato social, where she exhorted them to get more involved. "It was a tremendous struggle," McVey says. Some teachers even quit. But after just one year, math scores jumped by 53%, reading scores by 25%--and Blanton got off the list. Further improvements have landed it on the state's list of blue-ribbon schools.

Blanton is a textbook example of what President Bush believes accountability can do for schools nationwide. His plan calls for annual assessments of students in math and reading from grades three to eight, which would require a huge increase in standardized testing. Today, only 15 states--including Texas--administer such tests in each of these years. His plan would give assistance to low-income schools that fail to make sufficient progress. If a school didn't shape up in three years, its students would get federal funds to attend a better public or private school.

HORNET'S NEST. Critics warn that annual testing would create test mania and divert kids from broader learning. But there's ample evidence that performance can rise with well-designed accountability systems that use tests in addition to other measures. In North Carolina's ABC program, each school gets a target for how much they should improve on the state's test each year. Schools that meet the standard receive a bonus of up to \$1,500 per teacher. The neediest schools are assigned a team of top-rated teachers, plus an administrator, that spends a year helping to "conduct staff

development and forming action plans for borderline teachers," says Elsie C. Leak, who oversees the program. So far, 85% of schools receiving aid have earned their way off the laggard list. North Carolina, with Texas, has outpaced all other states in gains on the NAEP tests.

Or look at how Texas helped to improve the three districts around El Paso, one of the poorest areas in the U.S. The schools had been dreadful for so long that people assumed nothing could be done, says Susana Navarro, head of the El Paso Collaborative for Academic Excellence, a community group formed in 1991. Then the group set high standards, worked to improve teacher quality, and relied on the TAAS exams to measure progress. Now, 70% of El Paso's children pass the exams, up from about 50% in 1994. "Accountability [has been] the most valuable contribution," says Navarro.

Testing often stirs up a hornet's nest among parents and critics. While there's little opposition in Texas, a backlash is building in states that conduct more difficult tests. In Massachusetts, 45% of high school students have been flunking the test that will be required for graduation starting in 2003. This has parents worried that their kids won't graduate on time--or at all.

Similar tests have driven up the dropout rate in Cincinnati, where kids must pass five Ohio tests to graduate. Last June, 92% of 12th-graders but only 35% of freshmen passed all five, says Kathleen Ware, associate Cincinnati superintendent. Some kids learn enough to bring up their score, which is the goal of the tests. But a bigger reason for the discrepancy is that some 40% of incoming students leave before graduation. "This is a long, tough road," warns Ware. It may be that in states with tough tests, students will need more time to meet the standards.

Another worry: that "schooling tends to get reduced to test prep, giving kids a watered-down curriculum," says Monty Neill, head of the National Center for Fair & Open Testing, a group critical of standardized tests. The best educators resist that impulse. At Blanton, McVey reinstated dance and piano when the school got off the troubled list.

The best way to counter the problem is to develop tests worth teaching to. Unfortunately, quality varies widely. California and others states assess English using dumbed-down, fill-in-the-bubble tests. But tests in Massachusetts and New York require kids to read complex material and write extended analyses. The U.S. needs higher and more uniform standards. There are also more comprehensive ways to assess students. At the Urban Academy, a Manhattan public high school, seniors prepare final projects and present them to outside experts to qualify for graduation.

The entire accountability system remains a work in progress. But it would be wrong to give up on testing, warns Boston Superintendent Thomas W. Payzant. True, 56% of his 10th-graders flunked the state English exam last year and 66% failed math. "But we have to be very clear about what we want our students to learn," says Payzant, who warns that if the tests were abolished, pressure to turn around Boston's long-failing schools would evaporate. Even critics like Neill agree that "kids and their parents have a right to know if school is preparing them for something other than dead-end jobs and prisons." Without greater accountability, schools can continue to fail with impunity.

4. OFFER MORE VARIETY

Most people associate school choice with vouchers, which allow parents to use public funds for private schools. But while vouchers remain stymied in a political and legal quagmire, there has been an explosion of choice in public school systems. Charter schools have multiplied from 100 in 1994 to 2,000 today. They serve a half-million of America's 53 million K-12 students, estimates Jeanne Allen, president of the Center for Education Reform in Washington. Another 1 million or so kids have a choice of schools within the traditional public-school system, she estimates. By contrast, only about 20,000 students in a handful of cities attend private schools using publicly funded vouchers. Indeed,

giving students a choice of public schools, where 90% of kids go, is a more realistic alternative than vouchers. It's also a far easier political sell, since the teachers unions support charters.

The rationale for choice lies in the competitive jolt it can give existing schools. "Choice and competition breed innovation and better performance," just as they do in business, argues Edison's Schmidt. Equally important is that "one size does not fit all in education," says John L. Anderson, vice-chairman of New American Schools, a nonprofit that helps schools implement comprehensive reform models.

One example is Perspectives Charter School in the heart of Chicago. It has just 150 students, mostly African American and Hispanic, in grades 6 to 12. All must observe the school's 20-point behavior code known as "The Disciplined Life." The code helps to create a safe environment, in part by training students how to resolve conflicts peacefully. Expectations are skyscraper-high. All students must apply to five colleges and can't graduate "unless they're accepted at a college, trade school, the military, or have a job," says Co-Director Diana Shulla-Cose. It's tough. But since the school opened in 1997, reading scores have doubled, math scores have tripled, and 19 of last year's class of 21 graduated and went to college.

NEW MODELS. To ensure that students have access to educational approaches that best fit their needs, school boards should be overhauled and given the primary responsibility for creating choice in their districts. In effect, boards should help every school become a charter school, with the ability to set its own approach within broad guidelines. Boards would set the guidelines and oversee the results to ensure that schools meet performance standards.

To encourage more variety, educators and some companies are coming up with what amount to national brands for educational methods. Already, more than 3,000 schools in all 50 states have adopted one of New American Schools' models. They range from Success for All, which targets improving literacy, to Co-Nect, which creates high-tech schools. Meanwhile, Edison now runs 113 schools, up from 79 last year, using an approach involving lots of technology and more time in school. KIPP, which stresses rigorous teaching of the basics, is about to roll out its model nationally.

More public districts are moving toward a multiple-choice model, as well. In New York, students can choose among dozens of differing middle and high schools, although there's no guarantee of acceptance at their first choice. Chicago has 15 charters, 12 citywide magnet schools, and 15 international baccalaureate programs and expects to bring in Edison and KIPP to manage some public schools.

One danger in the proliferation of options is that educators may chase fads or fruitless experiments that lead nowhere or even set students back. "We need far more research" on which models work best, cautions AFT President Sandra Feldman. Boards will have to hold schools to high standards and close them if they fail to deliver.

5. PROVIDE ADEQUATE FUNDING

In January, a New York court issued a stinging indictment of the state's funding of New York City's 1.1 million-student school system. A staggering 31% of the city's teachers flunked the basic exam required of new educators on their first try, vs. 4.7% of those in the rest of the state. Hundreds of city school buildings have structural deficiencies. Overall, the state's poorest districts, mostly in the city, spend \$2,800 per child less than the richest, mostly located in suburbs and upstate. That works out to some \$60,000 less per class.

The result: Just 60% of city students who entered the ninth grade in 1996 have graduated. At every turn, city schools lack the resources to provide the "sound basic education" required by the state constitution, wrote New York Supreme Court Judge Leland DeGrasse, who ordered major funding reforms.

This decision, which the state is appealing, is the latest in a three-decade string of rulings striking down school-funding systems on constitutional grounds. Wyoming and Kentucky have made progress in reducing the disparities between the wealthiest and poorest districts. But there are still gaps in 42 states, according to the Education Trust. "We get killed," complains Chicago Schools CEO Paul G. Vallas, who says some suburbs spend twice as much as Chicago, even though it has half the state's special-ed students.

For years, the solution has been to try to equalize funding, which is most commonly based on property taxes, thus perpetuating the discrepancies between rich and poor districts. But any schemes that include blocking wealthy districts from lavishing extras on their schools breed resentment. Now, some reformers are embracing a more practical approach: adequate, rather than equal, funding. After a court struck down its funding system in 1995, the state of Wyoming took such a tack. It embarked on an extensive study of what makes up an adequate education and calculated that it costs \$7,400 per student.

Of course, more money is no guarantee of success: Schools in Washington, D.C., are dreadful, despite annual outlays of \$8,000 per kid. And while billions have been dumped into the federal Title I program, which helps the most impoverished schools, many recipient schools remain abysmal.

Still, extra dollars can work wonders. After a court struck down Kentucky's system, the state boosted spending on its schools by 20% in 1990. It targeted the money to backwoods schools such as Roundstone Elementary School in Mt. Vernon, Ky., which serves 270 mostly poor students. Its library was outdated, classes were large, and the building was crumbling. A 150% budget increase let Roundstone remodel the library, cut class sizes, and sharply expand professional development for teachers. The payoff? "We're now considered one of the best schools in the state," says Principal David Pensol. His fourth-graders ranked first in state science scores last year.

Uncle Sam may have to help resolve disparities between states. In 1998, for example, Connecticut and New Jersey spent \$9,000 per student, twice as much as Mississippi or Utah. Indeed, the 10 bottom-ranked states spent less than the national average. As courts have made clear, it's unfair to consign kids to inferior schools because of where they live.

6. INCREASE TIME IN SCHOOL

The amount of time kids spend in class has remained largely unchanged since the 19th century, when schools adopted the six-hour day and the nine-month calendar to accommodate farm life. The summer break is especially harmful to minority and poor kids. They enter the first grade half a year behind upper-income children but fall 2.5 years behind by the end of fifth grade, according to a Baltimore study by Johns Hopkins University sociologists Doris R. Entwisle and Karl Alexander. "Almost all of this gap can be traced to the summer vacations, when lower-income kids were treading water and upper-income kids were forging ahead," says Alexander. The reason, he concluded, is that upper-income families do so much better at keeping their kids stimulated during the summer.

"NO SHORTCUTS." The solution--requiring more time in school for kids who need it--is simple to say but difficult to achieve. "Schools have to be in session year-round," argues Chicago's Vallas. One problem, of course, is cost. There's also resistance from teachers, parents, and students, who all like the summer break. In addition, more time isn't as necessary for many affluent kids, giving the concept a penalize-the-poor tinge.

Still, evidence abounds that more hours in class can lift student performance (as well as alleviate child-care problems). It's one reason for the success of the KIPP Academy, which runs its two schools from 7:30 a.m. to 5 p.m., Monday to Friday, plus four hours on Saturday and an extra month in the summer. Arduous? Yes. But all 550 of its pupils in Houston and the South Bronx meet state standards, and many win scholarships to top prep schools. "There are no shortcuts to success," argues founder Mike Feinberg.

Similarly, in Chicago, 250,000 students, more than half of the total, now attend summer school or extended-day programs. They're a key reason why student test scores, though still low, have risen five years in a row.

7. USE TECHNOLOGY EFFECTIVELY

Schools have embraced new technology with fervor in recent years. Some 95% of public schools are wired to the Internet, up from less than 35% in 1994. There has also been an explosion in the digital resources available to schools, from virtual courses and field trips to access to some of the world's great libraries.

Yet so far, technology has done little to improve the national report card. The problem: Most educators don't know how to use it to improve student learning, teacher cooperation, or even school administration. That needs to change, since no other tool offers more potential to transform our schools.

Just look at schools that have begun to tap the potential. Adlai E. Stevenson High School in Lincolnshire, Ill., a suburb north of Chicago, offers students access to the Net from every classroom, office, library, and student common area. German teacher Margaret R. Plank uses e-mail to link her classes with students in Hamburg. The teens from both countries learn each other's language by discussing everything from mad cow disease to Germans' feelings about their country's role in World War II. "This gives the students a reason to improve," says Plank.

GONE FISHING. Similarly, Washington State has created a statewide fiber-optic intranet called K-20 that links every college and school district in the state. Now "we're offering all kinds of virtual courses," says state superintendent Terry Bergeson. Seven districts, from Forks, a fishing town on the Olympic Peninsula, to North Franklin on the Columbia River, have teamed up on a project to help protect salmon. Kids monitor water quality, discuss their findings with each other through teleconferences, and report to their local communities.

A new generation of software is proving far more effective than traditional programs, which are often little more than rote learning dressed up for the Digital Age. Take the Cognitive Tutor, developed by Carnegie Learning in Pittsburgh to teach algebra and geometry. The program uses artificial intelligence to determine what students understand and what they need to tackle next. Rather than drill kids on equations, it requires them to use algebra to solve real problems. Kids using Cognitive Tutor score higher on math tests than students in traditional algebra classes and are more than twice as likely to complete geometry and higher algebra.

Dot-coms may have soured the business world on the Internet's commercial potential, but schools are still experimenting with abandon. Teachers use the Net to collaborate on lesson plans. In some schools, e-mail is being harnessed to expand communication between teachers and parents. The Gates Foundation is helping pilot a new online system for testing kids more frequently and effectively. The goal is to turn today's cumbersome standardized tests into a just-in-time diagnostic tool that would

yield results instantly so teachers could address problems quickly. "In five years, we hope several states will have moved their entire testing system online," says the Foundation's Vander Ark.

Technology alone, like more choice or smaller schools, is no panacea for the ills of America's classrooms. But if deployed with the other reforms, it holds the promise of helping to close the yawning gap between schools in rich and poor communities. As with the other measures, it will take tremendous effort to adapt technology effectively. Doing so will require "a national mobilization...similar in scope...to bringing electricity and phone service to all corners of the nation," concluded the Congressional Web-based Education Commission last December. Those are good analogies for what it will take to implement all seven reforms outlined here. If the goal of "no child left behind" is a serious one, nothing less will suffice.

By William C. Symonds With Ann Therese Palmer in Chicago, Hilary Hylton in Austin, Tex., and bureau reports

Distributed to Committee
Via E-Mail
3/20/01

Subject: Helping students prepare for the HSGQE

Date: Mon, 19 Mar 2001 16:59:51 -0900

From: Nick Stayrook <nick@northstar.k12.ak.us>

To: Representative_Con_Bunde@legis.state.ak.us

**CC: jeholt@jnu-unix.legis.state.ak.us, ashortt@jnu-unix.legis.state.ak.us,
ernie@jnu-unix.legis.state.ak.us**

Karen McCarthy,

In regards to your question about what the Fairbanks North Star Borough School District has done to prepare students for the high school qualifying exam, I have collected the following points from our staff here in the district:

1. Aligned the curriculum with the content and performance standards
2. Provided staff development for teachers in a standards based approach to assessment and instruction
3. Summer school course is being offered to students who failed the exam
4. Provided tutors to work with students who are struggling with the test
5. Counselors have advised students to take geometry to prepare them to pass the math portion of the test
6. Worked with UAF to provide summer institutes for teachers which address standards
7. Provided workshops for teachers on test taking strategies
8. Provided copies of the practice exams to all sophomores and juniors and their teachers.

I am sure individual teachers in our high schools are also helping students to prepare for the exams in other ways not listed here, for example developing diagnostic pretests to determine areas in which the students need more work.

I hope this provides you the type of information you were seeking. If you have further questions, please contact us.

Nicholas Stayrook, Director
Program Planning and Evaluation
Fairbanks North Star Borough School District

Subject: URGENT! Please, don't cheat our children!

Date: Thu, 15 Mar 2001 21:01:35 -0900

From: Barbara Lefler <lefler@alaska.net>

To: Senator_Lyda_Green@legis.state.ak.us, Senator_Loren_Leman@legis.state.ak.us,
Senator_Jerry_Ward@legis.state.ak.us, Senator_Bettye_Davis@legis.state.ak.us,
Senator_Gary_Wilken@legis.state.ak.us, Representative_Con_Bunde@legis.state.ak.us,
Representative_Gretchen_Guess@legis.state.ak.us,
Representative_Joe_Green@legis.state.ak.us, Representative_Brian_Porter@legis.state.ak.us,
Representative_Reggie_Joule@legis.state.ak.us,
Representative_Peggy_Wilson@legis.state.ak.us,
Representative_Gary_Stevens@legis.state.ak.us,
Representative_Fred_Dyson@legis.state.ak.us,
Representative_Peggy_Wilson@legis.state.ak.us,
Representative_John_Coghill@legis.state.ak.us,
Representative_Gary_Stevens@legis.state.ak.us,
Representative_Vic_Kohring@legis.state.ak.us,
Representative_Sharon_Cissna@legis.state.ak.us,
Representative_Reggie_Joule@legis.state.ak.us

Dear Honorable Legislators,

We are parents of a student in the graduating class of 2002! Neal has an IEP. We are emphatically opposed to the language of SB 133.

If the 2% of the students who are developmentally disabled and have to take the alternative assessment want IEP diplomas, let them have it.

However, the other 98% of the students (including our son) with cognitive abilities want to be held to the same standard as their peers! Our children are capable of achieving if they are provided with an appropriate education. We parents already have to fight for our children's education. By taking away their high expectations and by stripping them of their rights to use state standards and benchmarks, there is no motivation for the schools to provide an appropriate education. We are tired of fighting. Please, don't cheat our children out of their right to achieve and graduate with their peers.

Sincerely,

Barb and Doug Lefler

Subject: HSQE

Date: Tue, 13 Mar 2001 11:09:37 -0900

From: adent <adent@alaska.net>

To: Representative_Con_Bunde@legis.state.ak.us

Dear Representative Bunde:

I am writing to urge you to stay the course regarding the High School Qualifying Exam. As the prime architect of the legislation which required this exam, yours is the voice which should be heard the loudest in its support. There is no valid reason to delay or modify the requirements or your bill. If the exam is delayed, it will be watered down or eliminated over time. Please do not let this happen. This legislation is the only thing currently on the table to hold our public school accountable for their product.

When the apologists for our public school industry began the campaign to delay or eliminate the HSQE, I wondered whether the exam was, in fact, too difficult. To find out, I went on-line and took the practice exam for the mathematics section. This seemed to be the area of greatest contention, and I felt reasonably confident that I would be able to pass the reading and writing exams if I had too. While I have always been intrigued by the language of mathematics, I have never been able to quite grasp its complexities. In high school (West Anchorage, class of 1972) I managed to struggle through the required classes. In college I managed to get through the required Business Calculus class on a pass/fail basis. In other words, I was no math whiz.

So, was the math test too hard? No! I passed with a score of 88%. There were some relatively difficult (for me) algebra questions on the exam, as its critics love to point out. As a matter of fact, these were the very questions I missed. The point is, you can miss the more difficult questions on the exam and still pass. You will still get your diploma even if you can't determine the slope of a line based on a simple equation.

As an employer, I would be very disappointed if I were to hire a purported graduate of a high school in Alaska (or anywhere else for that matter) and found that that person did not have the minimum skills which the HSQE requires. As a taxpayer in Anchorage I would also feel cheated that my property tax dollars, the bulk of which go to support our public schools, are being so terribly wasted.

Thank you for your efforts.

Mike Boots
adent@alaska.net
907-276-1558

February 5, 2001

Con --

Here are the notes from my conversation with Bruce Johnson re: the results of the Content Review Team's decision to adjust the content of the test.

Three background pieces of information:

- 1) The content review team cannot work over the summer because of teachers' summer scheduling difficulties. In addition, DoE gets most of the teachers to work on the Team for free, because the school districts pay for their salaries if the Team meets during the school year. In some cases, DoE picks up the tab for the substitutes.
- 2) The process is delayed because sophomores do not take the Fall tests. They need the widest possible group of test takers to validate the questions, so the test questions are tried out during the Fall test administration only.
- 3) Bruce Johnson believes that the Competency Test will be indefensible if there is not a delay because the Department's Content Review Team members want to change it.

Conversation in a nutshell:

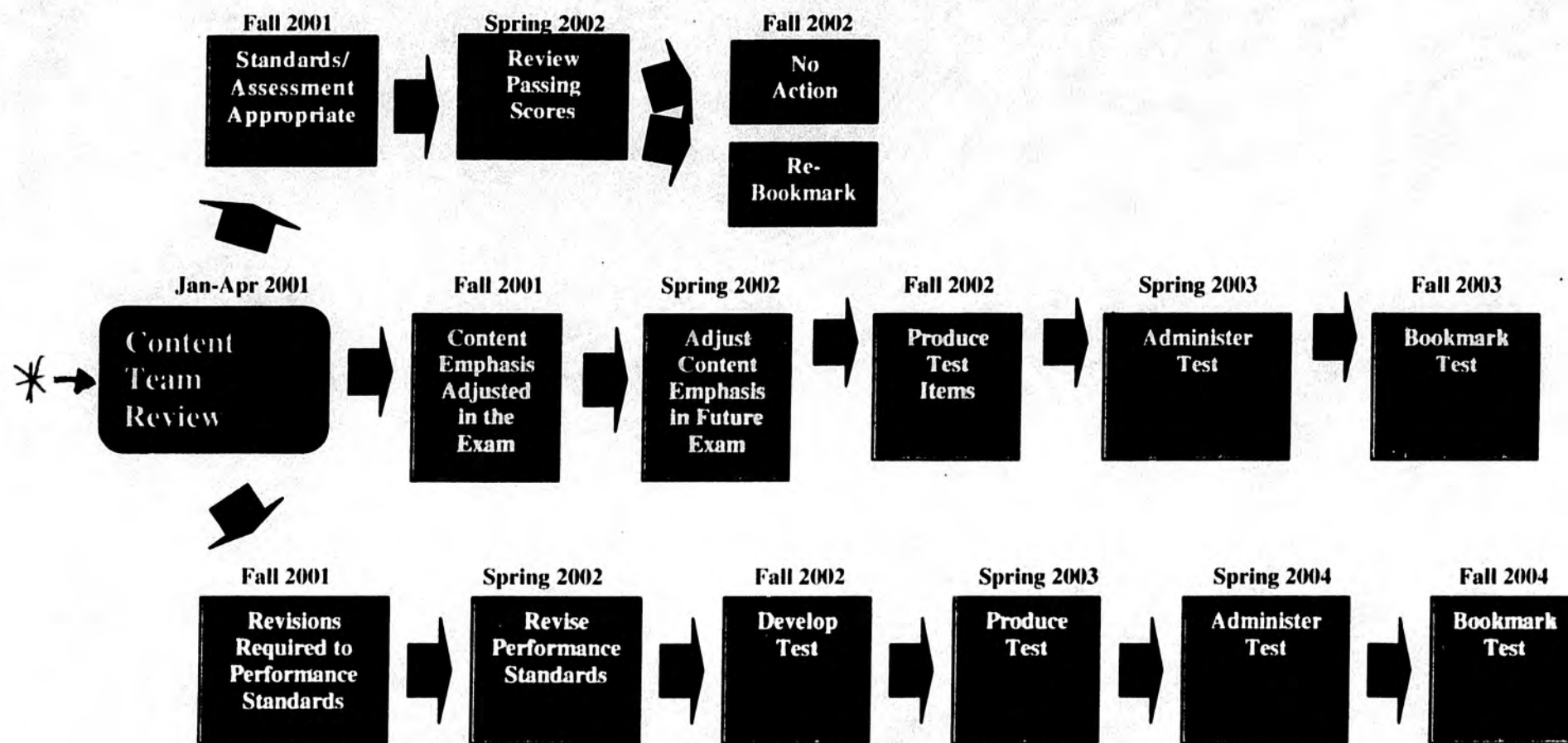
- 1) The Content Review Team (now with lots of businessmen and an essentially new team) has decided that they need to change the emphasis of which standards are tested most heavily on all three portions of the test.
- 2) They just met and will meet again in April. They will look at the standards and decide which standards will get many questions and which will not.
- 3) The State Board of Education will vote on the Review Team's recommendations in June.
- 4) In the Fall of 2001, they will determine the new emphasis of the standards through a series of meetings with Alaskans, then send their results to the publisher of the test.
- 5) In the Spring of 2002, the questions will come back from the publisher and there will be another meeting to tweak what they did. They will then send the approved changes back to the publisher.
- 6) In the Fall of 2002, nothing will happen because the new questions cannot be tried out.
- 7) In the Spring of 2002, the new test questions will be tried out. These new questions are embedded in the regular test, but are not graded. Those questions which many people get wrong are discarded. The Spring test is given in March. The results are available 90 days later (June).
- 8) In the Fall of 2003, the Content Review Team will be brought back together to bookmark new passing scores.

During the first drafting of the current test questions, the former Content Review Team picked good questions that went with the standards. This time, the current Content Review Team will identify the standards to be passed and then ask for questions to be developed from those standards.

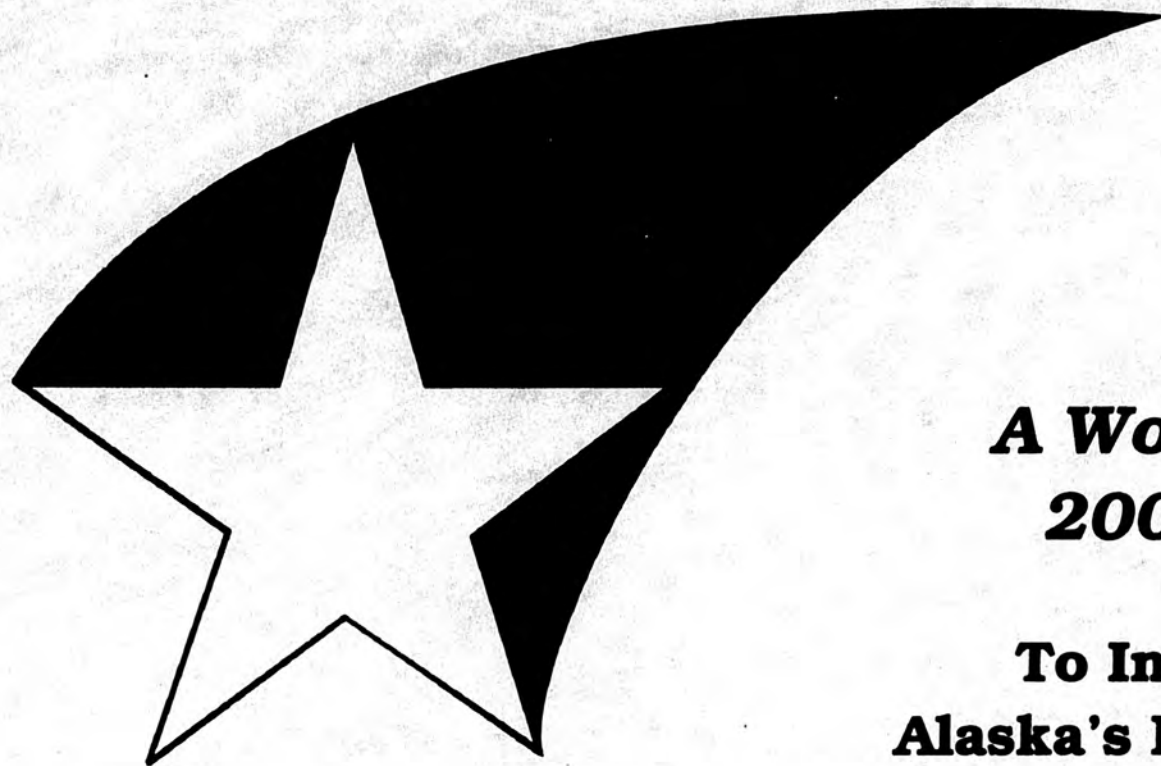
I asked if the current test is valid. Bruce Johnson said, "Yes." But then he asked if it tests the right skills. The test does what was intended, but now a different group has determined that some other questions should have been intended. So now, it is highly unlikely that the current test would be defensible in court because the Department hired people who want to change it.

Alaska Standards-Based Assessment Initiative

FRAMEWORK FOR CONTINUOUS RENEWAL



* Content Review Team's decision on the way to proceed.



***A Work Plan:
2002-2006***

**To Implement
Alaska's Public School
Accountability Initiative
For Improving
Student Achievement**

**Alaska Department of Education
& Early Development**

March 2001

A Work Plan: 2002-2006

For the State of Alaska and Alaska's Local School Districts For Effective Implementation of Alaska's Public School Accountability Initiative for Improving Student Achievement March 2001

The public schools of the State of Alaska have seized the challenge of the Quality Schools Initiative as legislated in 1997 and 1998. The challenge is no less than a complete overhaul of Alaska's public schools so that all students are able to meet higher academic standards. The challenge also requires school boards and school personnel to be accountable for student results.

This is an enormous undertaking, one quite different than Alaska's public schools have faced at any time in its history. We will not achieve this lofty goal tomorrow or next year. To reach the goal requires at every level a commitment to systemic and fundamental changes to our system of public schools. It requires much more than just fixing a high school exam. It also requires a deep commitment to adequately funding our schools in order to build the capacity of our teachers and principals to carry out this monumental goal. It will take until 2006 to complete all the tasks outlined in the attached work plan.

Every task in the work plan is driven by student achievement data obtained since the Alaska high school and benchmark exams were first administered in March 2000. From the data we have learned the State of Alaska and local school districts need to accomplish the following:

- Verify Student Standards, State Exams & Passing Scores
- Resolve Issue of Special Need Students
- Align Curriculum to State Reading, Writing & Math Performance Standards
- Upgrade & Align Performance Standards to Classroom Instructional Material
- Build Through Professional Development the Capacity of Teachers to Teach in Standards- and Data-driven Schools
- Build Through Professional Development Leadership Capacity for Superintendents & Principals to Administer in Standards- and Data-driven Schools
- Design & Implement Academic Intervention Strategies for Students Not Meeting Benchmark or High School Exam Standards
- Develop & Implement Core Courses in Small Schools with Expert Teachers in Reading, Writing & Math
- Identify School Models that Work in Alaska & Other States & Design Strategies to Assist Low- Performing Schools
- Strengthen Legal Validity of Alaska High School Graduation Qualifying Exam
- Build, Field Test & Implement School Designator System

Finally, every task in the work plan needs to be in place to ensure each student meets the higher standards and experiences success. Anything less does a disservice to our students and our system of public schools. It will also undermine the confidence Alaskans have in their public schools by placing unrealistic expectations on them without providing the necessary time and resources.

In summary, Alaska needs to complete each task outlined in the work plan. And we believe it will take until 2006, with appropriate funding, to do so. Only then will students be academically prepared to meet Alaska's new higher standards, take the high school test with confidence and do well.

A Work Plan: 2002-2006

To Implement Alaska's Public School Accountability Initiative For Improving Student Achievement
Department of Education & Early Development
March 2001

Category	Time Frame	State Responsibility	School District Responsibility	Discussion
Verify Student Standards, State Exams & Passing Scores	2002-2004	Review the high school standards and state exit exam. Review may lead to revised performance standards, revised test, and/or revised passing scores. Business community and high school students will be represented at every level of review process.	Secure volunteer, expert teachers and members of the business community to assist state in its review of high school exam.	Review began Feb. 2001. Some adjustment to test emphasis appears necessary to truly align exams with agreed upon foundational/essential skills.
	2002-2004	Review the benchmark examinations in grades 3, 6, and 8. Review might lead to revised performance standards, revised test, and/or different proficiency scores.	Recruit and secure volunteer, expert teachers to assist state in its review of benchmark exams.	Uses same review process as used for high school exam.

Category	Time Frame	State Responsibility	School District Responsibility	Discussion
Resolve Issue of Special Need Students	2002-2004	Continue to work with special education community to determine fair and defensible approaches for ensuring special education students meet standards and are not left academically behind. Study, analyze and recommend to governor and legislature alternate approaches that effectively serve the students. Business community, parents of children experiencing disabilities and advocacy agencies will be represented in review process.	Assist state in developing a recommendation to the legislature regarding potential alternate routes to a high school diploma for special needs students.	Possible options: different diplomas and different routes leading to the same diploma. Delay in effective date would allow time for strategies to be determined.
	2002-2004	Determine whether to award alternate diplomas to special students, a) limited English proficient, b) special education, c) and transient students, such as military dependents and others who come to Alaska late in their high school careers. Statute amendment required.	Recruit volunteer experts to assist state to determine how to respond to the unique needs of special population students.	

Category	Time Frame	State Responsibility	School District Responsibility	Discussion
	2004- Then Annually	Monitor and report to the legislature the effectiveness of agreed upon procedures for special population students.	Implement new procedures for special population students.	
Align Curriculum to State Reading, Writing & Math Performance Standards	2002-2004	Partner with organizations to produce prototype curricula aligned to the performance standards.	Align curriculum and lesson plans to state standards.	Funding vehicle may be 4 AAC 33.300-.330 (Quality Schools Grants). Requires increases in foundation program funding for five years.
Upgrade & Align Performance Standards to Classroom Instructional Material	2002-2006		Provide students with sufficient and up-to-date study materials that are aligned with performance standards.	A standards-based curriculum requires students to have appropriate classroom tools, such as new textbooks, software and other materials. This is recommended by the Governor's Task Force on School Funding. The recommendation requires an appropriation to ensure that instructional materials are matched to curriculum in a timely manner.

Category	Time Frame	State Responsibility	School District Responsibility	Discussion
Build Through Professional Development the Capacity of Teachers to Teach to Standards	2002-2006	Secure expert teacher trainers to be available to schools on contract. Organize, train and deploy trainers.	Identify expert teachers, including state-supported Quality Schools Consultants, to train teachers in standards-based instruction.	Demand will grow as accountability system matures. Currently in operation and ongoing. Uses federal funds to assist financially.
	2002-2006	Create and implement Center for School Excellence for low-performing schools.	Low-performing schools identify, design and implement appropriate teacher training and school/community improvement plans.	Provides training for teachers in low performing schools. This is a recommendation of the Governor's Task Force on School Funding. Requires appropriation.
	2002-2006	Create partnerships with Alaska Staff Development Network and other agencies to train teachers to teach in standards-based schools	Identify teacher training needs and schedule teachers for specific training.	Many teachers have not received direct training on teaching in standards-based schools.
	2002-2006	Create partnerships with Alaska universities and colleges to train teachers to teach in standards-based schools.	Partner with universities to give university students opportunities to mentor in school districts.	Many college education students have not received training on teaching in standards-based schools.

Category	Time Frame	State Responsibility	School District Responsibility	Discussion
	2002-2004	Update and create new standards-based support materials for teachers, such as teacher guides, practice tests, test procedure manuals, and participation guidelines for special need students to help prepare students for the high school and benchmark exams	Review and advise the state in the development of standards-based support materials. Train teachers how to effectively use state-developed support materials	
Build Through Professional Development Leadership Capacity for Superintendents and Principals to Administer Standards-Based Schools	2002-2006	Participate with Alaska universities, colleges and leadership training organizations to ensure that programs offered are research-based	Collaborate, plan and host with the state and various training institutions school-leaders- in-training for development of practical experiences designed to reflect the best practices toward improving student achievement. Review and advise the state in the development of standards-based support materials. Train school administrators how to effectively use state-developed support materials	The development of quality school leaders is a complex undertaking that requires partnerships to be effective.

Category	Time Frame	State Responsibility	School District Responsibility	Discussion
Design & Implement Academic Intervention Strategies for Students Not Meeting Benchmark or High School Exam Standards	2002-2004	Gather and analyze data to determine why some schools are not demonstrating improvements in student performance	Analyze student achievement data and target specific areas for improvement. Implement strategies that are proven to work.	Some data will be provided by Opportunity to Learn surveys administered to teachers and students with state exams.
	2002-2006	A student data unit within the proposed EED Center for School Excellence would track individual student performance.	Identify low-performing students early in their schooling. Seek partnerships with other agencies, including assistance from the Center for School Excellence, to develop and implement intervention strategies.	Focus interventions on students who have not passed benchmark or high school exams, and who need intervention based on developmental profiles conducted for each child in kindergarten or first grade. This is a recommendation of the Governor's Task Force on School Funding. Appropriation required over five years.
	2002-2006	Give school districts appropriate additional resources to develop and implement student intervention strategies.	Develop and implement intervention activities, such as summer school, tutoring, after school studies, etc. for students who are not meeting standards.	This is a recommendation of the Governor's Task Force on School Funding. Appropriation required.

Category	Time Frame	State Responsibility	School District Responsibility	Discussion
Develop & Implement Core Courses in Small Schools with Expert Teachers in Reading, Writing & Math	2002-2006	Create highly trained reading, writing, and math teachers in small high schools through distance delivered courses in reading, writing and math.	Plan and implement courses in reading, writing and math that target special skills utilizing distance delivery.	This program is for schools with populations of 50 students and below. This is a recommendation of the Governor's Task Force on School Funding, and would require an appropriation.
Identify School Models that Work in Alaska & Other States & Design Strategies to Assist Low-Performing Schools	2002-2006	Create a Center for School Excellence. Appropriation required for five years. Statutory authorization possibly required.	Identify low-performing students early in students' schooling. Require districts to develop improvement and intervention plans that include assistance from the Center for School Excellence and other agencies.	Provides technical help for teachers in low performing schools. This is a recommendation of the Governor's Task Force on School Funding and would require an appropriation.
Strengthen Legal Validity of Alaska High School Graduation Qualifying Exam	2002-2006	Give students the opportunity to complete the sequence of benchmark examinations in grades 3, 6, and 8 before they face the high school exam	Administer the benchmark examinations according to state procedures in grades 3, 6, and 8 before students face the high school exam and provide needed intervention activities	Class of 2006 will have the opportunity to take the grades 6 and 8 benchmark exams and receive academic interventions as needed.

Category	Time Frame	State Responsibility	School District Responsibility	Discussion
Build, Field Test & Implement School Designator System	2001-2003	Develop, field test and implement a system to designate schools as distinguished, successful, deficient or in crisis.	Volunteer and cooperate in development, field testing and implementation of school designator system.	As mandated in AS 14.03.123.
	2003-2006	Designate schools as distinguished, successful, deficient or in crisis. Identify low-performing schools, require improvement plans and legislated partnership with the State Board of Education & Early Development.	Recognize the school designator system as a part of the state's total school accountability system and require low-performing schools to develop and evaluate improvement plans that address identified areas of need.	Continuous review cycle of high school and benchmark exams, and 2006 high stakes timeline will give more reliable data appropriate to ranking of schools.



Alaska State Legislature

House Special Committee on Education Representative Con Bunde, Chair

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Brian Porter
Joe Green
Peggy Wilson
Gary Stevens
Reggie Joule
Gretchen Guess

MEMORANDUM

DATE: March 12, 2001
TO: House Special Committee on Education
FROM: Representative Con Bunde, Chair
RE: School District Alignment Information

Last year, the State of Alaska appropriated \$6.1 million for Learning Opportunity Grants and \$3.35 million for Quality School Grants.

I have received the following information from Dr. Richard Smiley, Director of Assessment at the Department of Education regarding school districts' efforts to align their curriculum to the State Performance Standards.

In February of 1999, the first Quality School Grants were provided to all school districts. By applying for and accepting those grants, districts were obligated to adopt the Performance Standards and have a plan for aligning their curriculum to those standards. The application deadline was December of 1999. Grant applications began arriving at DoE in the summer of 1999.

The following information comes from Bev Smith, of the Division of Teaching and Learning Support:

We do not have a definitive listing of districts that have, are, or will be aligning their curricula to state standards. We do, however, see "curriculum alignment" listed as an activity, for some districts, in state and federal grant applications and reports.

For example, in the FY2000 Quality Schools Grant reports, we noted that 6 districts used Quality Schools Grant funds to align curriculum. In FY2001, 2 districts proposed using these funds for curriculum alignment. Another 6 districts, in FY2001, proposed using these funds to improve instruction, activities, and assessments to better align with the Alaska standards.

Also, in the Title II Eisenhower Professional Development grant applications, we noted that 9 districts proposed using these funds to align curriculum and 19 proposed using the funds to implement standards-based instruction in the classroom. To make alignment truly effective, it must occur not only on the district curriculum level, but in individual classrooms as well, involving teaching methods, student activities, and assessments.

We do not know, however, if the funds used in these grants were sufficient to complete the alignment to state standards in all curricular areas. It should be noted that districts may use any of the state funding and several sources of federal funding for the purpose of aligning curriculum. The examples cited above for the Quality Schools Grant and Title II Eisenhower Professional Development Grant do not represent all of the curriculum alignment activities occurring in the state.

I can also report that department staff often receives requests to come out to districts/schools to help staff align curriculum in a variety of standards' areas. Department staff provides this assistance directly or identifies someone else to assist.



Alaska State Legislature

House Special Committee on Education Representative Con Bunde, Chair

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Brian Porter
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Reggie Joule
Gretchen Guess

MEMORANDUM

DATE: March 12, 2001

TO: House Special Committee on Education

FROM: Representative Con Bunde, Chair *Con Bunde*

RE: Other States' Accommodations for Special Needs Students

My intern, Lola Savatgy, has researched and prepared the attached information for you on test accommodations in other states. I hope that you find it useful. When she has concluded her research on whether any states with High School Competency Tests have been sued with regard to their provisions for students with special needs, I will distribute that information to you.

States with accommodations for special needs students:

Alaska

Arizona

Does not require IDEA students to pass a subtest (reading, writing and math) whose IEP specifies "out-of-level-testing". This applies only to specific subtest or subtests requiring out-of-level testing in order to get a diploma.

California

All exceptional students must pass the exam to get a diploma, including students with IEP or 504 plan.

Florida

All students are held to the standards, including special education and LEP students. Accommodations are allowed.

Massachusetts

Accommodations for students with disabilities, defined as students with IEP's or 504 plan. Accommodations must be in accordance with IEP or 504 plan. Also this state has an alternate assessment.

Minnesota

Students with special needs may meet the standards at an individual level according to the requirements of their IEP or 504 plan. Special accommodations that will not alter the validity of the standards assessments are available.

Nevada

Special education students can request a waiver from the exam. If the waiver is approved, they can get a diploma stating that they met all high school requirements except the competency exam.

New Jersey

IDEA students are entitled to participate in the exam if they are required to take the high school proficiency test. Students whose IEP's state that they are exempt from the proficiency are also exempt from the exam process. Any modifications or accommodations must be specified in the students IEP's or 504 plans. The decisions are made based on the students needs.

New Mexico

Students can participate through an accommodated administration of the exam, which is based on their IEP, or an alternate assessment based on special education guidelines.

North Carolina

Students with disabilities shall participate in the exam; however, they may be exempted from statewide standards by IEP team determinations. The students may receive a certificate of achievement or graduation certificate.

Ohio

Students with IEP must take the test but with accommodations.

Texas

Students must take the test but with accommodations. Alternate assessments required for students who cannot take the test with out modifications. An alternative assessment is expected to become a part of the school accountability system in the year 2002-2003 school year.

Indiana

Special education students receive similar accommodations they receive on IEP's. But special education students have the same three routes to a diploma as regular students.



Alaska State Legislature

House Special Committee on Education Representative Con Bunde, Chair

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Gretchen Guess

MEMORANDUM

DATE: March 12, 2001
TO: House Special Committee on Education
FROM: Representative Con Bunde, Chair *C Bunde*
RE: Alaska G.E.D. Requirements

There have been some inquiries about the requirements for accommodations provided to learning disabled and physically disabled people who take the General Education Development (G.E.D.) test. I have contacted Amy Iutzi-Mitchell, ABE/GED State Director at the Department of Labor, to obtain the following information.

- Accommodations may be provided to applicants who are learning disabled and/or physically disabled. Information regarding accommodation policies and procedures is attached.
- Doctors and other diagnosticians must fill out portions of the accommodation application. They may make suggestions for which of the available accommodations should be provided.
- Possible accommodations include tests in Braille, audio tapes, large print tests with extended time, and extended time for standard print. Scribes are available for physically disabled test takers on the essay portion.
- The accommodation application goes through an approval process. There is also an appeals process for those who disagree with the determination.
- Accommodations are not noted on a G.E.D. diploma.

Other information about the G.E.D. --

- There are five multiple-choice tests -- writing, social studies, science, literature and math. The writing test also has a written essay requirement.
- The federal government sets the average cut standard score at 45 points. Please note that this is an average of the standard scores from all five tests. States set the minimum standard score for each test in the battery. In Alaska, the minimum score is 40 points. That means a tester can go as low as a 40 standard score on an individual test as long as other tests bring the standard score average to 45 or higher.
- The G.E.D. tests are standardized using a national sample of graduating high school seniors. It is not meant to encourage students to leave high school for an "easy out".

- The 45 standard score average is attained by 67% of the graduating high school seniors who take the test for the national study. That means that 33% of the graduating high school seniors participating in the study do not achieve scores high enough to pass the G.E.D.
- The math section is composed of multiple choice word problems. Questions are divided into 50% arithmetic, 30% algebra, and 20% geometry. Of the arithmetic section, 30% is measurement, 10% is numerical relationships, and 10% is data analysis.
- All branches of the military will accept people who have earned a G.E.D. if they need personnel. The gate opens and closes depending on need.
- A new edition of the G.E.D. tests is being developed and will be used beginning in January of 2002. The literature section (which currently includes poems and plays) will be changed to include material more commonly encountered by adults. The math test will also be changed somewhat to be geared to common, practical math skills, and a calculator will be allowed on one section of the math test.
- By Alaska Statute, a 16-17 year old may take the G.E.D. test under certain conditions, including parental approval or legal emancipation, and withdrawal from school.
- Ms. Iutzi-Mitchell's experience (eleven years as a high school English teacher and eleven years working in Adult Basic Education Programs that prepare students for the G.E.D. tests) shows her that a 16-17 year old who is having trouble with the High School Competency Test may also have trouble with the G.E.D. She has seen that those who have gained some maturity test more successfully.

I have attached some material from the G.E.D. manual that was provided by Ms. Iutzi-Mitchell. If you have any specific questions, please contact her directly.

Alaska Department of Labor and Workforce Development

*Employment
Security Division*

FACT SHEET

GENERAL EDUCATIONAL DEVELOPMENT (GED) TESTING Test Administration Procedures for Adults with Disabilities

BACKGROUND:

The General Educational Development Testing Service (GED) is administered through the American Council on Education. The Commission on Adult Learning and Educational Credentials of the American Council on Education establishes the policies and procedures for the administration of the GED Tests. The GED Testing Service is located at One Dupont Circle NW, Suite 250, Washington, DC.

GED Testing Service operates under the policy that not all individuals can be fairly tested under standard administrations of the regular print editions of the GED Tests. In such cases, accommodated administrations may be arranged at the request of the candidate and with the approval of the Chief Examiner and the GED Administrator. In these instances, use of the nonstandard editions or modifications of the standard administration procedures are permitted in accordance with guidelines developed by the GED Testing Service staff.

The American Council on Education believes that every candidate should have a fair opportunity to demonstrate his or her knowledge and skills under appropriate test conditions. For some candidates a disability may interfere. This may be due to a learning disability, physical disability, mental disability, and/or attention-deficit/hyperactivity disorder.

When such disabilities are documented using the designated GEDTS form (Form L-15 and/or Form SA-001) and approved by the GED Administrator, the GED Chief Examiner must arrange to test the candidate with the approved accommodations.

ACCOMMODATIONS AVAILABLE:

In addition to the regular print editions, the GED Tests are available in U.S. and Canadian English-language audiocassette, Braille, and large print editions. The

non-standard editions are adapted for candidates with impaired vision, but they can also be used appropriately for candidates with other physical and learning disabilities.

Other accommodations include: extended time, private testing room, frequent breaks, a certified sign language interpreter, a scribe who records the answers to multiple-choice questions or the essay as dictated by the testing candidate, or use of a calculator.

PROCEDURES FOR REQUESTING ACCOMMODATIONS:

1. Test candidate submits Form L-15 or SA-001 to GED Chief Examiner.
2. GED Chief Examiner determines that documentation is complete on Form L-15 or SA-001.
3. GED Chief Examiner forwards Form L-15 or SA-001 to GED Administrator for the initial screening review.
4. GED Administrator informs GED candidate of approval, nonapproval, and/or a request for further information or an update to existing information.
5. When further information is presented, the Administrators send a letter of approval or nonapproval, or submit the request to GEDTS for an expert review.
6. A clinical case review is available for those cases that do not fit the GEDTS model. An appeals panel review is available for any request that has been denied at the state or national level.

REQUIREMENTS FOR ACCOMMODATIONS:

1. Professionals certified to document the need for accommodations include medical doctors, psychologists, and educational diagnosticians. The professional must be certified and licensed in a discipline relevant to the disability.
2. Statement or test results must be attained from the professional attesting to the cognitive potential of the candidate requesting accommodation.
3. A statement must be attained from the professional stating how the disability currently, significantly, and negatively affects the candidate's academic achievement.
4. A statement must be attained from the professional of how the accommodation(s) requested meets the needs of the identified disability.

SUCCESSFUL COMPLETION OF GED TESTS WITH ACCOMMODATIONS:

The GED graduate who successfully completes the GED tests with accommodations receives the same diploma as a tester who does not have accommodations.

REQUEST FOR SPECIAL ACCOMMODATION IN GED TEST ADMINISTRATION FOR CANDIDATES WITH PHYSICAL OR EMOTIONAL DISABILITIES

To: GED Administrator

CENTER ID NUMBER

CHIEF EXAMINER

DATE

CENTER NAME

ADDRESS

CITY

STATE/PROVINCE/TERRITORY

ZIP/POSTAL CODE

TELEPHONE NUMBER

FAX NUMBER

PROPOSED TESTING DATE

CANDIDATE NAME

SOCIAL SECURITY/SOCIAL INSURANCE NUMBER

ADDRESS

CITY

STATE/PROVINCE/TERRITORY

ZIP/POSTAL CODE

TELEPHONE NUMBER

DATE OF BIRTH

I grant permission for the release of my medical or psychological records to verify this accommodations request.

CANDIDATE'S SIGNATURE

GUARDIAN'S SIGNATURE (IF APPLICABLE)

DATE

I. Certifying Professional: I certify that I am licensed to diagnose and treat the disability specified below:

NAME OF CERTIFYING PROFESSIONAL (TYPE OR PRINT)

SIGNATURE:

DATE

TELEPHONE NUMBER

FAX NUMBER

LICENSE TYPE:

LICENSE NUMBER:

II. Basis for Request: Define condition(s) that make modification to standard testing procedure necessary and describe the modification(s) that you propose. Attach any supporting documents. Continue on back of page if necessary.

A: Condition

VISUAL IMPAIRMENT — DESCRIBE:

HEARING IMPAIRMENT — DESCRIBE:

MOBILITY IMPAIRMENT — DESCRIBE:

DSM IV CODE:

OTHER — DESCRIBE:

B: Modification

- ☐ EXTENDED TIME; _____ (specify: i.e., 1.5x, 2x, etc.)
- ☐ BRAILLE EDITION
- ☐ CALCULATOR/TALKING CALCULATOR
- ☐ INSTRUCTIONS INTERPRETED FOR DEAF CANDIDATE
- ☐ OTHER; DESCRIBE BELOW:

- ☐ LARGE PRINT EDITION
- ☐ AUDIOCASSETTE EDITION
- ☐ PRINTED TEST INSTRUCTIONS
- ☐ SUPERVISED FREQUENT BREAKS
- ☐ OFF-SITE TESTING; DESCRIBE BELOW:

- ☐ PRIVATE ROOM
- ☐ SCRIBE

IV. Approval by State, Provincial, or Territorial GED Administrator

☐ APPROVED ☐ NOT APPROVED FOR:

SIGNATURE, GED ADMINISTRATOR

DATE

EXAMINER

GED CANDIDATE

CERTIFYING PROFESSIONAL

GED USE
ONLY

REQUEST FOR SPECIAL TESTING: CANDIDATES WITH PHYSICAL DISABILITIES

Date: _____

Regarding: _____

CERTIFYING PROFESSIONAL

FORM L-15: Accommodation Request for Learning Disabilities and/or Attention-Deficit/Hyperactivity Disorder



PART I: INFORMATION

SECTION A:

GED EXAMINER

To the GED Chief Examiner: It is important that all requested information in this section be filled in by you before you give the form to the GED candidate. Sign line 7, however, only after the form has been completed. Before you sign, review the checklist on page 7 to ensure ALL needed information is provided. Missing information means the form will be returned, slowing the candidate's request. When you have signed, forward Form L-15 to your state, provincial, or territorial GED Administrator for review.

1. Chief Examiner: _____
2. Center ID Number: _____
3. Center Name: _____
4. Address: _____ City: _____
State/Province/Territory: _____ ZIP/Postal Code: _____
5. Telephone Number: () _____ Fax Number: () _____
6. Proposed Testing Date: _____ E-mail: _____
7. I have reviewed this application and find it complete.

GED Chief Examiner's Signature

Date

SECTION B:

GED CANDIDATE

To the GED Candidate: Make certain that you fill in each section completely and that you sign the release of information on line 6. Your GED Chief Examiner can help with this form but you are your own best advocate. Make certain each person indicated completely fills in the needed information. If you are under 18, your parent or guardian must sign on line 6 as well. Return the form to the Chief Examiner of your GED Testing Center at least one month before your desired testing date.

1. Candidate's Name: _____
2. Telephone Number: () _____
3. SSN (Social Insurance Number): _____
4. Date of Birth/Age: _____
5. Address: _____ City: _____
State/Province/Territory: _____ ZIP/Postal Code: _____
6. **Release of Information:** I grant permission to release my medical or psychological records to the GED Testing Service and its designees to document my request for accommodation. If the candidate is under 18 years of age, a parent or guardian's signature is also required.

Candidate's Signature

Parent or Guardian's Signature (if appropriate)

Date

To the Documenting Professional:

- It is important to the candidate's request for accommodations that (1) all sections be completed; (2) those certified or licensed to diagnose learning disabilities and/or attention-deficit/hyperactivity disorder (ADHD) make these diagnoses; and (3) those making a diagnosis have a minimum of two years experience working with adolescents or adults with learning disabilities and/or ADHD.
- A **certifying advocate** may be the assessment specialist (i.e., the psychologist, educational specialist, or others providing diagnosis). The certifying advocate also may be a person not involved with assessment. Such certifying advocates will transfer information contained in the psychological, educational, or other reports that may accompany a request for accommodations. For example, an advocate may transfer the scores given in a psychological report to Form L-15. In signing this section, the certifying advocate affirms that s/he adheres to the *Code of Professional Responsibilities in Educational Measurement* (National Council on Measurement in Education. Washington, DC: 1995).
- A **certifying professional** (e.g., a psychologist or psychiatrist) must be certified or licensed to diagnose learning disabilities and/or ADHD. Comprehensive training and direct experience with adolescent and adult populations is required. Professional credentials of the evaluator, including licensure and certification, are required in compliance with state licensure policies and policies of test production companies that limit administration of certain tests to those with advanced training.
- The GED Testing Service uses a common preferred practices model of documentation that derives from the U.S. Department of Education's definition of a learning disability in compliance with the 1990 Americans with Disabilities Act (ADA). This means that (1) the candidate should have the ability to pass the tests; (2) the candidate has a significant processing deficit that substantially limits his or her potential to demonstrate that ability on the GED Tests; and (3) substantial impairment of educational achievement is not primarily due to mental retardation, emotional factors, or cultural factors.
- A **standard score** discrepancy model is used. This means that information needs to be provided in standard score format. Measure of ability and achievement must be reported as standard scores (i.e., they are reported with a mean of 100 and a standard deviation of 15 in most cases).
- Initial approval decisions are based on the information provided in Form L-15. The form must be carefully completed. Supporting reports will be maintained in secured files to be used only in a case of clinical review.
- Complete psychological and educational reports attached to Form L-15 are used for clinical reviews.
- All **incomplete forms** will be returned to the GED Chief Examiner and to the candidate with a description of what information is missing.

Certifying Advocate:

The certifying advocate may be someone other than the assessment professionals. The certifying advocate can attest to the needed information by referring to the professional's reports (i.e., those of the educational specialist, the psychologist, or others).

1. Name of Certifying Advocate (please print): _____

2. Employment of Certifying Advocate: _____

3. Education of Certifying Advocate (highest degree earned): _____

4. Years of Experience with Late Adolescents/Adults Who Have Learning Disabilities: _____

5. Statement of Diagnosis:

I certify that documentation presented is evidence of _____ that requires the accommodations requested. (provide disability category here)

Signature

Telephone Number

Date

PART II: DISABILITY FOR WHICH ACCOMMODATION IS REQUESTED

Certifying professional, please identify the documented disability. There may be more than one.

Section A: Specific Learning Disabilities (check all that apply)

- ☐ Reading Disability (e.g., dyslexia)
- ☐ Math Disability (e.g., dyscalculia)
- ☐ Written Language Disability (e.g., dysgraphia)
- ☐ Other (please specify) _____

Section B: Attention-Deficit/Hyperactivity Disorder (ADHD)

ADHD, in general, is not thought to be a learning disability. It often coexists with learning disabilities. Therefore, ADHD is included on Form L-15. While ADHD is often defined as a chronic disorder, some ADHD symptoms may not persist in adulthood. Current diagnosis, therefore, is also required. Requests for accommodation based on ADHD coexisting with a learning disability must provide documentation for *both* conditions.

For the Certifying Professional:

To receive accommodations for ADHD, the current existence of ADHD must be clearly documented. Documentation must include a letter on official letterhead, signed by a psychiatrist, medical doctor, or psychologist who specializes in the diagnosis of ADHD, stating the diagnosis of ADHD and providing supporting diagnostic evidence of this disability. Diagnostic evidence may include a developmental history that defines symptom onset, specific computerized tests of attention such as the TOVA Gordon Diagnostic Battery or the CPT (Connors' Continuous Performance Test), and clear evidence that the candidate is otherwise qualified or has the cognitive potential to be successful on the GED Tests. Most often this will be demonstrated by test scores such as those given by the WAIS-R, WAIS-III, or Stanford-Binet IV. Information presented must also clearly document how the ADHD substantially limits the candidate's current documented educational achievement and what relevant accommodations are needed. Further, the documentation must confirm that the ADHD symptoms are not due to other psychiatric

(continued)

diagnoses alone, such as Depressive Illness, Bipolar Disorder, or Anxiety Disorder. These diagnoses are accommodated on GED Testing Service Form SA-001. A DSM-IV diagnosis must be included with the certifying professional's signature attesting to the diagnosis of ADHD.

DSM-IV Diagnosis: 314.

314.01 Attention-Deficit/Hyperactivity Disorder Combined Type

314.00 Attention-Deficit/Hyperactivity Disorder, Predominantly Inattentive Type

314.01 Attention-Deficit/Hyperactivity Disorder, Predominantly Hyperactive-Impulsive Type

314.9 Attention-Deficit/Hyperactivity Disorder, Not otherwise specified

DSM-IV (Diagnostic and Statistical Manual-Fourth Revision) Diagnosis: _____

Name of Professional Making Diagnosis: _____

Telephone Number: () _____ Date of Assessment: _____

Licensure or Certification: State/Province: _____ Number: _____ Specialty: _____

PART III: DOCUMENTATION

SECTION A: CLINICAL CASE HISTORY ON FILE?

No: _____ Yes: _____ Date of assessment: _____

SECTION B: MEASUREMENT OF POTENTIAL OR INTELLIGENCE

The Wechsler Scales of Intelligence (WISC-III, WAIS-R, WAIS-III) and Stanford-Binet IV are preferred. To support or clarify these results, other measures of cognitive potential may be used. These could include tests such as the PPVT-III, Ravens, TONI, WJ-R/Cognitive, KBIT, KAIT, etc. These additional tests, however, may not be used as the primary measure of overall potential.

Test Scores

Date of Assessment: _____

Test Used: ☐ WISC-III ☐ WAIS-R (accepted until 01/01/2000) ☐ WAIS-III ☐ Stanford-Binet IV

Verbal IQ: _____ Performance IQ: _____ Full Scale IQ: _____

WAIS-III Index Scores (if applicable):

Working Memory (WMI) _____ Processing Speed (PSI) _____

Perceptual Organization (POI) _____ Verbal Comprehension (VCI) _____

Subtest Scaled (i.e., Standard) Scores (mean of 10 with range of 1-19):

Information _____

Digit Span _____

Vocabulary _____

Arithmetic _____

Comprehension _____

Similarities _____

Letter-number _____

Sequencing _____

Picture Completion _____

Picture Arrangement _____

Block Design _____

Object Assembly _____

Digit Symbol _____

Coding (WISC-III) _____

Matrix Reasoning (WAIS-III) _____

Symbol Search _____

If prorated IQs are used, please explain the need to prorate: _____

Other supporting documentation: Identify supporting tests used and provide standard scores:

Psychological Diagnostician: This may be the certifying professional, or the certifying advocate may provide the needed information from the report of the psychologist. Psychologists must indicate certification or licensure. This information should be on their report. If not, it should be requested.

1. Name of Psychologist: _____
2. Telephone Number: () _____ Fax Number: () _____
3. Highest Degree and Area of Specialization: _____
4. License Number: _____ 5. Expiration Date: _____ 6. State/Province: _____

NOTE: Discrepancies between ability and achievement are part of the documentation of LD/ADHD.
Indicate model used: ☐ standard score ☐ regression

SECTION C: MEASUREMENT OF CURRENT ACADEMIC ACHIEVEMENT (STANDARD SCORES)

Date of Assessment: _____ **Test of Achievement Used:** _____
The WJ-R or WIAT are preferred. Others may be used for support only (e.g., WRAT III).

Current Achievement: (include Standard Scores)

Broad Reading: _____

Word Identification _____

Comprehension _____

Broad Math: _____

Calculation _____

Applied Problems _____

Broad Written Language: _____

Dictation _____

Writing Sample _____

Broad Knowledge: _____

Skills _____

Other _____

Other supporting educational documentation: Identify tests used and provide standard scores: _____

Educational or Psychological Diagnostician: This may be the certifying professional or it may be a person who did the educational assessment. Area of specialization and certification may not always be available.

1. Name of Educational Specialist: _____

2. Telephone Number: () _____ 3. Years of Experience: _____

4. Highest Degree and Area of Specialization: _____

5. Certification: _____ 6. Expiration Date: _____ 7. State/Province: _____

PART IV: ACCOMMODATIONS

SECTION A:

SPECIFIC INTERVENTIONS

What accommodations have been used effectively in the past? *For those who are newly diagnosed, this section may be left blank.* _____

SECTION B:

STATEMENT OF NEEDED ACCOMMODATIONS

What evidence leads you to the conclusions that the applicant has a disability? Why are the particular accommodations you have requested necessary for fair testing? How do they relate to the disability? _____

Accommodation(s)

- ☐ Large Print with Extended Time (*specify amount*) _____
- ☐ Extended Time (*e.g., 1 1/2x or specify additional units of time*) _____
- ☐ Audiocassette (tone indexed)
- ☐ Scribe
- ☐ Calculator
- ☐ Private Room
- ☐ Supervised Breaks (*specify the number of breaks and units of time on and off*) _____
- ☐ Other _____

CHECKLIST

GED Examiner:

- ☐ Complete all portions of Part I, Section A
- ☐ Provide the GED candidate with guidance in completing Form L-15, and ensure that the candidate understands the process

GED Candidate:

- ☐ Complete all portions of Part 1, Section B
- ☐ Sign form on line 6 of Part 1, Section B
- ☐ Obtain needed information from certified professionals
- ☐ Return signed form to GED Chief Examiner or your advocate

Certifying Professional:

- ☐ Provide all information needed in Part I, Section C, and Parts II, III & IV
- ☐ Sign form and report, if attached

The GED Testing Service considers a qualified candidate to be one who can perform the essential functions of the GED Tests (i.e., higher level thinking skills, core area subject knowledge, and mastery of written language). A qualified candidate for reasonable accommodations must have a reasonable chance of performing the essential functions of the GED Tests.

The GED Tests take approximately 7 hours and 35 minutes to take under standard conditions. The tests consists of five multiple-choice subtests and a timed essay on an assigned topic. The subject areas covered are Writing Skills, Social Studies, Science, Interpreting Literature and the Arts, and Mathematics. Passing scores are set so that approximately 67% of traditional graduating high school seniors would pass if they took the tests.

The GED Testing Service reserves the right to request further verification or documentation.

OFFICIAL USE ONLY

☐ Approved for:

- ☐ Large Print with Extended Time (*specify amount*) _____
- ☐ Extended Time (*e.g., 1 1/2x or specify additional units of time*) _____
- ☐ Audiocassette (tone indexed)
- ☐ Scribe
- ☐ Calculator
- ☐ Private Room
- ☐ Supervised Breaks (*specify the number of breaks and units of time on and off*) _____
- ☐ Other _____

- ☐ Not approved; provide additional information specific to LD.
- ☐ Not approved; provide additional information specific to ADHD.
- ☐ Not approved.

Signature of GED Administrator



Alaska State Legislature

House Special Committee on Education Representative Con Bunde, Chair

State Capitol
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(907) 465-3871 (fax)
Representative_Con_Bunde@legis.state.ak.us

Brian Porter
Joe Green
Peggy Wilson
Gary Stevens
Reggie Joule
Gretchen Guess

MEMORANDUM

DATE: March 13, 2001
TO: House Special Committee on Education
FROM: Representative Con Bunde, Chair *CBunde*
RE: Written Testimony to Senator Lyda Green

Mr. Malcolm Fleming, Principal of the Seward Middle/High School, sent the attached letter to Senator Green regarding the High School Competency Test as written testimony on SB 133. You might be interested in his comments.

Subject: HSGQE**Date:** Sun, 11 Mar 2001 18:45:12 -0900**From:** "Malcolm Fleming" <malcolm@kpbsd.k12.ak.us>**To:** Senator_Lyda_Green@legis.state.ak.us, Senator_John_Torgerson@legis.state.ak.us,
Representative_Ken_Lancaster@legis.state.ak.us, tosborn@kpbsd.k12.ak.us

High School Graduation Qualifying Exam Testimony
 By Malcolm Fleming
 March 11, 2001

The HSGQE is a great concept but some of its premises seem to be flawed:

1) College is not open, available, needed, or desired by every high school student. The current HSGQE does an excellent job of separating the potentially college bound student from all the other students, but so does SAT and ACT. So what have we accomplished by creating HSGQE?

2) We are hoping the HSGQE improves the quality of our high school graduates. My question is, do you pull at the top or push at the bottom? Our top students can easily pass the HSGQE so there's no need to fund programs to pull at them. Our bottom students struggle with the HSGQE so there is a reason to push them. Therefore greater resources are needed at the bottom. If we push the bottom and don't pull the top how does improve education, other than compress the mid range? We need to push the bottom and pull top at the same time.

May I suggest?

1) Keep the HSGQE in its present form and indicate the student's achievement on this test on their high school transcripts. Publish school results so individual schools and communities can see how they rate. Bragging rights have a way of motivating and focusing Americans.

2) Require transcripts to include attendance rates for each class the student takes. Employers seem to need responsible, dedicated, and reliable employees just as much as they need communication and logical thinking skills. Encourage employers to ask prospective employees for their high school transcripts during the employment process. None of my friends can ever being asked for a high school transcript except to attend my freshman year at college.

3) Make the 8th Grade Benchmark Test or the new "Essential Skills Exam" a high school entrance exam. Students must "pass" this test before entering high school classes. If a student passes the reading and writing sections maybe they could take 9th grade English and social studies classes. When they pass the math portion they can take algebra and geometry or other high school math classes. This would raise the bottom skills of students in high school classes and reduce the range of abilities students bring to high school. This would encourage the high school teacher raise their classroom performance expectations. Thus pulling the top students further, now that the bottom is better prepared to keep up in these classes. Remember, teachers are expected to teach all students in their classes and if the bottom is weak the top does not get much pressure. Of course, accommodations would be needed for handicapped students.

4.) Create a new pathway outside the regular academic high school for students to proceed through their secondary education career. This could be remedial classes for those trying to enter the regular high school program. Or, this could be classes focused on immediate employment skills with the idea that these students want or need to go to work and are not interested in academic education. Most of these classes would be vocational skills based that award certificates in quick succession. The goal is to train a work force for specifically skilled jobs. Make no

pretense that these students can do algebra or know what any thing about history. Their electives might include history or geometry classes.

5.) Our schools need the legislature's support to raise the standards. We are on the line and will rally to the challenges. On a whole I believe principals and teachers support higher standards. We see students slipping through just meeting the bare requirements. We know students can do better but we have had little or no support from society to raise standards. The mantra has been "a free and appropriate education for everyone." We are judged on our graduation rates but given no hard fast standard. Teachers and principals have had to be the bad guys when it comes to setting the standard. Yet we are told that retention, failures, and dropouts are unacceptable. So if we set the standard to avoid failure we are successful even if students fail to learn. We need the external force to set the standard so we can focus on hurtling the standard rather than defending it.

6.) Why not offer the HSGQE as a certificate of accomplishment? Measure the success of schools/districts on how many graduates have a HSGQE certificate. Focus on improving this score and the drop out rate. Punish or reward individual schools and districts for low percentage rates. Let high scoring schools advertise their success and compete with other schools. In business companies hire and fire CEO based on their profitability. Even failing companies manage to hire "hot shot" CEO's to turn the company around. Chrysler and Lee Iacocca come immediately to mind. As a principal, I have no problem making the passing of the HSGQE a primary priority of my school.

Thank you for the opportunity to testify on the HSGQE.

Malcolm Fleming, Principal
Seward Middle/High School
PO Box 1049
Seward, Alaska 99664

907-224-3351
907-224-3306 fax

BILL ANALYSIS -- HB 94
2nd Hearing February 28, 2001

Sponsor: House Rules by Request of the Governor

Bill Title: Pupil Competency Test; Annual Education Report

Update:

The following new information is in your packet:

- 1) Answers to question submitted to the Department about test scores, test cost, questions brought out at previous hearings, and questions about the Settlement Agreement between the Oregon Department of Education and "Advocates for Special Kids".
- 2) Updated version of the review of all states' Competency Tests.
- 3) AAG Phil Reeves' information about validity and defensibility
- 4) Legislative Legal Services' memo about validity and defensibility.
- 5) Overview of Alaska's Alternate Assessment System for students with severe cognitive disabilities.
- 6) Overview of the "Quality Education in the Last Frontier (QUELF) Grant
- 7) Information from Legislative Research on all states' Competency Exams.

Committee Members on the Offnet:

Representative Guess will be calling in from Washington, D.C.

Available to Testify in Juneau:

Greg Maloney	Special Education Director, DoE
Phil Reeves	Assistant Attorney General for DoE

Will Testify from Anchorage L.I.O. (??)

Amy Hedrick Disability Law Center (may be testifying from the L.I.O)

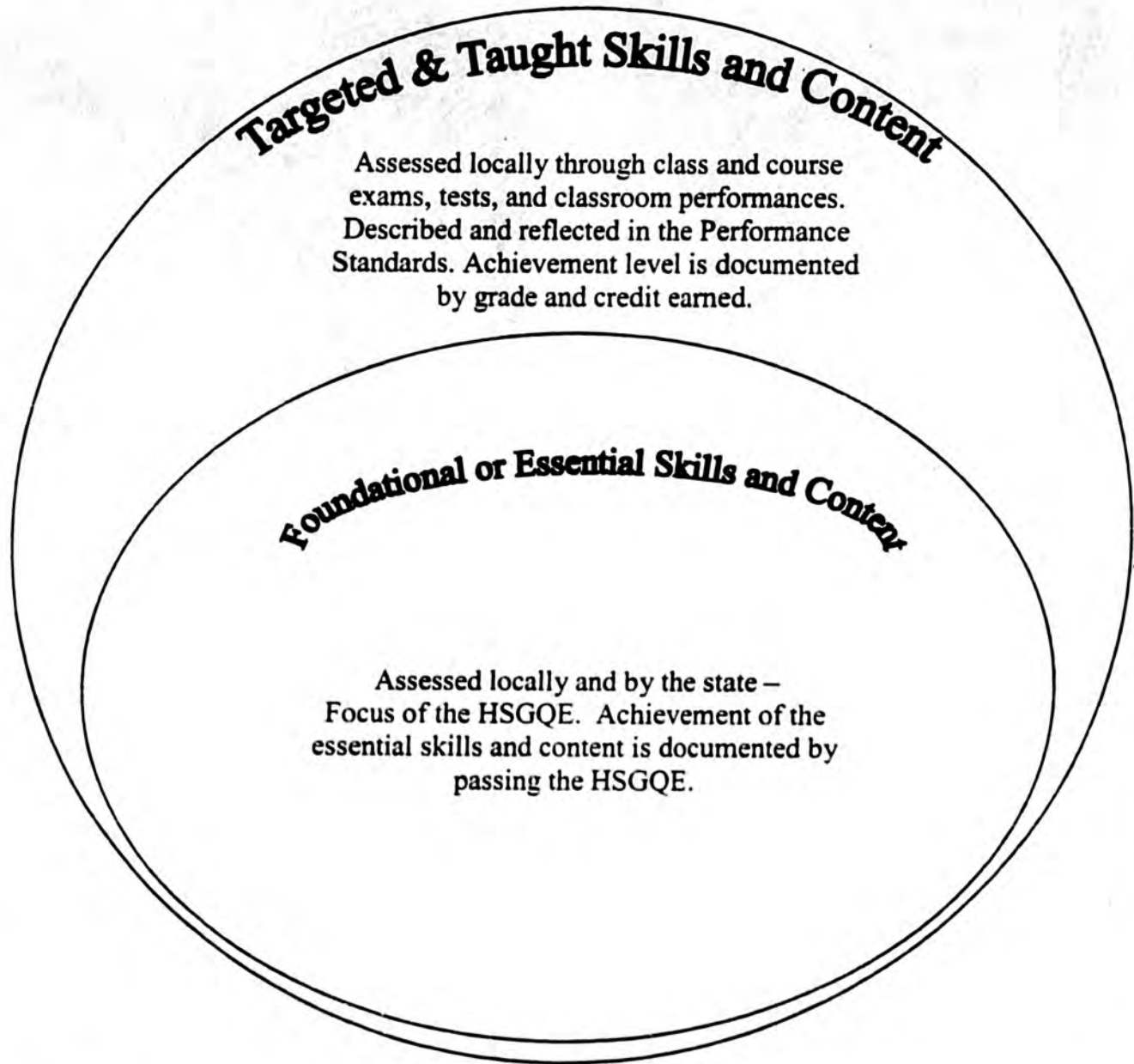
Will testify on the following topics:

- a) Definition of a high school diploma
- b) comment on your view of diplomas that note what accommodations were used to pass the test
- c) the concerns of the Disability Law Center regarding the High School Competency Test.

Teleconference Sites: Anchorage, Barrow, Valdez and Tok.

Essential Skills as a Subset of the Targeted & Taught Curriculum

State performance standards outline and describe the "targeted and taught skills/content" in reading, writing and math. These standards describe what we "want our students to know and be able to do." The state performance standards are a tool to guide good instruction and ensure our graduates are prepared for life beyond high school.



The "Essential Skills and Content" is a subset of the targeted skills and content. These are the skills and knowledge that a person would need to have or know to function at an introductory level in our adult society.

To determine if a given performance standard or exam question reflected an **essential** skill or content," the committee asked the following question: Would you deny a high school diploma to a person if he or she did not have that skill or know that content?

“Target and Taught Skills and Content”
versus
“Essential Skills and Content”

For each of the skills or content in a discipline or field of study, we can ask the question.... Is this something we want our students to know and be able to do? The answer to this question provides direction and content for curriculum and instruction in our schools. In Alaska, those skills and content are identified and described by content and performance standards developed by Alaskans.

The Alaska State Performance Standards:

- list and describe what we want our students to know and be able to do in reading, writing and math.
- identify the targeted and taught skills and content in our schools.
- serve as a guide to good instruction and solid curriculum.

The **“Essential Skills and Content”** is a subset of the targeted skills and content. These are the skills and knowledge that a person would need to have or know to function at an introductory level in our society.

To determine if a performance standard or exam question reflected an **essential** skill or content,” a committee of community members, business people, and educators asked the following question: Would you deny a diploma to a person if he or she did not have that skill or know that content?

The following questions are basic to the policy discussion of whether a diploma is to be awarded to a student. These two questions are often being confused with each other in the current High School Graduation Qualifying Exam discussion.

- (1) What do we want our students to know and be able to do? or
- (2) Would you deny a diploma to a student if he or she did not have that skill or know that content?

The attached diagram provides an overview of the relationship of the targeted skills and content (described by the performance standards) and the foundational/essential skills and content.

BEFORE THE ALASKA BOARD OF EDUCATION AND EARLY DEVELOPMENT
COMMENTS OF THE DISABILITY LAW CENTER OF ALASKA, INC.
REGARDING HSGQE

By
Amy E. Headrick, Staff Attorney
Disability Law Center of Alaska, Inc.

We have been asked to provide testimony regarding the High School Graduation Qualifying Examination. In this regard, three issues have been raised:

1. The definition of a high school diploma;
2. Notation on a diploma of accommodations provided to a student taking the HSGQE; and
3. Other concerns of the Disability Law Center regarding the HSGQE.

While we have previously provided testimony regarding the exam, including the Governor's proposed bill to delay the implementation date, we are happy to take this opportunity to again address this important issue and its implications for Alaskan children with disabilities.

A. **Inclusion of students with disabilities in state and district-wide assessments**

As a preliminary note, it is important to know that the Disability Law Center supports standards in education such as the HSGQE. As provided in the Individuals with Disabilities in Education Act (IDEA)¹, we also support full inclusion of those students with disabilities who are

¹ The Individuals with Disabilities Education Act ("IDEA"), as amended in 1997, explicitly requires students with disabilities be included in any state or district-wide assessments such as the HSGQE. See 20 USC § 1412(a)(17)(A) (1999); see also 34 CFR § 300.138 (1999). The IDEA strives to include students with disabilities in the regular curriculum of public education as much as is feasible. Congress clearly intended that students with disabilities be included in any state or district-wide assessments as part of this inclusion. In fact, the legislative history behind the 1997 revisions states that

[t]he Committee reaffirms the existing Federal law requirement that children with disabilities participate in State and district-wide assessments. This will assist parents in judging if their student is improving with regard to his or her academic achievement, just as parents of nondisabled children do.

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able. In fact, if the school districts are developing and implementing appropriate Individualized Educational Programs (IEP), the majority of students with disabilities should be able to take and pass the exam.

The basic principal behind the IDEA is to raise expectations for students with disabilities. Congress recognized, as does our current President, that there was a latent form of discrimination against students with disabilities. President Bush has referred to this as "the soft bigotry of low expectations." By holding lower expectations, these students only perform to that level, never reaching their full potential. The IDEA seeks to raise those expectations, placing the burden on school districts to provide the necessary services and supports for students with disabilities to attain the educational benefit available to students without disabilities. As noted by the first lady "we must do more than say that all children can learn. We must believe it."

Thus, federal law requires all students with disabilities be provided an appropriate education, which includes the provision of effective instruction in the general curriculum. These laws are designed to protect against discrimination in education based upon disabilities. By including students with disabilities in State and district-wide assessments, parents are given an effective tool by which to measure the education their students receive. Thus, the goals of nondiscrimination and promotion of high educational standards for all students are complementary objectives. Parents of students with disabilities do in fact want, and have the

H.R.Rep.No. 105-95 at page 101, 105th Cong., 1st Sess. (May 13, 1997), reprinted in 1997 U.S. CODE CONG. & ADMIN. NEWS 78, 98-88.

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right to demand, their students be assessed using the same standards as students without disabilities.

B. What is a diploma?

New Webster's Dictionary defines "diploma" as

A document signed by competent authority, conferring some power, privilege, or honor, as that given to graduates of colleges and universities upon completion of graduation requirements; an official document.

This definition is a good starting point for the current debate. A diploma signifies that the recipient has successfully completed the requirements of an academic program. With the document, which is official, comes certain rights or privileges. Such is the case with a high school diploma. For twelve years, students with and without disabilities work to complete the academic requirements so that they may receive the official seal of completion: their high school diploma.

Because the IDEA is intended to provide all students with equal opportunity to learn, it envisions that all but the most severely disabled be taught the same standards as students without disabilities. This means that school districts should be providing students with disabilities an appropriate education that allows them to meet the same graduation requirements as students without disabilities. Therefore, students with disabilities are entitled to receive the same diploma at the end of their course of study as students without disabilities. In most cases, they have worked harder, and often longer, to attain this goal and deserve to have their achievement

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recognized by the "official document" given by the school district to all students who meet the requirements.

A diploma does make a difference. In Bethel, the LKSD (Lower Kuskokwim School District) has recently implemented a policy that every employee, from the top to the bottom, must have obtained a high school diploma. Two janitors employed with the district for many years also attended school there. These two men have learning disabilities. Because the school district failed to properly educate them, they were not able to achieve the goal of obtaining a diploma. Now they have been told by the very school district that failed them, that they can no longer work there.

C. Notation on a diploma of accommodations provided to a student taking the HSGQE

As discussed above, students with disabilities are to be included in state and district-wide assessments to the extent possible. A student's IEP team must make the determination whether or not a student with a disability will participate in the assessments. According to the booklet published by the Department of Education & Early Development (DEED) entitled "Participation Guidelines For Alaska Students in State Assessments" only a small number of students (less than 2%) will not participate in the HSGQE.² These students will participate in alternate assessments. For the remaining students, the IEP teams must determine what, if any, accommodations will be provided.

Both federal and state law requires that appropriate accommodations be provided to students with disabilities for participation in assessments such as the HSGQE. The issue of

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accommodations has been an area of concern to our agency, as it has in other states.³ It is the opinion of the Disability Law Center that "flagging" of diplomas to reflect what accommodations were provided would be discriminatory and would undermine the relevant laws.

Flagging a diploma to indicate what accommodations were provided to a student with a disability undermines the law. It forever says to those who see it that this person has a disability. It provides an open door for discrimination. Accommodations are required by law in order to ensure the information resulting from a test is an accurate reflection of what the test is intended to measure. In other words, accommodations make sure a student's ability is measured rather than the disability. These students are entitled to accommodations, the students' IEP teams determine them, and they are used throughout the students' scholastic careers. Flagging diplomas does not seem to have any legitimate purpose.

Another issue related to flagging is the creation of different levels of diplomas. Although this has not been proposed in any specific bill, it has been a topic of discussion. For those students with disabilities so severe that they will take an alternate assessment, it is probably all right to grant them a different diploma. This would be the so-called IEP diploma. The IEP teams for these students have already determined that they will not be able to participate in the state and district-wide assessments.

² "Participation Guidelines For Alaska Students in State Assessments," at p. 7.

³ On February 14, 2001, I provided testimony regarding HB 94. At that time I provided a copy of the settlement reached between the Oregon Department of Education (ODE) and parents of children with learning disabilities. The agreement was centered on ODE providing appropriate accommodations.

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However, this is not the case for the vast majority of students with IEPs. The IEP is supposed to be designed so that these students are adequately prepared for the exams. They may need more individualized instruction, more time, or different methods of teaching, for example. Each year their individual plans are reviewed to determine if they are meeting the goals and objectives. If not, their program should be changed in order to ensure they are learning the material required for graduation. They are entitled to receive proper instruction so that they will not have to be segregated from their peers without disabilities. To give them a different diploma would be to seriously undermine the purpose of the IDEA. The correct emphasis should be on making sure our schools are providing these children with a proper education so that "no child is left behind."

D. Other Concerns Regarding Children with Disabilities

Many people have expressed their opinions regarding the subject of the HSGQE and students with disabilities. This agency has provided much testimony to date. While we appreciate the opportunity to be heard, and we applaud the efforts of this committee and the other members of the Alaska legislature for their attempts to resolve the issues, this latest proposal does not address our fundamental concern.

As I have said repeatedly throughout this testimony, the biggest concern is the large numbers of students with disabilities who are not given a real opportunity to learn. Creating a proper IEP is difficult and time-consuming. If the child is not properly taught in the early years, by third or fourth grade, it becomes even more difficult. I know of junior high and high school

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students who have been in special education since kindergarten who are still reading at a first or second grade level. By the time they are in seventh grade, it becomes very difficult and very expensive to bring them up to the level of their class. They continue to fall behind in all of their subjects because they cannot read the required texts. Parents get tired of fighting the school districts every year in order to try to get their children the education to which they are entitled. The students develop poor study skills or behavior problems because they feel "stupid." It is incumbent that these students have a real opportunity to learn the material the HSGQE will test.

The numbers of students with disabilities who passed the spring and fall 2000 exam are very low, indicating the real problem. We have all heard the overall percentages from the spring 2000 exam (which includes students with disabilities): 75% passed the reading, 48% passed the writing, and 33% passed the math. For students with disabilities, the numbers are well below: 31% passed the reading, 6% passed the writing, and 4% passed the math. These numbers are simply unacceptable.⁴

There are two possibilities for these low numbers. The test may be invalid as to students with disabilities. The test may unintentionally, and unfairly, be testing a particular disability. If so, it must be examined to see if it is a test problem, or if an appropriate accommodation can be provided to remove the bias. If this is the case, the problem can likely be resolved in the matter of a couple of years.

⁴ The percentages of students with disabilities who passed the fall 2000 exam are not any more encouraging: 18% passed the reading, 4% passed the writing and 6% passed the math.

Comments of the Disability Law Center of Alaska, Inc. to the Alaska State Senate and House Committees on Education

Re: HSGQE

February 28, 2001

Page 8 of 8

The other possibility, and the more likely one, is that students with disabilities simply are not being provided the education to which they are entitled. This problem is systemic. Our agency sees this on a daily basis, and we do our best to help the students and their families. Unfortunately, parents often do not have the time or resources to fight for their children's right to an appropriate education. Typically, they are not even aware of the laws and their ability to advocate for a better program for their children. They rely on the "experts," the educators. Too often, the school district administrators are more concerned with budgets to agree to provide the appropriate services and supports to students with disabilities.

The idea of the HSGQE was to hold schools accountable. Schools are given a large pot of money and holding them accountable is desirable and should be done. However, this current proposal of having different diplomas undermines that goal. It allows school districts to avoid being accountable. It allows them to continue to provide sub-par educations to students with disabilities without being held accountable. This is something the Disability Law Center cannot support.

Performance of Students with Disabilities on the High School Graduation Qualifying Exam

The following tables list the performance of students with disabilities and students without disabilities on the High School Graduation Qualifying Exam on the Spring 2000 and the Fall 2000 assessments. In reviewing this data, it should be noted that comparisons between students with disabilities and students without disabilities should be made very cautiously. Only students in 10th grade were allowed to take the test. However, in line with federal requirements, the department only collects and reports the number of students with disabilities by age. Since not all 10th graders are the same age, accurate participation rates and passing rates of students with disabilities cannot be calculated. The number of students with disabilities who participated in the assessments may also be under-represented due to omissions coding the test booklets.

Passed 51% 90% 67% 52% 47% 30%

SPRING 2000	READING		WRITING		MATH	
	#	# Not	#	# Not	#	# Not
	Passed	Passed	Passed	Passed	Passed	Passed
Students with disabilities	223	483	46	652	33	658
Students without disabilities	5,955	1,615	3,878	3,667	2,884	4,796
Overall	6,178	2,098	3,924	4,319	2,717	5,454

14% 47% 9% 21% 19% 27%

FALL 2000	READING		WRITING		MATH	
	#	# Not	#	# Not	#	# Not
	Passed	Passed	Passed	Passed	Passed	Passed
Students with disabilities	61	267	18	421	29	412
Students without disabilities	949	1,087	884	2,749	968	3,484
Overall	1,010	1,354	902	3,170	1,027	3,896

43% 22% 21%

GRADUATION EXAM LEGAL ISSUES

SB 56/ HB 94 Testimony Outline

Philip Reeves, A.A.G.

A. **Two federal court decisions** -- considering challenges to Texas and Florida state mandated graduation exams -- provide a great deal of information on likely criteria that would be applied in a federal court's review of the Alaska grad exam:

Debra P. v. Turlington, 730 F.2d 1405 (11th Cir. 1984);

GI Forum v. Texas Education Agency, 87 F. Supp. 3d 667 (W.D. Texas 2000)

- Both cases brought under Title VI of Civil Rights Act of 1964:
 - upon preliminary showing of significantly lower passing percentage by a plaintiff minority group, the burden shifts to the State to defend its program.
- While the Civil Rights challenge brings the matter to court, the focus of the court's review (in both the Florida and Texas cases) was on the issue of:
 - Does the State's graduation exam requirement violate plaintiff's Due Process rights under the 14th Amendment of the U.S. Constitution?
 - = Does the State provide reasonable educational opportunity to its students to pass the exam?

B. **First primary ruling** that we can glean from both of the cited cases is that

- courts give broad deference to the State to determine the appropriate standards for graduation;
 - Courts are unlikely to attempt to modify the state's policy decision as to what exam standard should apply.

C. **Courts will instead focus on whether the state has reasonably implemented the standard chosen.** The Florida and Texas courts identified two basic categories of test validity as their focus in reviewing those State's graduation exam programs:

(1) **CONTENT VALIDITY.** Does the test accurately measure the test taker's knowledge in the content area being tested?

- We are fairly confident that we can defend a challenge in this area based upon

Alaska's test development process:

- Alaska test developed with professional assistance of a major national test development corp. (CTB/McGraw Hill);
- process included input from dozens of Alaskans from around the state;
- a primary focus is to remove all test questions with cultural bias;
- test is aligned with the State Board adopted "performance standards";
- "continuous renewal" provides an on-going evaluation and improvement of the exam.

(2) INSTRUCTIONAL VALIDITY ("Opportunity to Learn"). Does the curriculum and the total educational program offer each student a reasonable opportunity to gain the knowledge and skills that are tested?

- Court's evidentiary focus in Florida *Turlington* case (730 F.2d 1405 at 1408):
 - in what grade (2-12) were students taught the skills tested, and in what grade did they master the skills;
 - any major variations in instruction among schools in the district;
 - remedial programs specifically related to mastery of the skills tested;
 - staff development related to teaching skills tested;
 - special programs designed to help students pass the test.

Experts testified that "their conclusions of instructional validity were bolstered by the state's extensive remedial efforts to help students who initially fail the test pass it before graduation."

- The Texas court focused particularly on the state mandated remediation and evidence of the 10 year track record of significant improvements in the passing percentages of minorities over the decade of the test's administration.

D. Apply "instructional validity" criteria from Florida and Texas cases to Alaska's testing program:

- Alaska has addressed these elements through implementation of comprehensive testing program beginning with Benchmark Exams in 3rd, 6th and 8th grade, that:
 - identify students who are falling below the curve at those early grades, and thus allow:
 - focused instruction and remediation on the individual student level;

- identify and correct problems with curriculum alignment with the exam;
 - provide data that allow the department to assist districts in areas of curriculum mapping and curriculum development
- Alaska's assessment program is designed to utilize the benchmark exam process to identify and respond to instructional problems on both the individual student and the district curriculum levels, to assure:
 - curriculum alignment with the graduation exam; and
 - targeted instruction/remediation to non-proficient students

E. Potential "instructional validity" challenge to Alaska exam based on timing:

- In upholding the Texas exam the court repeatedly cited to evidence of 10 years:
 - "concentrated targeted educational opportunities, in the form of remediation" and
 - a "track record" of success from the remediation in improving minority passing percentages.
- In the initial *Turlington* case challenging the Florida exam (474 F. Supp. 244)
 - the federal district court issued an injunction that ordered the state not to withhold diplomas during the first 4 years of the statutory exam requirement.
- In the later *Turlington* case reviewed above (730 F.2d 1405) the court upheld the Florida exam program after it was again challenged following the four year injunction
 - citing evidence of significant work in curriculum alignment and targeted remediation during the four year injunction, in upholding that exam.
- Review of the development timeline of Alaska's testing program shows:
 - benchmark exams were first given in the spring of 2000
 - = the first 6th grade class that participated/benefited from the benchmarks graduates in 2006.
 - the graduation exam was first offered in the spring of 2000
 - = students can legitimately claim that they had no notice of the specific requirements to be tested by the graduation exam until just two years prior to its effective date.

- Based on these facts, we will likely face an argument that the Alaska exam fails the "instructional validity" requirement until such time as we can show a track record of successful

- curriculum alignment efforts; and
- remediation programs to assist non-proficient students

F. As a final note, refer to an article published in the Education Law Reporter in May 1999, titled

Nondiscriminatory use of High Stakes Tests: Combining Professional Test-use Standards with Federal Civil Rights Enforcement. 133 Ed. Law Reporter 17.

- The article is an overview/commentary on a study published in 1999 by the National Research Council of the National Academy of Sciences. On the issue of "instructional validity" the article (and the study) point out a common problem that has arisen in the development of many states' graduation exam programs:

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

G. Special Education Issues:

- Test validity issues involving students with disabilities are based in statutory protections set out in the federal Rehabilitation Act of 1973, and the Individuals with Disabilities Education Act (IDEA).

- The Rehabilitation Act, Sec.504, essentially requires that any state program that accepts and expends federal funds may not discriminate on the basis of the person's disability.
- In the student assessment arena, IDEA requires:
 - (a) children with disabilities must to the maximum extent practicable be included in general State assessment programs;
 - (b) with appropriate accommodations.

- The case of *Brookhart v. Illinois State Bd. of Ed.*, 697 F.2d 179 (7th Cir. 1983) provides a fairly detailed review of the application of the federal statutory protections of students with disabilities to a graduation exam requirement. The court applied both the pre-IDEA "Education of the Handicapped Act" (EHA) and the Rehabilitation Act, Sec. 504 to the graduation exam requirement of an Illinois school district. Considering the EHA, the court held:

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

Id. at 183. Considering application of the Rehabilitation Act, the court held:

A student who is unable to learn because of his handicap is surely not an individual who is qualified in spite of his handicap. Thus denial of a diploma because of inability to pass the M.C.T. is not discrimination under the RHA.

Id. at 184.

- In summary, the *Brookhart* court held that the fact that an exam based graduation performance standard is beyond the capacity of some students with disabilities to meet -- and thus effectively denies them a diploma -- does not by itself result in a violation of either the Rehabilitation Act or the IDEA.

- the decision to not provide an alternative lower standard for children with disabilities is subject to the legislature's discretion;

- The legislature's authority to not provide an alternative diploma standard for children with disabilities does not mean that children with disabilities have no viable grounds for challenge of a graduation exam requirement. Their viable challenge would likely be either:

- a challenge of a denial of a particular testing accommodation that the student had requested; or

- a challenge on the same content validity/instructional validity grounds as the challenges of regular ed students (discussed above) -- applied to the particular facts of the student's Individualized Educational Program (IEP).

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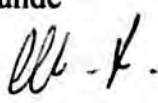
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MEMORANDUM

February 23, 2001

SUBJECT: High school exit exam (Work Order No. 22-LS0623)

TO: Representative Con Bunde

FROM: Michael F. Ford 
Legislative Counsel

You have asked for my opinion regarding the legal issues surrounding the high school exit exam (AS 14.03.075). As explained in this memo, there are several complex issues raised by requiring students to pass a test, in order to receive a high school diploma.

INTRODUCTION

In 1998, the Alaska Legislature enacted AS 14.03.075, that requires public school students to pass an examination in order to receive a high school diploma. The legislature also delayed the start of this requirement by four years, so that the first students affected by the test are the students expecting to graduate in the spring of 2002. By implementing a test requirement Alaska joined at least twenty other states that have also established a high school exit or competency examination. Most states that test students in this manner require students to pass the exam in order to receive a diploma, however a few states, such as Michigan, do not deny a diploma to students who fail the test. Instead, students who pass the test receive an endorsed diploma, while students who fail the test receive a diploma without endorsement.

Before enactment of the exit exam, graduation from high school required meeting credit requirements imposed by each local school board and by the Department of Education and Early Child Development by regulation. (See 4 ACC 06.075) There was some criticism that this system rewarded attendance more than mastery of academic content.

LEGAL ISSUES

Under Article VII, section 1, of the Alaska Constitution, the legislature is required to establish and maintain a system of public schools. The implementation of this mandate is largely left to the discretion of the legislature. See Hootch v. Alaska State-Operated Sch. Sys. 536 P.2d 793 (Alaska 1975). While there is little doubt that the legislature has the power to impose an exit exam, there has been litigation in other states regarding the implementation of this requirement. In that graduation is conditioned upon passing the

exam and failure may trigger placement in remediation programs, constitutional and statutory civil rights can be at issue.

Due process concerns

Under Article I, section 7, of the Alaska Constitution, and under the Fifth and Fourteenth Amendments of the U.S. Constitution, students are guaranteed certain due process rights. In Alaska due process express a basic concept of justice and fairness. Bachner v. Pearson, 479 P.2d 319 (Alaska 1970). In the context of a high school exit exam, the first question that must be addressed is does a student have a constitutionally protected property interest in a diploma such that due process must be given before it can be denied. The answer to that is yes. The United States Supreme Court has made it clear that a diploma is of such personal importance that its denial can be a violation of the "property" interests protected under the Fourteenth Amendment. Goss v. Lopez, 419 U.S. 565, 579 (1975).

Having concluded that students have a constitutionally protected property interest in the diploma process, there are generally two due process areas that are the basis of legal challenges to a statutory exit exam. The first involves the opportunity to learn. Specifically, have students received sufficient time to prepare for the exit exam. This question was examined in Debra P. v. Turlington, 644 F.2d 397 (5th Cir. 1981) and in a later review of the same case Debra P., 730 F.2d at 1411. There the court found that four years during which the State of Florida made active preparation efforts constituted sufficient due process. Courts in Georgia and New York found that two years did not constitute adequate due process. Georgia State Conf. of Branches of NAACP v. Georgia, 775 F.2d 1403 (11th Cir. 1985). On this point it appears that Alaska has made significant efforts to meet the constitutional test preparation requirements, during the four year lead time between enactment of the exit exam requirement and the first imposition of the test. The court in Debra P. found that evidence of significant work by the State of Florida in the areas of curriculum alignment and remediation was an important issue. It would be prudent to determine whether the efforts made by the Department of Education and Early Development and local school districts in the areas of curriculum alignment and remediation are comparable to the Florida process. If so this should be sufficient to avoid a successful legal challenge on this issue.

The second due process issue involves the content validity of the examination. As described by the court in Debra P. "a state may condition receipt of a public school diploma on the passing of a test so long as it is a fair test of that which is taught". It appears that as to this issue Alaska has a fairly solid defense. The state has used a large national test development firm, taken input from residents, made efforts to reduce cultural bias, and has a process to continually review the exam. However, an import aspect of content validity is what is actually taught in classrooms. In Debra P. the state of Florida demonstrated curricula validity by commissioning a study directed by a private firm and carried out by the Florida Department of Education that surveyed curricular material, teachers, district personnel, and students. The court accepted the results of the study, that

provided a cross-sectional sample, as evidence that the content of the exit exam was being taught in Florida classrooms. In short, in order to satisfy due process concerns Alaska may have to prove that what is actually being taught in the schools is what is being tested.

Equal protection concerns

Under Article I, section 1, of the Alaska Constitution, and under the Fourteenth Amendment of the U.S. Constitution, students are guaranteed equal protection under law. A claim made under the equal protection clause involves an allegation of unequal treatment. Leege v. Martin, 379 P.2d 447 (Alaska 1963). What this means in terms of an exit exam is that state and local school officials are prohibited from engaging in certain types of discrimination. For example, intentionally discriminating on the basis of race, color, national origin, or sex is illegal. Regarding high stakes exit exams, courts have almost uniformly dismissed claims of intentional discrimination. Only when the test used is shown not to have complied with professional testing standards has there been court intervention. See Larry P. v. Riles, 495 F.Supp. 926 (N.D. Cal. 1979). Assuming that Alaska follows professional standards in all technical matters, including test administration, scoring, score reporting and test standards, a claim of unequal treatment seems unlikely to succeed. Where there is no unequal treatment, there can be no violation of the right to equal protection of the law. Matanuska-Susitna Borough School Dist. v. State, 931 P.2d 391 (Alaska 1997). See also Debra P. and Anderson v. Banks 540 F.Supp. 472 (S.D. Gs. 1981).

Relevant federal law

While the constitutional protections against illegal discrimination are important, there are also several federal civil rights statutes that prohibit recipients of federal funds from discriminating against students. The federal statutes include Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and regarding students with disabilities, Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act of 1990. These statutes prohibit certain intentional discrimination, but also have a more important facet. These laws prohibit criteria or methods of administration that have the "effect" of subjecting individuals to discrimination. There is a three step process for determining if a legal violation (known as a disparate impact claim) exists:

1. The plaintiffs must show by a preponderance of the evidence that some policy or practice, such as the use of an exit exam, has disproportionate adverse impact of a protected group. For example, if statistical analysis shows that the success rate for members of a protected class is significantly lower (or the failure rate is significantly higher) than what would be expected from a random distribution, then the test has disproportionate adverse impact.

2. Assuming that the plaintiffs show a disparate impact, the burden shifts to the defendant to justify the practice. This means a showing of "educational necessity". Courts have held that this means a substantial legitimate justification, New York Urban League, Inc. v. New York 71 F.3d 1031 (2d Cir. 1995), or proof of a manifest relationship between the practice and the defendant's education objectives. Sharif v. New York State Education Department, 709 F.Supp. 345 (S.D.N.Y. 1989). The state could show "educational necessity" assuming that the Alaska Department of Education and Early Childhood Development can show that the exit exam used meets professional standards that apply given the purpose for test.

3. Finally, even if a state can show educational necessity for a particular test, it is possible for the plaintiff to succeed if the plaintiff can show there exists an equally effective alternative that would result in less disparate effects. Georgia State Conf. of Branches of NAACP v. Georgia, 775 F.2d 1403 (11th Cir. 1985).

Title VI of the Civil Rights Act of 1964 also raises issues regarding the effects of educational testing on students who are learning the English language. This issue has complexities relating to validating a test for students whose native language is not English. The issues include forming bias, content bias, linguistic and cultural biases, and difficulty of knowing what bilingual students know in their native languages. Additionally, there are two other federal statutes that raise questions on this issue. One is the Improving America's Schools Act of 1994, and the second is the Equal Educational Opportunities Act of 1974. These statutes prohibit denial of equal educational opportunities by failing to take appropriate steps to overcome language barriers that impede equal participation by students. Although I know of no cases in which a court has struck down a test for violating these statutes, a claim could be made on this basis if tests of questionable validity were used.

Students with disabilities

The treatment of student with disabilities in the context of an exit exam raises additional complex issues. There are three federal statutes that must be considered, the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973, and Title I of the Improving America's School Act of 1994. These laws mandate that all students be included in large-scale assessments, including students with disabilities. Also required, is appropriate accommodation, that people with disabilities are guaranteed access to programs and services as effective as those provided to their peers without disabilities. The ADA further requires that alternate forms or accommodations in testing are required, provided that the content being tested is the same.

Denial of a high school diploma to a child with a disability has been held not to violate the pre-IDEA "Education of the Handicapped Act" (EHA) or Section 504 of the Rehabilitation Act of 1973. Brookhart v. Illinois State Bd. of Ed., 697 F.2d 179 (7th Cir. 1983). The court held that denial of a diploma is not denial of a "free appropriate public education". In considering the application of the Rehabilitation Act, the court held that a

"student who is unable to learn because of his handicap is surely not an individual who is qualified in spite of this handicap. Thus denial of a diploma because of inability to pass the M.C.T. is not discrimination under the EHA." The court also held that the decision not to provide an alternative lower standard for children with disabilities is a matter to be decided in the discretion of the legislature.

In light of the legal rights described above, two areas become critical in applying an exit exam to students with disabilities. The first is ensuring legally adequate accommodation and the second is ensuring that the tests given to students with disabilities and the evaluation materials are validated for the specific purpose for which they are used.

CONCLUSION

While the legislature has broad discretion to fashion a graduation exam requirement, students have constitutional and statutory rights intended to ensure that a test is a fair measurement of academic achievement. The Alaska State Legislature has the right to pursue educational policies that it legitimately believes are in the best interests of its students. The challenge to the State of Alaska is to impose the exit exam in a manner that also satisfies constitutional and statutory requirements applicable to the testing process.

The test required in Alaska appears to be one professionally designed to accurately measure the test taker's knowledge in the content area being tested. If students have also been given a reasonable opportunity in the school system to gain the knowledge and skills that will be tested it is doubtful that a legal challenge to the exit exam would succeed.

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High Stakes High School Exit Exams

Alaska Department of Education & Early Development*
March 2001

*To our knowledge no agency in the nation is gathering information to the extent that is covered in this chart. However, much the information in the first two columns includes data from collected by The Education Commission of the States. Much of the ECS data was verified by the Alaska Department of Education & Early Development on the various states' web sites. A good deal of the information was not available from ECS and was obtained from the various state's web sites by the Department of Education & Early Development.

State	Original Exams	Modifications	Special Needs Students
Alabama	The Class of 2001 needs to pass the reading and language sections of the graduation exam; the Class of 2002 must also pass math and science; the Class of 2003 must also pass social studies.		
Alaska	Effective January 2002, students must pass a competency exam in reading, writing and math. Students may take the exam up to 3 years after completing course work.	Governor submits legislation seeking 4-year delay to 2006 for high stakes effective date. Until 2006, test will still be administered and scores recorded on student transcripts.	No exclusions from exit exam. Allows accommodations for students with IEP or 504 plans. Alternate Assessment for special education students who cannot take regular exam.
Arizona	The competency test covers reading, writing and math. Classes of 2002 and 2003 required to pass reading and writing; must also pass math beginning in 2004.	State delayed math test from 2002 to 2004 because of high numbers of failures on the math portion (9 of 10 failed). State has agreed to drop some of the most difficult math items from the exam.	Does not require IDEA students to pass a subtest (reading, writing, or math) whose IEP specifies "out-of-level testing". Applies only to specific subtest or subtests requiring out-of-level testing in order to get a diploma.
California	Starting with Class of 2004, each student must pass the exit exam to graduate. Ninth graders may take the test for the first time in spring 2001. Students may begin taking exam as sophomores in 2001-02. Students must be given special instruction if needed. Alternatives to exam: The State Board must study the appropriateness of other criteria by which a student who fails the test may earn a diploma, including exemplary grades and alternative tests of equal rigor.	Doing away with higher level questions, which will require legislation. Delayed setting passing score until 2002. The state Senate passed legislation on 2/20/01 to delay until 2004-2005 the high school exit exam for which several lawmakers said students and schools are unprepared. A state-commissioned study suggested the postponement, arguing that a delay would allow more time for the test to be developed and more time for students to learn the subject matter it will cover, including algebra.	All exceptional students must pass exam to receive diploma, including students with IEP or 504 plan. Accommodations allowed. Testing may be delayed for up to 24 calendar months from enrollment in California schools for LEP students, but these students must eventually pass exam to get diploma.

State	Original Exams	Modifications	Special Needs Students
Florida	Beginning with the class of Class of 2003 students must pass the 10th grade level of the Florida High School Competency Test in reading, writing and math. The exam was first administered in 1998, and students have been given grades from 1 to 5, depending on achievement level. Passing scores will be set in 2001. This is a standards-based exam that replaces Florida's long standing multiple choice high school minimal competency exit exam created in 1976, the first exit exam in the nation. The state uses test scores to grade schools from A to F. Letter grades determine cash awards for schools that perform well.	Only a week before the exam was administered in 2001, the state announced only multiple-choice questions on the reading and math tests would count for both students taking the exit exam and to calculate the cash awards for schools. This is because it's taking the test publisher until the end of the school year to score the more difficult questions involving written answers.	All students are held to the standards, including special education and LEP students. Accommodations are allowed.
Louisiana	English/Language arts, and mathematics tests are administered to Class of 2001 as 10 th graders. English, Mathematics, science or social studies to Class of 2002 as 10 th graders. Five achievement levels: advanced, proficient, basic, approaching basic, unsatisfactory. Those scoring unsatisfactory are only ones to fail.	The State Board of Education adopted a policy that permits 8 th graders who fail the state test three times to enroll in an alternative program that would lead to a General Educational Development diploma and a "skills certificate" rather than a regular high school diploma. Students could reenroll in regular high school program when they pass the 8 th grade test.	No Info.
Maryland	Effective with Class of 2003, 9 th grade students required to pass Maryland High School Assessments as a graduation requirement. Tests are in English 1, government, algebra, geometry and biology. Field testing began in 1999 and continues through mid-2001.	State plans to phase in more testing in future years.	No info.

State	Original Exams	Modifications	Special Needs Students
Massachusetts	Starting with the Class of 2003, all students must pass math and English tests to graduate. All 10th grade students must take tests in math, science and technology, history and social science and English in coming years, also required for graduation. Students may earn a "Certificate of Mastery" by meeting criteria that vary depending on a student's performance on skills assessments. Those criteria may include superior performance on advanced placement tests.	Delaying implementation of exam by 2 years (now effective 2007). Proficiency levels are advanced, proficient, needs improvement, failing. Students scoring above "needs improvement" pass exam. State Board set lower passing score than expected. The State Board now (2/15/01) is poised to create an appeals process that may allow students who fail the high school test, but who have good grades to prove they've mastered the material without passing the test. Under the proposal, panels of teachers and principals around the state would weigh the appeals. They might give students extended testing time, a different test setting, or someone to read the questions aloud or they could sign off on an alternative that may be different from the pencil and paper test.	Accommodations for students with disabilities, defined as students with IEPs or 504 plan. Accommodations need to be in accordance with IEP or 504 plan. Also has Alternate Assessment. LEP students are enrolled in transitional bilingual programs or in ESL classes. Must take exam in English if enrolled 3 years or longer. Spanish language version of test.
Minnesota	Effective Class 2000, students must pass basic standards tests. The reading and mathematics tests are first given in the eighth grade and the written composition test is given in the tenth grade. The Class of 2002 must also meet "High Standards" in 24 of 48 content standards from 10 learning areas. Districts may request waivers from the state's graduation standards on a case-by-case basis. The Department of Children, Families & Learning commissioner rules on waivers. Parents can request waivers from standards if the student is engaged in equally rigorous activity meeting same standards or for other reasons.	Districts have discretion to phase in Profile of Learning implementation, which require graduates to complete work in 24 standards by 2004.	Students with special needs may meet the standards at an individual level according to the requirements of their IEP or 504 plan. To help some students perform their best, special accommodations that will not alter the validity of the standards assessments are available. Local school districts must establish procedures to ensure that students with limited English proficiency complete the standards. To help some students perform their best, special accommodations that will not alter the validity of the standards assessments are available.

State	Original Exams	Modifications	Special Needs Students
Mississippi	Requires mastery of Functional Literacy Exam, which tests minimal competencies.	Academic end-of-course tests will be phased in during the 2001-2002 school year to replace the Functional Literacy Exam (FLE) as a requirement for graduation. Students who began 9th grade in school year 1999-2000 (Class of 2003) must pass the Functional Literacy Examination (FLE) plus the Subject Area Test in U.S. History from 1877. Students who began 9th grade in school year 2000-2001 (Class of 2004) must pass the mathematics section of the FLE plus the Subject Area Tests in U.S. History from 1877 and English II (with a writing component). Students who begin 9th grade in 2001-2002 (Class of 2005) must pass the mathematics section of the FLE plus the Subject Area Tests in U.S. History from 1877, English II (with a writing component), and Biology I. Students who begin 9th grade in 2002-2003 (Class of 2006 or later) must pass the Subject Area Tests in U.S. History from 1877, English II (with a writing component), Biology I, and Algebra I. This group of students must pass all four Subject Area Tests even if they take the course(s) prior to their 9th grade year. Senate Bill 2488, passed in 2000 legislative session, established new accountability standards that will reward schools based on student performance. The bill also provides for an intensive assistance program for schools not meeting accreditation standards.	No info.
Nevada	Effective with Class of 1999, test includes reading, writing, math and science. 11th grade students are required to pass a writing performance assessment and a proficiency assessment that includes both reading and mathematics in order to receive a standard high school diploma. Students who fail to pass in the 11th grade are provided several additional opportunities as 12th grade students to fulfill this requirement.		Special ed students can seek waiver from exam. If waived, they receive diplomas stating they met all high school requirements except the exit exam.

State	Original Exams	Modifications	Special Needs Students
New Jersey	Must pass an 11th grade high school test in reading, writing and math. The Special Review Assessment (SRA11) process was developed to provide an alternate assessment for students who do not pass one of the three subtests. The SRA11 provides students with the opportunity to exhibit their understanding and mastery of the HSPT11 skills in contexts, which are familiar and related to their experiences. An SRA11 panel decides may be informed by scores from previous High School Proficiency Test administrations, class work and other information about a student's strengths and weaknesses. Students go to summer school for remediation if they don't pass high school test.		To the extent possible, the SRA11 process for special education, unclassified handicapped, and LEP students should parallel the general process SRA 11 guidelines. Students eligible for special education under the Individuals with Disabilities Education Act (IDEA) are entitled to participate in the SRA11, if they are required to take the high school proficiency test. Students whose IEPs state that they are exempt from taking the high school test are also exempt from participating in the SRA11 process. Any test modifications or accommodations must be specified in student IEPs or 504 plans. Decisions about exemption, modifications and/or accommodations are made by the IEP or 504 team and should be based on individual student needs.
New Mexico	Test includes reading, language arts, math, science, social science, written composition. Students take for first time in grade 10. Students can take test up to five years after leaving high school and get a diploma.	A new standards-based exam will replace old exam, effective with Class of 2004.	Students can participate through an accommodated administration (based on IEP) or alternate assessment based on bilingual or special education program guidelines. Also has Alternate Assessment. A standardized achievement assessment in Spanish will be developed for students identified as LEP and who have appropriate Spanish language skills.
New York	New York State Board of Regents is phasing in a schedule under which all students will have to pass the Regents exams to graduate, beginning with the Class of 2000. Students must achieve a minimum score of 65 on the exams unless their district requests a 55 for the first few years. • Class of 2000 – English; • Class of 2001 – English, math; • Class of 2002 – English, math, U.S. History, Global History; • Class of 2003 – all previous curricular areas plus science; • Class of 2004 – all previous areas, except students must score at least 55 in math and science; • Class of 2005 – all previous areas with a minimum score of 65.	Set first bar lower; phasing in. Students entering 9th grade in 2000-2001 and before may earn a Regents diploma (rather than a local diploma) by meeting more stringent requirements for courses and Regents exam scores. For students entering 9th grade in 2001-2002 (Class of 2005) and thereafter, all students must meet requirements for Regents diplomas. To earn a Regents diploma with honors, a student must achieve an average of 90 percent in all Regents examinations required for the diploma. New York School District is considering a request (2/22/01) by a number of alternative schools that want to substitute their student projects, or portfolios, for Regents exams as graduation requirements in math, social studies and science.	

State	Original Exams	Modifications	Special Needs Students
North Carolina	Effective with the graduating Class of 2003, all students must take exit exam of "essential skills", to be administered in the spring of 11 th grade. Effective with the Class of 2001, students must pass a computer skills test in the 8 th grade. Honors diploma available for high scoring students.	State board has delayed exit test by two years to 2005 in order to do more field testing.	To extent possible, students with disabilities shall participate in high school exam; they may be exempted from statewide standards by IEP team determines students do not have ability to participate. These students may receive a certificate of achievement or graduation certificate. LEP students are required to meet same standards as all students, but districts required to provide focused intervention and "personalized education plans."
Ohio	Students must pass 8 th grade level high school exit exam. Includes, reading, writing, math, science and citizenship. To earn a diploma with honors, students must maintain a 3.5 GPA, and either earn certain proficiency test scores as designated by the state board, or earn a 27 on the ACT (or the equivalent on the SAT,) as well as meet certain course requirements.	State will implement new test measuring same competencies, but at 10th grade level. Will be administered to 10th graders in 2003. Class of 2005 is first group needed to pass exam. A gubernatorial commission has recommended replacing the existing exit test with end of course exams.	Students with IEPs must take the test, but with accommodations as described in student's IEP.
South Carolina	Exit exam was first administered in 1986, and it became a requirement for a diploma in 1990. It assessed student performance on statewide objectives in reading, writing, and math. Students who do not pass all sections of the examination are given four opportunities to retake the subtest(s) they did not pass.	The current exit examination is scheduled to be replaced by the Palmetto Achievement Challenge Test in 2003.	
Texas	The Texas Assessment of Academic Skills (TAAS) measures the statewide curriculum in reading, writing, and mathematics. Satisfactory performance on the TAAS exit level tests is needed for a high school diploma.	End-of-course examinations measure the statewide curriculum of certain high school courses (Algebra I, Biology, English II, and U.S. History) in order to ensure that high academic standards are being met. Demonstrating satisfactory performance on end-of-course tests became an additional means for students to be eligible to graduate beginning in the 1998-99 school year.	Students with IEPs must take the test, but with accommodations as described in student's IEP. Alternate assessments required for students who cannot take test without modifications. An alternative assessment is expected to become a part of the school accountability system in the 2002-2003 school year. Tests are designed to measure annual growth in the English reading proficiency of second language learners, and are used along with English and Spanish TAAS to provide a comprehensive assessment system for LEP students. LEP students in Grades 3-12 are required to take the test until they achieve a rating of advanced.

State	Original Exams	Modifications	Special Needs Students
Utah	Effective with the graduating Class of 2005. The test must include at least language arts, reading and math.		No info.
Washington	Students must pass test before being issued "certificate of mastery," which is required for graduation starting with Class of 2008. The test is the 10 th grade assessment in reading, writing, communication and math.	The state delayed the implementation of the high stakes nature of the exam by two years. Exit exam was initially scheduled for implementation in 2006. House Education Committee is being urged (2/20/01) to approve House Bill 2068, which would delay the mathematics and writing graduation requirements until 2010. The reading requirement would still have to be mastered by 2008. A separate provision of HB 2068 that would require the state to develop alternatives to the WASL for assessing student performance. Forty-two percent of the class of 2008 met the state math standard last year, while 66 percent met the reading standard.	

High Stakes Tests With A Twist

Alaska Department of Education & Early Development

State	Original Exams	Modifications	Special Needs Students
Georgia	A curriculum-based test is administered in 11 th grade "for graduation purposes."	The graduation test will be replaced with end-of-course assessments when they are developed.	
Indiana	Beginning with the Class of 2000, each student needed to pass a graduation exam in English/language arts and math at the 9 th grade level to graduate. State law allows two more ways for students to graduate without passing one or more test that comprise the exam: (1) if the student has used all possibilities to take the test; completed remediation opportunities; maintained high school attendance rate of 95%; maintained a C average in courses required for graduation; received recommendations by teacher(s) and principal. (2) Completes the "Core 40" with a "C" or better and gets permission of principal. Core 40 is the state's high school curriculum that leads to minimum preparation for college.		Special education students receive similar accommodations they receive on IEPs. But special ed students have the same three routes to a diploma as regular students.
Maryland	Exit exam covers math, reading, writing, citizenship, arts and physical education, the "World of Work" and "Survival Skills," but only at basic levels.	Exit exam will be replaced with end-of-course exams in English, government, algebra, geometry and biology. Students entering 9th grade in 2003 (Class of 2007) will be required to pass those end-of-course exams to graduate.	
Tennessee	Effective with Class of 2002, state is moving away from exit exam and is phasing in end-of-course tests in key subjects. Class of 2005 is first class that needs to pass test for diploma. 2001-2002 - Passing Gateway tests becomes a graduation requirement for students entering high school as freshmen. End-of-course testing begins in Algebra I and Biology. End-of-course testing also begins in English I, Math Foundations II, Algebra II and Geometry. 2002-2003 - End-of-course testing begins for the English II, Physical Science, Chemistry and U.S. History.	Moving from exit exams (choice of two) to end-of-course exams.	

State	Original Exams	Modifications	Special Needs Students
Virginia	All students must pass a literacy test to graduate. Students graduating in 2004, 2005 or 2006 must pass 6 end-of-course exams, 2 in English and 4 student-selected. Students graduating in 2007 and later may select only one subject; the remaining 3 must be in history, science and math. (Those subject matter requirements were applied to all students in the previous regulation.) Other tests, including the SAT II, Advanced Placement or International Baccalaureate exams, TOEFL and others may substitute for the end-of-course exams. Beginning with the Class of 2002, students may earn an Advanced Studies Diploma by passing more end-of-course exams or their substitutes (9 rather than 6,) and taking more courses.		
Wisconsin	By fall 2002, local school boards must develop policies specifying criteria for awarding high school diplomas, to be effective 2002-2003. As one of those criteria, districts must administer a "graduation exam" in language arts, math, science and social studies. However, each district may determine the passing score, and whether passing is even required for graduation. Parents may have their children opt out of the examination; whether, and how, a student who has opted out may receive a diploma is left to each district.		
Wyoming	Effective with the Class of 2003, high school students need to pass a test in reading, writing, and mathematics for a diploma. The testing system has two major components. The main feature is a set of assessments designed to measure student learning of the Wyoming Content Standards. The second component is a norm-referenced test to use for national comparison purposes.	The State Board of Education delayed the test effective date to the Class of 2005. A bill approved in 1/01 by the WY House education committee would create three types of high school diplomas—advanced, proficient and individualized.	

Tests: No High Stakes

Alaska Department of Education & Early Development

State	Original Exams	Modifications
Connecticut	State law mandates a statewide assessment to all students in grade 10 in math, language arts, science and interdisciplinary. It was administered for the first time in 1995. The legislation specifies the test cannot be used as the sole criterion for graduation or promotion, but that it will be the basis for awarding Certification of Mastery for those students who achieve the state goals in any of the subjects tested. It further specifies that a record of such performance should become part of the student's permanent school record and the official high school transcript. The high school test is a logical extension of the state's long-established testing program at grades 4,6 and 8.	
Delaware	No longer requires students to pass state assessments to graduate, but still requires certain assessment scores and course requirements for honors diplomas (Academic Diploma and Distinguished Achievement Diploma).	Backed off exit exam
Hawaii	The Hawaii Department of Education has placed a moratorium on its exit exam, effective with the Class of 2000, so that a new assessment system based on Hawaii's new performance standards may be developed. The old exam, developed in 1977, was not aligned with the new standards, was insufficiently rigorous and was entirely multiple-choice in format. The new exam is expected to be first administered in 2002 to the 10 th grade.	
Maine	Does not use state tests for graduation requirement. Uses state test as 10% of how school/district is assessed. Test is not used for student accountability.	
Michigan	Students must score above a certain level in mandatory state assessments (in communication, math, science and social studies) to gain state endorsement in that area. The scores and any endorsements earned appear on each student's transcript. Students need not gain state endorsement in any area to graduate, but if a student does not receive one of the endorsements, a district staff member and the student must meet "to determine an educational program for the pupil designed to have the pupil achieve state endorsement in each area in which he or she did not achieve state endorsement."	Districts can decide whether exit exam is used.
Missouri	A statute forbids exit exams: "In no case shall the state board of education or any other state agency establish any single test or group of tests as a condition or requirement for high school graduation or as a requirement for a state-approved diploma."	
Nebraska	A state initiative called School-based Teacher-led Assessment and Reporting System (STARS) are based on voluntary state content standards. Teachers conduct classroom assessments which are combined with national standardized tests and the NAEP are used to measure and report to the public student learning of Nebraska standards. Students are tested in each grade level writing, reading, math, science and social studies/history. Local school districts must have state approve local assessment plans.	
Oklahoma	To graduate, students must take end-of-instruction tests in English (starting in 2000-01), U.S. history (2000-01), biology (2001-02) and algebra (2001-02), but do not have to pass the tests. Results are recorded on transcripts. "It is the intent of the legislature that... the performance data and any available research shall be reviewed for consideration of additional consequences, including, but not limited to, high school graduation."	

Oregon	The Certificate of Initial Mastery is being phased in from 1990 to 2004. Not required for a diploma. Students may take one of three levels of difficulty of exams, A, B, C. A is the least difficult. To earn a certificate when the program is fully implemented, students must pass 10th grade tests in writing, reading, applied mathematics and science.	28% of students earned a certificate in year 2000. In February 2001, the state settled a class action suit filed by special ed students who claimed the testing system that leads to a Certificate of Initial Mastery discriminates against learning-disabled students. At the heart of the suit was whether LD students had equal opportunity to participate in the state testing program. In a state that offers one of the nation's most inclusive testing systems, the mediators who settled the suit said special education accommodations were too narrow.
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STATE OF ALASKA

Department of Education & Early Development

Office of the Commissioner

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To: The Honorable Con Bunde
Alaska State Legislature

From: Shirley J. Holloway, Ph.D.
Commissioner

Date: February 27, 2001

Subject: Responses to the House Special Committee on Education Questions

Below are the responses to the two sets of questions submitted to the department by your office:

SET I

1. Please provide the passing scores for each part of the Competency Test in a format that can be explained to the general public. How many questions/which questions have to be answered correctly in order to pass each part of the test?

Each component of the HSGQE is scaled from 1-600 in much the same manner that the SAT scores are scaled 100-800. Over time, meaning has been attached to SAT scaled scores since post-secondary institutions require specific scores for students to be admitted. The HSGQE scaled scores will also acquire meaning as everyone increases their understanding of the results. Alaskans recommended passing scores by identifying questions (based on our performance standards) that were considered to be essential for future success upon graduation from high school. The scaled HSGQE passing scores are as follows:

Spring 2000

Reading: 305 passing score equals a raw score of 42 points out of 74 points.
Writing: 356 passing score equals a raw score of 49 points out of 68 points.
Math: 383 passing score equals a raw score of 55 points out of 80 points.

Fall 2000

Reading: 305 passing score equals a raw score of 40 points out of 71 points.
Writing: 356 passing score equals a raw score of 51 points out of 67 points.
Math: 383 passing score equals a raw score of 54 points out of 80 points.

As you can see, the examinations vary slightly in terms of total possible points as well as the number of points necessary to achieve a passing score. Our contractor, however, guarantees that our exams are of comparable difficulty.

2. How do Alaska's procedures for LD students compare to the provisions in the Oregon settlement agreement?

It is important to note that Oregon's mediated settlement involves an assessment system that is not high stakes in nature (in other words, diplomas are not withheld based on a student's performance on the assessment). Alaska's test accommodations system is designed to ensure that student's with disabilities are not unfairly penalized because of their disability while still maintaining test reliability and validity. A copy of the Oregon settlement agreement is attached for your reference.

In addition, Alaska has no specific accommodations that apply only to students with learning disabilities. All accommodations are available to any student with a disability, based on the decision of that student's IEP team, or a student eligible for services under Section 504 of the Vocational Rehabilitation Act.

3. Have you been able to get final total amounts for the cost of the Competency Test (distinct from the Benchmark Tests)?

The department's total assessment budget is \$4.2 million. The chart below illustrates the budgeted amounts for the High School Graduation Qualifying Exam and the Benchmark Assessments from the department's contract with CTB/McGraw-Hill.

	FY1998	FY1999	FY2000	FY2001
HS Graduation Qualifying Exam	\$350,000	\$966,600	\$1,786,800	\$2,147,500
Benchmark Assessments		\$791,800	\$1,583,400	\$1,352,800
Total	\$350,000	\$1,758,400	\$3,370,200	\$3,500,300

4. Answers to Rep. Wilson's questions:

- **Where are lawsuits most likely to come from?**
- **Can we win?**
- **If not, what do have to specifically change?**

Phil Reeves, an attorney with the Dept. of Law, prepared a summary of the legal context in which high stakes testing and challenges occur. This summary has been presented to committee members. Mr. Reeves will also

be present during the hearing on February 28th to verbally address these questions.

5. When will we see The Plan?

The department expects to have its work plan for 2002-2006 finalized no later than the second week of March.

6. What % of high school graduates are from military families?

School districts are not currently required to document whether students in their schools are from military families. Consequently, the department does not have accurate information regarding the percentage of high school graduates who are from military families.

7. Some districts are ramped up for the test. Is anyone getting their methods out to other districts?

A number of efforts to support school districts have been implemented by the department. A compact disc with the Chugach School District's standards-based education program has been created and is available to districts. The department also maintains a cadre of Quality Schools Consultants who are available to provide ongoing technical assistance to school districts regarding standards-based education. In addition, the department has helped sponsor a series of annual summer institutes that provide school teams and individual professionals the opportunity to network with other districts as well as gain additional expertise in improving student outcomes. A catalogue of these institutes is included for your review.

SET II

- 1. Are you familiar with the Settlement Agreement between the Oregon Department of Education, the Oregon Board of Education, and the Advocates for Special Kids (ASK)? If so, how does Alaska's statewide assessment program compare to Oregon's for learning disabled students?**
As noted above in Question #2, it is difficult to compare Oregon's mediated settlement with Alaska's system of accommodations since Oregon's assessment system is not high stakes in nature.
- 2. In developing Alaska's High School Competency Test, did CTB/McGraw Hill include children with learning disabilities during the field testing?**
Yes.

3. On what research were Alaska's decisions about accommodations and modifications based?

The *References* section of the *Participation Guidelines for Alaska Students in State Assessments* lists the research that was utilized in creating the accommodations system. Accommodations used by other states were also reviewed and Dr. Richard Smiley, Director of Assessments for the department, attended meetings conducted by the Council of Chief State Schools Officers (CCSSO) that focused on accommodations.

4. Do Alaska's accommodations include the use of a typewriter or word processor when the student's disability impairs the physical act of writing?

These accommodations are allowed, although the use of a computer spell-checker is not.

5. Is the approved list of accommodations final, or may IEP teams include methods of assessment that are not on the list?

The list of accommodation is not final. Page 9 of the *Participation Guidelines* states that the listed accommodations are not exhaustive due to changes in the technology of adaptive and assistive devices. It is up to the IEP team, in conjunction with the test coordinators, to determine what are appropriate accommodations.

Also, in line with IDEA 97, IEP teams may choose to have a student assessed using modifications. As noted on page 8 of the *Participation Guidelines*, modifications are defined as "changes to a testing situation that alter what the test measures or the level of performance that must be met". However, districts are not required to count the results of modified tests in their district reports and a student who passes a modified test would not be eligible for a diploma.

6. What are the procedures for students and parents to challenge decisions about accommodations and participation in alternative assessments? How is this information provided to parents?

As with any decision made regarding the special education and related services that are provided to a student with disabilities, parents have the federally-protected right to challenge an IEP team's decision related to assessments. These rights include participating in mediation, filing an administrative complaint with the department, or requesting a due process hearing. Descriptions of these procedures are provided to parents in the Procedural Safeguards notice that is provided to parents during every IEP meeting. Parents of students on 504 plans also have the right to appeal decisions regarding accommodations.

- 7. Did Alaska participate or make use of the work regarding test participation and accommodations done by the National Center on Educational Outcomes or the Council of Chief School Officers' State Collaborative on Assessment and Student Standards (SCASS)?**

Yes. In fact, the head of NCEO, Dr. James Ysseldike, attended the first two meetings of the committee that was convened to oversee the development of the Participation Guidelines. As noted above, Dr. Smiley attended meetings of the CCSSO SCASS group that focused on including students with disabilities in statewide assessments.

- 8. What empirical and experimental research has Alaska used in making decisions about test accommodations?**

As stated above, the *References* section of the *Participation Guidelines for Alaska Students in State Assessments* lists the specific research studies that were consulted. The response to Question 7 also describes Alaska's participation in the CCSSO activities and the consulting services provided by Dr. Ysseldike. The department continues to monitor changes in the accommodation systems of other states and to participate in NCEO and SCASS activities.

- 9. The Settlement Agreement entered into between the State of Oregon and the Advocates for Special Kids (ASK) included a provision that all accommodations would be allowed, valid and scoreable if used in the classroom as part of the student's IEP until research evidence invalidates the score interpretation. What is your view of this decision?**

As previously noted, Oregon's assessment system is not high stakes in nature. Consequently, the use of accommodations has different impact on student outcomes than it would for high stakes assessments. IEP teams in Alaska may choose to assess a student with a disability by using modifications. However, this student would not be eligible for a high school diploma.

- 10. What skills/knowledge are assessed in Alaska's alternate assessment for severely learning disabled students?**

It is unlikely that students with learning disabilities, regardless of the severity, would participate in Alaska's Alternate Assessment process. This assessment is for students with severe cognitive delays who are involved in a functional, basic-skills education program. A set of Alternate Performance Standards has been created that extends Alaska's Performance Standards to meaningful levels for these students. Students with learning disabilities are generally expected to participate in the regular statewide assessments. For your reference, I am providing you with an overview of the Alternate Assessment process.

- 11. What is the process for a parent's or student's appeal within the assessment program? How does it compare to the procedure in Oregon, which has been praised?**

Alaska's assessment system provides a process for challenging test scores. For students with disabilities, federal law, as described above, provides procedures for students with disabilities and/or their parents to challenge decisions made by IEP teams.

- 12. The psychometric research and statistical analysis reports of the Oregon Department of Education have been praised as "models for other statewide assessment programs". Do you agree with this assessment? If so, has the Alaska Department of Education modeled its research and analysis on Oregon's?**

The department has actively monitored the status of statewide assessments, including accommodations systems, in other states.



Comprehensive System of Student Assessments (CSSA)

Alternate Assessment System



ALTERNATE ASSESSMENT

Overview

In 1998 the state legislature passed a law creating a system of accountability, standards, and assessments for our schools. This school accountability is known as the Quality Schools Initiative. All students, including those with disabilities, must have educational standards and be assessed as part of the Quality Schools Initiative. The importance of including students with disabilities in statewide assessments is underscored by the 1997 Amendments to the Individuals with Disabilities Education Act (IDEA 97). This federal legislation requires that states develop alternate

assessments and guidelines for the participation of students with disabilities in alternate assessments.

Most students with disabilities will be included in the general course of study and be assessed through Benchmark Exams and the High School Graduation Qualifying Exam, either with or without accommodations. However, a small percentage (approximately 2%) of students in our schools have significant cognitive disabilities and adaptive skill levels that prevent completion of the standard academic curriculum even with modifications and accommodations. These students are involved in a functional, basic skills education program. Alternate performance standards and an alternate assessment system are necessary to include these students in statewide accountability and consider their needs when planning to improve schools.

Alaska's Department of Education & Early Development, working with test publisher, CTB McGraw-Hill, has developed an individualized, performance-based alternate assessment for students with significant cognitive disabilities. The assessment uses alternate performance standards that are based on Alaska content standards for all students and accepted by the State Board of Education & Early Development on March 24, 2000. During the school year, the teacher and parent will collect a portfolio of evidence (e.g., work samples, data charts, photographs) of the student's proficiency in meeting these alternate performance standards. The process is closely tied to the student's individual education program (IEP) and provides a system to improve and organize what teachers are already doing as part of the IEP process. The following pages are intended to give a better understanding of Alaska's alternate assessment.

Participation in the Alternate Assessment

Members of the student's individualized education program (IEP) team decide whether a student participates in the alternate assessment. The student's team must verify that the student meets all the following criteria:

- The student demonstrates cognitive ability and adaptive skill levels that prevent completion of the standard academic curriculum even with modifications and accommodations.**
- The student requires extensive direct instruction in multiple settings to accomplish the application and transfer of skills.**
- The student is involved in a functional, basic life skills education program.**
- The student's inability to complete the standard academic curriculum is not the result of excessive or extended absences, or primarily the result of visual,**

auditory, or physical disabilities, emotional-behavioral disabilities, specific learning disabilities, or social or cultural and economic differences.

Design of the Alternate Assessment



A statewide committee is working with test publisher, CTB McGraw-Hill, to assure that Alaska's alternate assessment provides an accountability measure that is:

- Consistent with state standards,
- Individualized to meet each student's unique learning needs,
- Performance-based,
- Integrated with the student's individualized education program (IEP), and
- Based on independent and reliable scoring.

And emphasizes:

- High standards,
- Parent involvement,
- Functional skills,
- Age-appropriate skills,
- Natural supports, and
- Generalization of skills.

Standards to be Assessed by the Alternate Assessment

All students are working to meet Alaska's content standards in 11 content areas (English/Language Arts, Mathematics, Science, Geography, Government & Citizenship, History, Skills for a Healthy Life, Arts, World Languages, Technology, and Employability). However, students are assessed in only three areas. Students in the standard course of study are assessed in Reading, Writing, and Math. Students participating in the alternate assessment are assessed in the English/Language Arts, Math, and Skills for a Healthy Life content areas.

Alternate performance standards, based on Alaska content standards for all students,

have been developed and approved by the State Board of Education & Early Development. The alternate performance standards can be found in Appendix A.

Demonstrating Proficiency



Students participate in the alternate assessment in grades three, six and eight, the same years that their peers take the Benchmark Exams. During high school, students participate in the alternate assessment beginning at grade 11. The department has identified a subset of the alternate performance standards to be assessed at each of these grade levels. Indicators of proficiency will be identified by the teacher and parent. The student, teacher, and parent will collect a portfolio of evidence of the student's proficiency. Evidence will be gathered during the school year and submitted in the spring of the year that the student participates in the alternate assessment. Evidence of the student's proficiency may take a variety of formats such as work samples, photographs, videotapes, data charts, checklists, progress reports, and interviews with employers or peers.

Independent raters will use a numerical rating system to score the portfolio of evidence on the following:

- **Skill** - how well the student performs the target behavior.
- **Support** - the extent to which the student is independent or uses prompts or assistance.
- **Generalization** - the extent to which the target behavior is demonstrated in more than one natural environment or with different people, in different subjects or different activities.
- **Appropriateness** - the extent to which skills are age-appropriate, challenging, authentic, and meaningful for the student.

Based on the above scores, an overall numerical score is derived which rates the student at one of four proficiency levels: not proficient, below proficient, proficient, and advanced. These proficiency levels correspond to the levels that are reported for all students.

Following is an example of how proficiency might be demonstrated for two students. John is 8 years old and Mary is 17 years old. Each is being measured on alternate performance standards at different times in their educational career: John is being measured with third graders and Mary with 11th graders. The indicators of proficiency that were selected for Mary and John are listed along with examples of the evidence that might be submitted to demonstrate their proficiency. The examples show how the alternate assessment is individualized to measure the unique skills of two students with very different abilities.



John

John is 8 years old and has delays in his cognitive skills. He can write letters and numbers using an adapted pencil, although this requires some effort. When with others, he often becomes distracted and wanders off. He is working on staying with the group and waiting his turn. He speaks, but is difficult to understand, and is just beginning to learn how to use a computer.

English/Language Arts Content Standard: A student should be able to speak and write well for a variety of purposes and audiences.

Alternate Performance Standard	Indicators selected for John	Evidence submitted
The student will use verbal and nonverbal communication to convey information, needs, and wants.	• John writes 3-4 words from a science unit to label pictures for a group presentation. • John writes words from the school lunch menu, which will be used to clarify his requests when ordering in the school cafeteria.	• Copies of the labels John made for the presentation • Work sample showing the words John

		has written
<i>Math Content Standard: A student should be able to apply mathematical concepts and processes to situations within and outside of school.</i>		
Alternate Performance Standard	Indicators selected for John	Evidence submitted
The student will respond to and use patterns.	• John follows a daily picture schedule to join activities in the appropriate order. • John follows a sequence of pictures to complete his part of a class presentation.	• Data sheets • Videotape
<i>Skills for a Healthy Life Content Standard: A student understands how well-being is affected by relationships with others.</i>		
The student will maintain positive interpersonal relationships.	• While working on a team project, John stays with his group and shares pictures when asked. • During free time, John stays with a peer and takes turns in a simple board game.	• Videotape • Data sheets



Mary

Mary is 17 years old with significant motor and cognitive delays. She vocalizes several vowel sounds and communicates by smiling or laughing when she is happy, and frowning or crying when she is upset. She can reach and grasp objects but has a difficult time holding small objects.

English/Language Arts Content Standard: A student should be able to speak and write well for a variety of purposes and audiences.

Alternate Performance Standard	Indicator selected for Mary	Evidence submitted
The student will engage in meaningful conversation.	• Mary shows pictures of her vacation to a peer, using smiles and vocalizations in response to peer's comments. • In response to parent's questions about her school day, Mary responds with smiles and vocalizations to indicate agreement.	• Written documentation from peers • Written documentation from parents

Math Content Standard: A student should be able to apply mathematical concepts and processes to situations within and outside of school.

Alternate Performance Standard	Indicator selected for Mary	Evidence submitted
The student will respond to and use measurement.	• When instructed by her peers, Mary sets the digital timer to bake a cake for a class project. • Mary sets the digital timer for the class's silent reading time.	• Written documentation by peers • Data chart

Skills for a Healthy Life Content Standard: A student should be able to contribute to the well-being of families and communities.

Alternate Performance Standard	Indicator selected for Mary	Evidence submitted

The student will participate meaningfully in the community.	• Working with a peer, Mary stamps the sponsor cards at the 1-mile marker for the community walk-a-thon. • Working with a peer, Mary hits a switch to count the number of people attending a class-sponsored spaghetti dinner.	• Written documentation by peers • Videotape
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Frequently Asked Questions about the Alternate Assessment

Why is there a need for alternate performance standards?

Alaska's content standards were created for all Alaskan students. However, Alaska's performance standards are highly specific in terms of skill and age attainment. The alternate performance standards were written to allow for variation in the demonstration of skills across ages and abilities.

When do students participate in the Alternate Assessment?

Students participate in the alternate assessment in grades three, six, and eight, the same years that their peers take the Benchmark Exams. During high school, students participate in the alternate assessment beginning at grade 11. The department has identified a subset of the alternate performance standards to be assessed at each of these grade levels.

How are parents to be involved in the alternate assessment?

As members of the IEP team, parents participate in the decision as to whether the student is eligible for, and will participate in, the alternate assessment. Parents also work with teachers to identify indicators with which to determine student proficiencies on the alternate assessment. They are also involved in evaluating how well the portfolio demonstrates the true level of the student's skills.

When are scores on the alternate assessment to be reported?

Proficiency scores on the alternate assessment are reported at the same time that the state reports proficiency scores for students participating in the benchmark and high school graduation qualifying exams.

Will students who participate in the alternate assessment be eligible to receive a high school diploma?

No, under AS 14.03.075, only students who pass the High School Graduation Qualifying Examination will receive a high school diploma.

What benefits will occur for students as a result of participating in the alternate assessment?

Schools must be accountable for all students. Educators, parents, policymakers, and the general public want and need to know the extent to which all students, including students with disabilities, are benefiting from their educational programs. The alternate assessment will provide information that will help teachers, schools, and parents design more effective educational programs. The assessment is integrated with the student's individualized education program (IEP) and provides a structure to assist teachers to improve instruction and better organize what they are already doing.

When will the alternate assessment be available?

A statewide field test of the alternate assessment will begin for students in grades three and eleven in September 2000. Full implementation will occur in the 2001-2002 school year when eligible students in grades three, six, eight, and eleven will be assessed.

Appendix A: Alaska's Alternate Performance Standards

The table below lists Alaska's Alternate Performance Standards (with corresponding content standards) for the three areas to be assessed in the alternate assessment.

English/Language Arts	
Alaska's Content Standards for All Students	Alternate Performance Standards
A student should be able to speak and write well for a variety of purposes and audiences.	The student will: • Use functional written communication. • Use verbal and non-verbal communication to convey information, needs, and wants. • Engage in meaningful conversation.

A student should be a competent and thoughtful reader, listener, and viewer of literature, technical materials, and a variety of other information.	The student will: • Relate and apply what is viewed or read to practical purposes. • Comprehend meaning from oral language and other forms of communication.
A student should understand and respect the perspectives of others in order to communicate effectively.	The student will: • Respond to environmental, social, auditory, or visual cues. • Modify communication according to social and cultural norms.
Math	
Alaska's Content Standards for All Students	Alternate Performance Standards
A student should be able to apply mathematical concepts and processes to situations within and outside of school.	The student will • Respond to and use numbers and calculations. • Respond to and use measurement. • Respond to and use patterns.
Skills for a Healthy Life	
Alaska's Content Standards for All Students	Alternate Performance Standards
A student should be able to demonstrate responsibility for the student's well being.	The student will: • Manage personal needs. • Make choices and advocate for self and others. • Act safely and responsibly. • Engage in recreational and leisure activities.

A student should understand how well-being is affected by relationships with others.	The student will: • Maintain positive interpersonal relationships.
A student should be able to contribute to the well-being of families and communities.	The student will: • Contribute meaningfully at home and in the classroom. • Participate meaningfully in the community.

Special Education Categories and Eligibility Criteria

Listed below are the criteria for the 14 disability categories that must be used to determine whether a child demonstrates a disability and is in need of special education and related services. The presence of a disability is not sufficient to establish eligibility for special education. The disability must result in an educational deficit that requires specially designed instruction (i.e. special education).

1. Autism

To be eligible for special education and related services as a child with autism, a child must:

- a. exhibit a developmental disability significantly affecting verbal and non-verbal communication and social interaction, generally evident before age three, that adversely affects educational performance; and
- b. require special facilities, equipment, or methods to make the child's educational program effective; and
- c. be diagnosed as autistic by a psychologist; and
- d. be certified by the IEP Team and other qualified professionals as qualifying for and needing special education services.
- e. Characteristics of autism include:
 - ☒ irregularities and impairments in communication.
 - ☒ engagement in repetitive activities and stereotyped movements.
 - ☒ resistance to environmental change or change in daily routines.
 - ☒ unusual responses to sensory experiences.

Note: A child who manifests the above characteristics after age 3 could be diagnosed as having autism.

2. Deafness

To be eligible for special education and related services as a child with deafness, a child must:

- a. exhibit a hearing impairment that hinders the child's ability to process linguistic information through hearing, with or without amplification; and
- b. require special facilities, equipment, or methods to make his or her educational program effective; and
- c. be diagnosed by a physician or audiologist as deaf; and
- d. be certified by the IEP Team and other qualified professionals as qualifying for and needing special education services.

3. Deaf-Blindness

To be eligible for special education and related services as a child with deaf-blindness, a child must:

- a. exhibit concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that the child cannot be accommodated in a special education program solely for deaf or blind children; and

- b. require special facilities, equipment, or methods to make his or her educational program effective; and
- c. be diagnosed by an optometrist or ophthalmologist and by a physician or audiologist, as appropriate, as deaf-blind; and
- d. be certified by the IEP Team and other qualified professionals as qualifying for and needing special education services.

4. Emotional Disturbance

To be eligible for special education and related services as a child with emotional disturbance, a child must:

- a) exhibit one or more of the following characteristics over a long period of time and to a marked degree that adversely affects educational performance:
 - an inability to learn that cannot be explained by intellectual, sensory, or health factors;
 - an inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
 - inappropriate types of behavior or feelings under normal circumstances;
 - a generally pervasive mood of unhappiness or depression; or
 - a tendency to develop physical symptoms of fears associated with personal or school problems.
- b) require special facilities, equipment or methods to make his or her educational program effective; and
- c) be diagnosed as emotionally disturbed by a psychiatrist or psychologist; and
- d) be certified by the IEP Team and other qualified professionals as qualifying for and needing special education services.

Note: The term includes children who are schizophrenic but does not include children who are socially maladjusted (see Glossary). It is important to distinguish children with ED from children with other behavior problems. Information in Appendix J provides some suggested clarification of terminology to assist in making these distinctions.

5. Hearing Impairment

To be eligible for special education and related services as a child with a hearing impairment, a child must:

- a) exhibit a hearing impairment that adversely affects educational performance but which is not within the meaning of deaf; and
- b) require special facilities, equipment, or methods to make his or her educational program effective; and
- c) be diagnosed by a physician or audiologist as hard of hearing; and
- d) be certified by the IEP Team and other qualified professionals as qualifying for and needing special education services.

6. Specific Learning Disability

To be eligible for special education and related services as a child with a learning disability, all of the following six components must be addressed:

- a) The child must exhibit a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations.

The term **specific learning disability**:

- includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.
- does not include children who have learning problems that are primarily the result of a visual disability; motor disability; hearing disability; mental retardation; emotional disturbance; environmental, cultural or economic disadvantage; or lack of attendance.

- b) The IEP Team must show that:

- The child demonstrates limited academic achievement for his or her age and ability levels in one or more of the following areas when provided with appropriate learning experiences:
oral expression; listening comprehension; written expression; basic reading skills; reading comprehension; mathematics calculation; or mathematical reasoning; and,
- The child demonstrates a severe discrepancy between intellectual ability and academic achievement in one or more of the above-mentioned areas.

- c) The IEP Team must also ensure the following:

- At least one IEP Team member, other than the child's regular teacher, must observe the child's academic performance in the regular classroom setting;
- In the case of a child who is out of school, a team member must observe the child in an environment appropriate for a child that age; and,
- The observation report must document the name and title of the observer, as well as the date and place of the observation. This report must also be attached to the Evaluation Summary and Eligibility Report.

- d) The IEP Team must prepare a written report of the evaluation results that includes statements of:

- Whether the child has a specific learning disability;
- The basis for making the determination;
- The relevant behavior(s) noted during the observation of the child;
- The relationship of these behavior(s) to the child's educational functioning;
- Medical information, if any, related to the child's educational functioning,

- The nature of the severe discrepancy between intellectual ability and academic achievement which is not correctable without special education and related services; and,
- The determination of the team regarding the effects of environmental, cultural, economic, or attendance factors on the child's academic performance.

The report must be dated and team members must indicate their agreement or disagreement with the report's conclusions, and then sign the report. A team member who disagrees with the conclusions of this report must submit a separate statement of his or her own conclusions.

- e) The child must require special facilities, equipment, or methods to make his or her education program effective.
- f) The child must be certified by the IEP Team and other qualified professionals as qualifying for and needing special education services.

7. Mental Retardation

To be eligible for special education and related services as a child with mental retardation, a child must:

- a) score two or more standard deviations below the national norm on an individual standardized test of intelligence; and
- b) exhibit deficits in adaptive behavior manifested during the developmental period that adversely affect the child's educational performance; and
- c) require special facilities, equipment or methods to make his or her educational program effective; and
- d) be diagnosed as mentally retarded by a psychiatrist or psychologist; and
- e) be certified by the IEP Team and other qualified professionals as qualifying for and needing special education services.

8. Multiple Disabilities

To be eligible for special education and related services as a child with multiple disabilities, a child must:

- a) exhibit two or more of the conditions described in this section, the combination of which causes such severe education problems that he or she cannot be accommodated in a special education program for solely one of the conditions; and
- b) require special facilities, equipment, or methods to make his or her educational program effective; and
- c) be diagnosed as described in this section for each condition; and
- d) be certified by the IEP Team and other qualified professionals as qualifying for and needing special education services.

Note: The term multiple disabilities does not include deaf-blindness. Children with multiple disabilities exhibit two or more severe disabilities that are likely to be life-long, significantly interfere with independent functioning, and necessitate environmental

modifications to enable the individual to participate in school and society. A learning disability and speech/language impairment does not constitute a multiple disability. Likewise, a student with mental retardation who receives speech therapy as a related service would not be found eligible under this category.

9. Orthopedic Impairment

To be eligible for special education and related services as a child with an orthopedic impairment, a child must:

- a) exhibit a severe orthopedic impairment, including impairments caused by a congenital anomaly, disease or other causes, that adversely affects educational performance; and
- b) require special facilities, equipment, or methods to make his or her educational program effective; and
- c) be diagnosed by a physician as orthopedically impaired; and
- d) be certified by the IEP Team and other qualified professionals as qualifying for and needing special education services.

10. Other Health Impairment

To be eligible for special education and related services as a child with a health impairment, a child must:

- a) exhibit limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, and is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and sickle cell anemia, that adversely affects educational performance; and
- b) require special facilities, equipment, or methods to make his or her educational program effective; and
- c) be diagnosed by a physician; and
- d) be certified by the IEP Team and other qualified professionals as qualifying for and needing special education services.

11. Preschool Developmental Delay

To be eligible for special education and related services as a preschool child with developmental delays, a child must:

- a) be not less than 3 years old nor more than 6 years of age; and
- be certified by the IEP Team and other qualified professionals as qualifying for and needing special education services as a child with developmental delays by meeting the following criteria:
- I. function at least two standard deviations below the mean or 25% delayed in age equivalency in at least one of the following areas:
 - cognitive development
 - physical development which includes fine and gross motor

- speech and language development which includes articulation, fluency, voice and language
- psycho-social development and
- self-help skills;

or

II. function at least 1.7 standard deviations below the mean or 20% delayed in age equivalency in two or more of the five areas in "b" above;

and

III. has learning problems that are not primarily the result of bilingualism, cultural difference, environmental disadvantage, or economic disadvantage.

The category preschool developmental delay should not be used when the child clearly meets the eligibility for another disability category.

Note: There is no pre-school learning disability classification. A child with learning problems who is not less than 3 years nor more than 6 years of age must meet the above criteria for preschool developmentally delay to qualify for service.

12. Speech Impairment

To be eligible for special education and related services as a child with a speech impairment, a child must:

- a) exhibit a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects educational performance; and
- b) require special facilities, equipment, or methods to make his or her educational program effective; and
- c) be diagnosed by a physician or speech-language pathologist as speech impaired; and
- d) be certified by the IEP Team and other qualified professionals as qualifying for and needing special education services.

13. Traumatic Brain Injury

To be eligible for special education and related services as a child with a traumatic brain injury, a child must:

- a) exhibit an injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial maladjustment that adversely affects educational performance. The term includes open or closed head injuries resulting in mild, moderate, or severe impairments in one or more areas, including cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not include brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma; and
- b) require special facilities, equipment, or methods to make his or her educational program effective; and
- c) be diagnosed by a physician as having a traumatic brain injury; and

- d) be certified by the IEP Team and other qualified professionals as qualifying for and needing special education services.

14. Visual Impairment

To be eligible for special education and related services as a child with a visual impairment, a child must:

- a) exhibit a visual impairment, not primarily perceptual in nature, resulting in measured acuity of 20/70 or poorer in the better eye with correction, or a visual field restriction of 20 degrees as determined by an optometrist or ophthalmologist, which even with correction, adversely affects educational performance; or
- b) exhibit a physical eye condition that affects visual functioning to the extent that specially designed instruction is needed; and
- c) require special facilities, equipment, materials, or methods to make his or her educational program effective as determined by a teacher of students with visual impairments; and,
- d) be certified by the IEP Team and other qualified professionals, which includes a certified teacher of students with visual impairments, as qualifying for and needing special education services.

Quality Education in the Last Frontier: Alaska's State Improvement Grant

Abstract

The Quality Education in the Last Frontier (QELF) project, Alaska's state improvement grant, is designed to increase educational services and successful outcomes for all students, including students with disabilities. The QELF project will accomplish this by providing direct support and technical assistance, as well as facilitating collaboration among its partners. The project is located within Alaska's Department of Education & Early Development (EED).

Based on an extensive needs assessment, the following six goals were identified:

- (a) increase the participation of all students, including students with disabilities, in activities related to Alaska's Quality Schools Initiative and other school reform efforts;
- (b) support the full participation of parents, families, and community members in activities promoting student achievement;
- (c) develop and sustain effective partnerships with state agencies that provide services affecting students' educational achievement;
- (d) develop the infrastructure to recruit, train, and retain education professionals;
- (e) develop the infrastructure to recruit, train, and retain paraeducators; and,
- (f) develop an evaluation program to ensure the efficient use of federal, state, and local resources for project activities.

The QELF project will advocate for full inclusion of students with disabilities in statewide education reform activities by providing training, resources, and technical assistance to school districts, parents, families, communities, and state agencies. The project will also increase cooperation among stakeholders and build the capacity of systemic structures currently in place. Twenty-six organizations representing parents, school districts, school personnel, Alaska Natives and other under-represented groups, state agencies, institutions of higher education, and private employers have signed partnership agreements that identify specific areas of collaboration. These partnerships will enable the QELF project to achieve its goals with a small staff and low administrative overhead. They will also ensure that Alaska's systemic capacity continues to grow after the project's completion.

The QELF project will implement innovative strategies to improve the recruitment, training, and retention of paraeducators and professional educational personnel. The Alaska Personnel Development Team, comprised of stakeholders in Alaska's education system, will provide continuous assessment and feedback. The University of Alaska, Anchorage, the University of Oregon, and the Alaska Staff Development Network will combine distance education programs and summer institutes, increase the number and type of courses offered, and share expertise to meet Alaska's preservice and inservice training needs.

The QELF project will enable its partners to be more effective in achieving their goals and ensure federal, state, and local resources are more efficiently integrated. The project will also permanently increase the capacity of Alaska's education system to improve student achievement.

Response to Senator Wilken's Request for Information

During the hearing before the Senate HESS committee on February 21*, Senator Wilken asked for the number of students, ages 14 and over, who are receiving special education. The response is based on the 12/1/99 child count report submitted to the federal government. The 12/1/00 child count is currently being completed.

Students Ages 14 and over receiving special education:	4,864
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Total Number of students, ages 3-21, receiving special education:	17,495
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Alaska State Legislature

House Special Committee on Education Representative Con Bunde, Chair

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Gretchen Guess

To: The Special Committee on Education
From: Representative Bunde *[Signature]*
CC: Karen McCarthy
Date: 02/16/01
Re: Competency Exam Research Information

Attached you will find information from Legislative Research on the competency exam in other states. In addition to this, please note the following:

I am providing this information to you regarding the states that originally set standards for high school graduation so that you can assess modifications and delays that have been made. This is important to note, as we are making decisions regarding delaying our competency exam.

Of the nineteen states that originally developed Competency Test requirements, thirteen are making modifications to the current exam. The states seeking modifications are Arizona, Florida, Georgia, Maryland, Minnesota, Mississippi, New Mexico, New York, North Carolina, Ohio, Texas, Tennessee, and Maryland. Out of this thirteen, those who set standards similar to the ones set by Alaska are Arizona, Nevada, New Mexico, Ohio, South Carolina, and Maryland. Six are requesting delays of the effective date of the graduation requirement. Delays are being sought in Arizona, California, Massachusetts, and North Carolina, but for a maximum of two years. Alaska is the only state seeking a four-year delay.

New Mexico, a state that has similar legislation as Alaska, is not requesting a delay. Instead, they are making modifications to the current exam, which will then be administered to the class of 2004. They will also modify the exam for students identified in Language Education Programs. They also have assessments for students who participate through an accommodated administration or alternate assessment based on bilingual or special education program guidelines.

Please also note that the following states are not making modifications and are not seeking delays in the competency programs they established: Alabama, Louisiana, Nevada, South Carolina, Utah and Washington. Four of these states are from the original nineteen.

I hope you take the time to review this information and that it is beneficial to you.

Attachments/ LCS

Legislative Research Services

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Legislative Affairs Agency
Division of Legal and Research Services*

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February 12, 2001

Memorandum

TO: Representative Con Bunde
FROM: Cherie Nienhuis 
Legislative Analyst
RE: Exit Exams in Other States
Legislative Research Report 01-130

You asked for information pertaining to the administration of exit exams in other states. You are particularly interested in whether lawmakers in other states are considering delaying implementation of the exam, and if so, under what circumstances and conditions the delay is being considered.

As you may know, accountability and assessment in our educational institutions is a common theme among state legislatures across the country. State laws have been written to address the need for measurement in education, usually by means of a standardized test, or exit exam. Many of these laws, including Alaska's, require that students attain a passing score on the exam in order to receive a high school diploma.

We have attached a number of articles pertaining to the subject matter described above. Included in the attachments are the results by school district of Alaska's exit exam, and information about other states requiring an exit exam in order to graduate. We have included recent reports on the status of the exams in other states, and whether delays are being considered. And finally, several opinion articles are attached which present various arguments on the issue of exit exams.

I hope you find this information useful. If you have questions, or need additional information, please do not hesitate to contact us.

Results of the 2000 High School Graduation Qualifying Examinations

School Districts	Reading Results Spring+Fall 2000 High School % Passed	Math Results Spring+Fall 2000 High School % Passed	Writing Results Spring+Fall 2000 High School % Passed	Oct. 1, 2000 Grade 11 Enrollment
Alaska Gateway	81	31	34	32
Aleutian Region	75	25	25	4
Aleutians East	65	15	31	26
Alyeska Central	24	7	14	110
Anchorage	85	45	58	3303
Annette Island	82	5	36	22
Bering Strait	45	24	26	84
Bristol Bay	100	50	83	18
Chatham	92	25	50	12
Chugach	50	30	50	10
Copper River	75	49	55	55
Cordova	96	46	67	24
Craig	55	26	47	38
Delta/Greely	49	25	31	59
Denali	100	67	63	27
Dillingham	84	19	54	37
Fairbanks	93	46	61	943
Galena	74	29	42	186
Haines	74	46	54	35
Hoonah	83	38	54	24
Hydaburg	27	0	0	11
Iditarod Area	44	19	25	32
Juneau	87	58	62	437
Kake	67	22	33	9
Kashunamiut	31	0	6	16
Kenai Peninsula	81	45	54	875
Ketchikan	100	51	71	156
Klawock	50	13	25	16
Kodiak Island	77	34	53	213
Kuspuk	47	16	28	32
Lake & Peninsula	41	18	27	22
Lower Kuskokwim	47	19	34	176
Lower Yukon	35	16	15	74
Mat-Su	73	39	50	1129
Mt. Edgecumbe	76	38	62	90
Nenana	40	15	28	78
Nome	77	23	26	39
North Slope	49	19	28	120
Northwest Arctic	32	8	13	108
Pelican	100	33	67	3
Petersburg	100	65	80	60
Pribilof	80	40	70	10
Saint Mary's	56	22	22	9
Sitka	76	46	55	120
Skagway	100	64	91	11
Southeast Island	85	33	59	27
Southwest Region	26	5	12	42
Tanana	88	25	50	8
Unalaska	100	90	100	20
Valdez	100	69	88	48
Wrangell	100	59	59	27
Yakutat	69	38	38	16
Yukon Flats	44	6	17	18
Yukon/Koyukuk	50	8	13	24
Yupik	12	0	15	26
Totals	79%	42%	55%	9151



ECS StateNotes

Assessment & Secondary Education

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States Conducting Student Competency Testing for High School Graduation (Exit Exams)

August 2000

When students graduate from high school, the public expects that each student will possess the skills to be successful at either work or postsecondary education. We know, however, that not all students meet this expectation. In an effort to increase the numbers of well-prepared young adults, nearly all states have set standards that describe what students should know and be able to do. The logical next question is, "Have students met those standards?" or "What do they know?" And then, "How will we measure what they know?" To answer these questions, some states have made a diploma contingent upon the demonstration of knowledge and skills. Some require students to pass a single "exit exam," while others require students to pass "end of course" tests. Still others require proficiency on sets of particular standards such as math or English.

High School Exit Exams (24 states)

States that require students to pass an assessment with a minimum score in order to graduate.

State	Notes	Citation
Alabama	The class of 2001 must pass the reading and language sections of the graduation exam; the class of 2002 must also pass the math and science sections; the class of 2003 must also pass social studies.	Ala. Admin. Code r. 290-4-2-.02
Alaska	Effective January 2002, students must pass a competency exam in reading, English and math.	Alaska Stat. § 14.03.075
Arizona	The competency tests covers reading, writing and math.	Arizona Rev. Stat. § 15-701.01
California	Starting in 2003-2004, each student must pass the exit exam to graduate. Students may take the exam in grade 9 starting in 2000-01. The board must study the [potential] appropriateness of other criteria by which a student who fails the test may earn a diploma, including exemplary grades and alternative tests of equal rigor, (Cal. Educ. Code § 60856).	Cal. Educ. Code § 60851
Florida	All 11 th grade students must pass a high school competency test in reading writing and math. Students enrolling as 9 th graders in 1999-2000 and later (the class of 2002 and thereafter) must pass the 10 th grade assessment test instead of the high school competency test. "In establishing passing scores [for these tests], the state board shall consider any possible negative impact of the test on minority students."	Fl. Stat. ch. 229, § 57

State	Notes	Citation
Georgia	A curriculum-based test is administered in 11 th grade "for graduation purposes." The graduation test will be replaced with end-of-course assessments when they are developed.	Ga. Code Ann. § 20-2-281
Indiana	Beginning with the class of 2000, each student must pass a graduation exam to graduate, unless the principal certifies that the student will complete the Core 40 curriculum (§ 20-10.1-5.70-1), or meet several other, fairly stringent requirements (grades, attendance, teacher recommendations, etc.).	Ind. Code § 20-10.1-16-13
Louisiana	Language arts, writing and mathematics tests are administered in 10 th grade, science and social studies in the 11 th grade.	La. Admin. Code § 2.099.00
Maryland	Exit exam covers math, reading, writing, citizenship, arts and physical education, the "World of Work" and "Survival Skills," but only at basic levels. They will be replaced with end-of-course exams in English, government, algebra, geometry and biology. Students entering 9 th grade in 2003 will be required to pass those end-of-course exams to graduate.	Md. Regs. Code tit. 13A, § 03.02.03
Massachusetts	All 10 th grade students must take tests in math, science and technology, history and social science and English. Starting with the class of 2003, all students must pass the math and English tests to graduate. In coming year, passing the other tests will also become requirements for graduation.	Mass. Gen. Laws ch. 69, § 1D Mass. Regs. Code tit. 603, § 30.03
Minnesota	Students must pass the Basic Skills test in reading, writing and math. The class of 2002 must also meet "High Standards" in 24 of 48 content standards from 10 Learning Areas.	Minn. Stat. § 120B.02 Minn. R. 3501.0040, 3501.0230
Mississippi	Requires mastery of "minimum academic skills as measured by assessments developed and administered by the State Board of Education."	Miss. Code Ann. § 37-16-7
Nevada	Test covers reading, writing, math and science.	Nev. Rev. Stat. § 389.015
New Jersey	Requirements include passing an assessment and demonstrating skills in areas identified by the state board of education other than those covered in the assessment tests.	N.J. Rev. Stat. § 18A:7C-2
New Mexico	Test includes reading, English, math, science and social science. Students leaving high school may take the exam within five years and still receive a diploma.	N.M. Stat. Ann. § 22-2-8.4
New York	New York State Board of Regents is phasing in a schedule under which all students will have to pass the Regents exams to graduate, beginning with the class of 2000. Students must achieve a minimum score of 65 on the exam; unless their district requests a 55 for the first few years. • Class of 2000 – English; • Class of 2001 – English, math; • Class of 2002 – English, math, U.S. History, Global History; • Class of 2003 – all previous curricular areas plus science; • Class of 2004 – all previous areas, except students must score at least 55 in math and science; • Class of 2005 – all previous areas with a minimum score of 65.	N.Y. Comp. Codes R. & Regs. tit. 8, § 100.5
North Carolina	Effective with the graduating class of 2001, all students must pass a computer skills test, to be administered in the 8 th grade. Effective with the graduating class of 2003, all students must pass basic competency exit exams, to be administered in the 11 th grade.	N.C. Gen. Stat. § 115C-12 N.C. Admin. Code tit. 16, r. 6D.0103
Ohio	Includes math, reading, writing, science and citizenship.	Ohio Rev. Code Ann. § 3313.61

State	Notes	Citation
South Carolina	Exam covers reading, writing and math.	S.C. Code Ann. § 59-30-10
Tennessee	Currently has exit exams, but beginning with the 2001 freshman class, students must pass end-of-course tests in English II, Algebra I and Biology instead of a single exam.	Tenn. Code Ann. § 49-6-6001
Texas	Exit-level assessments include English, math, social studies and science.	Tex. Educ. Code Ann. § 39.025
Utah	Effective with the graduating class of 2005. The test must include at least language arts, reading and math.	Utah Code Ann. § 53A-1-611, amended in H.B. 177 (Utah 2000)
Virginia	All students must pass a literacy test to graduate. Students graduating in 2004, 2005 or 2006 must pass 6 end-of-course exams, 2 in English and 4 student-selected. Students graduating in 2007 and later may select only one subject; the remaining 3 must be in history, science and math. (Those subject matter requirements were applied to all students in the previous regulation.) Other tests, including the SAT II, Advanced Placement or International Baccalaureate exams, TOEFL and others may substitute for the end-of-course exams.	Va. Code Ann. § 22.1-253.13:4 8 Va. Regs. Reg. § 20-131-50
Washington	Students must pass test before being issued "certificate of mastery," which is required for graduation starting with class of 2006.	Wash. Laws § 28A.655.060

Exit Exams Barred or Repealed (2 states)

State	Notes	Citation
Hawaii	The Hawaii Department of Education has placed a moratorium on its exit exam, effective with the class of 2000, so that a new assessment system based on Hawaii's new performance standards may be developed. The old exam, developed in 1977, was not aligned with the new standards, was insufficiently rigorous and was entirely multiple-choice in format. The new exam is expected to be first administered in 2002 to the 10 th grade.	No citation
Missouri	A statute forbids exit exams: "In no case shall the state board of education or any other state agency establish any single test or group of tests as a condition or requirement for high school graduation or as a requirement for a state-approved diploma."	Mo. Rev. Stat. § 160.570

Variations on Exit Exams (4 states)

State	Notes	Citation
Delaware	No longer requires all students to pass state assessments to graduate. Effective with the graduating class of 2004, however, requires students to demonstrate proficient level regarding state high school content standards to receive an Academic Diploma. A higher level of proficiency results in student receiving Distinguished Diploma. Students not reaching the proficient level receive a Standard Diploma and have up to five years to upgrade it to an Academic Diploma by retaking assessments and reaching proficient level.	S.B. 260 (Del. 1999) (approved May 3, 2000)

State	Notes	Citation
Michigan	Students must score above a certain level in mandatory state assessments (in communication, math, science and social studies) to gain state endorsement in that area. The scores and any endorsements earned appear on each student's transcript. Students need not gain state endorsement in any area to graduate, but if a student does not receive one of the endorsements, a district staff member and the student must meet "to determine an educational program for the pupil designed to have the pupil achieve state endorsement in each area in which he or she did not achieve state endorsement."	Mich. Comp. Laws § 380.1279
Oklahoma	To graduate, students must take end-of-instruction tests in English (starting in 2000-01), U.S. history (2000-01), biology (2001-02) and algebra (2001-02), but do not have to pass the tests. Results are recorded on transcripts. "It is the intent of the Legislature that... the performance data and any available research shall be reviewed for consideration of additional consequences, including, but not limited to, high school graduation."	70 Okla. Stat. tit. 70, § 1210.508
Wisconsin	By fall 2002, local school boards must develop policies specifying criteria for awarding high school diplomas, to be effective 2002-2003. As one of those criteria, districts must administer a "graduation exam" in language arts, math, science and social studies. However, each district may determine the passing score, and whether passing is even required for graduation. Parents may have their children opt out of the examination; whether, and how, a student who has opted out may receive a diploma is left to each district.	Wis. Stat. §§ 118.30 and 118.33

Endorsed/Honors Diplomas (5 states)

States that award special diplomas, in part, for performance on exit exams that is better than merely adequate. (See also ECS StateNote "Differentiated Diplomas")

State	Notes	Citation
Arizona	To earn an honors endorsement, students must show a "extraordinary level of knowledge, skill and competency" in math, English, science and social studies.	Ariz. Rev. Stat. § 15-1626
Massachusetts	Students may earn a "Certificate of Mastery" by meeting criteria that vary depending on a student's performance on skills assessments. Those criteria may include superior performance on advanced placement tests or various awards.	Mass. Gen. Laws ch. 69, § 1D Mass. Reg. Code tit. 603, § 31.04
New York	Students entering 9 th grade in 2000-2001 and before may earn a Regents diploma (rather than a local diploma) by meeting more stringent requirements for courses and Regents exam scores. For students entering 9 th grade in 2001-2002 and thereafter, all students must meet requirements for Regents diplomas. To earn a Regents diploma with honors, a student must achieve an average of 90 percent in all Regents examinations required for the diploma.	N.Y. Comp. Codes R. & Reg. tit. 8, § 100.5
Ohio	To earn a diploma with honors, students must maintain a 3.5 GPA, and either earn certain proficiency test scores as designated by the state board, or earn a 27 on the ACT (or the equivalent on the SAT,) as well as meet certain course requirements.	Ohio Rev. Code Ann. § 3313.61 Ohio Admin. Code § 3301-13-07
Virginia	Beginning with the class of 2002, students may earn an Advanced Studies Diploma by passing more end-of-course exams or their substitutes (9 rather than 6,) and taking more courses.	Va. Code Ann. § 22.1-253.13:4 § Va. Regs. Reg. § 20-131-50

January 24, 2001

States Adjust High-Stakes Testing Plans

By Lynn Olson
Education Week

As states edge toward their deadlines for denying students diplomas based on state tests, many have blinked, either postponing the day of reckoning or modifying their original plans.

"We've already seen a lot of states that are making adjustments," said Kathy Christie, the director of the information clearinghouse for the Denver-based Education Commission of the States. "I don't believe I've seen anyone, so far, that has totally backed off, nor do we truly expect that to happen."

Only this month, for example, the North Carolina board of education delayed by one year its requirement that students pass new high school exit tests to earn a diploma.

Last month, the Alaska state school board recommended pushing back the state's exit-test requirement from 2002 to 2006, a change that requires legislative approval.

Arizona officials have sent a letter to districts asking for their advice about the best timing to implement new test requirements for graduation, following initial high failure rates. The state already has postponed until 2004 a requirement that students pass a math test to earn a diploma, but students in the class of 2002 still must pass the writing and reading portions.

And in Wyoming, a bill approved by the House education committee this month would create three types of high school diplomas—"advanced," "proficient," and "individualized"—based on a student's ability to meet new graduation requirements. The state board of education previously delayed the date by which students must meet the standards to earn a diploma, from 2003 to 2005. Unlike in other states, Wyoming schools are expected to collect a "body of evidence" to measure whether students have achieved proficiency in each content area.

Such moves follow on the heels of earlier delays in Alabama and Maryland.

Other states are standing by their original timelines, but are simplifying the content of their exams, lowering the passing scores required for graduation, or adding appeals processes and accommodations for students who may be having difficulty.

Last month, for example, the California state board approved a recommendation by Gov. Gray Davis, a Democrat, to shorten a new high school exit exam by as much as one hour and to delete some of the most advanced math questions.

In Ohio, a gubernatorial commission has recommended replacing the existing high school exit test with end-of-course exams. It also called for doing away with a requirement, scheduled to take effect in spring 2002, that 4th graders score at the "proficient" level on a state reading test to advance to 5th grade.

Also last month, the Louisiana board of education adopted a policy that permits 8th graders who fail the state test three times—even after repeating a grade and receiving remedial instruction—to enroll in an alternative program that would lead to a General Educational Development diploma and a "skills certificate," rather than a regular high school diploma. Students could re-enroll in the regular high school program at any time after they pass the 8th grade test.

"There are always people who would like to say we're watering it down, but that's simply not the reality," said Walter C. Lee, a member of the Louisiana board. By providing students with an alternative to dropping out of school, he argued, "we really have strengthened the program."

Meanwhile, Massachusetts Gov. Paul Cellucci and Lt. Gov. Jane Swift released a set of recommendations this month to bolster support for the Massachusetts Comprehensive Assessment System, or MCAS, which has come under fire from some parents and educators following initial high failure rates. The class of 2003 is the first that will have to pass the mathematics and English sections of the exam to earn a diploma. In 1999, only 67 percent of 10th graders passed the English section of the test and 44 percent passed the math section.

'Politically Untenable'

Twenty-four states now require students to pass state tests to earn a diploma, or plan to do so. And many are increasing the difficulty of those exams.

"It appears that on these tough tests, the failure rates are so high that they are literally politically untenable, and so states are forced to address them," said Monty Neill, the executive director of FairTest, a Cambridge, Mass.-based nonprofit group that opposes high-stakes testing.

High failure rates have clearly rattled Alaska policymakers. In his State of the State Address two weeks ago, Gov. Tony Knowles warned: "We face the prospect that up to two-thirds of our high school students aren't on track for a diploma under the current exit-exam law. That's neither acceptable, nor fair." Mr. Knowles, a Democrat, urged the Republican-controlled legislature to find a "more responsible effective date for the high school graduation exam."

Susan Stitham, a high school English teacher and the chairwoman of the Alaska state board of education, said that "the bottom line for me is that 2002 was not a date that was selected with any thought. Nobody ever said, 'When can you be ready, or when can the kids be ready?' It was just plopped on us."

The board was also concerned that some of the math questions on the state test might be too hard, she said, contributing to the low success rates. "Are all the things that are on there really what a student needs to know and be able to do to graduate from high school?" Ms. Stitham asked. "I don't think so. Like many states,

we're having problems with the math."

Similar issues are vexing lawmakers in Arizona, where 88 percent of all sophomores who took the state math exam in spring 1999 failed. The dismal results prompted state education officials to make new rules: High school students will have to take algebra in 9th grade and geometry in 10th grade.

The state also has agreed to drop some of the most difficult math items from the exam, a problem for which state schools Superintendent Lisa Graham Keegan said she takes responsibility. "I thought we had some items on there that were outside the parameters that were absolutely non-negotiable for all students," she said.

'Do It Right'

But the bigger problem, Ms. Keegan asserts, is the poor connection between the state's math standards and what students are learning and teachers are teaching in classrooms. The state set the original target date for linking test results to a diploma before it had data on how fast students' scores could improve, according to the schools chief. Now, she argues, those dates may have to be delayed a year or two.

"My bottom-line goal is, do the kids get there? Do we teach them what they need to know?" Ms. Keegan said. "You can only go as fast as you can go."

Others say the Arizona board decided to revisit its timelines under intense pressure from state legislators. "Essentially, the state board of education has taken the AIMS test off the table," said state Rep. John Huppenthal, a Republican, referring to the Arizona Instrument to Measure Standards. "They were on the verge of losing complete legislative support for the program, and I think they realized that.

"They're high-quality standards," he added, "but they just present an enormous political problem—essentially a train wreck—in which children who have been accepted to quality universities can't get out of high school."

North Carolina board members decided this month to slow down their graduation requirements—until the class of 2004—after watching such controversies unfurl in other states. Philip J. Kirk Jr., the chairman of the state board, said the state wanted to do adequate field-testing of the new exam to ensure confidence in the passing scores. State officials also wanted more time to communicate with the public and educators about the exam.

"We're sacrificing a year or two in order to get the test right and to get more confidence in it," Mr. Kirk said. "I didn't want to delay it even one day. However, even I was persuaded by the testing experts and the legal staff that we'd better do it right. I also was persuaded that maybe we have not done a good enough communication job with teachers and with high school students."

But Mr. Kirk said he was adamantly opposed to putting the requirement off for two or three years, an idea expected to come up at next month's board meeting.

'Highly Charged Debates'

Improving public communication about state tests is also an issue in Massachusetts, where the Massachusetts Teachers Association has launched a \$600,000 advertising campaign against what it calls the "one-size-fits-all, high-stakes, do-or-die MCAS test."

State officials announced this month that they plan to spend as much as \$1.5 million on a public relations campaign of their own in behalf of the controversial exam. "These are highly charged debates," said Lt. Gov. Swift, "and in highly charged debates, there is often misinformation, some of which is spread purposefully."

Ms. Swift described the package of changes recommended by the Cellucci administration this month as "fine-tuning."

"We have not backed down from the graduation requirement, nor have we backed off from the timetable for the graduation requirement," she said. "In fact, all of the recommendations that the governor and I have made are designed to keep us on schedule."

Some of those changes include creating a more focused retest for students who initially fail the exam; permitting students who still have not passed the test by the end of 12th grade to enroll in alternative programs at community colleges; establishing an appeals process for students who score within a couple points of passing and who believe their exams may have been scored incorrectly; offering a four-year tuition waiver to state higher education institutions for students who do well on the test; and narrowing the history section to focus on American rather than world history.

But some of the biggest—and most sensitive—changes are designed to address the needs of special education students, who fail the MCAS at a higher rate than their other classmates do. The same issue has come up in states such as Alaska and Wyoming, where students with disabilities also will have to meet state standards to earn a diploma.

Mr. Cellucci, a Republican, has asked the Massachusetts education department to review and expand the list of allowable testing accommodations for special-needs students. He has also asked the state board of education to set up an appeals process that would review whether such students who failed the exam were given adequate accommodations.

A similar appeals process would be available for students without special needs who failed to meet the passing standard by the senior year of high school and wanted similar accommodations.

But the most contentious proposal in Massachusetts is to introduce a separate "state-endorsed certificate" for special education students who cannot achieve a passing score on the MCAS but who have achieved the goals in their individualized education plans required under special education law. The certificate

would not be a diploma and would not automatically allow students to enroll in state colleges or universities.

Ms. Swift said state officials were trying to address the "legitimate needs" of a small percentage of special education students who would not be able to meet the state standards, while maintaining pressure on districts to help most special-needs students meet the graduation requirement.

The proposal has enraged some in the special education community. "I think it's a really regressive, terrible idea because it's going to create a two-tiered system," said Lisa A. Guisbond, the parent of a 2nd grader with a learning disability. Ms. Guisbond, who co-chairs the Brookline chapter of the Coalition for Authentic Reform in Education, which opposes the high-stakes testing requirement, said the certificate "would be essentially worthless to [students] in terms of going on to higher education or getting employment."

But S. Paul Reville, the chairman of a state committee charged with overseeing the implementation of the law that created the MCAS, said the needs of special education students would not be ignored, as long as the state required districts to show progress in their achievement.

"The package shows, for the first time, a willingness to make some accommodations to some of the concerns that critics have been raising about MCAS over the past couple of years," he said. But "it may be too little, too late."

That's certainly the view of FairTest's Mr. Neill. While parent and teacher opposition has prodded the state to act, he said, "we think the response is mostly irrelevant and has angered more people than it's pleased." Tinkering with high-stakes testing rules or delaying the timelines, Mr. Neill argued, "doesn't change the fundamental issue that you shouldn't make decisions this way."

In other states as well, the debate is far from over. A legislative aide in Alaska predicted "quite a battle" over any attempt to change or delay the diploma rules.

Local Interference?

And in Ohio, an aide to Sen. Robert A. Gardner, a Republican and chairman of the Senate education committee, said that GOP lawmakers there are split about whether to end the state's requirement tying student promotion to testing. Legislators also are trying to sort out whether end-of-course exams would interfere with local control by leading to a state-level curriculum.

Testing and the use of tests to make high-stakes decisions "is going to be a big issue for us this year," predicted Julie Davis Bell, the education program director for the National Conference of State Legislatures. "We will watch it very closely."

On the Web

"The Use of Tests When Making High-Stakes Decisions for Students" is a resource guide for educators and policy makers provided by the U.S. Department of Education. Information in the guide is "intended to apply to standardized tests that are used as part of decision-making that has high-stakes consequences for individual

students."

From "No Exit? Testing, Tracking, and Students of Color in U.S. Public Schools," published by the Applied Research Center: "For many students, and disproportionately for students of color, the imposition of exit exams is like adding an unanticipated 100-yard dash to the end of a 26-mile marathon."

"The Use of the TAAS High School Exit Exam," from The Center for the Study of Testing, Evaluation, and Educational Policy criticizes the Texas Education Agency's exit-exam policy. Includes background, Web links and newspaper articles.

PHOTOS: "We face the prospect that up to two-thirds of our high school students aren't on track for a diploma," Alaska Gov. Tony Knowles warns during his State of the State Address earlier this month.
—Michael Penn/AP

Education Remains Top Item For State Legislators

By Tiffany Danitz

Stateline.org

Friday, January 19, 2001



Improving US public education was a top priority for state governments last year, and is again in 2001. The issue was a major focus of nearly every governor's state of the state address, and at least 6,000 school-related bills were introduced in state legislatures. "Education is such a major political issue right now. Every governor wants to be the education governor and every president wants to be the education president - the rhetoric at the federal level is unlike anything we have ever seen before. And the American public is ranking it (the issue) as number 1, too," says Julie Bell, who heads the education department of the National Conference of State Legislatures (NCSL).

Several states put in place notable new policies last year, California and New Jersey chief among them. These were some of the year's highlights:

- California passed a landmark school aid package that guarantees every student in the state with good grades a chance to attend college and also provides funds to recruit teachers and reduce class size. Democratic Gov. Gray Davis made the plan the number one item on his legislative agenda, and some experts call it the most ambitious education reform measure in the nation.
- New Jersey embarked on a \$12 billion school construction plan under the leadership of Republican Gov. Christie Todd Whitman. The money will be awarded over ten years. Lawmakers approved the bill in response to a court order to repair school buildings in 30 needy districts. Then the legislature went beyond the order, making aid available to all districts regardless of wealth.
- Delaware Gov. Tom Carper signed a teacher accountability law that he had urged lawmakers to pass for the last two years. The comprehensive plan relaxes testing demands on students, but it doesn't let teachers off the hook. Instead of punishing or rewarding students for their performance, the law makes teachers accountable by linking their job evaluation to student scores. It includes a teacher-mentoring program that enlists veteran teachers to help rookies. (KANSAS, which has a similar program, decided to give mentor teachers a \$1,000 pay bonus this year.)
- Voters in Michigan and California rejected school voucher initiatives financed by wealthy conservatives that would have entitled parents of students in failing schools to send their children elsewhere at full or partial state expense. Teacher unions opposed the plans. A federal court in Cleveland struck down that Ohio city's five-year-old voucher plan, but Florida's statewide program -- the only one of its kind in the country -- continued to operate despite a legal challenge. In 2001, however, there will be no new vouchers awarded in Florida.

- Colorado and Georgia passed education reform bills that impose higher standards and require more accountability. Colorado's law focuses on grading the performance of schools and tying rewards and sanctions to the rankings. Georgia Gov. Roy Barnes pushed his reforms through the legislature despite the resistance of education unions, parents and activists. Some of his proposals will increase testing, reward high-performing schools, cut class-size for grades K-3, and set up an office of accountability to monitor reforms. The most controversial aspect of Barnes' plan ends teacher tenure. Every state except Georgia has teacher tenure laws.
- Texas saw its chief measure of student achievement, the Texas test, upheld in court. The Mexican American Legal Defense and Education Fund had sued to overturn it, arguing that the exam discriminates against minority students. U.S. District Judge Edward Prado disagreed, backing the state's right to set education policies if they are fair and improve education. His decision was watched across the states as governors and lawmakers brace for more lawsuits against their newly developed tests.
- Arizona voters opted to end bilingual education. A ballot initiative passed in November requires an immersion curriculum for public school students in the state who speak English as a second language. Education experts believe the move could start a trend.
- Maine Gov. Angus King continued to try and bring every seventh grader in the state a laptop computer. Pennsylvania lawmakers considered creating an online charter school and other states put money into technology for their schools. Universities also expanded online efforts, many offering distance learning programs over the Internet. Yale, Stanford, Oxford and Princeton universities joined forces to offer alumni online continuing education classes.

Improving Public Education

Throughout the states, phase II of the standards-based reform movement kicked into high gear as legislators debated how to make schools accountable, what types of tests to use and what rewards and sanctions should be placed on student performance. Debate also swirled around how to fund schools and what is an "adequate" education. Most states require by law that students receive an "adequate" education, but lawmakers are struggling to define what that means before the courts do.

All but one state, Iowa, has adopted standards that define what a student should learn at each grade level. Twenty-four states impose an exit exam that students must pass to graduate, according to Achieve, Inc. a nonprofit organization that tracks progress on standards-based reforms.

The standards movement started out slowly, with only 14 states signed on in 1996, but it has gained remarkable momentum and is starting to effect the way schools are governed. Education Commission on the States' (ECS) Clearinghouse Director, Kathy Christie says school board control of schools is giving way in some large urban districts to the mayor or an appointed CEO.

Lawmakers and state education departments are asking themselves tough questions about governance, such as: "How can we improve school boards or change the governance system so that school boards can play a role? Should the mayor have some control, or all of the

control? Should there be a different form of governance for under-performing schools? Should state superintendents be appointed or elected?" Christie told Stateline.org.

Lawmakers Dogged By Quality Teacher Deficit

Spurred by the need to raise the quality of teaching to meet higher standards and faced with a declining teaching force, which is rapidly shrinking because of retirements, cuts in class size and rising enrollments, lawmakers placed greater emphasis on teacher recruitment and training in 2000.

Twenty states now offer bonus pay, sometimes in the form of signing bonuses, but also for mentoring new teachers or getting students to perform well on tests. Some 2000 highlights:

- Connecticut and New York raised teacher salaries and threw in home loan and tuition reimbursement enticements.
- Because of the high cost of living in Northern California, the San Francisco school system is providing housing for teachers.
- California approved a substantial pay raise for teachers.
- Maryland, Virginia, Arizona, Kentucky, Louisiana, Colorado, Indiana and Nebraska approved packages that included teacher pay raises and college scholarship programs for would-be teachers. Many of these programs target teaching candidates who will commit to working in low-performing schools.
- Georgia passed a law that gives teachers willing to work in rural schools signing bonuses. The state also put more money into professional development opportunities.
- New York's \$25 million "Teachers of Tomorrow Act" gives teachers with three years experience who are willing to work in impoverished schools or can teach subjects in shortage areas (math, science and computers) a \$3400 bonus.

Becky Fleischauer, a spokesperson for the National Education Association (NEA), a 2.5 million member strong teacher union, is not surprised by the flurry of legislation to make the teaching profession more attractive.

"Standards-based reforms involves investing. State legislatures are realizing that you have to do more than just raise the bar and teacher quality is certainly part of helping all kids reach high standards," she says.

Reducing class-size is another strategy states are employing to help students meet more rigorous academic standards. But employing this policy at the same time that student rolls are bursting can cause massive shortages, as California has learned.

It needs 300,000 more instructors by 2010. Yet former California Gov. Pete Wilson signed class-size reduction legislation before leaving office two years ago which stretched the state's existing teaching force to the limit and left 30 percent of new teachers practicing on emergency credentials.

The Fresno Bee newspaper did an analysis of the 1999-2000 school year showing that one in

seven elementary school teachers in California worked without credentials last year compared to 1 in 63 the year before Wilson signed the law. Reporters also found that poor students were five times more likely than better-off kids to have a teacher without credentials.

The preceding was excerpted from the education chapter of "State of the States 2000," our annual report on state policy highlights. To obtain your free copy of this 56-page book, email your postal mailing address to managingeditor@stateline.org

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Issues to Watch

- Education

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NCSL State Legislative Report Education Standards, Assessment and Accountability

October 2000

Volume 25, Number 9

By Shelby Samuelsen, Research Analyst

Overview

Education accountability-asking students, educators and institutions to be responsible for education outcomes-is gaining attention and influence as state and local policymakers implement sweeping accountability reforms. After decades of focusing on funding levels, curriculum offerings and resources, American education now is highlighting student learning and achievement. Statewide standards form the foundation for accountability reform. After they established academic standards, state policymakers turned their attention to creating statewide assessments, accreditation, and systems of rewards and sanctions. These new accountability approaches differ from traditional systems because they emphasize student achievement, look at schools as the mode of improvement, publicly report district and school scores, and attach rewards and sanctions based on specified performance levels. Within this new system, however, questions are emerging about how to include all students and how to establish fair assessments, performance levels, sufficient rewards and appropriate sanctions. This state legislative report discusses recent legislative trends and issues in standards-based and accountability reform.

In the 2000 legislative session, 41 states proposed more than 900 bills relating to accountability and assessment. Both Colorado and Georgia enacted comprehensive accountability policies. The Colorado legislature enacted legislation similar to school grading reforms in California and Florida that will grade schools using an A to F scale. The Colorado legislation also created a system of sanctions and rewards based on specified improvement indicators. The Georgia legislature passed the A-plus reform act, which eliminates tenure protections for new teachers, establishes a grading system for schools, and develops rewards and sanctions. The bill stipulates that in schools that receive poor grades for three or more years state education officials can authorize the removal of school personnel or allow parents to transfer their children to other public schools. Table 1 shows selected accountability and assessment enactments in the 2000 legislative sessions.

State Legislative Activity

During the 1997 through 2000 legislative sessions, more than half the states have enacted new policies that address accountability and assessment, including the following.

- **Alabama** classifies schools each year based upon student performance on the statewide achievement states. Schools that are placed on Academic Alert-if a majority of students score below the 23rd percentile on the Stanford Achievement Test-are required to achieve specified improvement. If progress is not made in a year, the schools are assigned an academic improvement team of professionals who are appointed by the state superintendent of education.
- **California** enacted the Public Schools Accountability Act, which mandates that schools are publicly ranked using the academic performance index (API). The API is a complex formula that is based on statewide test scores for the first three to five years (starting in January 2000) and eventually will include high school graduation rates, dropout rates and school attendance rates. Based on the API, the superintendent of public instruction develops an expected annual percentage growth target for schools based on their API baseline score.
- **Colorado's** Senate Bill 186 mandates the Department of Education to evaluate the academic performance and safety of every public school within the state. The bill also requires the department to develop a comprehensive data collection and reporting system for evaluation.
- **Delaware** passed the Educator Accountability Act of 2000, which requires student performance indicators to be used in teacher evaluations that will include student performance and improvement based on the Delaware Student Testing Program in reading, writing and math.
- **Connecticut** requires the state board of education to prepare a list of elementary and middle schools, by school district, that are in need of improvement based on student performance on the statewide examination. Each local board of education on the list must meet with the commissioner of education to discuss the process of improving school performance. The state publishes a report card on each school, including its performance on the statewide test.
- **Florida** enacted a comprehensive accountability plan that assigns a letter grade based on performance. Any student who has spent the prior school year at a school that receives a performance grade of "F" for any two school years (in a four-year period) can apply for a voucher to attend a private school.
- **Georgia's** A-plus Education Reform Act, passed in 2000, eliminates tenure for beginning teachers, grades schools from A to F based on student performance on statewide assessments, and implements a system of rewards and sanctions for schools. The A-plus act also includes salary increases for teachers in determined shortage areas (mathematics, science, foreign languages, special education, etc.).
- **Hawaii** requires the director of education to establish a comprehensive accountability system, including a student assessment program and a school profile that reports on student performance measures, school attendance, dropout rates, and parental involvement for each school.
- **Mississippi** authorized student assessment standards for student promotion and graduation in the public schools, defined standards for the implementation of a

performance-based accreditation system for individual schools and school districts, and authorized the state board of education to enter into long-term contracts for student assessment.

- **New Mexico** identifies schools that qualify for intervention, using multiple indicators of performance and accreditation standards, which include adequacy of performance in required subject matter, adequacy of pupil activities, adequacy of professional development, and adequacy of writing curriculum. The state team identifies schools that qualify for intervention and makes recommendations to the state's Educational Standards Commission (ESC). The ESC then assigns a liaison to work with the school and identify resources.
- **Texas** designed assessment instruments to assess students' essential knowledge and skills in certain grade levels and requires the Texas Education Agency to adopt secondary exit-level assessments to be administered to students in grade 11. Schools and districts can receive cash awards for exemplary student performance, but are subject to intervention and, ultimately, takeover if achievement falls below minimum standards.
- **Utah** enacted legislation in 1999 that provides for annual criterion-referenced achievement testing of students in all grade levels and norm-referenced testing of students in grades three, five, eight and 10. The state board of education is required to develop assessment mechanisms for determining demonstrated competency in courses required for high school graduation and provides for an external evaluation of core curriculum, content standards, objectives and assessments.

Standards

Statewide student standards are being established across the country as states set benchmarks for what students need to know and be able to do at each grade level. In 1997, 31 states had adopted standards in four core academic subjects-English, mathematics, science and social studies. In 1999, 44 states had adopted standards in those subjects and all states, except for Iowa, have adopted standards in at least one subject. Proponents of standards argue that clear and specific standards can help to guarantee all children, regardless of background or socioeconomic status, a rigorous academic curriculum. Standards also can ensure alignment among district and state assessments.

Although standards have been adopted in virtually all states, the implementation of standards is an entirely different issue. Many educators and policymakers are questioning whether teachers are receiving adequate professional development to help facilitate the integration of standards into the classroom. In Virginia, the state department of education is asking all 87,000 public school teachers in the state how they believe their schools are handling the Standards of Learning Program, which incorporates statewide standards, assessments and a system of accreditation for schools and districts. The on-line survey asks teachers about their teaching methods, whether there is sufficient classroom instructional time and if they believe they are receiving quality staff development. State officials hope the survey will provide information about how the standards are being implemented and the usefulness of the professional development. The results from the survey will be part of an indicator of school performance on the annual school report card.

National organizations-like the American Federation of Teachers (AFT) and the Thomas Fordham Foundation-rate the quality of state standards each year. In 1999, AFT found that the general quality of standards was continuing to improve. Twenty-two states, up three from 1998, had standards that were " ... generally clear and specific and grounded in particular content to meet AFT's common core criterion." The AFT report stated that states had more difficulty establishing clear standards in English and social studies, rather than in math and science. The Fordham Foundation gave the states an average grade of C-minus for 2000, up from a D-plus in 1998. It argued that states have become more serious about their responsibility to identify essential knowledge and skills; however, a majority of states hold "mediocre" expectations for their students. Although these organizations differ in their overall assessments of state standards, the reports clearly show the need for states to continually evaluate and strengthen their content standards, including assessing how the standards are being received and implemented at school sites.

Assessments

Virtually all states have turned to standardized testing to measure student achievement. By 2000, every state except Iowa will administer at least one form of a statewide test. States are working to ensure that their tests are aligned with state standards. According to Education Week, the number of states that administer student assessments explicitly aligned with standards in at least one subject increased from 35 in 1997-98 to 41 in 2000.

Types of testing programs vary dramatically across states. Some states use a commercially produced, norm-referenced test to assess student achievement (norm-referenced tests measure a student's performance against that of other students across the nation). Although norm-referenced tests allow students to be compared to a national measure, the tests are not necessarily aligned to specific state standards. Approximately 42 states use a criterion-referenced test. Criterion-referenced tests measure student performance against specific content standards. One concern with multiple choice assessments is that they do not accurately measure student growth. Many states now are developing more authentic assessments that require students to demonstrate their knowledge in a portfolio or through extended writing responses. In 1998, for example, Kentucky overhauled its testing program and employed an assessment that combines essays, multiple-choice questions and a writing portfolio. Vermont requires eighth grade students to complete portfolio assessments in both English and mathematics. According to Education Week, 10 states require students to incorporate portfolios of written projects or write extended responses to questions in subjects other than English.

The stakes attached to testing are increasing each year. Several states are attaching accreditation and ratings to schools based upon student performance on assessment. In Virginia, starting in 2006, only schools where pass rates exceed 70 percent on the statewide assessments in history/social sciences, mathematics, English and science will be eligible for accreditation. In 1999, only 7 percent of the schools in Virginia met the state requirement. The Virginia state board of education proposed dropping some of the penalties and extending the time frame for implementation. Furthermore, the state created a Virginia Technical Advisory Committee, which is to report annually to the state board on the assessments' validity and reliability and propose recommendations for improvements.

In addition to using assessments to determine school and district accreditation, 28 states have in place or are considering high school exit exams. Exit exams are creating concern

among parents and educators who question the use of a test to determine whether a student will graduate. In Wisconsin, parents mobilized in 1999 to protest the state's high school exit exam because they argued it was unfair for a student's graduation to be based on a single measure. The Wisconsin Legislature responded to these concerns, and in 2000 the exams will be only one of several factors used to decide whether a student can graduate. In Indiana, students who pass the ISTEP-Plus graduation exam graduate; students who fail the math or English portion must satisfy rigorous requirements to be eligible for a waiver to graduate. In 2003, the Massachusetts graduation test will be implemented-students must score at the proficient or advanced levels on all 10th grade tests to receive a high school diploma. Students in Massachusetts have joined together in mass protest of the state's assessment program. In May 2000, students delivered 7,000 signatures to demand the state repeal the law that makes passing the MCAS a graduation requirement. The students complained that the MCAS stifle creativity, waste valuable class time and force teachers to teach to the test.

High-stakes testing is accompanied by a myriad of questions and concerns for policymakers, educators and community members to consider.

- Is the statewide test a valid and fair measure of student growth?
- What type of assessment would best measure student growth and performance?
- Should this assessment be the sole measure of accreditation, promotion or graduation? If not, what other indicators should be included?
- Does this accountability system include students with disabilities and language minority students? If so, are alternative assessments and accurate measurements of performance in place for these students?

Reporting

How states use performance results is an important part of accountability policies. From determining what to include on school report cards to how that information is disseminated and explained to the public, accurate and fair reporting can be a powerful tool for improvement measures. As of January 2000, at least 40 states issued school report cards. The majority of states include student performance on assessments in their report cards. Dropout and graduation rates often are included. Colorado, among other states, includes indicators of community involvement and school safety. Although states vary in their capacity to collect, analyze and report information, it is important that all states provide clear, understandable and constructive information. The public needs to understand the different aspects of the state's accountability system; without public support, these reforms will fade over time.

Texas publishes two report cards annually. The Academic Excellence Indicator System (AEIS) reports at the district and school levels on student performance indicators as well as on profile data that includes student, staff and financial information that provide a context for interpreting the results. The AEIS data serve as a basis for all accountability ratings, awards and reports. The second is the School Report Card, provided to each school by the Texas Education Agency. This custom report card-that must go to each student's family-includes attendance rates, dropout rates, performance on statewide assessment and college admissions examinations, end of course examinations, completion of the state board of education's recommended high school program, student/teacher ratios and administrative and instructional costs per student. Maryland has been issuing district and state report cards 1991. The data-including student performance, mobility, dropout rates and finance

information are reported by gender and race/ethnicity. In Ohio, the state includes a selection of questions that parents can ask the schools in regard to information on the report card.

Accreditation/Ratings

The indicators state policymakers use to determine if a school or district is high- or low-performing is an extremely contentious and delicate issue. Florida enacted a comprehensive school accountability package in 1999. The state assigns each school an A, B, C, D or F, based on student achievement on the reading and mathematics sections of the Florida Comprehensive Achievement Test (FCAT) and a writing test. Schools that are rated F twice in a four-year period are considered "chronically failing," and students then become eligible for private school vouchers. Although Florida was the first state to assign letter grades, Colorado followed closely behind and will assign grades to schools in 2001. Critics of the Florida and Colorado programs argue that the grades do not take into consideration external factors, including the social and economic characteristics of low-income areas. California ranks schools based on their Academic Performance Index (API). California's complex ranking system, the API, compares the academic performance of schools with similar ethnic and economic characteristics. However, the ratings still are based on assessment scores. For the first three to five years, these rankings will be based solely on test scores until the state develops valid high school graduation, dropout and school attendance rates.

Similar to Florida's system, the Alabama accountability system classifies schools based on student performance; however, schools are delegated into three specific categories. If 50 percent or more of the students score above the 40th percentile on the achievement test, the school is classified as Academic Clear. If a majority of students score below the 40th percentile, the school is placed under Academic Caution, and if a majority of students score below the 23rd percentile, the school is placed in Academic Alert. The state superintendent of education is empowered to intervene in or take control of schools or school systems that are on academic alert when they have not met their improvement targets after three years.

State Intervention

School and district rewards and sanctions vary widely from state to state. Thirteen states-California, Florida, Georgia, Indiana, Kentucky, Maryland, New Jersey, New Mexico, North Carolina, Pennsylvania, Tennessee, Texas and Utah-currently offer monetary rewards to successful schools. In New Mexico, the Legislature appropriates funds to high-performing schools on a per-pupil basis. During the 1997 legislative session, \$500,000 was appropriated to 104 schools, and in 1999, the fund for rewards increased to \$1.9 million. In California, the Governor's Performance Award Program provides monetary awards to schools that meet or exceed their growth targets or to schools that demonstrate comparable improvement in academic achievement by all significant ethnic and socioeconomically disadvantaged subgroups. In 2000, the governor and state board approved \$25 million in grants for 200 of the state's lowest-performing schools under this improvement program.

As part of larger accountability reforms, approximately 18 states have enacted legislation that allows them to intervene in a district that is deemed to be low-performing. Thirteen of those states include the assignment of state staff as part of the assistance. In North Carolina, the state assigns teams of five to six members to work in a low-performing school for a year. In New Mexico, low-performing schools are required to develop a school improvement plan. If,

no progress has been made after two years, the Educational Standards Commission has a diagnostic team visit the school. These special teams are sent to analyze and diagnose problems and make recommendations for improvement. In California, the superintendent of public instruction invites schools that score below the 50th percentile on the statewide achievement test to participate in the Immediate Intervention/Underperforming Schools Program (II/USP). In this program, external evaluators are assigned to schools where they establish improvement plans and growth targets. Other states intervene by recruiting master teachers and administrators to specific schools. South Carolina pays the salaries and yearly bonuses for three years for exemplary teachers to teach in schools that are designated as low-performing. The state also funds the salaries and includes a 25 percent bonus for principals in these schools.

In some instances, states leverage change by altering the governance of local school districts. In large urban districts like Chicago, Baltimore and Oakland, mayors have been granted greater control over city public school systems. In 1995, the Illinois legislature transferred control of the Chicago public schools to Mayor Richard Daley, giving him control of the budget and responsibility to appoint school board members, the board president and the district's chief executive officer. In 1999, Michigan's Governor John Engler signed legislation that gave Detroit Mayor Dennis Archer the power to appoint a new school board and chief administrative office to supervise the city's schools. Although the overall effect of mayoral control of schools remains to be seen, this governance model has allowed states to intervene in low-performing school districts while ensuring a certain degree of local control.

As accountability policies are implemented across the country, it will be critical for policymakers to continually reassess their systematic reforms. It will be important to:

- Ensure alignment across all aspects of reform-from standards and assessments to reporting and accreditation.
- Communicate what performance indicators are used for accreditation and reporting to teachers, administrators and community members.
- Provide fair and accurate measures of student growth and performance.
- Identify existing policies and practices that successfully achieve school improvement.
- Provide adequate professional development and support for teachers to ensure high-quality instruction in all schools and for all students.
- Allow sufficient opportunity for feedback among all stakeholders, including students, teachers, administrators, parents, local policymakers and state officials including governors, legislators, chief state school officers, state school board members and department of education personnel.
- Consider the uniqueness of districts and communities in designing and implementing statewide accountability systems.
- Provide for systemic and sustained evaluation of reforms.

Although implementing standards and assessments has been difficult, states are finding that their response to performance-through sanctions, rewards, takeovers, etc.-is even more

contentious. Successful standards-based and accountability reform will depend upon adequate communication between educators, policymakers and the community at large.

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Education/School Testing: Does Texas Make The Grade?
All eyes are on Bush's state as it leads the nation in showing the promise--and pitfalls--of testing Relevancy: 100; (Time)
Jodie Morse With reporting by Ann Blackman/Washington, Chris Coats/Dallas, Desa Philadelphia/New York and Timothy; 09-11-2000 Size: 10K Reading Level: 10.

Pop quiz. Name and locate the following: Hekla, Monrovia, Manitoba and Orinoco. Now for a math problem: If a load of wheat weighs 3,942 lbs., what is the worth at 50[cents] a bushel, deducting 1,050 lbs. for tare? (Hint: a bushel of wheat weighs 60 lbs. You're on your own for tare.)

O.K., pencils down. These questions, which percolated through e-mail chains over the summer, are not meant to prepare you for the hot seat on Who Wants to Be a Millionaire. Rather, they're drawn from an oral exam given to seventh- and eighth-graders in Saline County, Kans., back in 1895. Students who mastered the five-hour exercise gained admission to high school. And if enough of the kids performed well overall in their studies, their teachers could win a pay raise of 25[cents] a week.

As school reforms go, standardized exams certainly have staying power. But the stakes are a good deal higher on the tests of today. As kids head back to class, they'll embark on what some educators have dubbed the Year of the Test, sitting for state exams that determine everything from high school graduation to school-funding bonuses. Not to mention whether your kindergartner will have nap time (schools in Mobile, Ala., have grabbed that time for test prep) and where you'll buy your next home (real estate agents in Arizona and Virginia now tout high scores in school districts where they have homes for sale).

Both George W. Bush and Al Gore advocate statewide-testing regimens to boost academic standards. It's a message that resonates with voters, who consistently back testing in national polls, and with policy-makers, who use tests to gauge the success of other school reforms. Recent studies detailed soaring test scores among black students who used vouchers to enroll in private schools, and among California immigrants after that state required they be taught only in English. Despite noisy protest rallies in Massachusetts and Virginia last spring, support for high-stakes testing remains strong. In a new poll for the Business Roundtable, 68% of those surveyed say students should pass statewide tests to graduate; 75% think that even those in elementary schools should do so to progress to the next grade. Said Bush last week on a six-state tour promoting his education agenda: "Measurement is the cornerstone to reform."

No place shows both the promise and pitfalls of such measurement more plainly than Texas, where Bush is serving his second term as Governor and which has one of the oldest and best studied of the high-stakes exams. First administered in 1990, the Texas Assessment of Academic Skills (TAAS) requires that exams in reading, writing, math, science and social studies be taken in

alternate years by the state's third- through eighth-graders. High school students must pass reading, writing and math tests. Administrators at some high-scoring schools can earn bonuses of as much as \$25,000; low-performing schools risk takeover by the state. Texas officials boast that since 1994, scores have risen 27%, and more students are taking the SAT and college-level advanced-placement exams. A study released last month by the Rand Corp. ranked Texas first in the U.S. in educating children, when measured by comparing students with similar family backgrounds. Officials also cite the shrinking gap in Texas between the scores of minority students and their white peers. In 1994, 28% of blacks and 34% of Hispanics in 10th grade passed the exam. This year 67% and 70% respectively did.

Such was the experience of Leander Middle School, tucked in the hills an hour north of Austin. When the Texas exam was first instituted, only 66% of Leander's students passed the math and reading portions of the test. So the school hired a consultant. The principal also had a revolutionary idea: drop homeroom and one daily elective, then double the time students spend on math lessons to 90 min. a day. Three times a year students take--and chart their progress on--exams tougher than the TAAS. To reduce stress during the real exam week, the school serves granola bars and invites children to come to class in their pajamas. The recipe has paid off. Leander's test scores, including those of its black and Hispanic students, have climbed steadily. And Leander students aren't pining for those lost electives. "We're here to learn," says 13-year-old Brooke Godbey. "We wouldn't benefit more from choir."

Each spring, students at Woodrow Wilson Elementary in Denton, Texas, trade their normal curriculum for an eight-week crash course known as "TAAS Camp." There, students who ace a day of drills spend the late afternoon playing computer and board games. The stragglers get one-on-one tutoring. The pressure peaks at test time. Says Sarah Telaneus, 11: "All of a sudden your heart starts pounding and you're thinking, 'I might go blank.'" Not to worry: she and her classmates turned in scores high enough to put their teachers in line for bonuses.

Critics maintain that such gains have come at a hefty price, contending that classrooms have morphed into pressure cookers and teachers dumb down creative lessons to teach only to the test. And recent studies allege that the gains in minority scores may be illusory. Growing numbers of Texas' minorities--as many as 50% in some schools--are dropping out or being granted "special education" status, meaning their test scores are not counted toward their school's overall ranking, according to a study published last month by Walt Haney, an education professor at Boston College. Says Haney: "Any system leaving that many children behind is tragic."

Some research has shown that intense coaching, like that at Woodrow Wilson, can lead to short-term spikes in test scores but that later on kids tend to forget much of what they've crammed. "Instead of reading novels, kids are skimming three-paragraph passages for key words," says Linda McNeil, an education professor at Rice University, who this year co-authored a report critical of the Texas exam for Harvard University's Civil Rights Project. Texas' lackluster performance on other national exams bolsters her case. Even as TAAS scores have skyrocketed, SAT marks have lagged. According to figures released last week by the College Board, the average math SAT score for Texas students increased just one point over last year, and the verbal score dropped to its lowest level in four years--and to the third-worst

spot in the U.S.

The score disparity points to another persistent criticism of the Texas test: that it is simply too easy. Its format, almost entirely multiple choice, is less demanding than many of the newfangled state exams, which require students to show their work on math problems and to answer essay questions. The writing segment of the Texas high school exit exam last spring consisted of just 40 multiple-choice grammar questions and a letter-writing assignment. A 1998 report by Harvard researcher Sandra Stotsky, commissioned by the Tax Research Association, concluded that the reading test declined in complexity in each of the previous three years. State officials deny the test has been watered down and say they're unveiling a more challenging exam in 2004.

More worrisome to educators are the many students who fail the current exam. Despite a B average, it took Amber Montgomery 13 tries--and four extra years of tutoring--before she finally passed the math portion of the achievement test and graduated at age 22 from Burleson High School, near Fort Worth. Says Montgomery: "I was determined to get my diploma."

But many struggling students, whose scores threaten to drag down a school's overall rating, find themselves shunted from the exam room. That apparently was the case at TSU/HISD Laboratory School, a tiny, predominantly African-American school near downtown Houston. After 93% of students passed all parts of the exam in 1998, the school won an "exemplary" state rating. But just one year later, only 62% passed. What happened? In 1998, 39% of students SAT out the exam after they were deemed "special ed," a designation generally confined to students with severe learning disabilities. The next year, after a district crackdown, only 24% received the exemption.

According to education professor Haney, more and more Texas minority students have dropped out of high school since the introduction of the state exam, from about 35% in the late 1980s to 40% through most of the 1990s. The Texas Education Agency dismisses Haney's calculations as inflated and says it has measures in place, such as factoring a school's minority-dropout rate into its overall ranking, to check the problem. But the agency concedes that its dropout figures--about 58,000 blacks and Hispanics since 1996--may be under the mark by as many as 20,000 students.

Promising to "leave no child behind," Bush pledges to replicate the Texas model on a national scale. While Gore calls for voluntary tests in fourth and eighth grades, Bush would require states to test children every year from third through eighth grades or lose 5% of their federal aid. If a school turned in failing grades three years in a row, its students would receive federal vouchers for tuition at parochial or other private schools. But each state would control the content of its exams.

Many states are already tinkering with the Texas formula. In addition to offering kids multiple tries to pass high-stakes tests, some states weigh other measures of student achievement alongside the exams. In Vermont students are assessed and promoted on the basis of a portfolio of work that includes a state test, classwork and teacher evaluations.

Even with the 1895 exam, a student who failed could retake the test a year later. But there's one thing he was sure to know, living in Kansas: tare is the weed normally harvested along with wheat.

--With reporting by Ann Blackman/Washington, Chris Coats/Dallas, Desha Philadelphia/New York and Timothy Roche/Austin

"Instead of reading novels, kids are skimming three-paragraph passages for key words and passing tests with these tricks."

--LINDA MCNEIL, RICE UNIVERSITY

Jodie Morse With reporting by Ann Blackman/Washington, Chris Coats/Dallas, Desha Philadelphia/New York and Timoth, *Education/School Testing: Does Texas Make The Grade? All eyes are on Bush's state as it leads the nation in showing the promise--and pitfalls--of testing.*, Time, 09-11-2000, pp 50+.

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The Big Score Relevancy: 99; (Newsweek) By Daniel McGinn With Steve Rhodes in Chicago, Donna Foote in Los Angeles and Anne Gesalman in Houston; 09-06-1999 Size: 13K Reading Level: 9.

The Big Score: High-stakes tests are rapidly becoming a rite of passage in districts around the country. But do they really improve learning?

By Daniel McGinn With Steve Rhodes in Chicago, Donna Foote in Los Angeles and Anne Gesalman in Houston Edition: U.S. Edition

Section: Society

Inside Chicago's top-ranked Whitney Young High School, the posters started appearing last December. LET'S BE #1! GIVE IT 110%! Usually this sort of rah-rah propaganda supports the basketball team, but this campaign by the principal had a different aim: urging kids to score high on the Illinois Goal Assessment Program, a standardized test that students would take in February. Tests are nothing new to the kids at Whitney Young--they already take three other batteries of standardized exams each year. But for a group of high-achieving 11th graders, the pressure was just too much. These kids say real learning is being shoved aside as teachers focus on boosting test scores. Creative writing? Forget it. Instead, they say, teachers emphasize a boilerplate essay format that exam scorers prefer. So on Feb. 2, eight juniors purposely failed the social-studies portion of the test. The next day 10 failed the science test. Then they sent a letter to the principal: "We refuse to feed into this test-taking frenzy."

As rebellions go, it wasn't exactly the Boston Tea Party. But it's a small sign of the growing anxiety among parents, teachers and kids over the proliferation of standardized tests. Fill-in-the-bubble exams have been part of classroom life for decades, but for most of their history they were no big deal. Scores were tucked in students' folders; at most, they were used to segregate kids into higher- and lower-level classes. That's changed dramatically in the last decade as reformers try to improve school quality by holding educators accountable for learning. Every state has a different testing scheme, but many state legislatures are writing new standards for what kids should learn in each grade and mandating tough new "high stakes" tests to gauge progress. Unlike such old-style standardized tests as the Iowas or Metropolitans, many of the new exams are linked to the curriculum and feature essays and short answers, not just multiple choice. The biggest difference: low scores can bring real pain. Kids can be held back, forced into summer school or, under rules in 26 states, denied a diploma. Educators can lose pay or be fired; schools can face state takeover. In polls, the tests win wide public support, and more states are jumping on the bandwagon.

Yet there is no easy answer to the most basic question: do these tests help kids learn? As the testing movement has grown, opposing experts have churned out a mountain of conflicting research. Fans of the tests say they're as necessary to schooling as a scale is to dieting. Ideally, they're diagnostic tools, letting teachers know Jack doesn't understand two-digit multiplication and Jill needs help with subject-verb agreement. Yes, it's sad that a single exam might keep a child from graduating, but most European countries already use exit

exams, and some U.S. students are kept from graduating for lesser offenses, like flunking gym or cutting too many classes. And as schools ask for money to hire teachers and cut class size, taxpayers have every right to expect a measurable payback. Supporters of the new exams point to encouraging results in Texas, one of the first states to implement this type of reform plan.

Despite those arguments, a growing number of critics say this testing inevitably leads to dumbed-down teaching. "Every hour that teachers feel compelled to try to raise test scores is an hour not spent helping kids become critical, creative, curious thinkers," says Alfie Kohn, author of "The Schools Our Children Deserve." It's those skills, after all, that put the United States ahead of world competitors in areas like entrepreneurship. Last fall the National Research Council warned Congress that schools should refrain from basing important decisions like who gets promoted or graduates solely on test scores, and called for more exploration of the unintended consequences of high-stakes exams. Teachers in the inner cities, where many children are being held back for failing the tests, worry that these exams are overwhelming their already overcrowded and understaffed classrooms. Suburban homeowners have more bottom-line concerns; they fear that dismal test scores will lower home values. For now, those worries will persist. Testing opponents have scored small victories in places like Wisconsin, but momentum is on the side of reformers. As kids return to classrooms this fall, the new exams will be part of the curriculum.

At Madison High School in Houston, the tests have already brought an innovation that makes teenagers cringe: Saturday classes. In 1990 Texas replaced its old tests with a tough new one (its acronym: TAAS); students who failed wouldn't graduate. Early results were abysmal. Madison principal Warner Ervin remembers when dozens of seniors failed. Students were crushed, parents were irate, teachers embarrassed. "It was difficult for everyone," Ervin says. So in 1997, Ervin began requiring every failing kid to attend tutoring sessions, some held on Saturday. The year before the tutoring began, 57 seniors failed; last spring the whole class passed. Results are also improving statewide. Last spring 78 percent of Texas students passed the test, up from 53 percent in 1994. Education is certain to be a key issue in the presidential race, so expect Gov. George W. Bush to tout this track record.

Other states can boast of their own success stories. Take 9-year-old Steven Ip of Brooklyn, one of 17,591 third graders who failed the high-stakes test given to New York City kids for the first time last winter. Steven, whose parents emigrated from China, has solid math skills, but because of his limited English ability, he scored in the 11th percentile on the reading test. So like a record 37,000 New York City kids, he faced mandatory summer school; if he failed his retest in August, he'd be forced to repeat third grade. During five sweaty weeks in a classroom at P.S. 241, teacher Maria Teresa Maisano worked with Steven and seven other students. They read books in class and for homework, learning how to ask questions and find key ideas. When test day arrived, Steven felt prepared. Like roughly 60 percent of the summer students, he passed the exam and can start fourth grade. The city's school chancellor, Rudolph Crew, has been blasted for retaining kids and mandating summer school, but he's standing firm. "This is high anxiety—it's not for the meek of heart," he says. "But I think it's the right thing to do."

Other educators aren't so enthusiastic. At Santa Monica Boulevard Elementary in Los Angeles, the lilting sounds of Spanish fill the playground. But in teacher David Levinson's fifth grade, as in all other California schools, classes must be taught in English. For 31 of his 32 students, English is a second language. "The scores for most of these kids are low and it's not too hard to figure out why," says Levinson. "These tests are extremely unfair." But

they're the law, and as a consequence they're beginning to drive the curriculum. "We spend a lot more time teaching to the test and a lot less on the kind of hands-on, learn-by-doing teaching we did in the past," says the school's longtime principal, Albert Arnold. "My teachers are very frustrated, and kids pick up on that." They'll be more frustrated next year when, for the first time, students who fail the test are held back.

California's on-again, off-again testing regimen shows just how messy the transition to exam-driven reform can be. Until the late '80s, California's schools were topnotch. Then in the early '90s, a sinking economy, political bickering over education reform and a growing immigrant population set them back. So the state devised a new test, the California Learning Assessment System. But critics attacked essay questions as too subjective to be fairly graded, and reformers who favor a back-to-basics approach lobbied for more focus on the three Rs. By 1994, the CLAS was dead, and students went untested for three years as legislators debated new standards. Most experts urged them to design a customized exam that tests exactly the skills the state's kids should be learning, instead of an off-the-shelf national exam. When standards, curriculum and tests are aligned through the made-to-order tests many states are adopting, "teaching to the test" can become a positive technique, experts say. But California's leaders couldn't wait for a custom exam, so they opted to use a generic test in the interim. Experts say that's been a weak link in their reform plan. "The system in California is imperfect," says Stanford professor Kenji Hakuta. "What's needed are tests that more closely line up to instruction." This disparity is a recurring theme: experts favor a gradual, methodical transition, but political realities often force quick, crude steps to try to show improvement before the next election.

As testing spreads, experts aren't the only ones parsing the quality of exams. When Wisconsin Gov. Tommy Thompson proposed a statewide graduation exam in 1997, he had wide public support. Then parents saw sample questions. "It scared the heck out of them," says state Sen. Bob Jauch. "They weren't sure they could pass it themselves." A strange coalition of opponents emerged, consisting of parents concerned that the tests were too tough, educators who resented the state's giving orders to locally run schools and legislators who'd rather spend the \$10 million testing budget on a tax cut. By June, Wisconsin's new test was dead.

Tales like that one give hope to the Chicago kids at Whitney Young who bucked the test last winter. Over the summer they rounded up like-minded students from other schools and named themselves the Organized Students of Chicago. They've already passed out leaflets denouncing the city's testmania; now they're planning teach-ins. The focus on the exams "just seems so totally excessive," says Will Tanzman, 17. Eli Presser, an 18-year-old who graduated last spring but is still active in the group, says the rising number of tests makes students feel "like they're under constant jeopardy--like every single test was going to influence their life." Principal Joyce Kenner ordered the students to perform 10 hours of community service for refusing to take last year's exam. So far, they haven't served it, and may rally more students to boycott the exams this winter.

School officials are sympathetic to charges that they're giving too many tests. "Nobody wants to be test crazy... We don't want you to be drones," says Chicago school board president Gerry Chico. But like administrators around the country, he says schools need to face the reality that the status quo, in which thousands of kids languished in classes with virtually no instruction, couldn't continue. Parents like Jay Rehak, who's also a Whitney Young teacher, worry their kids are suffering for the sake of the system. When his daughter faced her first high-stakes exam two years ago, "she came home panicked every night," he

says. But University of Chicago researcher Melissa Roderick, who's followed 100 students at five schools through Chicago's pass-the-test-or-stay-back program, says the get-tough approach is needed, the same way financiers impose harsh, short-term measures to stabilize troubled economies. "The tests are getting us moving," Roderick says. "Over time we'll look to other things."

Perhaps. Or maybe this new breed of exam will become a defining part of school days well into the next century. Most states are only beginning to get their curriculum in sync with the new tests, so experts say it will be years before we see whether they deliver improvements dramatic enough to justify the investment. "We're in the middle of the maelstrom- -it's very difficult to see which way it's going to go," says Judith Mathers, a policy analyst at the Education Commission of the States. Until then, pencils in hand, we all plunge ahead.

With Steve Rhodes in Chicago, Donna Foote in Los Angeles and Anne Gesalman in Houston

ILLUSTRATIONS/PHOTOS: The Pressure Is On: In Brooklyn, Steven Ip studied hard for the test that determined whether he would repeat the third grade. Extra Attention: In Los Angeles, Levinson thinks the tests are unfair to his fifth graders, who are still learning English

Tough love: Houston principal Warner Ervin watched dozens of seniors fail a difficult new test, but tutoring made the difference

KEYWORDS: testing, Whitney Young High School, SAT, statewide tests, education, high school, teaching, learning, standardized tests

By Daniel McGinn With Steve Rhodes in Chicago, Donna Foote in Los Angeles and Anne Gesalman in Houston, *The Big Score*, Newsweek, 09-06-1999, pp 46.

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HEADLINE: STANDARDS THAT COUNT

BODY:

EDUCATION

SETTING standards for education reform is easy. Making them count takes work. A recent study by the Council of Chief State School Officers found that Missouri and Illinois need to get to work in both areas. Both states lag behind the nation in graduation requirements. The most glaring gaps: Illinois and Missouri require only three years of English and two years of social studies for graduates and Illinois requires only one year of science.

We need stiffer requirements. Whether students plan on college or not, their high school diplomas should guarantee them the basics they need to function as citizens in a highly demanding and technical society. Both states need to work more closely with higher education officials and construct mandatory high school curriculums that make sense.

But sensible course requirements alone do not guarantee success. The St. Louis Public Schools, along with Wellston, require more classes from their graduates than any other district in the St. Louis area. Yet last year, only 3 percent of city 10th-graders scored proficient on state math tests.

Clearly, tough classes matter more than lofty requirements. But how do we measure the quality of high school classes?

For states like Texas, the answer is exit testing. Students must prove their readiness to graduate from high school by passing a standardized test. If they fail, they do not graduate. **Exit exams** mean heartache for some students, whose failure cheats them out of a graduation ceremony with their classmates, **delays** their post-high school plans until they pass or discourages them from taking the test again. But Texas test scores are on the rise, and a diploma now means more than just a certificate of high school attendance.

Missouri and Illinois have adopted exit exams, but the stakes are lower, and neither state puts graduation on the line. Maybe we should. We could start with exit testing in the lower grades -- an antidote to social promotion -- and use tests that measure critical thinking skills as well as information absorption. For high school students, a research project component could help measure ability and reward hard work.

Standards alone cannot fix our public schools. We need more involved parents, dedicated teachers, sensible administrators and manageable classrooms. We need to remember that test scores cannot tell us the contents of a child's mind or the expanse of a student's potential. But we also need to admit that, like it or not, we live in a world that values performance more than potential. We need to prepare children early for that world, using standards that prod them on

to success.

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LENGTH: 14169 words

SYMPOSIUM: EDUCATION AND THE CONSTITUTION: SHAPING EACH OTHER AND THE
NEXT CENTURY: Sorting and Reforming: High-Stakes Testing in the Public Schools

Rachel F. Moran *

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SUMMARY:

... " Defying the common wisdom that programs today must appeal to "niche" markets, "Millionaire" attracts people of all ages and from all walks of life. ... So far, the OCR has investigated complaints about high school exit examination requirements in several states, including Ohio, Nevada, North Carolina, and Texas. ... In 1978, the legislature amended the Act to require that students pass a functional literacy examination as a condition of receiving a high school diploma. ... The most significant is *GI Forum v. Texas Education Agency*, a class action that relied directly on the legacy of *Debra P. Individual students and several advocacy organizations sued Texas officials, alleging that the use of the Texas Academic Assessment System (TAAS) as a graduation requirement discriminated against black and Hispanic students and violated due process. ... In fact, Texas school districts have confronted such difficulties in staffing their classrooms that some have begun to recruit high school students to teach. ...*

TEXT:

[*107]

I. Introduction

During the recent television season, the surprise hit was a game show called "Who Wants to be a Millionaire." n1 Defying the common wisdom that programs today must appeal to "niche" markets, "Millionaire" attracts people of all ages and from all walks of life. n2 There has been considerable speculation about the reasons for the show's success, n3 but one thing is certain. At the heart of this entertainment phenomenon is multiple-choice testing. In fact, "Millionaire" is the first quiz show to give contestants multiple-choice questions, prompting one expert on television and film to comment: "The difference between 'Millionaire' and the 50's game shows tells you where education is going in this country. In the 50's game shows, you had to know the exact answer. Today we get multiple choice [*108] on a show whose title isn't even punctuated correctly." n4

The show's format demonstrates that multiple-choice tests have become an accepted part of American life, so commonplace that millions of people tune in to see who will reap the rich rewards of selecting the correct answer. In fact, the format on "Millionaire" has triggered many of the same concerns that generally arise about multiple-choice tests. In the first place, there have been doubts about the accuracy of the scoring. Early on, two contestants were informed that they had given wrong answers, when in fact their responses were

correct. n5 In addition, some viewers have called in to complain that questions have been drafted in misleading and inappropriate ways. n6 Moreover, some have expressed reservations about the validity of the test. That is, the questions do not seem well-calculated to identify who is entitled to one million dollars. The most widespread criticism has been that the questions are too easy. The insurance company that guarantees the prize money insisted that the show pose more difficult problems to avoid an excessive number of winners. n7 Alex Trebek, host of the high-brow game show Jeopardy, joked that contestants on "Millionaire" were asked simple questions like "What's the usual color of PostIts?" n8 Finally, and perhaps most perniciously, the show has been widely criticized because its contestants are overwhelmingly white and male. Indeed, the show's host, Regis Philbin, issued an on-air appeal to women and minority viewers to enter the selection process. n9 Critics have alleged [*109] that a time-pressured format and biased questions have disproportionately advantaged white men. n10

America's fascination with "Millionaire" provides a glimpse into the power of high-stakes testing and its hold on the popular imagination. But while this television show affects the fortunes of only a few contestants each night, other forms of standardized testing have daily consequences for millions of students in America. These tests are being used to determine who will be promoted from one grade to the next, who will receive a high school diploma, and who will gain admission to elite colleges and universities. As with "Millionaire," these practices are widely accepted, roundly applauded, but nevertheless quite controversial. In this article, I will first examine the historical origins of high-stakes testing. Next, I will describe the growing interest in these tests in elementary and secondary schools as well as the tensions that have resulted. Then, I will explore the most significant challenges to the use of high-stakes testing as a requirement for graduation or promotion to another grade. This article will close by contemplating the likely future of the movement for testing and accountability.

II. The Roots of High-Stakes Testing

The use of standards in American education is far from a contemporary innovation. During the late nineteenth century, schools took on newfound importance as America confronted the combined forces of urbanization, industrialization, and immigration. Attendance became compulsory as educators assumed the task of preparing students to become productive workers and good citizens. The "common" school was designed to take students from all walks of life, assimilate them to a shared set of values, and inculcate in them a necessary set of skills. n11 Concerned about accountability and standardization, particularly in urban schools, business and professional leaders pressed for centralized administrative control of school districts. The hope was that schools could adopt the same model of governance as corporations used and apply a "scientific" [*110] approach to teaching. n12

In response to the growing importance of education, national reformers took an interest in developing curricular guidelines that would help schools perform their critical public function. In 1892, the National Education Association created the Committee of Ten to draft recommendations for strengthening the curriculum in America's high schools. This group was the first "blue ribbon panel" to address such an issue. n13 The Committee's work was influential in developing not only secondary school course offerings, but also standards for college admissions. The resulting recommendations focused on giving modern academic subjects the same weight as classical ones and on ensuring that all students received the same preparation for "the duties of life" through a liberal education, regardless of whether they were college-bound. n14

The Committee of Ten's report prompted the formation of yet another committee, this time to review college admissions criteria. n15 As a result of efforts to standardize high school graduation and college entry requirements, the College Entrance Examination Board was established. The Board developed a unified examination system for admission to college. The topics chosen for the test shaped high school offerings at schools with students headed for higher

education; the scope and difficulty of the tests established something akin to voluntary national standards in each subject. n16 The College Entrance Examination Board's work laid a foundation for the development of standardized testing in higher education. After World War II, these tests became a commonplace feature of college admissions. The impetus for multiple-choice entrance examinations came from elite institutions. Top educators wanted to shake up the traditional system of merely admitting the children of alumni without much concern for their scholastic aptitude. To compete with European universities, college presidents at institutions like Harvard and Yale believed that they needed a meritocratic system of admissions. Because a wide pool of graduating high school seniors would have to be evaluated to identify the most academically talented, the system had to be relatively inexpensive to administer. Thus was born the Scholastic Aptitude Test, now a fixture of the college application process. n17 [*111]

The success of standardized testing in colleges and universities paved the way for their use in elementary and secondary education. At first, the tests were primarily a way to sort students by ability and to place them in appropriate programs. n18 In the 1970s, however, a movement emerged to implement testing for promotion and graduation. This "minimum competency" movement enjoyed some success, but it also met with strong opposition because of concerns about fairness. The United States had only recently embarked on efforts to desegregate the schools and to undo past inequities in education based on race. As a result, denying a diploma to students who could not pass an exit examination seemed to punish the victims of past discrimination for having attended inferior schools. Moreover, placing students who failed the test in remedial classes could resegregate schools that had only recently been ordered to achieve racial balance in the student body. n19 These objections slowed down the implementation of high-stakes testing, but interest in standards and accountability was rekindled in the early 1980s, leading to the contemporary push for testing requirements.

III. The Recent Rise of High-Stakes Testing

In 1983, the National Commission on Excellence in Education published a report entitled *A Nation at Risk*, which warned that America's children were falling behind their peers in other countries and that an alarming number were functionally illiterate and innumerate. n20 The report went on to urge that Congress undertake national educational reform to reverse "a rising tide of mediocrity that threatens our very future as a Nation and a people." n21 Despite this ominous warning, federal officials could not agree on comprehensive educational reform, nor was Congress willing to appropriate substantial additional monies for the public schools. n22

Instead, policymakers grew increasingly interested in the use of national standards and accountability. n23 For the accountability movement to remain a low-cost reform initiative, it had to rely heavily on standardized tests. Moreover, to address the outcry over social promotions and meaningless [*112] high school diplomas, the tests had to have real consequences for a student's future. The result was high-stakes testing, which the National Research Council defines as a test on which "an individual student's score determines not just who needs help but whether a student is allowed to take a certain program or class, or will be promoted to the next grade, or will graduate from high school." n24 Testing was touted as both a scientifically legitimate and a relatively inexpensive way to "get tough" on the public schools.

High-stakes tests have become standard practice throughout much of American public education, but this school reform strategy has hardly been free of controversy. Because of the popularity of the movement, policymakers have battled over who should set the standards and get the political credit. In his 1997 State of the Union address, President Clinton called for "a national crusade for education standards - not federal government standards, but national standards, representing what all our students must know to succeed in the knowledge economy of the twenty-first century." n25 He followed through with efforts to develop voluntary national tests that would assess fourth-graders'

and eighth-graders' proficiency in reading and mathematics. n26 In 1998, Congress brought the drive for federally imposed accountability to a halt when it barred the Department of Education from using appropriations to develop a national standards test. n27 At present, the only federally sponsored testing is the National Assessment of Educational Progress (NAEP). Developed in the mid-1980s, the NAEP is administered on a purely voluntary basis to make state-by-state comparisons of student achievement. The test is used exclusively to generate research data; it has no stakes attached for students, teachers, local school districts, or state agencies. n28

So far, then, efforts to impose uniform, national standards have been stymied. If Congress were to hold school districts receiving federal monies accountable by administering a mandatory national test, state and local officials fear that their traditional authority over designing and implementing the public school curriculum would be undermined. Even voluntary national tests are controversial because they make state and local [*113] educational tests seem at best parochial and at worst pointless. n29 Congressional intermeddling seems particularly inappropriate in light of the steady decline in the federal government's financial support for public schools throughout the 1980s and much of the 1990s. n30

Because of this impasse in developing a national examination, states have taken the primary responsibility for adopting standards testing. At present, 19 states require students to pass an exit examination to receive a high school diploma, and seven plan to adopt such tests in the next few years. n31 The tests have proven particularly popular in the South. In 1998, 11 of 15 states below the Mason-Dixon line required students to pass a high school exit examination. By contrast, of the remaining 35 states, only six had imposed such requirements. n32 State reliance on highstakes testing continues to grow. Although the Wisconsin legislature's joint finance committee last year voted 13 to 3 to leave an exit testing program unfunded and to delete the law creating the examination, this decision bucked the trend toward expanded use of standards testing. n33

There has been ongoing debate about the propriety of high-stakes testing. One aspect of the controversy is technocratic. Experts accuse politicians of misunderstanding or willfully ignoring the proper applications of standardized tests. In particular, when state and local officials are under pressure to do something about failing schools, they tend to look for a quick fix. Rather than develop new tests, they use existing ones, even though they were constructed for a wholly different set of purposes. n34 In Chicago, for example, the school district decided to administer the Iowa Test of Basic Skills (ITBS) to identify low-performing schools and students. However, the ITBS is a norm-referenced test, one that by definition classifies some children as above average and others as below average based on [*114] their performance relative to each other. Moreover, the ITBS's scoring procedure is based on national, aggregate performance without any special consideration of Chicago's curricular priorities and academic standards. n35 Indeed, the test's own developers have indicated that it should not be used as the sole basis for retaining students at a grade level or for selecting students for special instructional programs. n36 Although the Chicago public school system conducted a pilot test of the Chicago Academic Standards Examination in early 1999, the chief accountability officer expressed fears that dropping the ITBS would cause the district to lose credibility with the media and the public. n37

Another line of confrontation has emerged between teachers and school administrators who must undertake the day-to-day business of educating children on the one hand and politicians who pronounce testing and accountability a panacea for the school system's ills on the other. Teachers worry that standards are being developed without much input from them and that the tests cast a shadow over daily instruction. n38 When districts face negative labels, loss of funds, and constraints on their autonomy if scores are low, teachers are under intense pressure to teach to the test, even at the cost of displacing other important curricular material. The incentive to focus on the test to the exclusion of other academic subjects is particularly strong in low-income,

minority school districts, where at-risk students jeopardize a school's chance of gaining a favorable rating. n39 In addition, standards testing may force teachers to try to fit all students [*115] into the same mold, regardless of differences in their learning styles. As one scholar in the field of education has noted:

Uniform standards may be appropriate for business - a manufacturer wants all its microwave ovens to meet specified standards of quality. That's good. But to what extent do we want all students to be alike? Of course, there are certain basic skills we want all students to master, but should all students be required or expected to attain them at exactly the same age or grade level? n40

Students who cannot fit the mold are in danger of being pushed out of the regular testing system to keep a school's scores up. Students may be placed in special education, held back, encouraged to be absent the day of the examination, or even steered toward transfer to another school or dropping out. n41 When these strategies fail, some desperate districts have resorted to cheating to improve their test performance. n42

Finally, the tests create conflict between disadvantaged communities and state and local proponents of standards testing. Interestingly, some accountability initiatives have been adopted as a corollary of school finance reform. In both Kentucky and Texas, for example, the state supreme [*116] courts held that reliance on local property taxes to fund the public schools resulted in such gross disparities among districts that the finance system was unconstitutional. n43 When the state legislatures developed plans that equalized school funding, they also adopted accountability measures to ensure that the state's enlarged role in allocating funds actually led to improved academic outcomes. n44 In short, school finance reforms coupled with accountability measures were seen as a way to ensure that students in less affluent districts received not just money, but also a meaningful education.

Even so, parents, students, and community leaders in low-income and minority communities have questioned the fairness of standardized tests. n45 High-stakes testing has been concentrated in states and districts with substantial low-income and minority populations. n46 Not only are students of color more likely than whites to have to take an examination, but available evidence suggests that they are disproportionately likely to fail it. n47 Although defenders of accountability testing argue that standards are needed to protect at-risk students from educational neglect, disparities in passage rates have led to charges that the tests do not measure merit but instead mark class privilege. As one critic has charged, [*117] "America's elites now perpetuate themselves with gatekeeping rules of their own making, rules legitimated by scientific objectivity." n48 The tests have been attacked because they require the kind of cultural capital that low-income children of color are unlikely to have. According to critics, questions drafted with white, middle-class students in mind seldom resonate with the lives of non-white or poor children. Perhaps the most striking example of this cultural insensitivity is a mandate that students with limited English proficiency take high-stakes tests only in English, a practice that effectively prevents them from fully demonstrating their academic skills. n49

Alternatively, testing opponents argue that students in historically underfinanced and typically segregated schools have not had an equal opportunity to meet the standards imposed by accountability tests. The tests stigmatize those who are held back in a lower grade or denied a high school diploma, even if the fault lies with a deficient educational system. Far from motivating children, this message of failure could prompt them to quit school or withdraw from their studies. As a result, those students most in need will be lost to the educational system. n50 Moreover, critics contend that labeling schools as low-performing in traditionally disadvantaged communities can backfire as a reform strategy. When these schools are placed into receivership or denied funding because of low test scores, teachers and administrators become discouraged. Instead of continuing to work in schools that serve at-risk students, these

educators seek jobs in affluent districts with students who arrive well-fed, healthy, rested, and ready to learn. Rather than enhance the educational environment for the disadvantaged, the accountability system may make it that much more tempting for teachers and administrators to leave schools already considered undesirable, low-status institutions. n51

Although the federal government has not undertaken to mandate tests itself, concerns about fairness have prompted some legislative and [*118] administrative activity. Late in 1999, the President's Advisory Commission on Educational Excellence for Hispanic Americans endorsed standardsbased reform but criticized high-stakes testing programs that fail to account for the special needs of Hispanic students. The Commission called on the Department of Education's Office for Civil Rights (the OCR) to launch a state-by-state inquiry into testing practices that discriminate against Hispanic students. Of particular concern was the treatment of students with limited English proficiency. n52

Although the OCR has not launched a special inquiry into the treatment of Hispanic students, it did circulate a revised draft of guidelines on high-stakes testing a few months after the Commission's report was released. The proposed guidelines are designed to clarify the practices permissible under Title VI and Title IX of the Civil Rights Act of 1964. The advisory standards specify the principles of measurement that should be observed to minimize dangers of discrimination, and they indicate that the tests should be "educationally justified" if they are to survive legal scrutiny. n53 So far, the OCR has investigated complaints about high school exit examination requirements in several states, including Ohio, Nevada, North Carolina, and Texas. Chicago's testing program also has triggered a complaint. In both Ohio and Texas, federal and state officials agreed that the tests could be used, but that all students must have access to remedial assistance, multiple chances to take the examination, and appropriate classroom instruction to prepare for it. The investigations in Nevada and North Carolina are likely to yield similar results. n54

In addition, Senator Paul Wellstone of Minnesota has sponsored the Fairness and Accuracy in Student Testing Act, which would ban elementary and secondary schools receiving federal financial assistance from using standardized tests as the sole factor in making "any decision [*119] about the retention, graduation, tracking, or within-class ability grouping of an individual student" n55 The legislation further provides that such tests must be reliable and valid, based on a functional performance level rather than on performance relative to that of other students, aligned with the curriculum and classroom instruction, offered on multiple occasions, administered in compliance with guidelines provided by the test developer or publisher, appropriate for the intended purposes, and modified to accommodate disabled and limited-English-proficient students. n56 As a list of supporters shows, the bill responds to reservations about high-stakes testing shared by teachers, educational experts, and advocates on behalf of low-income, minority students. Wellstone's legislation has been endorsed by educational organizations, such as the National PTA, the Council of Great City Schools, the National Education Association, the American Psychological Association, and the National Association of School Psychologists, as well as by racial and ethnic organizations, such as the National Association for the Advancement of Colored People, the Mexican American Legal Defense and Education Fund, and the National Urban League. n57 In offering the legislation, Wellstone revealed that he was motivated in part by his own personal history. He himself has a learning disability that hampers his performance on standardized tests. n58 As a result, Wellstone felt compelled to sponsor the legislation, even though it faces an uphill battle in Congress. n59

IV. Legal Challenges to High-Stakes Testing

Concerned parents, students, and community leaders are not waiting for Congress or the Office for Civil Rights to save them from the perils of high-stakes testing. In several states, parents have protested the use of tests as graduation requirements, and students have boycotted standards testing. n60 In

Massachusetts this year, hundreds of teachers, students, and parents protested the Massachusetts Comprehensive Assessment System (MCAS) by rallying on the capitol steps. At the rally, students and parents carried signs that read "High incomes=High MCAS scores" and "Hey Governor Celluci, kiss my MCAS." n61 Students also delivered [*120] petitions and packets of information to legislators and the governor. Moreover, hundreds of students around the state boycotted the MCAS on the day it was given. n62 Similar boycotts and protests have taken place in Arizona, Florida, Georgia, Illinois, Louisiana, Ohio, and Wisconsin. n63

Some students and advocacy organizations have turned to the courts for protection from high-stakes examinations. The leading case on high school exit examinations is Debra P. v. Turlington. n64 During the push for minimum competency requirements, the Florida legislature passed the Educational Accountability Act of 1976. The Act established three requirements for graduation from Florida public high schools: (1) a minimum number of credits; (2) mastery of basic skills; and (3) satisfactory performance in functional literacy as determined by the State Board of Education. The Act also provided for remediation and mandated creation of a comprehensive testing program to evaluate basic skills. n65 In 1978, the legislature amended the Act to require that students pass a functional literacy examination as a condition of receiving a high school diploma. Those who failed the test but had sufficient credits to graduate would receive a certificate of completion. n66 The distinction between a diploma and certification of completion was significant: only those who received a diploma were eligible for certain state jobs and admission to the state university system. n67 [*121]

When the test was administered, black students were disproportionately barred from receiving a diploma because they could not pass it. On the test's first administration, 78% of black students failed the communications or mathematics section or both; by contrast, only 25% of white students failed one or both sections. The pattern was the same during two subsequent administrations of the examination. As a result, 20% of black students remained ineligible for a diploma compared to only 1.9% of white students. n68 Because of these disparate outcomes, a class action was filed in federal district court against the state and local officials responsible for adopting and implementing the test. Brought on behalf of present and future twelfth-grade students who had failed or would fail the test, the suit alleged that the test was discriminatory and violated due process. n69

The discrimination claims were based on equal protection, Title VI, and the Equal Educational Opportunities Act. The plaintiffs contended that the test contained biased items, perpetuated the vestiges of past discrimination, and resegregated black students in remedial classes. n70 The trial court did not find any evidence of discrimination in the test's construction because Florida officials had used methods of test design that were generally accepted as valid and reliable. n71 To address whether the test perpetuated past discrimination, the court reviewed the history of public elementary and secondary education in Florida. The state's entire school system had been subject to de jure (that is, state-mandated) segregation on the basis of race from 1890 to 1967. Race-based pupil assignments were declared unconstitutional in 1967, and the state's schools were still under a federal desegregation decree. n72 The dual school system had created grave educational inequities, and students taking the exit examination in 1978 had spent at least some time in a system that had yet to undo the effects of past discrimination. Even if the test had been adopted with the best of intentions, it could not add insult to constitutional injury by denying diplomas to students victimized by officially sanctioned racism. Therefore, the use of the test as a graduation requirement had to be postponed until the senior class had been through twelve years of schooling in a desegregated system. n73 The trial court rejected [*122] the claim that disproportionate assignment of blacks to remediation led to impermissible segregation. The judge held that these assignments were a constitutionally acceptable way to address the lingering effects of unequal educational opportunity. n74

In addition, the test violated both procedural and substantive due process. The district court first found that students had protected property and liberty interests in a diploma. The property right arose because the state of Florida compelled students to attend school and, in turn, offered them a diploma with economic value. The liberty interest derived from a student's right to be free of the stigma of being labeled "functionally illiterate" by state officials. As a result, Florida officials could not divest high school pupils of these interests without following the dictates of due process. n75

With respect to procedural due process, state and local agencies had to provide students with adequate notice. The court held that two years' advance warning was insufficient, and that Florida had to allow students more time to prepare for and meet the new requirement. n76 On appeal, the Fifth Circuit basically agreed with the trial court's conclusions, but added an additional requirement. Under substantive due process, the state had to demonstrate that all students had a fair opportunity to learn; that is, the curriculum had to offer them a chance to master the skills necessary to pass the test. n77 On remand, Florida officials introduced surveys of teachers, students, and administrators to establish the curricular validity of the exit examination. In addition, officials visited selected classrooms to observe the material that was covered. n78 The trial court held, and the Fifth Circuit agreed, that this evidence was sufficient to satisfy substantive due process. n79 The federal judiciary was not willing to impose the onerous burden of showing that every student in every classroom actually had the same opportunity to learn. n80

Recently, several new legal challenges have been filed. The most significant is *GI Forum v. Texas Education Agency*, n81 a class action that relied directly on the legacy of *Debra P.* Individual students and several advocacy organizations sued Texas officials, alleging that the use of the Texas Academic Assessment System (TAAS) as a graduation requirement discriminated against black and Hispanic students and violated due process. [*123] Adopted in 1990, the TAAS test certainly produced disparate outcomes for students based on race and ethnicity. In 1991, 67% of black tenth-graders and 59% of Hispanic tenth-graders failed the examination, while only 31% of whites did. n82

Citing the Equal Protection Clause, the plaintiffs claimed that Texas officials had intentionally discriminated against non-white students in adopting and implementing the examination. They based this argument on the fact that the Texas Education Agency adopted cut-off scores of 70%, even when it knew that they would seriously harm black and Hispanic students. Moreover, as circumstantial evidence of animus, the plaintiffs cited procedural irregularities in the rush to adopt the test. n83 The defendants countered that they had adopted and implemented the TAAS as a way to ensure that all students received a meaningful education, regardless of race or ethnicity. Far from acting with discriminatory intent, legislators and state education officials sought to improve the academic performance of low-income, minority students. n84 On a motion for summary judgment, the district court concluded that there was insufficient evidence of discriminatory intent to merit a trial and dismissed the plaintiffs' claim. n85

The plaintiffs argued in the alternative that state officials had violated Title VI because the test had a discriminatory effect, regardless of whether it was adopted with a benign motivation. The defendants responded that there was no private cause of action under Title VI and that wrongful intent was a prerequisite under both Title VI and the Equal Protection Clause. n86 The trial court rejected both of these contentions and allowed the plaintiffs to proceed to trial on the Title VI claim. n87 Citing the gap in test scores between white, black, and Hispanic students, the plaintiffs asserted that the test had an impermissible disparate impact. In making this argument, they asked that the four-fifths rule used in employment discrimination be applied in an educational setting at least when diploma requirements were at issue. That is, if the passage rate for non-whites was less than 80 percent of that for whites, the [*124] plaintiffs would make out a prima facie case of impermissible disparate impact. n88

The defendants responded that the court should look at cumulative, not first-time, pass rates because only when students had failed the test after a number of attempts were they denied a diploma. According to state officials, remediation efforts steadily closed the gap between whites and non-whites as students took the tests on successive occasions. n89 The defendants also questioned the wisdom of importing employment standards into the field of education, but pointed out that non-whites' cumulative pass rates were slightly over 80 percent of those for whites. n90 Ultimately, the trial court agreed that cumulative pass rates were the relevant scores to compare but rejected rigid reliance on a four-fifths rule. Instead, the judge concluded that the disparity was wide enough to qualify as substantial, and the burden shifted to defendants to show that the TAAS test was educationally necessary. n91 The defendants satisfied this burden by demonstrating that the test was scientifically constructed and that the high stakes attached to it created important incentives for students to learn. n92 The plaintiffs were unable to persuade the district court that their proffered alternatives would be equally effective in pushing students to master basic concepts. n93

The plaintiffs also alleged that the TAAS test violated equal protection and the Equal Educational Opportunities Act because it perpetuated the vestiges of past discrimination in a state with a history of unconstitutional segregation, wrongful discrimination against limited-English-proficient students, and a grossly unequal system of school finance. n94 The defendants argued, and the district court agreed, that these historical wrongs had been sufficiently cured and that the test did not unfairly penalize students who had been victimized by prior governmental misconduct. n95 Relying on the Equal Educational Opportunities Act, the plaintiffs [*125] also contended that the TAAS test had the effect of excluding limited-English-proficient students from the instructional program. The trial court did not permit this claim to go to trial, presumably because it accepted the state's argument that a diploma is not a form of instruction. n96

Following Debra P., the plaintiffs asserted that students had both protected liberty and property interests in a diploma. Although the defendants argued that there was no constitutionally safeguarded interest whatsoever, the trial judge accepted the plaintiffs' position that due process protections were triggered by the TAAS requirement. n97 With respect to procedural due process, both plaintiffs and defendants conceded that notice of the TAAS test generally had been adequate. However, plaintiffs asserted that limited-English-proficient students had not received sufficient warning, in part because they sometimes entered high school at an advanced age and did not have enough time to prepare to take the test in English. The court rejected this claim, presumably accepting the defendants' view that general notice, not the plight of individual students who voluntarily entered the district late in their high school careers, was the relevant concern. n98

With respect to substantive due process, the plaintiffs contended that curricular validity had to be judged based on the regular curriculum. The defendants insisted, and the district court agreed, that remedial programs should be considered in assessing whether students had an opportunity to learn that prepared them for the test. n99 The defendants distinguished Texas's situation from that in Florida because the state had adopted the Texas Essential Knowledge and Skills to guide curricular development in the public schools. The TAAS test was designed to [*126] evaluate mastery of these skills, and consultations with teachers during the construction of the test confirmed that the examination measured skills taught in the classroom. n100 Although the Texas Education Agency had not conducted surveys and site visits like those in Debra P., the trial court found that it had discharged the obligation of establishing general curricular validity. n101

There are several notable points about the GI Forum decision that could be important in future litigation. First, with respect to equality issues, the district court focused exclusively on the testing process itself and largely refused to explore how the test affects a student's overall educational experience. In addressing claims of bias, the judge relied heavily on the

scientific methods used to construct the TAAS test. Although disproportionate failure rates for blacks and Hispanics were nonetheless cause for concern, the court accepted the defendants' argument that a high-stakes test was uniquely beneficial in motivating students and therefore was educationally necessary. The judge did not require elaborate statistical proof that the threat of being denied a diploma effectively prodded at-risk students to learn. The court deferred to the defendants' account of the test's impact, even though the plaintiffs had argued that the test demoralized black and Hispanic students and increased the likelihood that they would drop out of school. n102 The trial court refused to accept the plaintiffs' evidence that high rates of failure on the TAAS test correlated with increased drop-out rates. The court wanted proof of a causal relationship, not a mere correlation. In the court's view, students might drop out for a number of reasons that had nothing to do with the TAAS test. n103

Here, the allocation of the burden of proof was critical. Even when the plaintiffs had made out a prima facie case of disproportionate [*127] impact, the court insisted that they demonstrate that the TAAS test was not a good motivator. However, because the defendants bore the burden of establishing that the test was educationally necessary, the court logically should have required proof of a causal relationship between its administration and improved student performance. The defendants did offer evidence that, on successive administrations, the scores for black and Hispanic students improved. n104 However, this evidence did not plainly establish a causal relationship between the test and student motivation. Most importantly, students who dropped out of school would not be among the those who took the test multiple times. As a result, the multiple test-takers might constitute a pool of self-selected students who were already highly determined to succeed despite repeated obstacles. In addition, even if the test had no effect on student motivation, pass rates might improve because of the practice effect of taking the test over and over. In short, the defendants' evidence that the test was an educationally necessary incentive was probably no more convincing than the plaintiffs' evidence that it was detrimental.

The court also accepted the defendants' definition of what was at stake as a result of TAAS testing. According to the trial judge, the only relevant inequity related to the denial of a diploma, not the impact on the students' general educational experience. For instance, the plaintiffs contended that the disparity in first-time pass rates was the relevant criterion for determining whether the test had a discriminatory impact. Assuming that the primary concern was that students were stigmatized by this failure, were assigned to remediation, and perhaps even dropped out of school, then first-time pass rates were the proper focus of a Title VI inquiry. Failure could have a negative effect on a student's education, regardless of whether the district ever formally denied a student a diploma. The court, however, emphasized the gap in cumulative pass rates because, only after multiple failed attempts, did the state of Texas penalize students by withholding a degree. As a result, the sole question was how substantially the gap in pass rates had narrowed, even if the cost was that blacks and Hispanics failed the test many more times than did whites, lost many more hours of regular instruction than did whites, and perhaps decided to drop out of school more often than did whites. This narrow focus enabled the court to defer to "the State's right to pursue educational policies that it legitimately believes are in the best interests of Texas students," even if "the policies are debated and debatable among learned people." n105

The court's unwillingness to look at the test in context is further evidenced by its treatment of substantive due process issues. In Debra P., [*128] the state of Florida could not simply assert that because the exit examination measured basic skills, it necessarily drew on material taught in public school classrooms. Nor could officials point to the steps they had taken to ensure that the test was reliable and valid. Instead, the state had to offer survey evidence and site visits to convince the court that children had a fair opportunity to prepare for the test. The trial court in GI Forum refused to impose the same evidentiary burden on the state of Texas. Instead, it relied on the state's adoption of a formal curriculum, the Texas Essential Knowledge and

Skills, and its consultation with select classroom teachers in developing the test. Moreover, the judge allowed state officials to demonstrate that remediation prepared students to pass the TAAS test eventually, although a fair opportunity to learn arguably requires that all students receive appropriate instruction in the regular curriculum.

The proof of curricular validity offered by the state of Texas does not compare favorably with the evaluation of classroom teaching offered in Debra P. A formally mandated curriculum cannot ensure a common classroom experience for all children. There must be some evidence that the paper requirements are in fact being implemented. Teachers who are consulted when a test is designed are hardly likely to be a random sample. Instead, they are probably among the unusually successful and engaged instructors chosen for high-profile assignments. Even if these teachers were not self-selected, their number is so small that representativeness would still remain a serious problem. Again, by deferring to the state's view that curricular validity could be assured without much direct evidence of the classroom experience, the court in GI Forum adopted a deferential stance, assuming that officials acted in good faith and "would agree with the proposition that unequal education is a matter of great concern and must be eradicated." n106

Faced with defeat on both equal protection and due process grounds, the plaintiffs chose not to appeal the district court's ruling in GI Forum, presumably because counsel feared that a conservative Fifth Circuit Court of Appeals might overturn the helpful precedent in Debra P. n107 Other cases also have met with limited success in the courts. In Erik [*129] V. v. Causby, n108 the plaintiffs challenged a North Carolina county's Student Accountability Policy, which provided that students who failed to obtain a designated score on a state standardized test would be held back, regardless of their academic performance during the school year. Students who failed the test had to undergo remediation in the summer and retake the test. If they failed, they could take the test one more time. If they had not passed after three attempts, they were denied promotion to the next grade. The testing requirement was waived for special education and limited-English-proficient students. n109

The plaintiffs alleged that minority students' pass rates were about half of those for whites. Based on these disparate outcomes, the lawsuit asserted that the accountability program violated federal equal protection, Title VI, and due process, as well as North Carolina's own constitutional and statutory protections. The trial court denied the plaintiffs' request for a preliminary injunction. Although the judge did not reach the merits of the case, he signaled that "federal courts have no business substituting their judgment for that of the local school board when it comes to qualitative achievement standards for promotion." n110 The parties eventually settled the case out of court, and the district instituted a policy that makes students who fail the test but have better than a C average eligible for a waiver. In addition, school officials created a parental notification program and a system for developing individualized remediation plans. As a result, the number of students held back dropped substantially. n111

In Louisiana, parents opposed to the state's educational assessment program filed suit to obtain copies of the test questions. The court held that although the public records act did not explicitly exempt the questions from disclosure, releasing them would be "nonsensical" because the test's validity would be compromised. n112 In addition, the plaintiffs sought to enjoin Louisiana officials from using test results in making promotion decisions, but the district court threw out the case as premature since no results had yet been released. In doing so, the judge indicated that she had serious doubts that students had a protected property interest in promotion to the next grade. n113 After the litigation, the state [*130] board of education recommended that local officials retain students in fourth grade no more than one time, regardless of their test scores. n114 Despite these setbacks, litigation over high-stakes testing continues. Recently, in Indiana, students with disabilities filed suit, alleging that the state's exit examination fails to accommodate their unique needs. n115

V. The Future of High-Stakes Testing

The GI Forum decision and other recent cases demonstrate that, in a conservative era, federal courts are increasingly unwilling to probe the workings of state educational systems. The judiciary's reformist impulse has largely been spent after decades of struggle over desegregation. In the late 1960s and 1970s, federal judges embarked on a lengthy campaign to desegregate public schools. The result was protracted, and sometimes intractable, litigation that produced at best a tenuous racial balance, when the goal of integration was not wholly thwarted by white flight. n116 Beginning in the 1980s and continuing into the 1990s, district courts began to terminate these cases and withdraw from oversight of desegregation decrees. n117

With these weighty and pervasive obligations at an end, federal judges are undoubtedly reluctant to take up the task of scrutinizing ongoing racial inequities through the lens of high-stakes testing. Instead, as in GI Forum, courts would prefer to define the issues narrowly so that the entire system of public elementary and secondary education is not on trial. By focusing on the scientific methods used to construct a highstakes test, courts can require the state to be race-neutral in devising and administering questions without insisting that other inequities in the educational system be remedied. If curricular validity can be shown by formally mandated standards and consultation with select teachers, then courts can affirm that students have an equal opportunity to learn, even when classroom experiences in fact differ dramatically. In any event, testing cases are unlikely to lead to systemic reform, even if they succeed. Instead, the test will be thrown out, and inequalities in educational opportunity will persist.

Court-generated reform is more likely to come about in state than in federal court, and this reform is more likely to prompt - rather [*131] than derive from - high-stakes testing. For instance, in both Kentucky and Texas, the high courts held that the system of financing public schools was inequitable enough to violate the state constitution. n118 As a result, the Kentucky and Texas legislatures undertook comprehensive reform initiatives, in which accountability and high-stakes testing were one component. Far from driving systemic change, testing programs were used to measure the success of independent efforts to improve the public schools. These tests were incidental, not essential, to reform. For example, in Texas, if the TAAS test had been successfully challenged in federal court, the state would nevertheless have remained committed to school finance equalization as mandated by its own supreme court.

In states such as Kentucky and Texas, the schools historically have been funded at such low levels that even with court-mandated school finance reform, classrooms continue to confront the dilemma of limited resources. For example, Kentucky ranked forty-third in per-pupil spending and thirty-seventh in average teacher's salary when the state high court held the school system unconstitutional. Only 68.2% of ninthgraders finished high school, and in poor Appalachian districts, 48.4% of the population was functionally illiterate. n119 Texas, too, has long ranked in the bottom tier of states with respect to per-capita student spending on schools and other services for children. n120 Its school finance system also produced gross disparities in the resources available to children in low-wealth and high-wealth districts. For some districts, the ratio of available resources was as large as 700 to 1. n121 In addition, there was a significant correlation between district wealth and the racial make-up of the student body. n122 Although disparities in available resources have been moderated, Texas remains a state that invests relatively little in its schools. The state still ranks well below the national average in per-capita student spending, and its teachers receive comparatively low wages and few benefits. n123 In fact, Texas school districts have confronted such difficulties in staffing their classrooms that some have begun to recruit high school students to teach. n124 [*132]

Where testing programs have been adopted legislatively without the impetus of court-mandated reform, they have sometimes been justified as independent levers for systemic reform. Unfortunately, there is little evidence that test

results alone can motivate students and schools to perform better. Most states that have adopted high-stakes testing requirements did not appropriate substantial amounts of money to enhance classroom instruction. Indeed, some legislatures did not even want to pay to devise new tests; instead, officials tried to rely on existing tests, even when they were inappropriate for use in decisions about graduation, grade promotion, or tracking. Overall, then, the tests have been another bureaucratic requirement for schools to satisfy, but they have not led to an infusion of funds to handle the extra demands. n125

High-stakes testing is popular because it offers a way to identify and blame individuals without acknowledging a collective unwillingness to invest in public schools, particularly those in low-income, often minority areas. The tests have taken on the dimensions of a morality tale. n126 Failure is located in low-performing schools and failing pupils, not in systems of public education that suffer from serious inequities in the allocation of resources. The wealthiest students, who are enrolled in private schools, are spared the need to take high-stakes tests to demonstrate their bona fides. Middle-class and upper middle-class students in suburban communities expect to pass the test, and indeed, some of them view it as an annoyance that diverts them from more important work, such as preparing for advanced placement tests or college entrance examinations. n127 [*133]

In low-income schools that serve large numbers of at-risk students, however, the tests occupy a major place in the educational process. Schools risk being labeled low-performing and losing their autonomy; teachers risk being accused of neglect and losing their credibility; and students risk being identified as inadequate and losing their respectability. To prove both institutional and individual worth, principals must emphasize the importance of the test, teachers must revise their lesson plans to ensure that children are prepared, and children must be given incentives such as parties and prizes to keep up with lengthy and sometimes tedious drills and practice examinations. So much effort is diverted to the test that it becomes not a minimum standard, but the primary standard. The school's goal is to ensure that each child meets the minimum rather than to ensure that each child's potential is maximized. As a consequence, children in low-income communities of color who can readily pass become captives of test-driven instruction directed at their at-risk peers. n128

The current push for standards testing has enjoyed a long period of popularity, certainly longer than that of the minimum competency movement of the 1970s. For one thing, the rhetoric of holding students, teachers, and schools accountable sounds more upright and less derogatory than labeling them incompetent. For another, the country continues to enjoy an unprecedented run of economic prosperity. In a global economy, the United States has acquitted itself quite well, although the gap between the rich and the poor grows ever larger and the status of the middle-class seems increasingly fragile and tentative. n129 To fuel America's economic engine, it has been necessary to sort individuals into appropriate niches. The sorting at the top has seemingly been perfected through college and graduate admissions processes, which have relied on standardized testing to a significant degree in the post-World War II era. n130 Now that a high school diploma is seen as a bare minimum for most entry-level jobs, sorting individuals at the bottom of the job queue also has become imperative. n131 If a diploma is not a reliable marker of [*134] basic skills, employers will squander time and resources on training the untrainable. The accountability movement offers a way to distinguish not just between high school dropouts and high school graduates, but also between those who attended class and those who mastered the material.

The standards movement so far has not been derailed by the forces that hampered the minimum competency movement. In the 1970s, the country was still grappling with the legacy of officially mandated racial segregation. Racial unrest was very real, and a movement that seemed to reinstate racial hierarchy, even through a scientifically constructed test, was suspect. n132 Today, however, there is a growing clamor for formal colorblindness. According to this view, individuals should be judged on their own merits, regardless of race. A

properly designed and administered test is seen as a perfectly appropriate way to hold individuals accountable, whether or not it results in racial disparities. n133 In addition, many of the social reform movements of the 1970s were overshadowed by the Vietnam War, Watergate, and economic troubles. So far, persistent problems of this magnitude have not come along to displace the popular fascination with standards and accountability. Peace and prosperity have given Americans the luxury of tinkering with reform, although record budget surpluses at the federal and state levels have not led legislatures to open the purse strings for public education. n134 Perhaps, when the United States faces a fiscal downturn or international unrest, the interest in refining educational standards will subside. [*135] Unfortunately, the opportunity for meaningful change through public investment in the school system will have passed as well. Tests used for sorting will become a distraction from, and even a substitute for, genuine reform.

VI. Conclusion

High-stakes testing has become a pervasive part of the American educational scene. Indeed, prime-time television has joined the craze with the hit show of the season, "Who Wants to Be a Millionaire." Just as that show demonstrates our fascination with the power of multiple choice tests, it also reveals our cynicism and ambivalence. The questions require contestants to recall trivia, spouting facts that have little or nothing to do with their ability to be valuable and productive persons. At times, the audience secretly wonders why knowing inconsequential information should make such a huge difference in a person's financial fortunes. After all, the outcomes seem to turn on a combination of blind luck and random bits of knowledge, not on the contestant's inherent worth as a person, worker, or citizen. Even so, the show starkly reveals the consequences of failure. Someone who once had the potential to win a million dollars can go home with a pittance. A person who held the interest of millions of viewers, whose struggle was high drama, disappears during a commercial and is promptly forgotten.

The drama of high-stakes testing in the public schools takes place every year for millions of children across the nation. Despite some legal challenges and lobbying efforts, the accountability movement remains a powerful part of the American political scene. However well-developed the science behind assessment and measurement may be, high-stakes tests cannot work miracles in failing systems. The examinations are a yardstick and, yes, even a stick, but they are not a magic wand. And, unlike a television game show, America cannot conveniently arrange for those who fail the tests to disappear, nor can its responsibilities to these children be promptly forgotten.

FOOTNOTES:

n1 Bill Carter, 'Millionaire' Cashes In, N.Y. Times, May 21, 2000, <section> 4, at 5 (describing how the show's unprecedented success has enabled ABC to demand the highest advertising prices in history); Bill Carter, 'Millionaire' Adds a Night, N.Y. Times, May 17, 2000, at E10 (noting that the show is so popular that ABC has expanded it to four nights a week on prime time television).

n2 Bill Carter, A Million Reasons the TV Quiz Show Has Struck It Rich, N.Y. Times, Nov. 14, 1999, <section> 1, at 1; Frank Rich, Who Doesn't Want to Be a Millionaire, N.Y. Times, Nov. 20, 1999, at A13.

n3 See, e.g., Carter, supra note 2 (noting the long hiatus since game shows were popular in the 1950s); Rich, supra note 2 (greed and materialism coupled with economic insecurity due to a growing divide in wealth); Julia Chaplin, Quiz Shows Make Every Contestant a Video Gladiator, N.Y. Times, Jan. 16, 2000, <section> 9, at 1 (showing high-tech effects and computer anxiety); Joseph Siano, The Extraordinary Thrill of Watching Ordinary Winners, N.Y. Times, Feb. 6, 2000, <section> 13, at 4 (connecting to ordinary contestants in a depersonalized world); Paul Brownfield, He's America's Dealer of Choice; With Regis Philbin Holding the Cards, "Who Wants to Be a Millionaire" Feeds Off the

Same High-Stakes Tension That Lights Up Las Vegas, L.A. Times, Calendar, at 3 (love of gambling for large stakes).

n4 Carter, *supra* note 2 (citing Robert Thompson, a professor at Syracuse University).

n5 Sarah Shannon, U.S. Imports Millionaire Quiz, Plus the Mistakes, *Evening Standard*, Aug. 24, 1999, at 17; Bill Carter, Hit Quiz Show Misses as Correct Contestant Loses, *N.Y. Times*, Aug. 20, 1999, at B1.

n6 Amy Pagnozzi, Betting On a Million, *Hartford Courant*, May 19, 2000 at A3 (describing how one viewer complained that a question that attributed the term computer "bug" to a 1947 incident involving a moth that flew inside a computer ignored far earlier uses of the term "bug," for example, by Thomas Edison in 1889).

n7 Brownfield, *supra* note 3 (describing a lawsuit that Goshawk Syndicate, brokers at Lloyd's of London, filed in February 2000 based on allegations that the questions had been "dumbed down," making the game too easy).

n8 Bill Hoffmann, Trebek: Millionaire Wins No Prizes, *N.Y. Post*, Mar. 20, 2000, at 83; Michael Precker, Brain Games: The Eggheads Compare Quiz-Show Questions, *Dallas Morning News*, April 22, 2000, at 1C. Another game show host, Ben Stein, did a parody of "Millionaire" in which a contestant was asked to choose his first name from four possibilities. Allison Fass, Who Wants to Parody "Millionaire"? There Is No Final Answer, *N.Y. Times*, Apr. 6, 2000, at C10.

n9 Robert Schaeffer, Who Wants to Be a Contestant?, *N.Y. Times*, Feb. 19, 2000, at A15 (noting Philbin's on-air plea after barely 10% of those who competed on the show were women and none were African-American).

n10 *Id.*; Bill Carter, Quiz Show Draws More Women Contestants, *N.Y. Times*, Feb. 28, 2000, at C13 (describing efforts to include more "female material" and "black culture"); Amy Alexander, Who Wants to Be a Millionaire? We All Do!, *Boston Globe*, May 14, 2000, at E1 (asserting that the show's questions are biased because they are written by white men); see also Alex Kuczynski, Quiz Screening Seems to Reflect Gender Skew, *N.Y. Times*, Apr. 24, 2000, at C16 (claiming that the show had resorted to skewing the questions used in the selection process to enable more women to qualify).

n11 David B. Tyack, *The One Best System: A History of American Urban Education* 28-59 (1974).

n12 *Id.* at 126-76; Elliot W. Eisner, Standards for American Schools: Help or Hindrance?, 76 *Phi Delta Kappan* 758, 759-60 (1995).

n13 Diane Ravitch, *National Standards in American Education: A Citizen's Guide* 36-37 (1995).

n14 *Id.* at 37-39.

n15 *Id.* at 39.

n16 *Id.* at 40-41.

n17 For an engaging account of the development of the standardized testing movement in college admissions, see Nicholas Lemann, *The Big Test: The Secret History of the American Meritocracy* 1-52 (1999).

n18 Ravitch, *supra* note 13, at 46-47.

n19 *Id.* at 47-50.

n20 National Comm'n on Excellence in Educ., United States Dep't of Educ., *A Nation at Risk: The Imperative for Educational Reform* 8-9 (1983).

n21 *Id.* at 5.

n22 Hagit Elul, Making the Grade, Public Education Reform: The Use of Standardized Testing to Retain Students and Deny Diplomas, 30 *Colum. Hum. Rts. L. Rev.* 495, 497-500 (1999); Michael W. Kirst & Allan Odden, National

Initiatives and State Education Policy, 4 Stan. L. & Pol'y Rev. 99, 99 (1992-93).

n23 Elul, *supra* note 22, at 499; Kirst & Odden, *supra* note 22, at 99-100.

n24 Commission on Behav. & Soc. Sci. & Educ., Nat'l Res. Council, High Stakes: Testing for Tracking, Promotion, and Graduation 14 (Jay P. Heubert & Robert M. Hauser eds. 1999).

n25 President Clinton's Message to Congress on the State of the Union N.Y. Times, Feb. 5, 1997, at A20; see also *Commission on Behav. & Soc. Sci. & Educ.*, *supra* note 24, at 13.

n26 *Commission on Behav. & Soc. Sci. & Educ.*, *supra* note 24, at 14.

n27 Department of Education Appropriations Act of 1998, Pub. L. No. 105-277, <section> 447, 112 Stat. 2681 (1998).

n28 Ravitch, *supra* note 13, at 70-71.

n29 *Commission on Behav. & Soc. Sci. & Educ.*, *supra* note 24, at 15; Elul, *supra* note 22, at 500; Kirst & Odden, *supra* note 22, at 104; Arthur L. Coleman, Excellence and Equity in Education: High Standards for High-Stakes Tests, 6 Va. J. Soc. Pol'y & L. 81, 89 (1998).

n30 Lois Salisbury, et al., One Simple Standard: Every Child Can Learn, 4 Stan. L. & Pol'y Rev. 87, 92-94 (1992-93); David Cohen, What Standards for National Standards?, 76 Phi Delta Kappan 751, 753 (1995). For a general account of the tensions among federal, state, and local governments over standards testing, see Ravitch, *supra* note 13, at 150-53, 158-60.

n31 John Gehring, 'High Stakes' Exams Seen as Test for Voc. Ed., 19 Educ. Week on the Web 1 (February 2, 2000) <<http://www.edweek.org/ew/ewstory.cfm>>.

n32 Linda Jacobson, State Graduation Tests Raise Questions, Stakes, 17 Educ. Week on the Web 22 (June 24, 1998) <<http://www.edweek.org/ew/1998/41gradof17.cfm>>.

n33 Julie Blair, Wisconsin Committee Votes to Kill State Graduation Test, 18 Educ. Week on the Web 22 (June 23, 1999) Jacobson, *supra* note 32.

n34 See Coleman, *supra* note 29, at 90.

n35 *Commission on Behav. & Soc. Sci. & Educ.*, *supra* note 24, at 30-31.

n36 *Id.* at 261. But see Robert A. Davis, Public School Test Policy Hit; Too Much Rides on Scores, Critics Say, Chicago Sun-Times, Jan. 28, 1999, at 12 (noting that the publisher of the ITBS defended Chicago's decision to use it as a factor in grade promotions).

n37 *Commission on Behav. & Soc. Sci. & Educ.*, *supra* note 24, at 31; Rosalind Rossi, 'Too Many Tests,' Students Complain, Chicago Sun-Times, Jan. 12, 2000, at 20; Michael Martinez, Exam Protest Taken to School Board Office, Chicago Tribune, Jan. 12, 2000, at 2.

n38 See Anne C. Lewis, An Overview of the Standards Movement, 76 Phi Delta Kappan 744, 749-50 (1995). A notable exception is an experimental program in California that was designed to allow local school districts to play a central role in developing their own standards. The program operates on the premise that "meaningful change must begin with introspection by the educators charged with daily responsibility for the school's organizational culture and extend outward to all those affected by change - including students, teachers, parents, administrators, and the community." Salisbury, et al., *supra* note 30, at 91.

n39 Linda McNeil & Angela Valenzuela, The Harmful Impact of the TAAS System of Testing in Texas: Beneath the Accountability Rhetoric 9-28 (n.d.) (unpublished manuscript on file with author); William P. Moore, The Devaluation of Standardized Testing: One District's Response to a Mandated Assessment, 7 Applied Measurement in Education 343, 352-59 (1994); M. Gail Jones, et al., The Impact of High-Stakes Testing on Teachers and Students in North Carolina, 81 Phi

Delta Kappan 199, 200-02 (1999); Ann Cook, et al., Unmasking the Low Standards of HighStakes Tests, 19 Educ. Week on the Web (Mar. 8, 2000) <<http://www.edweek.org/ew/ewstory.cfm>>; Robert C. Johnston, In Texas, the Arrival of Spring Means the Focus Is on Testing, Educ. Week on the Web (Apr. 29, 1998). But see Ulrich Boser, Teaching to the Test? Educ. Week, June 7, 2000, at 1 (reporting on a forthcoming University of Wisconsin study that finds that "there may be little overlap between what state assessments test and what teachers teach.").

n40 Charles M. Reigeluth, Educational Standards: To Standardize or to Customize Learning?, 78 Phi Delta Kappan 202, 204 (1997).

n41 Linda Darling-Hammond, Creating Standards of Practice and Delivery for LearnerCentered Schools, 4 Stan. L. & Pol'y Rev. 37, 39-40 (1992-93); Debra Viadero, Testing System in Texas Yet to Get Final Grade, Educ. Week, May 31, 2000, at 1; Gary Orfield & Johanna Wald, The High-Stakes Testing Mania Hurts Poor and Minority Students the Most: Testing, Testing, The Nation, June 5, 2000, at 38; Lorrie A. Shepard, Will National Tests Improve Student Learning?, 73 Phi Delta Kappan 232, 234 (1991).

n42 David J. Hoff, As Stakes Rise, Definition of Cheating Blurs, Educ. Week, June 21, 2000, at 1.

n43 *Rose v. Council for Better Educ.*, 790 S.W.2d 186 (Ky. 1989); *Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W.2d 391 (Tex. 1989) (Edgewood I); *Edgewood Indep. Sch. Dist. v. Kirby*, 804 S.W.2d 491 (Tex. 1991) (Edgewood II); *CarrolltonFarmers Branch Indep. Sch. Dist. v. Edgewood Indep. Sch. Dist.*, 826 S.W.2d 489 (Tex. 1992) (Edgewood III); *Edgewood Indep. Sch. Dist. v. Meno*, 917 S.W.2d 717 (Tex. 1995) (Edgewood IV). For a description of the lengthy battle over school finance reform in Texas, see J. Steven Farr & Mark Trachtenberg, *The Edgewood Drama: An Epic Quest for Education Equity*, 17 Yale L. & Pol'y Rev. 607 (1999).

n44 Ellen Williams, Annual Survey of Texas Law-Education, 49 SMU L. Rev. 901, 902-03 (1996); Brian Gong & Edward F. Reidy, Assessment and Accountability in Kentucky's School Reform, in I Performance-Based Student Assessment: Challenges and Possibilities 215, 216-18 (Joan Boykoff Baron & Dennie Palmer Wolf eds., 1996); C. Scott Trimble & Andrew C. Forsaith, Achieving Equity and Excellence in Kentucky Education, 28 U. Mich. J.L. Reform 599, 599-600 (1995); Charles J. Russo, School-Based Decisionmaking in Kentucky: Dawn of a New Era or Nothing New Under the Sun?, 83 Ky. L.J. 123, 123-25 (1994-95).

n45 Richard Whitmire, 'Pushback' Movement, Which Resists Education Reforms, Gaining Ground, Gannett News Service, Dec. 6, 1999; Marjorie Coeyman, Urban Parents Protest "Unrealistic" Standards, Christian Science Monitor, Oct. 19, 1999, at 17.

n46 Sean F. Reardon, Eighth-Grade Minority Competency Testing and Early High School Dropout Patterns 4-5 (Apr. 1996) (paper presented at the annual meeting of the American Educational Research Association).

n47 Coleman, *supra* note 29, at 91.

n48 Peter Sacks, Standardized Testing: Meritocracy's Crooked Yardstick, 29 Change 24, 31 (Mar./Apr. 1997).

n49 See Angela Valenzuela, Subtractive Schooling: U.S.-Mexican Youth and the Politics of Caring 172-73 (Christine E. Sleeter ed., 1999).

n50 See *supra* note 41.

n51 See Richard J. Stiggins, Assessment, Student Confidence, and School Success, 81 Phi Delta Kappan 191, 192-93 (1999); Linda Darling-Hammond, The Implications of Testing Policy for Quality and Equality, 73 Phi Delta Kappan 220, 223 (1991); Jones, et al., *supra* note 39, at 202; Martin L. Maehr & Jane M. Maehr, "Schools Aren't As Good As They Used to Be"; They Never Were, 25 Educ. Researcher 21, 22-23 (1996); Milbrey W. McLaughlin, Test-Based Accountability As a Reform Strategy, 73 Phi Delta Kappan 248, 250 (1991); Kenneth A. Sirotnik &

Kathy Kimball, Standards for Standards-Based Accountability Systems, 81 Phi Delta Kappan 202, 211 (1999).

n52 President's Advisory Commission on Educational Excellence for Hispanic Americans, A Report to the Nation: Policies and Issues on Testing Hispanic Students in the United States (1999)
<<http://www.ed.gov/offices/oiaa/hispanic/PAC/September99.html>>; Mary Ann Zehr, Hispanic Students "Left Out" By High-Stakes Tests, Panel Concludes, 19 Educ. Week on the Web 5 (Sept. 22, 1999) The Office for Civil Rights responded cautiously to the request for an investigation. See Richard T. Cooper, Inquiry Into English-Only Tests Ordered, L.A. Times, Sept. 16, 1999, at A3.

n53 Julie Blair, OCR Issues Revised Guidance on High-Stakes Testing, 19 Educ. Week on the Web 25 (Jan. 12, 2000)

n54 Ben Wildavsky, Achievement Testing Gets Its Day in Court, U.S. News and World Report, Sept. 27, 1999, at 30, 32; Gail Russell Chaddock, Adverse Impact, Christian Science Monitor, Nov. 30, 1999, at 14; Rosalind Rossi, Complaints Hit School Promotion Rule, Chicago Sun-Times, Oct. 22, 1999, at 34.

n55 S. 2348, 106th Cong. <section> 1(b) (2000); see also H.R. 4333, 106th Cong. <section> 1(b) (2000).

n56 S. 2348, at <section> 1 (b); H.R. 4333, at <section> 1(b).

n57 Rob Hotakainen, Calling Graduation Tests Harsh, Wellstone Offers Alternative Plan, Minneapolis-St. Paul Star Tribune, Apr. 4, 2000, at 1A.

n58 Paul D. Wellstone, Even a Senator Could Fail This School Test, USA Today, Jan. 13, 2000, at 18A.

n59 Hotakainen, supra note 57.

n60 Whitmire, supra note 45; Coeyman, supra note 45.

n61 Anand Vaishnav & Doreen Iudica Vigue, Hundreds of Parents, Teachers, Students Rally Against MCAS, Boston Globe, May 16, 2000, at B3; Erica Thesing, Teens Tell Governor He Is Failing Them; MCAS Foes Deliver 800 Letters of Protest, Boston Globe, June 6, 2000, at B2.

n62 John Gehring, Students Boycott Tests in Mass. To Protest Emphasis on Exams, 19 Education Week on the Web 8 (Apr. 19, 2000)
<<http://www.edweek.org/ew/ewstory.cfm>>; Doreen Iudica Vigue & Tara Yaekel, Hundreds of Students Boycott MCAS Test Sanctions Are Issued in Scattered Protests, Boston Globe, Apr. 13, 2000, at A1.

n63 Kelly Pearce, Court Unmasks AIMS; State Ordered to Disclose Questions, Ariz. Republic, Apr. 22, 2000, at A1; Robbie Sherwood & Kelly Pearce, Students Organize Protests Demanding Better Schools, Ariz. Republic, Apr. 6, 2000, at A1; Sophia Lezin Jones, Gwinnett Parents Protest Gateway; All-or-Nothing Test Draws Fire From Those Who Say It Should Not Be Only Criterion for Promotion, Atlanta Journal and Constitution, Oct. 23, 1999, at 3B; Jacques Steinberg, Blue Books Closed, Students Protest State Tests, N.Y. Times, Apr. 13, 2000, at A28.

n64 *Debra P. v. Turlington*, 474 F. Supp. 244 (M.D. Fla. 1979), vacated and remanded, 644 F.2d 397 (5th Cir. 1981), on remand, 564 F. Supp. 177 (M.D. Fla. 1983), aff'd, 730 F.2d 1405 (5th Cir. 1984).

n65 *Debra P.*, 474 F. Supp. at 247-48.

n66 *Id.* at 248.

n67 *Id.* at 249.

n68 *Id.* at 248-49.

n69 *Id.* at 246-47. There were three classes of plaintiffs: one composed of all students who had failed or would fail the test, and two composed of black students in this situation. One class of black students was statewide, and one was limited to Hillsborough County, Florida. *Debra P.*, 474 F. Supp. at 246.

n70 *Id.* at 246-47, 250-51, 267-68.

n71 *Id.* at 254, 260-62.

n72 *Id.* at 250-52.

n73 *Id.* at 255-57.

n74 *Id.* at 268.

n75 *Debra P.*, 474 F. Supp. at 266.

n76 *Id.* at 267.

n77 *Debra P. v. Turlington*, 644 F.2d 397, 404-07.

n78 *Debra P. v. Turlington*, 564 F. Supp. at 177, 179-82.

n79 *Id.* at 185-86, *aff'd*, 730 F.2d at 1411.

n80 *Id.* at 183-84, *aff'd*, 730 F.2d at 1409.

n81 *GI Forum v. Texas Educ. Agency*, 87 F. Supp. 2d 667 (W.D. Tex. 2000).

n82 *Id.* at 671, 673.

n83 Plaintiffs' Response and Brief in Opposition to Defendants' Motion for Summary Judgment, at 7, 17-18, 25-26, *GI Forum v. Texas Educ. Agency*, 87 F. Supp. 2d 667 (W.D. Tex. June 22, 1999) (No. SA-97-CA-1278 EP).

n84 Defendants' Motion for Summary Judgment and Brief in Support, at 10-14, *GI Forum v. Texas Education Agency*, 87 F. Supp. 2d 667 (W.D. Tex. June 4, 1999) (No. SA-97-CA-1278 EP).

n85 *GI Forum*, 87 F. Supp. 2d at 670.

n86 Defendants' Motion for Summary Judgment and Brief in Support, *supra* note 84, at 20-28.

n87 *GI Forum*, 87 F. Supp. 2d at 669.

n88 Plaintiffs' Response and Brief in Opposition to Defendants' Motion for Summary Judgment, *supra* note 83, at 12-14.

n89 Defendants' Motion for Summary Judgment and Brief in Support, *supra* note 84, at 24-25; Reply Brief in Further Support of Defendants' Motion for Summary Judgment, at 5, *GI Forum v. Texas Educ. Agency*, 87 F. Supp. 2d 667 (W.D. Tex. July 2, 1999) (No. SA-97-CA-1278 EP).

n90 Defendants' Motion for Summary Judgment and Brief in Support, *supra* note 84, at 22-25.

n91 87 F. Supp. 2d at 677-79.

n92 *Id.* at 679-81.

N93 *Id.* at 681-82.

n94 Plaintiffs' Response and Brief in Opposition to Defendants' Motion for Summary Judgment, *supra* note 83, at 39-42.

n95 *GI Forum*, 87 F. Supp. 2d at 670; Defendants' Motion for Summary Judgment and Brief in Support, *supra* note 84, at 28-29; Reply Brief in Further Support of Defendants' Motion for Summary Judgment, *supra* note 89, at 12.

n96 Defendants' Motion for Summary Judgment and Brief in Support, *supra* note 84, at 29 n.6.

n97 *GI Forum*, 87 F. Supp. 2d at 682; Plaintiffs' Response and Brief in Opposition to Defendants' Motion for Summary Judgment, *supra* note 83, at 35-37; Defendants' Motion for Summary Judgment and Brief in Support, *supra* note 84, at 1417; Reply Brief in Further Support of Defendants' Motion for Summary Judgment, *supra* note 89, at 9-11.

n98 *GI Forum*, 87 F. Supp. 2d at 682; Defendants' Motion for Summary Judgment and Brief in Support, *supra* note 84, at 17-18; Plaintiffs' Response and Brief in Opposition to Defendants' Motion for Summary Judgment, *supra* note 83, at 3738.

n99 *GI Forum*, 87 F. Supp. 2d at 682; Plaintiffs' Response and Brief in Opposition to Defendants' Motion for Summary Judgment, *supra* note 83, at 38-39; Defendants' Motion for Summary Judgment and Brief in Support, *supra* note 84, at 1820.

n100 Dr. S.E. Phillips, *The Texas Assessment of Academic Skills Exit Level Test*, Defendant's Exhibit D316, at 10-11, *GI Forum v. Texas Educ. Agency*, 87 F. Supp. 2d 667 (W.D. Tex. Jan. 1999) (No. SA-97-CA-1278 EP); Professor Philip Uri Treisman, *Preliminary Expert Witness Report*, at 14-15, *GI Forum v. Texas Educ. Agency*, Defendant's Exhibit D33, 87 F. Supp. 2d 667 (W.D. Tex. Feb. 25, 1999) (No. SA-97-CA-1278 EP).

n101 *GI Forum*, 87 F. Supp. 2d at 682-83.

n102 See Dr. Walter M. Haney, *Preliminary Report on Texas Assessment of Academic Skills Exit Test (TAAS X)*, Plaintiff's Exhibit P 36, *GI Forum v. Texas Educ. Agency*, 87 F. Supp. 2d 667 (W.D. Tex. Dec. 11, 1998) (No. SA-97-CA-1236 EP); Dr. Walter M. Haney, *Supplementary Report on Texas Assessment of Academic Skills Exit Test (TAAS-X)*, Plaintiff's Exhibit, *GI Forum v. Texas Educ. Agency*, 87 F. Supp. 2d 667 (W.D. Tex. July 30, 1999; editorial revisions Aug. 5, 1999) (No. SA-97-CA-1278 EP).

n103 *GI Forum*, 87 F. Supp. 2d at 681.

n104 Phillips, *supra* note 100, at 13-15; Treisman, *supra* note 100, at 21-33.

n105 *GI Forum*, 87 F. Supp. 2d at 671.

n106 *GI Forum*, 87 F. Supp. 2d at 683.

n107 Cecilia Balli, *MALDEF Won't Appeal Ruling; Group will Eye Texas' New Test*, *San Antonio Express-News*, Feb. 8, 2000, at 1B. In the wake of the state's successful defense of TAAS testing, the Board of Regents has proposed standardized testing for college students at the University of Texas. Chris Vaughn, *UT Regents Consider Standardized Tests; Faculty Reaction "Anger and Disbelief"*, *Fort Worth StarTelegram*, Sept. 20, 2000, at 5; Linda K. Wertheimer, *UT Schools Weigh Systemwide Testing; Faculty Question TAAS-Like Accountability Plan*, *Dallas Morning News*, Sept. 19, 2000, at 1A.

n108 *Eric V. v. Causby*, 977 F. Supp. 384 (E.D.N.C. 1997).

n109 *Id.* at 386-87; see also Elul, *supra* note 22, at 501-02.

n110 *Eric V.*, 977 F. Supp. at 388.

n111 Elul, *supra* note 22, at 503.

n112 Anand Vaishnav, *Parents Cannot Get Copies of LEAP Test; State District Judge Calls Request "Nonsensical"*, *New Orleans Times-Picayune*, Feb. 10, 2000, at A5.

n113 *Parents for Educ. Justice v. Picard*, No. 00-633, 2000 U.S. Dist. LEXIS 6382 (E.D. La. Apr. 20, 2000); Randy McClain, *Suit Attacks LEAP Use in Promotions*, *Baton Rouge Advocate*, Mar. 2, 2000, at 11A; *Sensible Decision on LEAP*, *New Orleans Times-Picayune*, Apr. 26, 2000, at B6.

n114 Will Sentell, *BESE Changes Rule on Holding Back 4th-Graders*, *Baton Rouge Advocate*, May 1, 2000, at 1A.

n115 See *Rene v. Reed*, 726 N.E. 2d 808 (Ind. App. 2000) (class certification); Lynn Olson, *Indiana Case Focuses on Special Ed.: Suit Challenges High-Stakes Tests*, *Educ. Week*, May 31, 2000, at 1.

n116 Rachel F. Moran, *Milo's Miracle*, 29 Conn. L. Rev. 1079, 1084-87 (1997).

n117 *Id.* at 1087-90.

n118 See *supra* notes 43-44 and accompanying text.

n119 Trimble & Forsaith, *supra* note 44, at 601.

n120 Robert Reinhold, *Smile When You Say "School Reform,"* *Pardner*, N.Y. Times, Jan. 4, 1987, <section> 12, at 60; J. Michael Kennedy, *Doomsday Budget Shows Texas the Cost of Not Raising Taxes*, L.A. Times, May 22, 1991, at A5; Jennifer Bradley, *Tex-Mix*, *New Republic*, Mar. 25, 1996, at 27.

n121 Farr & Trachtenberg, *supra* note 43, at 615.

n122 *Id.* at 642-43.

n123 Tyce Palmaffy, *The Gold Star State*, 3/1/98 *Pol'y Rev.* 30, 30 (1998).

n124 Bob Banta, *Courses Prepare Students to Fill Teacher Gap*, *Austin AmericanStatesman*, May 25, 2000, at 1.

n125 Sirotnik & Kimball, *supra* note 51, at 214; George F. Madaus, *The Effects of Important Tests on Students*, 73 *Phi Delta Kappan* 226, 230 (1991); Eisner, *supra* note 12, at 764; Reigeluth, *supra* note 40, at 206; Linda Darling-Hammond & Beverly Falk, *Using Standards and Assessments to Support Student Learning*, 79 *Phi Delta Kappan* 190, 196-97 (1997); Rhona S. Weinstein, *High Standards in a Tracked System of Schooling: For Which Students and with What Educational Supports?*, 25 *Educ. Researcher* 16, 16-17 (1996).

n126 Orfield & Wald, *supra* note 41 (describing the popular perception that highstakes tests are "a necessary form of tough love for struggling schools").

n127 See, e.g., Melanie Markley, *Regardless of Where They Live, Parents Ask the Same Question: How Good Are the Schools?*, *Houston Chronicle*, Oct. 13, 1996, at 2 (focusing on minimum standards diverts Texas public schools from "taking bright, privileged students to a higher level of learning"); Reinhold, *supra* note 120 (TAAS tests do little to benefit affluent schools and simply add "a layer of restrictions on creativity"); Richard Lee Colvin, *Crusader Argues School Reforms Hinder Learning*, L.A. Times, Feb. 22, 2000, at A1 (a suburban parent complained that test preparation displaced her daughter's writing workshop).

n128 McLaughlin, *supra* note 51, at 248.

n129 Daniel H. Weinberg, *Census Bureau, Current Population Reports, Household Economic Studies 60-191, A Brief Look at Postwar U.S. Income Inequality 3-4* (1996) (economic stratification has grown steadily beginning in 1968 and continuing through the 1990s); Teresa A. Sullivan, et al., *The Fragile Middle Class: Americans in Debt* (2000) (documenting that the middle class is now more vulnerable than ever to going bankrupt as a result of divorce, job loss, injury, and illness).

n130 See Lemann, *supra* note 17, at 343-45.

n131 See Gerald W. Bracey, *The Forgotten 42%*, 80 *Phi Delta Kappan* 711 (1999) (noting that in 1996, half of high school dropouts lived below the poverty line compared to 24% of high school graduates, 16% of those with some college, and 2.5% of college graduates); Gerald W. Bracey, *The Eighth Bracey Report on the Condition of Public Education*, 80 *Phi Delta Kappan* 112 (1998) (noting economic stratification in a robust economy and a widespread and overstated belief that schools are tightly linked to the economy).

n132 See John A. Powell & Marguerite L. Spencer, *Remaking the Urban University for the Urban Student: Talking About Race*, 30 *Conn. L. Rev.* 1247, 1248 (1998) (describing how the use of standards testing abated to some degree in the postBrown era but reemerged in the late 1970s); Note, *Teaching Inequality: The Problem of Public School Tracking*, 102 *Harv. L. Rev.* 1318, 1318 (1989) (noting the short period in the late 1960s and 1970s when courts struck down tracking based on standardized test scores as racially discriminatory); David Kirp, *Intelligent Policy*, 2 *Psych. Pub. Pol'y & L.* 603, 610 (1996) (describing campus protests in 1969 when Professor Arthur Jensen published an article on racial differences in intelligence).

n133 See Powell & Spencer, *supra* note 132, at 1286-90 (describing increased reliance on standardized testing in college and university admissions in the push for formally colorblind decision-making).

n134 See Rachel F. Moran, Bilingual Education, Immigration, and the Culture of Disinvestment, 2 J. Gender, Race & Just. 163, 205-06 (1999).

BILL ANALYSIS -- HB 94
1st Hearing February 14, 2001

Sponsor: House Rules by Request of the Governor
Bill Title: Pupil Competency Test; Annual Education Report

Synopsis:

- Section 1:** Amends uncodified law of the State of Alaska by adding a new section on the purpose of the state's Quality Schools Initiative and Explains the purpose of changing the effective date of the Competency Test
- Section 2:** Requires the Department to provide an annual report to the Legislature on the progress of each school toward high academic performance for all pupils. Didn't SB 36 address this?
- Section 3:** Notwithstanding the current Competency Test statute, the State School Board shall determine the requirements to receive a diploma for a pupil with a disability who is receiving educational services through an I.E.P.
- Section 4:** Changes the effective date of the Competency Test to January 1, 2006.
- Section 5:** Allows the State Board of Education to recommend a further delay of the effective date later than 2006 if, based on the report provided for under Section 2, it would be reasonable, fair, and in the best interest of pupils.
- Section 6:** Until January 1, 2006, and at the direction of the State Board of Education, school districts will be required to give the Competency Test at least twice per year and reflect students' test results on their transcripts.
- Section 7:** Defines "school district".
- Section 8:** Immediate effective date.

Fiscal Note: \$0 "This bill delays the effective date of the high school competency examination graduation requirement until 2006. There is no additional cost related to this delay." — *what about test prep costs?*

Question: What is the estimated cost of producing the annual report *X* called for in Section 2?

Question: What is the anticipated cost associated with Section 1 (a) (2) of the bill -- "allowing the Department of Education and Early Development to continue to develop and perfect the testing method"? *X*

Available to Testify:

Bruce Johnson, Deputy Commission of DEED
Greg Maloney Special Education Director, DEED
Phil Reeves Lawyer for DEED

Jerry DeMientiff Lower Kuskokwim School Board (offnet)

May be on the Offnet:

Rich De Lorenzo Superintendant of Chugach School District
Students Chugach School District

Teleconference Sites: Mat-Su, Sitka, Tok, Petersburg, Nome, Valdez, Fairbanks

The National Education Association (NEA) offered Representative Bunde the opportunity to poll their members regarding the High School Competency Test. The following question was asked of those who subscribe to NEA's listserve:

In the Legislature, some legislative leaders have called for a delay in the High School Competency Test, fearing that there will be students who are denied a high school diploma because they do not pass one or more sections of the test. Other legislative leaders oppose a delay of the Competency Test, fearing that some districts will abandon efforts to improve. Which option do you support?

NEA received 76 responses between February 5 and February 13, 2001. Those responses are attached.

>Which option do you support?

I support delaying the High School Competency Test

>

>

>Please briefly describe you position.

I feel that the test is a good tool, but there needs to be more time to prepare students for a pass or fail system. There needs to be a state wide teaching standard from elementary thru high school (that is followed). I feel that the way it is set up now, many students that are struggling (I am the step parent of one) will just quit school.
More time, more money, more teachers, more help

Neither!

I think they should begin at the lower levels and work their way up.

You can put me down for a do it now, don't delay

Another question, how about all the military kids that have passed a state exam in another state--when they come here, they must take AK's test. Doesn't seem right for those. One Florida kid said the math here was much more difficult, English & writing easier. This is the problem: in FL they can pass with a 65%. Just food for thought

I support delaying the compulsory HSQE because students may be denied a diploma. Schools that are working to ammend curricula and provide remedial instruction, have not had enough time to help these students. I do not believe that schools will discontinue efforts to improve if testing is delayed. Also, with the benchmarks exams in place, those students in lower grades will have the prerequisite skills when they enter high school therefore alleviating much of the remediation difficulty we are currently experiencing. Thank you for the opportunity to respond to this situation.

I believe that there should be no delay in the competency test unless the legislature is willing to put \$\$\$ into intervention programs for students who are not meeting the benchmarks / exit exam. I know we would be holding our students hostage for funding, but when 1/3 of the seniors in the state aren't receiving diplomas, the legislature will be forced to do something proactive.

Vernon Marshall, My name is [REDACTED], I work at [REDACTED] High School in the counseling office and see the results of the testing on the students transcripts that I place the stickers. I also have a 15 year old granddaughter here at [REDACTED] HS in the 9th grade. She is behind in math and english. Just because of her, I hope that help will be available to students like her who do not fall in the top of the class. Junior High schools need to work harder to prepare these students for high school. I don't know how to go about this and throwing more money at education may not be the answer. If a student continues to get F's in core subjects in Jr. H.S. should not the problem be handled there. Change the format of team teaching, work with students that have core problems such as reading. Meet the challenge these young people present us with. I feel strongly that the need for K-8 should be better challenged, changes made and if needed money. Let's do something to make these students understand that coming into a high school you have to have command of certain skills to meet the need of this facility. Thanks for listening. [REDACTED]
Records, [REDACTED] High School, [REDACTED] AK

⑥ I would like to see the HSGQE continued, but without the diploma being at stake. Students who pass the tests would receive a special seal to place on their diplomas

⑦ I support delaying the dramatic consequences of the HSGQE - however, I believe that the test should continue to be given, and results noted on student transcripts. Schools and districts need to provide programs to support students who are not currently meeting the test standard. Legislators cannot delay the test and also not give additional monies to support activities to improve student achievement.

⑧ Which option do you support? Do not delay.

⑨
> Which option do you support? I support the move to delay the HSCT.
>
> Please briefly describe your position. I am a fifth grade teacher.
>

⑩ In the matter of whether or not to delay the competency test I am somewhat ambivalent. Is it fair to suddenly spring this on these students who have been taking the low road? No. However, it is needed and students, and parents, need to wake up to the fact that many students are not ready to move on to college or any gainful employment. They must start taking steps now. They have heard this before but chosen to ignore it. Therefore, we are forced to make them pay attention. To delay is to indicate once again that there will always be a way around any obstacle, and that we are a society of mediocrity. We pay mediocre wages, to attract mediocre people into an honorable profession, so they can churn out mediocre students.

So we either reinvent the wheel and apply this test to those students entering kindergarten when it was first mandated, or we stick with what we have. These students do have 2 years beyond high school to actually pass any given part, or so I am told.

If the public wants outstanding students, they must have outstanding teachers, or teachers willing to sacrifice themselves and families even further than they already are. This in my mind requires just compensation, and proactive planning at the regional level. Face it, you will not find an NFL football player, even a 3rd stringer, moving to the XFL for \$50,000 / year.

⑪
> Which option do you support? Delay the test until schools are ready for
> students to take it!!
>
> Please briefly describe your position. The test was started before schools
> had time to prepare students for it. It's not fair to penalize those
> students. Also, something needs to be done about accommodations for
> learning disabled students!!

12 Which option do you support? The test should be phased in. 2002 could be reading, 2004 the second section and 2006 all including the math. We should support a high school qualifying exam, we just need time to align the curriculum and above all adequate financial resources. While the state has cut education funding 30% (through inflation) they are now asking districts to have all students pass a qualifying exam. As the front page article in today's Anchorage Daily News states, Alaska is falling way behind in funding education.

Please briefly describe your position. Regardless of what the state decides on the exit exam, teachers will bear the criticism for students not passing. It is a staggering thought that the state can cut funding (through not inflation proofing) and then have teachers and districts shoulder the burden for new standards. Many of my colleagues are already documenting every assignment with the corresponding state standard to show that they covered the material in case they are later sued by parents (Recently I have had eight of my colleagues leave the state for jobs with better working conditions and better pay). The threat of lawsuits can hardly be conducive to good teaching.

The disparity between schools is nowhere addressed. I have taught at small schools where I believe there is a chance that no graduates might pass the test as it is now. At my present school I believe that perhaps 75% would pass and in two years 85% success. Sure there are outstanding teachers at my present school but the caliber was just as high at the smaller one where I taught. There are many other factors and low test scores at small remote schools cannot be blamed on teachers, which it will be.

Therefore I favor a phase in of standards starting in 2002 with reading. Further the funding formula should be increased 30% to cover 10 years of funding cuts. Only then will Alaska be on the verge of once again being competitive.

>

>Please briefly describe your position.

13 This test has definitely gotten everyone's attention. I don't think district's will abandon efforts to improve. If anything, districts are desperately scrambling to align their curriculums and direction with the state performance standards. I also believe that the time period from inception to implementation of this exam was very short. There are still many "bugs" that need to be worked out in the test itself as well as the process. In the meantime, it would be unjust to deny students a diploma during the "debugging" process. Further, the term "competency test" does not accurately reflect the content of this exam, particularly in the math section. I understand that committees are currently reviewing such content, and making recommendation to the state board of education. If there are questions of such magnitude, then implementation of this exam and its requirement for graduation should most definitely be delayed until appropriate adjustments can be made by the test makers and the districts.

>

14 I support delaying the test until the curriculums are closer aligned to the test. This is not the same as teaching to the test, it is teaching the material that the tests covers.

15 I support a temporary stay before the full implementation of the HSQE. I think that schools should continue to give the exam. However the high schools need to have remedial support services on paper in a year so that DEED can advise the legislature what the supplementary summer budget for remedial support will be and that program in place by 2002. With the exam in place for students graduating in 2004. I believe that if there is ever going to be progress with standards we need to create the need for expanded remedial services and there has to be a commitment to fund the options. Some kids need more time to learn. Other kids do not. Some kids and there families need more motivation. Others are already doing fine. It is not one size fits all any more than they all wear the same size shoe. And more time is going to cost more money. And that money needs to go to where the rubber meets the road. There needs to be SIGNIFICANT teacher input into remedial programs so that the state doesn't waste its money and the kids don't waste their time. If you are not paying for real teachers and a real program that corrolates to the needs to the student, don't bother.

I am a high school librarian, which means I have a broader perspective in some ways than a classroom teacher as I see all the students, and not just a select few.

I would hate to have the HSGQE delayed for the following reasons:

1. With the advent of the exam, students and families have begun to take responsibility for their own education. A much-needed change.
- 16 2. Our school has made some needed curriculum changes, not so much in teaching to the test as in modifying the sequence of math classes (again a good move as far as I can tell--especially since our math staff was not happy with a recent change in district graduation requirements and the addition of a bonehead math class).
3. Because of the test, our school has instituted a silent reading period and after school math and writing labs. A boon to the good students, a necessity to the lower/ average students.
4. We currently have around 30 students that probably will not get a certified diploma next year--most of them special education students--mainly because of the holes in their math education. Changing the date of requiring passing this test would allow these students to graduate, but once again it would be back to the old process of graduating unqualified students, the sooner we implement this requirement, the sooner the public can begin to have faith in our diplomas. Even with postponing the deadline, there will probably still be many special education students who will not get the certified diploma--because on innate ability--not because of lack of educational opportunity.

If a delay must be implemented, a two-year delay would suffice for those students capable of passing all levels of the exams.

Thanks for listening.

17 I favor the delay for a year or so. It is important that all students have some basic skills. If not they should not get the certificate of completion and not a diploma.

18 Which option do you support? I have concerns about the whole thing, but since I have to choose one or the other, it would be the delay. Maybe then enough time will have passed for people to understand that the US Educational system is not set up for this. I feel that if we want to set higher standards, it needs to start long before a child enters school. In addition, we need honor each other enough to expect that all teachers to do their jobs and quit protecting the ones that make us all look bad. Finally, if we are doing this because of how "ALL" of our kids scores compare with Europe/Asian scores....European/Asians only test their "Best" at high school level! So then let's just put the Benchmarks at eighth or ninth grade, and set the ones that fail on a skills track like they do!

19 >Which option do you support? I SUPPORT DELAYING THE HIGH SCHOOL >QUALIFYING EXAM.

>

20 >Please briefly describe you position. I FEEL THAT STUDENTS SHOULD BE >GIVEN THE TIME TO GO THROUGH ALL BENCHMARK LEVELS BEFORE TAKING THE EXAM. >THIS ALLOWS TIME TO IDENTIFY STUDENTS WHO HAVE DEFICIENCIES AND TIME TO >HELP THEM IMPROVE IN THOSE AREAS. IT WOULD ALSO APPEAR THAT THE CUT >SCORES AND CONTENT NEED TO BE LOOKED AT TO MAKE SURE THEY ARE FAIR TO >STUDENTS. CHANGE TAKES TIME AND IN THIS CASE THE LEGISLATURE MAY HAVE >GIVEN TOO SHORT OF A TIME FRAME FOR IMPLEMENTATION. HOPEFULLY THEY WILL >LISTEN TO THE PEOPLE THAT DELIVER THE SERVICES.

21 I support keeping the test dates as they are at this point. Educators and students have been working hard to meet the standards and I fear (as a 9th grade English teacher and in the THICK of it) that student momentum, in particular, will be lost in a delay of grad. requirements. I DO have mixed emotions about this, however. Many issues surround this topic and no EASY resolution is on the horizon. My colleagues and I are on the same page with these comments.

22 SURVEY ANSWER: I feel that the time line for completion of the Exit Exam should be moved to 2006. Two years is not enough time for some students to prepare for the exam. I am concerned about a student who, say, can read and write on an above average level, but has been in special education for math during all of his/her years in school. This student will not pass the math part of the exam, but this does not mean that he/she cannot go on to college and be a productive member of society. Some provision needs to be made for Special Education students.

23 I think we should have an exit exam that allows students with differences to use any method possible to show us they can pass the exam. If this is the standard we are wanting to set then lets stick too it. If the standards are too high for the average person then reset the cut off scores. If we cancel the test now we lose a lot of momentum. But I would rather postpone it than have only 20% graduate with a diploma.

>
>Which option do you support?
Which option do you support? I support delaying the test.

24
>
>Please briefly describe you position.

I believe that many students, if required to pass in 2002, will not have the acquired skills by this time. I'd rather see the HSQE implemented along with the Benchmark scores. Students and teachers have not had sufficient time to allow for proficiency.

If we (educators) were aware of what skills would be necessary for high school students and could prepare the child from elementary school, I believe that this would be more responsible. I do understand that if the HSQE is to continue, that there will be growing pains. Some students will not receive a diploma, but to intact it without more training for teachers and a more solid foundation for students would be grievous.

>

This note is in response to the legislatures request to hear the opinion of NEA members.

When a person decides to lose weight how do they go about it? Do they weigh themselves more often with more accurate scales? Or do they change their exercise and eating habits?

25
The qualifying exam is merely a more accurate scale not a change in fitness habits. The answer to reforming education does not lie in increased testing. It lies in professional development. Teachers need to have the opportunity to watch their talented colleagues teach. They need to be allowed the opportunity to attend conferences and classes that will improve their work within the classroom.

Having a salary that is competitive with other states would increase the number of good teachers being drawn to Alaska. Allowing teachers a voice in forming public education policy is crucial. After all who better to decide what would improve the quality of the education in our schools than the professionals that do the teaching.

If pushed I would support delaying the test for a few years to allow our students to be better prepared. I disagree with the test for many reasons.

Not the least of which is that it is absurd that after 12 years of attendance, hard work, and a,b,c,d,f grades we have decided to put the measurement of our children's education in one pass/fail test. How many colleges are going to look at this test without looking at the students transcripts, recommendations, ACT/SAT scores, personal essays, etc..... How do we know if this test is a measure of employability? I do not understand what purpose this test serves.

And the McQuesten

26
I am in favor of delay, but there are several overarching issues, regardless of when the test consequences go into effect: funds for remediation, accommodations for those on IEPs, and use of differentiated diplomas -- rather than denial of diplomas -- based on student proficiency.

I believe the competency tests should be delayed. (following is a quick reason why:)

1. There are no provisions for adaptations or modifications to meet the unique needs of children with disabilities.
2. Too many reasons for taking the test are wrapped up into ONE test.

27

I don't think competencies are related to a district's efforts to improve (improve what?), but rather: are the competencies related to what the test is testing for, i.e. is the test to find out if the kids can pass college courses, or is the test to find out if the kid can fill out a job application and hold down a warehouse job or drive a bus, or answer a telephone?

I think that for those kids who are college bound, they should take the SATs and if they score adequately, would receive a diploma. Passing this test indicates whether teachers have been teaching the right things to those kids and would hold those teachers accountable for that course work.

All of the other students who do not intend to attend college should be given a minimum competency test (at about 6th grade level, which I think is the national norm for reading ability) and be granted a diploma if they pass. Not all kids need to take the same exam to get a diploma, in my opinion.

Good luck.

28

The Board of Directors of the Fairbanks Education Association and our Policy Assembly have taken a position supporting a delay in the implementation date of the HSGQE, probably until 2006. We did this in November for a variety of reasons, and FEA has gained even more concerns since then. Our concerns include appropriateness of the cut scores and the test items (especially in the math section), unresolved issues such as special needs students and transient (including military) students, and more. Our district is moving full steam ahead on analysis of the benchmark results and implementing the Cox model—but this won't result in a coordinated change in our curricula to reflect the benchmark results until next year at the earliest. These are just some of the reasons. . . .

I don't think we're averse to continuing to administer the HSGQE during any interim period and recognizing students who have passed it on their diploma or transcripts.

29

In reply to the questionnaire concerning the HSGQE. I'm not convinced that any advantage that may be gained by getting tough with high school students will serve any purpose other than encourage them to quit or allow them to exit the Alaska state school system with no diploma (after 13 years of effort and investment). I believe that those young people will be at a great disadvantage in nationwide job search. Ultimately the chances of those dropouts will more than likely COST this state in increased social services and loss of revenue due to impacted taxable income.

Within the profession of teaching I would be hard pressed to identify any system or individual that would abandon efforts to improve public education simply because the "test" is delayed. Additionally, it is not up to the teachers to abandon efforts to improve. It is local board direction and leadership that is responsible to coordinate educational improvement through the wishes and desires of those that they represent.

Teachers have and will continue to embrace legislative leadership toward continued educational growth.

I oppose a delay of the testing for I have seen some very positive results such as administrators becoming involved with what is actually going on in the classroom and supportive of the classroom teacher whereas prior to the testing their attention seemed to be focus in other areas. I think it has helped redirect our priorities which delaying the test will not help continue this process. I do think that NEA must stand up to the DOE and legislature and insist that more help is given. This year we do not have practice tests for the benchmarks 4,6,8 and so our students again (last year we, the school, got the practice tests one week before the actual test!) are going into the testing situation "cold."

30 Familiarizing the students with the type of test they will be taking is an essential step in readying students to do their best. The DOE is too quiet and in a reserved mode as far as specific help to the school districts. They should provide us with research and data on schools who perform well in various parts of the state. Systems which are successful in helping their students should be encouraged to share their methods and techniques with other schools. Data gathering should be on-going in all parts of our state to find out what is working to teach students reading, writing or math in Alaska (rural and urban). The DOE should be our active partners in helping the students and the legislature should encourage DOE to participate actively.

Do not delay the Qualifying Exam.

31 Districts and Students alike have and are continuing to gear up for the exam. I agree that if the exam is delayed then so will all the efforts. Right now I believe that students are rising to the occasion and taking the exam seriously. I feel that it is important to stay the course.

32 I support the delay. I feel that without the results from the earlier benchmarks, districts have not had the time to adequately prepare for the change.

33 I am in favor of delaying implementation of the high stakes HSQE. I feel it is potentially unfair to students who have not had the benefit of benchmark testing throughout their academic career. I also fear that the test was put together too quickly, as a result of the legislative mandate establishing it. Furthermore, I am opposed to the all-or-nothing approach of the HSQE. While I agree that a certified diploma is a good idea, I don't think Sp.Ed. students and others should receive only a certificate of completion. I like Lyda Green's suggestion that we have more than one kind of diploma. One shoe will never fit all sizes!

34 Which option do you support? I feel that not enough time has been given to implement the proper programs to get students up to the level that is expected for the minimums of this test. I also have to wonder if the difficulty of each section of the test is equal and a true representation of what people feel is a base minimum, not a grandiose expectation from schools not given adequate funding to support this endeavour.

35 Putting the competency test into effect now would only serve one purpose: to prove how many Alaskan students can not pass its minimum requirements. It seems like we (in education) are already well aware of this fact. I do believe that our education system needs a lot of reform and money, but the test just doesn't seem to actually do anything positive for education. If the system is broken, setting higher standards is pointless.

36 I support having state standards and the Exit Exam. The problem is how this was implemented. Ideally, the standards would be implemented from grade one on through the students' education career. A compromise would have been to start at sixth grade. As it is now, we are doing a disservice to those students who are in the upper grades that do not have the skills and knowledge to pass the exit exam.

37 I believe that the competency test is a good thing as long as it is testing the basics needed to fulfill a decent work ethic. I have heard from instructors of math that the math portion is not at all basic and that it relates to higher level skills that not all children can attain or need to attain. It seems that the testing should have been conducted and then decisions made based on how the children generally fared compared to their grades in school. That would show to some extent whether or not the test was fair. I also don't believe that issues relating to special ed students have been solved and that students with dyslexia will suffer when taking this test. So to make this long story short, I would consider waiting before this testing was used to determine whether or not a student received a proper diploma. Having said this, I firmly believe that students are graduating with less than adequate skills and something must be done.

38 I support the test but prefer a delay of the "teeth" in it, especially for the math. Maybe they should postpone the math requirement and keep the reading and writing? I feel the test serves a purpose--I have a reason when they ask, "Why do we need to know this?" and it holds the students accountable beyond us. I have at least one student whom I don't feel can read well enough, but it is no longer a requirement of my class. If the state holds its ground, we'll be forced to make sure they read whether they pass all of our classes or not.

39 I believe that testing should go forward. However, I strongly disagree that students be denied a diploma when they have not been exposed to a standards based education. This is unfair especially for students having transferred into our state or district from outside. The testing process should not be interrupted. Students will gain additional test taking skills, hopefully districts will see that the process is here to stay and will not abandon improvement efforts. A continuation of the testing program will also provide more NEEDED data to "tweak" the cut-off points. I have not seen enough intermediary steps put in place to support those students falling below the proficient level.

Thank you for the opportunity to speak my voice...

40 I support a delay, but with specific requirements for districts to put improvement plans in place. There cannot be failure on the part of the state in monitoring progress toward competency for our students. The delay will help us have time to implement plans we have already begun to use. It is unfair to expect students to pass this test in such a short amount of preparation time. By delaying there will be time to work out the probable problems expected with special ed students and others.

41 I do not favor delaying the graduation requirement. It is only delaying the inevitable.
Better to face the facts now, determine the solutions, and implement them.

- > Which option do you support?
- > DELAY or eliminate....
- > Please briefly describe you position. Students have not been "prepared" for this type of exit exam. Many students "freeze" at taking such "all or nothing" exams. Many students excel in one area or another...natural talents in math but not English. Natural or developed writing skills but struggle with math.
- > I work with many learning disabled students; they should not be stressed out and penalized and only receive a certificate of attendance because of some "cut off" score for passing a test. More opinions and thoughts but my ride is here!! It's after 4 pm.

I do not support the test at all. I firmly believe we are on the wrong track in this attempt at reform. It's a misguided attempt which should be scrapped completely, not just delayed.

>Please briefly describe you position.

we don't need to have labels of failure placed on children as they enter adulthood;
having the resources available to students are not in place currently and would need to be available in order for the delay to be effective.

As to my opinion of the HSQE, my 16 year old son passed all sections with flying colors, and dropped out of school this year because he felt it was irrelevant. He has decided to get his GED and enroll in UAA in the fall. In the mean time, he is being a big slug (I took away his driver's license and car). This test did nothing to help him.

So-do I think the date should be delayed for those kids who do not pass? Yes. I think schools are doing a great job, but the parents of those kids who do not pass, need a wake up call. I also think that the state needs to do away with social promotion. That is a HUGE problem for kids who are not ready for the next grade, but get shoved forward without the necessary skills because their parents won't let them repeat a grade.

thanks for "listening"

I am in favor of holding the students to the standards in Reading and Writing for the class of 2002. The Math test probably needs to be reworked to better reflect a basic competency level, which is where the other two test currently are. The reading test, for which I sat on the Cut-Score Committee, should probably be stiffened a bit.

I taught in Barrow for 5 years, have been in the Mat-Su for the last ten, and was in Oregon for 17 years prior. Oregon has had competencies and standards since the '70s, so they are very familiar to me, but Alaska seems to be behind the curve. Having always been outcome and standards based, I cannot fathom how any school or district or teacher can function for the betterment of the students without such standards. I testified at the audio conference on January 27 to that effect. It's not just a problem in rural schools, as some people would like us to believe, but in individual buildings within districts, and within individual classrooms within buildings. I currently teach at ~~Barrow~~ ~~High~~, which has fairly high percentages of students passing all three tests, but we run our building much differently than a previous school at which I taught which is only 7 miles away and has about the same number and composition of students. We were 10 percentage points higher in reading (no big deal), 20 percentage points higher in writing, and doubled their number of students passing the math portion. One of the reasons I transferred to ~~Barrow~~ 8 years ago was because of its willingness to focus on academic achievement and work towards standards. When Con Bunde's bill passed in 1997, we did not bitch or moan or ignore; we set out a plan of action by department which was implemented in the fall of 1997. We have been on track, are continually refining and researching, and have not received any extra state help to achieve this. At the same time, our class sizes have risen to the point where I teach two Social Studies classes with more than 40 students in each. It would be very nice to have increased state funding so we could lower some PTRs, but teaching basic skills to

47

I feel we should keep the deadline in place for 2002. If students do not pass, they still have multiple opportunities to take the test (until they are 22!) and should then receive a proper diploma. If they can't pass by then, maybe we need to accept that reality. It seems ridiculous to me that we should expect every student will pass. That is a laudable goal, but not a realistic one.

Keep me on your list. I feel quite strongly about keeping the test in place.

48

I don't particularly like either option. Frankly, I'm having a difficult time deciding whether or not the test is a "good" or "bad" thing. Since it's inception, I've seen a tremendous improvement in most of my students efforts in class. The mere threat that information may be needed for the HSGQE has prompted many who were apathetic to start taking an interest in classroom details rather than just getting by. On the other hand, I've seen as many students leave the state, go to the GED or simply give up and sit in class until they are old enough to drop out because they don't believe they have any chance. Granted, I work in an alternative ed program, so the population of students isn't necessarily the same as students in the mainstream, however, these two extremes are probably happening there as well.

The best choice I've heard so far was the proposal to make the HSGQE mandatory for a state issued diploma while allowing local districts to issue their own diplomas for individuals who do not pass it. Presumably, the state diploma is seen as higher quality.

49

My response: keep the testing on track but to delay it a few years to condense the test. We can still test basic skills with fewer test items. I am a third grade teacher and I find that the test is just too long and grueling for most of my students. Their attention spans aren't geared for that long of a test. Many of us on the testing committee agreed at the time of inception that it was too long on the average, test items (for example in the Math section) required too much reading. We need to have a benchmark to measure school success but I don't think that we have come to a consensus on where that mark should be. I am in favor of testing, keep it on track but refine the test

50

I support the delay. I feel the state needs to deal with the issue of Learning Disabled students who do not qualify for the alternative assessment, yet due to a severe discrepancy in Reading, Math and or Written Expression, may be in jeopardy of not passing the exit exam. Also, districts need time to examine test results and align instruction to meet areas of need at each level. Up until now we have not had this information.

51

> Which option do you support? I support a delay in the High School Competency Test until 2006.

> Please briefly describe you position. I do not believe that the State Board of Education or the legislature pre-programed sufficient time to FUND and implement the curricula changes necessary to prepare for the standards. There were too many questions left unanswered and too much gray area. Now that the benchmarks have given us some idea of what we need to work on, and which districts or schools need the most change to meet the standards, we can put this additional time to good use. We just now have some statistical data that correlates a students percentile score on the CAT with a PROBABLE decile score on the exit exam. It is quite scary, particularly for math. With these tools we can finally make some "educated" changes instead of random stabs in the dark!

I support delaying.

(52) All the reasons are already out there. It seems to me that there are enough questions regarding the test itself that it is not fair to subject the class of 2002 to this high stakes exam. Once the bugs are worked out -- what is a passing score, what content is reasonable, how to address the testing needs of special-needs students, etc. -- then let's go with it.

There is another question, though, that challenges the legitimacy of the test as a whole. If teachers in the classroom continue to be told/instructed to develop and use alternative methods of assessment / authentic methods of assessment, why are we asking students to take another "fill-in-the-dot with a number two pencil" test? From that perspective the test, itself, is absolutely stupid.

(53) One delay with a specific timeline for passing would be a good thing. I don't believe that any more delays would be beneficial and I believe that school districts may not put forth the required effort if they did not believe that the exam would ever truly be instituted.

(54) I believe the state of Alaska is wasting its money on the high school competency test. I believe all districts already give CAT 5 tests or Iowa tests and there is a high degree of correlation of scores between these tests and the high school test. Wouldn't it be simpler to say students need to achieve a certain percentile in each subtest on these tests before they receive a high school diploma. Then the state could subsidize districts who need to target certain students. Instead of spending money to print an additional test, administer the additional tests and check these tests, this money could actually go to students who need help.

(55) I support a delay in the requirement of passing the competency exam to receive a HS diploma. I think the test itself should be evaluated to determine if it is a reasonable measure of competence, and I think the schools should have a chance and the resources provided to teach the students what they need to know to pass the tests.

(56) I would support a delay until the test writers, the scorers (that is those deciding the cutoffs), and those teaching were all on the same page. If I read correctly the data about those passing other standardized tests and the exit exams there was absolutely no correlation. That is disturbing. I think it is a good idea to hold kids accountable but not if we have a lousy test, poor cutoffs, and classes so big we can't meet student needs. I am a math teacher at ~~Calvary~~ High.

(57) My personal opinion on delaying the exit exam is that I don't feel it is a good idea. I do believe something should be done for those students that are identified as learning disabled and also that some compensation may need to be made for those students in the bush communities. By delaying the effective date of the test we risk the chance of students and districts not taking them seriously enough and feeling that when the next date comes along they will again delay it.

58

We support a delay in the competency test. We believe that teachers will not abandon efforts to improve our education system. How ridiculous! Every educator we know is always striving to improve the system.

"Delay the graduation requirement, but inforce the test and the standards."

59

1. National data tells us that it takes at least 5 years after new standards are implemented for them to take hold. We have only had the new standards in place for 2 years and we are already requiring the test for graduation.

2. Looks like a number of lawsuits are waiting to be filed.

3. Many students are rushing to private schools where the test is not required. We have two standards.

60

I am on the side of the legislators who want to delay the exam. I think that Alaska has rushed to put the exam in place and has not allowed students, teachers, or districts ample time to prepare. I have wondered how we can hold our students responsible for meeting certain criteria when those criteria have not been in place for the whole of their 12 years of education.

Vernon

I do not support the HQE test at any time. I see this as the wrong direction for the state; at best a waste of time and resources and at worst a racist agenda to disenfranchise minority students from the Alaska Education system.

Please cast my vote to implement never.

Thanks

>

>Which option do you support?

>

② I THINK THE WHOLE THING SHOULD BE SCRAPPED AS A POLITICAL BOONDOGGLE. IT IS NOTHING MORE THAN A CONSERVATIVE ATTEMPT AT "PROVING" PUBLIC EDUCATION DOESN'T WORK. FAILING THAT, IT SHOULD BE DELAYED AS LONG AS POSSIBLE. I HAVE A DAUGHTER WITH LEARNING DIFFICULTIES AND THE TEST DOES NOTHING FOR HER EXCEPT TO DENY HER RIGHT TO A DIPLOMA.

③ I agree with the postponment of the test for a few years, but I also believe we have a responsibility to the future students to monitor the school districts to make sure they are working now to enable the students will pass the test in a few years.

Which option do you support? Please briefly describe you position.

④ If funding is significantly increased, or there is a plan to increase funds, to address the remdial needs of Alaska's students, then I say delay the Competency Test. If Alaska's teachers are expected to just do the best they can with what they have, staus quo, then so be it.

⑤ I favor delaying the test.

My reasoning is that we are asking students to perform in a different manor than they have been taught. An example would be previously in Math the correct answer would assure you of total credit for a question. Now we want to look at the process they used to reach the answer and even if the answer is wrong, they may still get some credit if the process used was partially correct. In other words, students need to be able to explain their work in ways they have not been taught. A delay will allow students to be taught in the same manner as they will be tested.

I also believe there are some problems with the test itself, its directions, and the testing setting. We're just not ready to deny a student a diploma because there are too many problems that need to be addressed first.

6 I feel that the high school competency test deadline should be extended for up to four years. This will allow time for the test standards, questions, and cutoffs to be adjusted fairly and with equity. It will also give students time to know ahead of time the standards on which they will be judged and an opportunity to directly prepare for the exam with reasonable expectations made upon them and their achievement. The question of learning disabled and other special education students and an appropriate diploma need to be answered as well. Also, more appropriate and state subsidized methods of instruction need to be provided for the high risk students taking the high school exam.

7 I think the test should not be delayed, however passing the test and meeting credit requirements should result in a certified diploma, whereas failing the test but meeting the credit requirements would result in a standard diploma. Test results should also be printed on the transcripts.

8 I absolutely support delaying the test and realigning the math cutoff with reading and language expectations.

The graduating classes that will have not been through the benchmark exams are at a real disadvantage. There are very few remediation efforts in place for the class of 2002. These kids have had the rules changed on them at the last minute. This, I believe, is the educational child abuse.

Thanks for taking the time to compile this information. I would be interested in the results.

9 I support the continuation of preparation for the HSQE without delay

10 >Which option do you support?

DELAY THE EXAM

>

>Please briefly describe your position.

I DO NOT FEEL THAT THE CONCERN THAT DISTRICTS WILL ABANDON EFFORTS TO IMPROVE IS VALID.

>

11 Do not delay, but let's get supports in place for those that do not pass. That may mean money!

>Which option do you support?

>

Delay

>Please briefly describe you position.

>

(2) Lack of Planning by the State and lack of funding by the State and opportunity financially and implementation wise for Districts.

>We will tabulate the results and report them to you.

>

The State of Alaska should give up the idea and focus on works of Glasser and Grinder to create a real quality school system.

(13) I feel that the HSQE should be delayed. Until kids have taken more benchmark tests, we won't have data to compare to determine who is on target for passing the exit exams and who is not. Right now, especially in the lower grades, we only have one set of numbers to look at. Although you can see how the group did on CAT versus Benchmarks, the tests really are quite different and are difficult to compare.

(14) I support to delay the exam until the state does the following:

1)allows schools to implement a change in their curriculum/mandatory courses which should include algebra / geometry

2)funds schools to cover the cost of the exam

>Which option do you support?

>Delay

>Please briefly describe you position.

(15) >It's my belief that students should be held accountable for material they

>are taught. Until we are confident that the test represents material

>presented during a students instruction. It is unfair to withhold diplomas.

>We will tabulate the results and report them to you.

Thank you for the opportunity to offer some comment about the HSGQE. I am a counselor at Kenai Central High School, Kenai, AK and have spent what seems as my entire year looking at the HSGQE results and determining a suitable course of action in response to them.

The HSGQE is much like an avalanche coming down on the mountainside. Regardless of our personal feelings about the test, the first to be hit by this are the students planning to be in the class of 2002 and 2003.

(16)

If we are to have any intervention that will assist students in getting a diploma, we need at least the time that Gov. Knowles proposed.

Tim Peterson asked for a brief comment to be given to you. Brevity will not adequately detail the situation. At Kenai Central, we are able to see a one-to-one relationship to success on the HSGQE math being tied to Advanced Algebra and a strong B or A grade. This trend was found to be the case at the second administration of the HSGQE this fall.

40% of the class of 2002,
20% of the class of 2003 and
40% of the class of 2004

These percentages represent 111 students.

I have attached a letter that I wrote to various people in Juneau. I also believe that Tom Harvey has a letter that summarized my findings in October. Information in that letter was used for comment to the state school board.

Thank you,

Jon G. Lillevik

House Education Committee

February 14, 2001

Department of Education and Early Development

Assessment Overview



Teaching and Learning Support

SB281 Mission: The mission of the Division of Teaching and Learning Support is to improve student performance.

Key Performance Measures

Measure: Percentage of students who meet the proficiency level in benchmark assessments in grades 3, 6, and 8

(Developed jointly with Legislature in FY2001.)

Current Status:

Percent Proficient/Advanced in Reading, Writing and Mathematics on Benchmark Examinations, Spring 2000

Grade	Reading	Writing	Mathematics
3	72	49	64
6	70	73	63
8	83	68	41

Benchmark:

Benchmark examinations were administered for the first time in March of 2000. The State Board of Education and Early Development set the proficiency level for each grade. These proficiency levels are Advanced; Proficient; Below Proficient; and, Not Proficient. These data from the first administration in March 2000 will establish a baseline for measuring student performance. Proficiency is defined as the sum of students who scored at the Advanced and Proficient levels on the Benchmark exams.

Spring 2000 Benchmark Reading Exam Results

	Not Proficient	Below Proficient	Proficient	Advanced	Total #
Grade 3	100-257	258-309	310-432	433-600	
% in Level	12	16	59	13	72
Examinees					9,924
Grade 6	100-247	248-310	311-371	372-600	
% in Level	12	18	27	43	70
Examinees					9,924
Grade 8	100-232	233-270	271-324	325-600	
% in Level	10	7	17	66	83
Examinees					9,574

**Spring 2000
Benchmark Writing Exam Results**

	Not Proficient	Below Proficient	Proficient	Advanced	Total #
Grade 3	100-244	245-351	352-489	490-600	
% in Level	10	40	45	4	49 / 89
Examinees					9,901
Grade 6	100-195	196-299	300-415	416-600	
% in Level	4	22	50	23	73 / 95
Examinees					9,907
Grade 8	100-190	191-315	316-415	416-600	
% in Level	2	30	45	23	68 / 98
Examinees					9,569

**Spring 2000
Benchmark Math Exam Results**

	Not Proficient	Below Proficient	Proficient	Advanced	Total #
Grade 3	100-253	254-321	322-400	401-600	
% in Level	12	24	36	28	64 / 84
Examinees					9,894
Grade 6	100-290	291-328	329-398	399-600	
% in Level	23	13	35	28	63 / 76
Examinees					9,879
Grade 8	100-272	273-373	374-460	461-600	
% in Level	17	42	33	8	41 / 83
Examinees					9,508

Background and Strategies:

State law requires a comprehensive system of student assessments including a developmental profile for students entering kindergarten or first grade, benchmark assessments in reading, writing, and mathematics at grades 3, 6, and 8, and passage of the High School Graduation Qualifying Exam in order to receive a high school diploma beginning in 2002. The department has:

1. Provided school districts with state performance standards in reading, writing, and mathematics at the appropriate grade levels.
2. Developed the benchmark examinations in reading, writing, and mathematics for grades 3, 6, and 8.
3. Provided professional development opportunities for standards based instruction.
4. Provided technical assistance to school districts in aligning curriculum to state standards.

The department is in the process of:

1. Working with school districts to develop programs that provide students with opportunities to learn in order to reach the state standards at the appropriate age/grade levels.
2. Developing intervention strategies to assist students that fail to meet standards or are at risk of failing to meet standards at the appropriate age/grade levels.
3. Working with school districts to target staff development and teacher in-service opportunities to support standards-based instruction and assessments.

4. Targeting federal grant dollars to support increased student performance in reading, writing, and mathematics.
5. Identifying a new norm-reference assessment, linked to Alaska performance standards that will be potentially administered at grades 4, 5, 7, and 9.

Measure: Percentage of students performing above the national average on state adopted norm-referenced tests

(Developed jointly with Legislature in FY2001.)

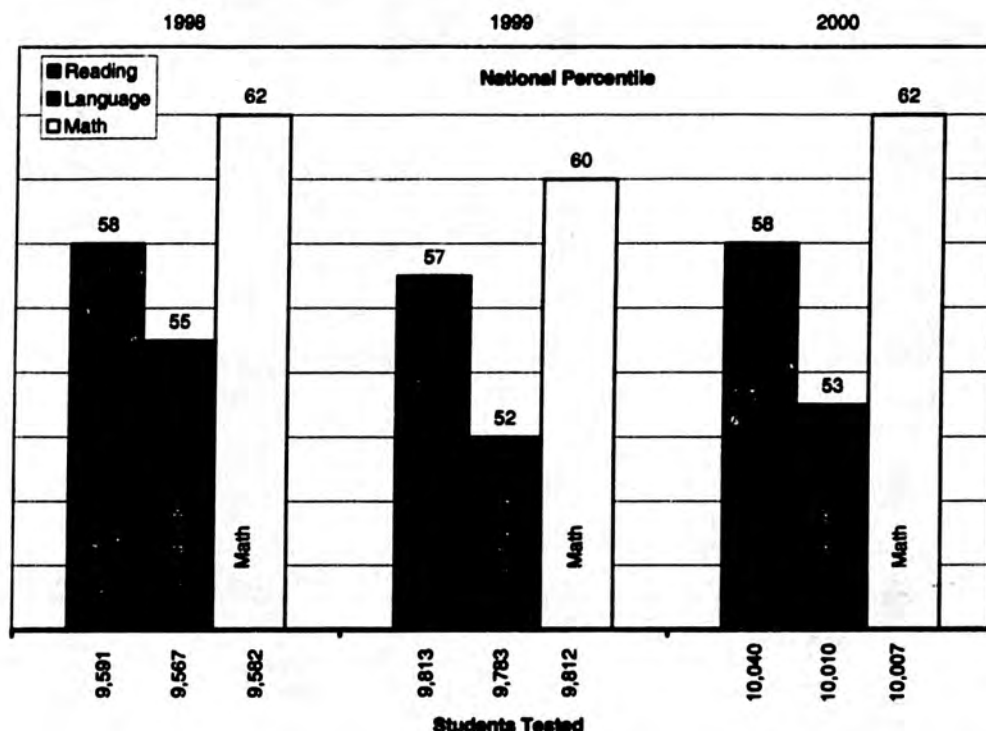
Current Status:

In school year 1999-00, 31.9% of Alaska's 4th graders scored in the top quartile in reading, 30.7% in the top quartile in language arts and 37.3% in the top quartile in mathematics.

Benchmark:

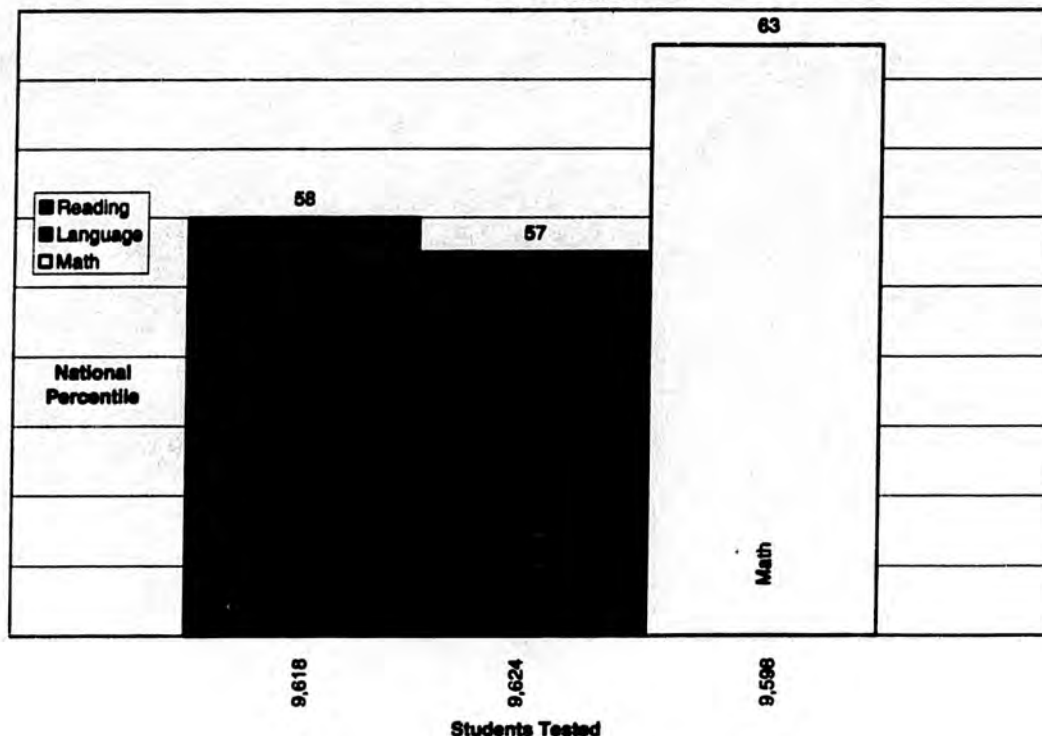
The chart below illustrates the performance of Alaska's 4th grade students on the norm-referenced test in school years 1998 through 2000.

CAT/5 - Grade 4



*In the 1999-2000 school year the department changed the CAT/5 from grade 8 to 7 because of the implementation of the Benchmark exam at grade 8. The following chart illustrates the 7th grade results.

CAT/5 - Grade 7 2000



Background and Strategies:

The department has used the CAT/5 norm-referenced test for the past 5 years. The current contract will expire in June of 2001 and the department will seek competitive proposals for a new norm-referenced test to be used for school year 2000-2001 and beyond. The new contract will solicit proposals for norm-referenced tests at grade 4, 5, 7 and 9. The addition of two new norm-referenced tests at grades 5 and 9 will provide a transition to an assessment system with capabilities not now available. Under the new system, students will be assessed each year from grades 4 to 10 using a combination of Benchmark, HSGQE and norm-referenced tests, which will allow for a measure of student academic growth from year-to-year. The ability to track student growth will allow the department to implement in 2002, a school rating system that will assign a designation of distinguished, successful, deficient or in-crisis to each public school in the state as required by AS 14.03.123.

Measure: Percentage of students who pass the state high school graduation-qualifying exam (Developed jointly with Legislature in FY2001.)

Current Status:

Percent of enrolled students passing the first or second administration of the high school graduation-qualifying exam:

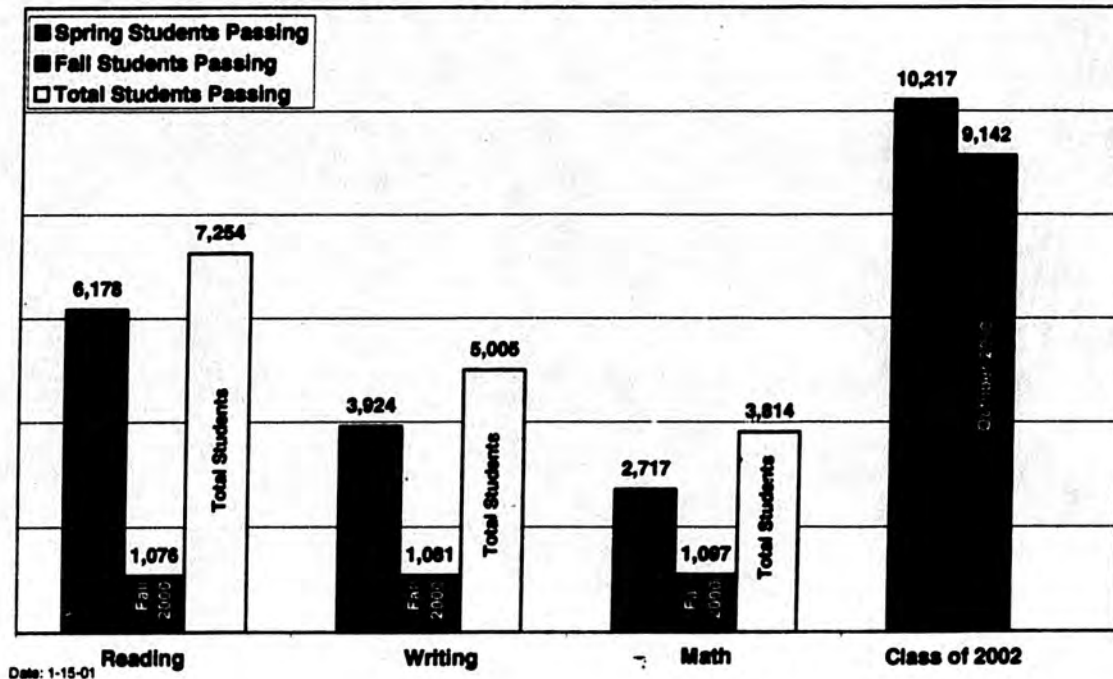
Reading - 79%
Writing - 55%
Mathematics - 42%

Benchmark:

The High School Graduation Qualifying Examination is completed and was administered for the first time in March of 2000 and again in October of 2000. The State Board of Education & Early Development set the proficiency level for the exam. These data from the first administration of the graduation-qualifying exam will establish the baseline for

measuring student performance for the class of 2002. The exam will be offered in October and March of each school year. Students are eligible to take the exam for the first time in the spring of their sophomore year.

High School Class of 2002 Number of Students Passing the HSGQE



Background and Strategies:

State law requires a comprehensive system of student assessments including a developmental profile for students entering kindergarten or first grade, benchmark assessments in reading, writing, and mathematics at grades 3, 6, and 8, and passage of the High School Graduation Qualifying Exam in order to receive a high school diploma beginning in 2002. The department has:

1. Provided school districts with state performance standards in reading, writing, and mathematics.
2. Developed the graduation qualifying examination in reading, writing, and mathematics.
3. Provided professional development opportunities for standards based instruction.
4. Provided technical assistance to school districts in aligning curriculum to state standards.

The following pages contain Year 2000 Alaska State Assessment Results for grades 3, 6, and 8, and the high school graduation qualifying examination by school district:

Year 2000 Alaska State Assessment Results - **READING**

District	Spring 2000						Spring+Fall 2000	Oct. 1, 2000
	Grade 3 % Prof./Adv.	Grade 3 Tested	Grade 6 % Prof./Adv.	Grade 6 Tested	Grade 8 % Prof./Adv.	Grade 8 Tested	High School % Passed	Grade 11 Enrollment
Alaska Gateway	71	44	48	40	68	40	81	32
Aleutian Region	57	7	60	5	71	7	75	4
Aleutians East	55	29	43	23	92	26	65	26
Alyeska Central	93	15	89	18	92	34	24	110
Anchorage	75	3807	74	3863	88	3539	85	3303
Annette Island	80	25	66	27	67	30	82	22
Bering Strait	33	127	25	143	41	113	45	84
Bristol Bay	69	16	81	21	95	20	100	18
Chatham	62	21	59	22	41	22	92	12
Chugach	75	12	77	9	85	14	50	10
Copper River	84	55	68	53	89	60	75	55
Cordova	86	35	90	42	92	36	96	24
Craig	74	35	76	30	85	20	55	38
Delta/Greely	70	41	79	77	86	64	49	59
Denali	92	24	76	29	97	30	100	27
Dillingham	67	42	50	48	82	39	84	37
Fairbanks	84	1254	77	1155	88	1203	93	943
Galena	80	194	85	197	95	176	74	186
Haines	87	23	82	32	79	29	74	35
Hoonah	64	11	45	20	50	10	83	24
Hydaburg	51	8	20	5	60	10	27	11
Iditarod Area	53	38	44	41	53	44	44	32
Juneau	79	408	73	409	90	457	87	437
Kake	64	11	66	12	76	21	67	9
Kashunamiut	45	22	24	21	50	22	31	16
Kenai Peninsula	78	725	78	793	89	774	81	875
Ketchikan	85	184	80	185	85	203	100	156
Klawock	61	23	31	13	92	13	50	16
Kodiak Island	64	237	75	221	80	184	77	213
Kuspuk	48	33	30	34	34	38	47	32
Lake & Peninsula	46	41	35	37	69	39	41	22
Lower Kuskokwim	37	246	27	255	45	225	47	176
Lower Yukon	29	171	24	149	36	117	35	74
Mat-Su	80	973	78	952	88	1033	73	1129
Mt. Edgecumbe	N/A	N/A	N/A	N/A	N/A	N/A	76	90
Nenana	86	57	82	44	83	47	40	78
Nome	55	71	55	47	78	52	77	39
North Slope	50	185	40	130	58	149	49	120
Northwest Arctic	41	197	25	191	42	144	32	108
Pelican	80	5	0	2	100	3	100	3
Petersburg	88	51	88	61	91	65	100	60
Pribilof	54	13	78	9	74	19	80	10
Saint Mary's	27	15	50	12	66	9	56	9
Sitka	81	115	75	131	88	108	76	120
Skagway	89	9	100	7	100	6	100	11
Southeast Island	89	17	70	20	78	18	85	27
Southwest Region	27	62	24	67	42	50	26	42
Tanana	75	8	29	7	66	3	88	8
Unalaska	95	19	73	26	91	23	100	20
Valdez	84	56	62	76	92	82	100	48
Wrangell	89	34	86	43	88	49	100	27
Yakutat	100	11	77	9	100	10	69	16
Yukon Flats	37	27	22	23	53	15	44	18
Yukon/Koyukuk	40	35	41	44	63	40	50	24
Yupik	11	36	3	29	19	22	12	26

Year 2000 Alaska State Assessment Results - WRITING

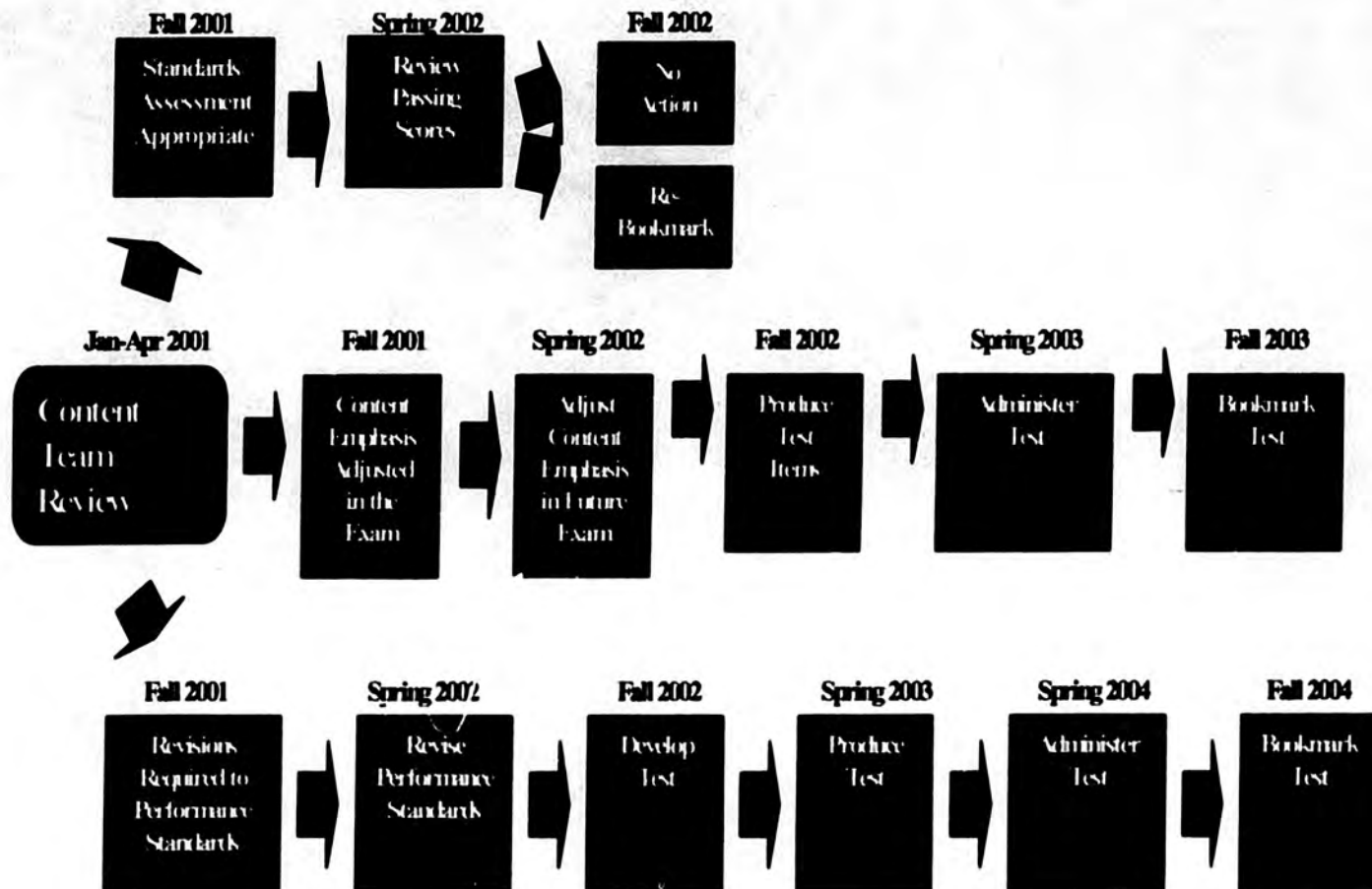
District	Spring 2000						Spring+Fall 2000	Oct. 1, 2000
	Grade 3 % Prof./Adv.	Grade 3 Tested	Grade 6 % Prof./Adv.	Grade 6 Tested	Grade 8 % Prof./Adv.	Grade 8 Tested	High School % Passed	Grade 11 Enrollment
Alaska Gateway	44	45	48	40	43	40	34	32
Aleutian Region	0	7	40	5	43	7	25	4
Aleutians East	28	29	61	23	58	26	31	26
Alyeska Central	53	15	89	18	73	33	14	110
Anchorage	53	3809	76	3864	74	3542	58	3303
Annette Island	38	24	58	26	49	31	36	22
Bering Strait	28	126	39	145	26	113	26	84
Bristol Bay	19	16	71	21	90	20	83	18
Chatham	38	21	63	22	32	22	50	12
Chugach	75	12	66	9	71	14	50	10
Copper River	61	54	63	52	76	59	55	55
Cordova	75	35	88	41	69	36	67	24
Craig	40	35	80	30	65	20	47	38
Delta/Greely	52	42	73	75	74	64	31	59
Denali	46	24	79	29	75	31	63	27
Dillingham	33	42	46	48	56	40	54	37
Fairbanks	58	1228	81	1142	72	1189	61	943
Galena	49	195	79	196	75	177	42	186
Haines	78	23	84	32	48	29	54	35
Hoonah	27	11	40	20	40	10	54	24
Hydaburg	25	8	25	4	30	10	0	11
Iditarod Area	23	38	51	41	48	44	25	32
Juneau	52	408	73	409	71	460	62	437
Kake	27	11	75	12	43	21	33	9
Kashunamiut	40	25	43	21	17	23	6	16
Kenai Peninsula	51	723	79	794	70	772	54	875
Ketchikan	53	185	80	183	61	199	71	156
Klawock	34	23	23	13	78	14	25	16
Kodiak Island	45	236	77	223	63	182	53	213
Kuspuk	30	33	32	35	21	38	28	32
Lake & Peninsula	20	41	38	37	44	39	27	22
Lower Kuskokwim	23	249	35	255	33	227	34	176
Lower Yukon	21	172	33	149	24	121	15	74
Mat-Su	50	974	80	952	72	1029	50	1129
Mt. Edgecumbe	N/A	N/A	N/A	N/A	N/A	N/A	62	90
Nenana	51	61	87	47	68	47	28	78
Nome	28	70	58	48	56	53	26	39
North Slope	32	184	51	130	47	130	28	120
Northwest Arctic	29	192	32	186	29	144	13	108
Pelican	20	5	0	2	100	3	67	3
Petersburg	56	52	90	61	76	64	80	60
Pribilof	46	13	67	9	58	19	70	10
Saint Mary's	7	15	54	13	44	9	22	9
Sitka	55	115	77	130	75	109	55	120
Skagway	66	9	100	7	100	6	91	11
Southeast Island	59	17	70	20	61	18	59	27
Southwest Region	12	60	31	67	25	52	12	42
Tanana	25	8	29	7	33	3	50	8
Unalaska	37	19	82	27	82	22	100	20
Valdez	63	56	78	76	81	82	88	48
Wrangell	47	34	84	43	86	49	59	27
Yakutat	55	11	78	9	70	10	38	16
Yukon Flats	12	26	37	22	33	15	17	18
Yukon/Koyukuk	23	35	43	42	37	43	13	24
Yupit	9	34	11	28	14	22	15	26

Year 2000 Alaska State Assessment Results - MATHEMATICS

District	Spring 2000						Spring+Fall 2000	Oct. 1, 2000
	Grade 3 % Prof./Adv.	Grade 3 Tested	Grade 6 % Prof./Adv.	Grade 6 Tested	Grade 8 % Prof./Adv.	Grade 8 Tested	High School % Passed	Grade 11 Enrollment
Alaska Gateway	57	46	43	38	28	40	31	32
Aleutian Region	28	7	67	3	29	7	25	4
Aleutians East	52	29	59	22	27	26	15	26
Alyeska Central	73	15	61	18	36	33	7	110
Anchorage	67	3813	67	3863	43	3531	45	3303
Annette Island	47	26	40	25	13	31	5	22
Bering Strait	33	123	20	143	6	110	24	84
Bristol Bay	50	16	67	21	55	20	50	18
Chatham	67	21	41	22	23	22	25	12
Chugach	84	12	77	9	36	14	30	10
Copper River	75	53	55	51	36	59	49	55
Cordova	83	35	81	41	53	36	46	24
Craig	63	35	74	31	35	20	26	38
Delta/Greely	54	41	62	76	50	60	25	59
Denali	62	24	71	28	55	31	67	27
Dillingham	57	42	37	48	43	40	19	37
Fairbanks	73	1222	65	1131	39	1171	46	943
Galena	66	192	63	195	38	173	29	186
Haines	95	23	84	32	52	29	46	35
Hoonah	54	11	45	20	40	10	38	24
Hydaburg	25	8	34	3	0	10	0	11
Iditarod Area	44	37	41	40	34	44	19	32
Juneau	79	409	70	407	52	456	58	437
Kake	27	11	25	12	38	21	22	9
Kashunamiut	36	22	33	21	4	23	0	16
Kenai Peninsula	69	727	70	792	46	768	45	875
Ketchikan	77	183	75	185	40	195	51	156
Klawock	65	23	15	13	35	14	13	16
Kodiak Island	55	236	63	223	27	182	34	213
Kuspuk	40	32	32	35	13	37	16	32
Lake & Peninsula	32	41	27	37	21	39	18	22
Lower Kuskokwim	42	248	28	256	11	226	19	176
Lower Yukon	25	171	17	147	7	123	16	74
Mat-Su	72	977	67	948	41	1027	39	1129
Mt. Edgecumbe	N/A	N/A	N/A	N/A	N/A	N/A	38	90
Nenana	61	62	69	47	38	47	15	78
Nome	38	68	40	45	19	52	23	39
North Slope	61	184	39	129	18	149	19	120
Northwest Arctic	34	194	30	190	10	136	-8	108
Pelican	60	5	0	2	66	3	33	3
Petersburg	86	52	76	62	48	65	65	60
Pribilof	28	14	44	9	21	9	40	10
Saint Mary's	33	15	46	13	33	9	22	9
Sitka	75	115	65	131	44	109	46	120
Skagway	100	9	72	7	67	6	64	11
Southeast Island	59	17	60	20	28	18	33	27
Southwest Region	31	62	33	68	22	51	5	42
Tanana	76	8	38	8	0	3	25	8
Unalaska	69	19	54	26	53	21	90	20
Valdez	75	56	74	76	52	82	69	48
Wrangell	91	34	89	43	63	49	59	27
Yakutat	91	11	67	9	40	10	38	16
Yukon Flats	31	26	30	20	0	15	6	18
Yukon/Koyukuk	54	35	31	40	14	44	8	24
Yupik	12	34	0	29	4	23	0	26

Math score drop-off
in 8th grade : beyond
a national problem.
I wonder if DOE
has any good ideas
about that & if
they've passed ideas
on to districts.

Alaska Standards-Based Assessment Initiative FRAMEWORK FOR CONTINUOUS RENEWAL



History of Alaska School Reform Since 1991

June 1991

Governor Walter J. Hickel directs the newly appointed State Board of Education and Commissioner of Education Jerry Covey to develop a plan to improve Alaska's system of public schools.

November 1991

The Governor's Blue Ribbon Commission, composed of 21 prominent Alaskans appointed by Governor Hickel, meets for first time. The Commission identifies 10 broad areas of educational concerns and asks the Governor and State Board of Education to appoint more than 100 Alaskans from outside and inside the educational system to make recommendations in each of the areas. The reform movement becomes known as Alaska 2000 (AK2K).

January 1992

The 10 committees of Alaskans meet for the first time.

October 1992

The State Board of Education approves AK2K recommendations, including developing student academic standards. AK2K becomes Alaska's major school reform initiative.

December 1992

The State Board proposes a regulation that sets a goal for schools to provide students with "a working knowledge of English, mathematics, science, geography, history, skills for a healthy life, government and citizenship, fine arts, technology and world languages." The regulation takes effect June 24, 1993. (4 AAC 04.030)

February 1993

At the direction of the State Board, the Standards and Assessment Oversight Committee meets for first time to set direction for development of student standards. The State Board commits to developing content standards—broad statements of what our students should know and be able to do—in 10 core subject areas: English/Language Arts, Mathematics, Science, Geography, Government and Citizenship, History, Skills for a Healthy Life, Arts, World Languages and Technology.

October 1993

The State Board asks the public to comment on proposed voluntary content standards in math, science and English/language arts. Public hearings are held in 14 communities around Alaska. Public hearings are held over Legislative Teleconference Centers in dozens of additional communities. As a result of strong public comment, the state board holds a second round of public hearings. Standards are adopted in 1994 and take effect on January 4, 1995.

September 1994

The State Board asks public to comment on proposed standards in history, geography, government and health. Board holds hearings in six communities and teleconferenced hearings in dozens of other communities. State Board adopts standards on November 29, 1994. Regulations take effect July 26, 1995.

December 1994

Governor Knowles takes office, appoints a new State Board, which in turn appoints Commissioner Holloway, effective March 13, 1995.

June 1995

The State Board asks the public to comment on proposed content standards in world languages and technology. Board takes written testimony and adopts them on October 24, 1995. Regulations take effect March 28, 1996.

April-October 1996

Commissioner Holloway builds the Alaska Quality Schools Initiative (QSI), which ends up with four major strands: High Student Academic Standards and Assessments; Quality Professional Standards; Family, School, Business and Community Network; and School Excellence Standards. The QSI replaces AK2K as Alaska's major school reform initiative. QSI builds upon AK2K and takes school reform to a new level of accountability.

October 1996

Governor Knowles, ARCO President Ken Thompson and Commissioner of Education Holloway invite school and community leaders to Girdwood for the Knowles Administration's first Education Summit. At the conclusion of the summit, Commissioner Holloway commits to developing in Alaska a results-based system of education based on standards. This is her QSI plan.

Spring 1997

The Legislature passes, and Governor Knowles reluctantly signs, the secondary pupil competency testing law, which becomes AS 14.03.075. The new law requires all high school students to pass an exit exam in order to receive a diploma. Those who do not pass get a certificate of attendance. Effective date is January 1, 2002. The governor announces that a single exit exam at the

conclusion of 12 years of schooling is not a good idea and he will introduce legislation in 1998 that will implement a complete school system of accountability based on measurable student performance standards.

March 1998

The Department contracts with Council for Basic Education (CBE) to review Alaska's proposed reading, writing and math performance standards. Department makes changes to standards as recommended by CBE.

June 1998

The Governor signs into law Senate Bill 36, which becomes AS 14.07.020(b). The new law sets a requirement for the department to develop student performance standards in reading, writing and mathematics and to develop benchmark exams at designated grade levels. The QSI portion of SB 36 required the following:

- **Academic Standards**—Mandated the State Board of Education to adopt academic standards in reading, writing and math at four levels; ages 5-7; 8-10; 11-14 and 15-18. The high school and benchmark exam questions are to measure whether students have met the standards.
- **Alaska Benchmark Examinations**—Mandated the department to assess students at the 3rd, 6th and 8th grades beginning in March 2000, in order for schools to check whether students are meeting the reading, writing and math standards and are on course to pass the high school exam.
- **Developmental Profile**—Required schools to complete a developmental profile on all entering kindergarten and first grade students.
- **QSI Grant**—Gave school districts additional dollars through the Quality Schools Grant program if they establish plans to adopt standards, intervene with additional services for children who are not meeting the standards, and train educators how to teach students in a results-based system of public education. The QSI Grant program became part of the state's school funding program.
- **School Designators**—Requires the State Board to develop an annual system of rating schools, and designate each school by August 2002 in one of the four categories, *distinguished*, *successful*, *deficient*, and *in crisis*. The categories are to be based on a school's student test scores and other indicators of student performance.
- **School Report Cards**—Requires each school to annually report specific information about student performance to their communities and the State of Alaska beginning July 1, 2000. The information required includes school

Beth Nordland
told me in
January that
standards have
not changed
since 1993.

accreditation status, results of norm-referenced achievement tests, results of state standards-based assessments in reading, writing and mathematics, description of student, parent, community and business involvement in student learning, and rates of student attendance, K-8 retention, grade 7-12 dropout and graduation. The department is required to issue its first school-by-school report card on January 15, 2001.

June 1998

The Department of Education establishes the elements of the QSI law as the department's key priorities.

July 1998

The Education Commission of the States submits a partial review of Alaska's proposed performance standards in reading, writing and math. The review is favorable.

September 1998

The State Board adopts by motion (not as a regulation) the student employability standards as an eleventh content standard.

January 1999

State Board adopts by motion (not as a regulation) student performance standards in reading, writing and mathematics.

March 1999

Benchmark exams for grades 3, 6, and 8 and high school exams are field tested statewide. State Board mandates all sophomores to take the exam.

September 1999

Public schools complete first developmental profiles of kindergarten and first grade students.

September 1999

State Board adopts in regulation performance standards in reading, writing and mathematics. The same regulation removes content standards from regulation and readopts them by reference in the publication *Alaska Standards: Content and Performance Standards for Alaska Students*. The board also adopts by reference the employability content standards.

February 2000

The School Designator Committee begins series of meetings to recommend elements of a system to rate schools as distinguished, successful, deficient and in crisis.

March 2000

State Board adopts Alternate Performance Standards and the Student Cultural Standards.

March 2000

The first administration of the high school and benchmark exams is conducted statewide. At the direction of the State Board, all 10th grade students are required to take the high school exam.

April 2000

Alaska content standards are measured in a group process against NAEP standards. Alaska's standards match well with NAEP standards.

June 2000

Commissioner Cross announces he will recommend to the State Board a two-stage "phased in" approach to the Alaska High School Graduation Qualifying Exam. Under the phase in, the Class of 2002 and Class of 2003 would be held to a lower passing score than Class of 2004 onward, when a higher passing score would take effect.

June 2000

Committees meet to recommend passing scores for high school exam.

August 2000

Committees meet to adopt proficiency scores for benchmark exams.

September 2000

State Board adopts passing scores for high school exam. Phase in idea dropped.

September 29-October 1

About 350 School board presidents, school administrators, some of the state's best teachers and business and community leaders convened at Girdwood for Education Summit 2000, the second education summit of the Knowles Administration. The purpose was to develop strategies to help more children meet the state's new higher standards in reading, writing and mathematics. Teams from school districts statewide examined the performance of their districts' students on state tests and learned how analyze score data and to improve schools to better meet the learning needs of students.

October 2000

The second administration of the high school exam commences statewide.

December 2000

The State Board adopts proficiency cut scores for the benchmark exams.

December 2000

The State Board adopts a resolution urging the Legislature to change the effective date for the high stakes portion of the High School Graduation Qualifying Examination, from January 1, 2002 to 2006. The Board's plan would continue the administration of the test.

December 2000

As the next step toward fulfilling the goals of the Quality Schools Initiative, Gov. Knowles appoints 11 Alaskans to an Education Funding Task Force. The task force will recommend to the governor and the State Board in February 2001 a five-year funding plan to fulfill the goals of the QSI and improve education in Alaska.

January 2001

Governor Knowles announces in his State of the State address that he supports the State Board's December 2000 resolution and that he urges the Legislature to amend the law for the high stakes portion of the high school exam to take effect 2006.

January 2001

By law, the first school-by-school Report Card to the Public is scheduled to be delivered to the Legislature and the public.

January 2001

Committees begin meeting to start a continuous renewal of Alaska's standards-based assessment system. Committees begin with a review of the high school standards and high school exam. The meetings are expected to conclude in April. The renewal process for benchmark exams will follow.

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United States District Court,
 W.D. Texas,
 San Antonio Division.

GI FORUM, IMAGE DE TEJAS, Rhonda Boozer, Melissa Marie Cruz, Michelle Marie Cruz, Leticia Ann Faz, Elizabeth Garza, Mark Garza, Alfred Lee Hicks, Brandye R. Johnson, Jocquelyn Russell, Plaintiffs,

v.

TEXAS EDUCATION AGENCY, Dr. Mike Moses, Members, and the Texas State Board of Education, in their official capacities, Defendants.

No. Civ.A. SA-97-CA1278-EP.

Jan. 7, 2000.

Suit was brought challenging the use of the Texas Assessment of Academic Skills (TAAS) examination as a requirement for high school graduation. The District Court, Prado, J., held that: (1) use of TAAS examination did not violate of Title VI regulations, and (2) use of TAAS examination did not violate due process rights of Texas' minority students.

Judgment for defendants.

West Headnotes

[1] Civil Rights ⚔ 126
 78k126

Disparate impact analysis is appropriate under Title VI regulation prohibiting activity in federally funded programs that has the effect of subjecting individuals to discrimination because of their race, color, or national origin. 34 C.F.R. § 100.3.

[2] Civil Rights ⚔ 200
 78k200

Plaintiffs bringing lawsuits pursuant to Title VI regulation prohibiting activity in federally funded programs that has the effect of subjecting individuals to discrimination because of their race, color, or national origin have a private right of action. 34 C.F.R. § 100.3.

[3] Civil Rights ⚔ 111
 78k111

A disparate impact theory of racial discrimination permits a court to overturn facially neutral acts and policies that have significant adverse effects on

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protected groups without proof that the actor adopted those practices with a discriminatory intent.

[4] Civil Rights ☞240(1)

78k240(1)

Burden-shifting analysis established in Title VII cases would be applied in determining whether a prima facie case of disparate impact had been established in violation of Title VI regulation prohibiting activity in federally funded programs that has the effect of subjecting individuals to discrimination because of their race, color, or national origin. 34 C.F.R. § 100.3.

[5] Civil Rights ☞127.1

78k127.1

Use of the Texas Assessment of Academic Skills (TAAS) examination as a requirement for high school graduation did not have an impermissible disparate impact on Texas' minority students in violation of Title VI regulation prohibiting activity in federally funded programs that has the effect of subjecting individuals to discrimination because of their race, color, or national origin; although there was a prima facie showing of significant adverse impact, Texas Education Agency (TEA) met its burden in showing that the TAAS test was an educational "necessity," and there was no showing that there were equally effective alternatives to the current use of the TAAS test. 34 C.F.R. § 100.3.

[6] Constitutional Law ☞278.5(5.1)

92k278.5(5.1)

[6] Constitutional Law ☞278.5(7)

92k278.5(7)

[6] Schools ☞178

945k178

Use of the Texas Assessment of Academic Skills (TAAS) examination as a requirement for high school graduation did not violate the procedural or the substantive due process rights of Texas's minority students; Texas Education Agency (TEA) provided adequate notice of the consequences of the exam and ensured that the exam was strongly correlated to material actually taught in the classroom, the test was valid and in keeping with current educational norms, and did not perpetuate prior educational discrimination or unfairly hold Texas minority students accountable for the failures of the State's educational system. U.S.C.A. Const.Amend. 14.

*668 Albert H. Kauffman, Javier N. Maldonado Cynthia M. Cano, Nina Perales, Mexican American Defense and Educational Fund, San Antonio, TX, for plaintiffs. Geoffrey Amsel and Deborah Verbil, Office of Atty. General, Austin, TX, for

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Defendants.

ORDER

PRADO, District Judge.

The issue before the Court is whether the use of the Texas Assessment of Academic Skills (TAAS) examination as a requirement for high school graduation unfairly discriminates against Texas minority students or violates their right to due process. The Plaintiffs challenge the use of the TAAS test under the Due Process Clause of the United States Constitution and 34 C.F.R. § 100.3, an implementing regulation to Title VI of the Civil Rights Act of 1964, asking this Court to issue an injunction preventing the Texas Education Agency (TEA) from using failure of the exit-level TAAS test as a basis for denying high school diplomas. [FN1] The Court has considered the testimony and evidence presented during five weeks of trial before the bench, as well as the relevant case law. After such consideration, and much reflection, the Court has determined that the use of the TAAS examination does not have an impermissible adverse impact on Texas's minority students and does not violate their right to the due process of law. The bases for the Court's determination are outlined more fully in its findings of facts and conclusions of law, below. The Court writes separately only to make a few general observations about the legal issues underpinning this case.

FN1. This suit is also brought individually by nine Texas students who did not pass the TAAS exit-level examination prior to their scheduled graduation dates. Those students who actually testified request that their respective school districts issue their diplomas. Consistent with this Order, that request is denied. Those students who did not appear to testify--Melissa Marie Cruz, Michelle Marie Cruz, and Joculyn Russell--are dismissed from the case for failure to prosecute.

In deciding the issues presented, both at the summary judgment stage and at trial, the Court has been required to apply a body of law that has not always provided clear guidance. It is clear that the law requires courts to give deference to state legislative policy, see *Board of Educ. v. Mergens*, 496 U.S. 226, 251, 110 S.Ct. 2356, 110 L.Ed.2d 191 (1990); in the educational context, such deference is even more warranted, see *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 42, 93 S.Ct. 1278, 36 L.Ed.2d 16 (1973). Education is the particular responsibility of state governments. *Id.* Moreover, courts do not have the expertise, or the mandate of the electorate, that would justify unwarranted intrusion in curricular decisions. See *id.* On the other hand, these considerations cannot be used to tie a court's hands when a state uses its considerable power impermissibly to disadvantage minority students.

*669 This case requires the application of law from a number of diverse areas--employment law, desegregation law, and testing law in areas such as bar examinations or teacher certification examinations. Only one case cited by any

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party or this Court is both controlling and directly on point--Debra P. v. Burlington, 644 F.2d 397 (5th Cir.1981). In Debra P., the United States Court of Appeals for the Fifth Circuit found that a state could overstep its bounds in implementing standardized tests as graduation requirements. Specifically, the court found that a test that did not measure what students were actually learning could be fundamentally unfair. The court also found that a test that perpetuated the effects of prior discrimination was unconstitutional. This Court finds these ideas to be in step with the United States Supreme Court's suggestion in Regents of University of Michigan v. Ewing, 474 U.S. 214, 225, 106 S.Ct. 507, 88 L.Ed.2d 523 (1985), that a state could violate the Constitution if it implemented policies that violated accepted educational norms.

In addition, this Court has allowed the Plaintiffs to bring a claim pursuant to a regulation adopted in conjunction with Title VI. See 34 C.F.R. § 100.3. That regulation, in clear, unmistakable terms, prohibits a federally funded program from implementing policies that have a disparate impact on minorities. *Id.* While the Court acknowledges that the United States Supreme Court has limited Title VI itself to constitutional parameters (i.e., has required a showing of an intent to discriminate in order to prove a violation), see *United States v. Fordice*, 505 U.S. 717, 722 n. 7, 112 S.Ct. 2727, 120 L.Ed.2d 575 (1992), the Court does not find that this limitation has been clearly and unambiguously extended to its implementing regulations. The Court is not alone in reaching this conclusion. See *Cureton v. National Collegiate Athletic Assoc.*, 198 F.3d 107, 113 (3d Cir.1999); *Elston v. Talladega Co. Bd. of Educ.*, 997 F.2d 1394, 1406 (11th Cir.1993); *Harper v. Board of Regents of Ill. State Univ.*, 35 F.Supp.2d 1118, 1123 (C.D.Ill.1999); *Valeria G. v. Wilson*, 12 F.Supp.2d 1007, 1023 (N.D.Cal.1998); *Graham v. Tennessee Secondary Athletic Ass'n*, No. 1:05-CV-044, 1995 WL 115890, at *12 (E.D.Tenn. Feb.20, 1995). Nor is the Court alone in concluding that a private right of action exists under this regulation. See, e.g., *Harper*, 35 F.Supp.2d at 1123; *Valeria G.*, 12 F.Supp.2d at 1023; *Graham*, No. 1:05-CV-044, 1995 WL 115890, at *12. The Court believes that it has followed the law as it presently exists in allowing these claims to go forward.

In reviewing the diverse cases that underpin this decision, the Court has had to acknowledge what the Defendants have argued throughout trial--this case is, in some important ways, different from those cases relied upon by the Plaintiffs. In the first place, this case asks the Court to consider a standardized test that measures knowledge rather than one that predicts performance. The Court has had to consider whether guidelines established in the employment context are adequate for determining whether an adverse impact exists in this context. In addition, the Court has been required to determine the deference to be given to a State in deciding how much a student should be required to learn--the cut-score issue. Finally, the Court has had to weigh what appears to be a significant discrepancy in pass scores on the TAAS test with the overwhelming evidence that the discrepancy is rapidly improving and that the lot of Texas's minority students, at least as demonstrated by academic achievement, while far from perfect, is better than that of minority students in other parts of the country and appears to be getting better. [FN2]

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FN2. The Court read and heard with interest the conclusions of Plaintiff's expert Amilcar Shabazz on this subject. See Report of Dr. Amilcar Shabazz, Plaintiff's expert, at 11-12. Shabazz rejects the argument that offering focused remedial efforts to students who do not pass the TAAS helps eradicate the effects of past discrimination. A student who fails the test does not graduate. A student who has been remediated and finally passes the test has only passed a test, not necessarily received an adequate education. The Court notes in response that its authority to determine what constitutes an "adequate" education is extremely limited.

*670 This case is also remarkable for what it does not present for the Court's consideration. In spite of the diverse and contentious opinions surrounding the use of the TAAS test, this Court has not been asked to--and indeed could not--rule on the wisdom of standardized examinations. This Court has no authority to tell the State of Texas what a well-educated high school graduate should demonstrably know at the end of twelve years of education. Nor may this Court determine the relative merits of teacher evaluation and "objective" testing.

This case is also not directly about the history of minority education in the State. While that history has had some bearing on some of the due process concerns raised by the Plaintiffs, what is really at issue here is whether the TAAS exit-level test is fair. As the Court notes below, the test cannot be fair if it is used to punish minorities who have been victimized by state-funded unequal educations. Thus, the Court has carefully considered the claims that Texas schools still offer widely diverse educational opportunities and that, too often, those opportunities depend on the color of a student's skin or the financial resources of the student's school district. [FN3] To some degree, as discussed below, the Court must accept these claims. But that finding, alone, is an insufficient basis for invalidating this examination. There must be some link between the TAAS test and these disparities. In other words, the Plaintiffs were required to prove, by a preponderance of the evidence, that the TAAS test was implemented in spite of the disparities or that the TAAS test has perpetuated the disparities, and that requiring passage of the test for graduation is therefore fundamentally unfair. The Court believes that this has not been proven. Instead, the evidence suggests that the State of Texas was aware of probable disparities and that it designed the TAAS accountability system to reflect an insistence on standards and educational policies that are uniform from school to school. It is true that these standards reflect no more than what the State of Texas has determined are essential skills and knowledge. It is undeniable that there is more to be learned. However, the Court cannot pass on the State's determination of what, or how much, knowledge must be acquired prior to high school graduation.

FN3. Of course, these are generalizations. The Court recognizes that students in districts with relatively greater resources have failed the TAAS examination.

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This case presented widely differing views of how an educational system should work. One set of witnesses believed that the integrity of objective measurement was paramount; the other believed that this consideration should be tempered with more flexible notions of fairness and justice. Thus, the relative quality of experts in this case is not so simple a matter as either party would make it. On the issue of internal test fairness and soundness, clearly the TEA presented better experts--their experts wrote the test and have written other tests. Their experts are invested in the profession and practice of test-writing and are committed to standardized tests as useful exercises for various kinds of educational measurement. However, TEA's experts were not so qualified, the Court finds, to speak on the wisdom of the use of standardized tests as they apply to ethnic minorities in a state educational system that has had its difficulties providing an equal education to those minorities. In that regard, the expert testimony failed to match up. TEA's experts, for example, are not especially qualified to speak on the psychological, social, or economic effects of failing to pass a test used as a requirement for graduation. At least one of those experts testified*671 that whether a given test item disadvantages minority students is a factor that an item reviewer may ultimately reject in determining whether an otherwise valid item should be placed on the test. This is so because, as TEA's experts overwhelmingly testified, what is fundamentally important to these psychometricians is that the test objectively measure the material that it purports to measure and that it measure content that students have been exposed to. [FN4] See Report of Dr. Susan Phillips, Defendants' expert, at 16 (a plausible explanation for differential performance is difference in achievement level). On the question, then, of whether it is wise to use standardized tests in making high-stakes decisions, taking into account all the contextual factors, the Court finds the expert testimony was not fairly joined. Plaintiff's experts had clearly considered this question more fully and given it more weight. The question is--how relevant to this Court's decision is the wisdom of the TAAS test and, to the extent that Plaintiff's experts were able to prove that the test is not wise, have they been able to show that it actually crosses the line and is impermissible by some legal standard?

FN4. The Court does not suggest that the psychometricians who testified on behalf of the TEA reject the notion that a test's effects should be fair. Rather, they view the system in place, which provides wholly objective assessment, as the best way to ensure fairness. In addition, Defendants' expert Dr. Susan Phillips noted that careful scrutiny is given to test items that are identified as having large differences between the performances of minority and majority students. See Report of Dr. Susan Phillips, Defendants' expert, at 3.

Ultimately, resolution of this case turns not on the relative validity of the parties' views on education but on the State's right to pursue educational policies that it legitimately believes are in the best interests of Texas students. The Plaintiffs were able to show that the policies are debated and

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debatable among learned people. The Plaintiffs demonstrated that the policies have had an initial and substantial adverse impact on minority students. The Plaintiffs demonstrated that the policies are not perfect. However, the Plaintiffs failed to prove that the policies are unconstitutional, that the adverse impact is avoidable or more significant than the concomitant positive impact, or that other approaches would meet the State's articulated legitimate goals. In the absence of such proof, the State must be allowed to design an educational system that it believes best meets the need of its citizens.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT [FN5]

FN5. Any finding of fact more appropriately characterized as a conclusion of law may be considered as such.

THE TEST

Test Construction

In 1984, the Texas legislature passed the Equal Educational Opportunity Act (EEOA), designed to impose an "accountability" system on Texas public school administrators, teachers, and students. The following year, in response to that legislation, the Texas State Board of Education adopted a curriculum of Essential Elements. [FN6] In addition, the Board moved forward with its plans to implement an objective standardized test that would measure mastery of the state-mandated curriculum. In 1987, Texas instituted the TEAMS high school graduation exit test, given to eleventh-graders.

FN6. In 1998-1999, the Texas Essential Knowledge and Skills (TEKS) replaced the Essential Elements.

In 1990, Texas replaced the TEAMS test with the Texas Assessment of Academic Skills (TAAS) test, the subject of this lawsuit. Like the TEAMS test, the TAAS test is designed to measure mastery of the state-mandated curriculum. However, the TAAS test seeks to assess higher-order thinking and higher problem-solving skills than did the TEAMS test. The TAAS test is developed and constructed by *672 National Computer Systems (NCS), a private corporation. NCS, in turn, subcontracts development of TAAS items to Harcourt Brace Educational Measurement (HBEM) and Measurement Incorporated. HBEM contracts with individuals to write items for the TAAS test. In addition to the extensive input from these professional test-designers, many of whom are not in the State of Texas, there is a great deal of input from state educators in the design of the TAAS test. Decisions as to which portions of the state-mandated curriculum should be measured by the TAAS test are made by Texas teachers and educational professionals. The Texas Education Agency has ensured that the educators comprise an ethnically diverse group of individuals from across the state. In addition, proposed TAAS questions are reviewed by subject-matter content experts, review committees of teachers and educators, test-construction experts, and measurement experts.

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In reviewing test items, educators are instructed to consider the following issues: relevancy of the item, difficulty range, clarity of the item, correctness of the keyed answer choice, and the plausibility of distractors. Reviewers are also asked to consider the more global issues of passage appropriateness, passage difficulty, and interactions between items within and between passages as well as work, graphs, or figures. Reviewers are asked to

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H

United States Court of Appeals,
Eleventh Circuit.

DEBRA P., a minor, by IRENE P., her mother and next friend, et al., Plaintiffs-
Appellants,

v.

Ralph D. TURLINGTON, Individually and as Commissioner of Education, et al.,
Defendants-Appellees.

No. 83-3326.

April 27, 1984.

High school students filed suit challenging constitutionality of competency examination they were required to pass in order to receive state high school diplomas. The District Court, 474 F.Supp. 244, enjoined use of the test until the 1982-83 school year. On appeal, the Former Fifth Circuit Court of Appeals, 644 F.2d 397, upheld District Court's injunction but remanded for further findings, and denied rehearing, 654 F.2d 1079. On remand, the United States District Court for the Middle District of Florida, George C. Carr, J., 564 F.Supp. 177, found that the test was instructionally valid and did not discriminate against blacks. On appeal, the Court of Appeals, R. Lanier Anderson, III, Circuit Judge, held that: (1) District Court was not clearly erroneous in finding that examination was instructionally valid, and (2) District Court was not clearly erroneous in finding vestiges of past intentional segregation did not cause test's disproportionate impact on blacks, and that use of test as diploma sanction would help remedy vestiges of past segregation. Affirmed.

West Headnotes

[1] Schools 178
345k178

District court, in determining on remand whether competency examination taken by high school seniors was instructionally valid, properly considered circumstantial evidence, as remanding opinion gave no indication that in requiring that state prove that test covered things actually taught in classroom, panel meant to limit proof to direct evidence of classroom activities.

[2] Federal Courts 853
170Bk853

District court's findings of fact and inferences drawn therefrom are clearly erroneous only when reviewing court on entire evidence is left with definite and

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firm conviction that mistake has been committed.

[3] Schools 178
345k178

Adequate evidence supported district court's finding that competency examination which, under an amendment to Educational Accountability Act, high school seniors were required to pass in order to receive high school diploma was instructionally valid. West's F.S.A. §§ 229.55 et seq., 232.246(1)(b).

[4] Schools 178
345k178

That state study on whether competency examination which public high school students were required to pass in order to receive state high school diploma was instructionally valid did not focus specifically on students who had failed test did not compel finding that such study did not prove examination was a fair test of that which was taught, where none of the experts at trial suggested that an instructional validity study must focus on students who have failed the test, but rather conceded that there are no accepted educational standards for determining whether a test is instructionally valid.

[5] Schools 178
345k178

District court, in determining whether competency examination taken by high school seniors was instructionally valid, was not clearly erroneous in inferring that skills tested were actually taught from circumstantial evidence presented at trial, such as evidence of inclusion of skills in curriculum, inclusion of skills by individual teachers in course of instruction, existence of remedial efforts and evidence from student survey that students remembered receiving instruction in the skills.

[6] Evidence 318(4)
157k318(4)

Results of private consulting firm's study of whether school districts had taught skills tested by competency examination, which high school seniors were required to pass in order to receive a high school diploma, were admissible under hearsay exception as having equivalent circumstantial guarantees of trustworthiness, notwithstanding that study respondents were aware of study's purpose and state commissioned firm to conduct study, as site visitors verified accuracy of district reports and site visitors were told that other visiting teams might audit the reports. Fed.Rules Evid.Rule 803(24), 28 U.S.C.A.

[7] Schools 178

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345k178

District court was not clearly erroneous in finding that disproportionate failure of blacks on competency examination high school seniors were required to pass in order to receive high school diploma was not caused by present effects of past intentional segregation, and that, even assuming there was a causal link between vestiges and disparate impact, use of test as diploma sanction would remedy vestiges of past intentional segregation, thereby supporting conclusion that test was not unconstitutional as discriminating against blacks. Civil Rights Act of 1964, § 601 et seq., 42 U.S.C.A. § 2000d et seq.; Equal Educational Opportunities Act of 1974, § 204, 20 U.S.C.A. § 1703; U.S.C.A. Const.Amend. 14; West's F.S.A. §§ 229.55, 232.246(1)(b).

*1406 Stephen F. Hanlon, Tampa, Fla., for plaintiffs-appellants.
William R. Dorsey, Jr., Deputy Gen. Counsel, State Bd. of Educ., Tallahassee, Fla., for defendants-appellees.
Appeal from the United States District Court for the Middle District of Florida.

Before JOHNSON and ANDERSON, Circuit Judges, and TUTTLE, Senior Circuit Judge.

PER LANIER ANDERSON, III, Circuit Judge:

A class consisting of Florida high school seniors who have failed a state-wide competency examination appeal findings entered by the district court on remand from Debra P. v. Turlington, 644 F.2d 397 (5th Cir.1981) (Unit B). We affirm the decision of the district court.

FACTS

In 1978 the Florida legislature approved an amendment to the Educational Accountability Act of 1976, Fla.Stat. § 229.55 et seq., requiring Florida public school students to pass a functional literacy examination, the SSAT-II, in order to receive a state high school diploma. Fla.Stat. § 232.246(1)(b) (1978). Shortly thereafter, present and future twelfth grade students who had failed or would fail the test filed suit, challenging the constitutionality of using the test for diploma denials under the due process and equal protection clauses of the Fourteenth Amendment. They also challenged this use of the SSAT-II under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq. (1976), and the Equal Educational Opportunities Act ("EEOA"), 20 U.S.C. § 1703 (1976). [FN1] Central to their challenge was the argument that the diploma sanction had an unconstitutionally disproportionate impact on blacks. At the time of the 1979 hearing, after three test administrations, the failure rate of black students was approximately 10 times greater than that of white students. [FN2]

FN1. For a fuller discussion of this litigation, see Debra P. v. Turlington, 644 F.2d 397, 400-02 (5th Cir.1981) (Unit B).

FN2. After three test administrations, 20.049% of the black students in the Class of 1979 had not passed the test, compared with 1.9% of the white

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students in that class. 644 F.2d at 401.

As noted later in this opinion, the pass rate of all students had improved dramatically by the time of the 1983 hearings on remand.

*1407 The district court held that use of the SSAT-II for diploma denials violated the due process and equal protection clauses, Title VI, and the EEOA. *Debra P. v. Turlington*, 474 F.Supp. 244 (M.D.Fla.1979). The court enjoined the test's use as a diploma sanction until the 1982-83 school year, but allowed the state to use the test in the interim for remediation, which the court found violated neither the Constitution nor statutes. The district court found that the SSAT-II's content was valid, *id.* at 261, which would allow the state to use it as a diploma sanction after 1982.

The district court issued the four-year injunction for two reasons. First, the court found that the examination violated the equal protection clause, Title VI, and the EEOA by perpetuating past discrimination against black students who had attended segregated schools for the first four years of their education. 474 F.Supp. at 250-57. The students in the high school class of 1983 would be the first to have attended physically integrated schools for all 12 years of their educational careers; thus, they would be the first students against whom the diploma sanction could be applied. Second, the court held that the test's implementation schedule provided insufficient notice, in violation of the due process clause. *Id.* at 267. The court determined that because instruction of the skills necessary to complete the SSAT-II is a cumulative and time consuming process, *id.* at 264, four to six years should intervene between announcement of the test and implementation of the diploma sanction. *Id.* at 267. The class of 1983 would be the first with six years notice of the sanction and adequate instruction to take the test.

On appeal, the former Fifth Circuit Court of Appeals upheld the district court's injunction, but remanded for further findings on two issues that would affect use of the SSAT-II as a diploma sanction in 1983 and thereafter. First, the circuit court required the state to demonstrate on remand that the competency exam was "a fair test of that which is taught in [Florida's] classrooms." *Debra P. v. Turlington*, 644 F.2d 397, 408 (5th Cir.1981) (Unit B). The circuit court declared clearly erroneous the district court's holding that the test's content was valid; the record was "simply insufficient in proof that the test administered measures what was actually taught in the schools of Florida." *Id.* at 405. Without such proof, use of the test as a diploma sanction would violate the due process and equal protection clauses. *Id.* at 404, 406. Second, the circuit court held that if the state was able to prove that the test tested what was "actually taught," the state would then have to demonstrate either that the test's racially discriminatory impact was not due to the present effects of past intentional discrimination, or that the test's use as a diploma sanction would remedy those effects. *Id.* at 407-08.

On remand, the district court tried the two issues separately. After trial on the first issue, the district court concluded that the state had met its burden of proving by a preponderance of the evidence that the competency examination is

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"instructionally valid," i.e., a fair test of that which is taught in Florida's schools. Debra P. v. Turlington, 564 F.Supp. 177, 186 (M.D.Fla.1983). After an evidentiary hearing on the second issue, the court found that although vestiges of past segregation still exist to some extent, and although the test still has a racially discriminatory impact, there is no causal link between the disproportionate failure rate of black students and those present effects of past segregation. Id. at 188. The court found, moreover, that even if there were a causal connection, the defendants had carried their burden of showing that the diploma sanction would remedy those effects. Id. The propriety of these findings forms the basis for this appeal. Our opinion will refer more particularly to facts adduced at the hearings in the district court on remand.

I. INSTRUCTIONAL VALIDITY

Following remand, the Florida Department of Education commissioned IOX Assessment Associates, a private consulting *1408 firm, to design a study to determine whether Florida's school districts teach the skills tested by the competency examination. IOX designed a four-part study. The first part of the study consisted of a teacher survey, which was distributed to all of Florida's 65,000 teachers. Forty-seven thousand teachers responded to the survey. The survey asked whether the teacher had provided instruction during 1981-82 relating to the skills tested on the SSAT-II and if so, whether that instruction had been sufficient for a student to master the skills.

The second part of the study was a district survey completed by all of Florida's 67 school districts and 4 university laboratory schools. The survey requested the districts (1) to estimate in which of grades 2-12 students were taught the test skills and in which grade a majority of students would have mastered the skills, (2) to describe any major variations in instruction among schools in the district, (3) to describe any remedial programs specifically related to mastery of test skills, (4) to describe staff development activities related to teaching test skills, (5) to list instructional materials specifically used to teach test skills, and (6) to identify any program designed specifically to help students pass the test. The district survey instructed respondents to consider only the 1981-82 school year.

The third part of the study was a series of site visits to verify the accuracy of the district reports. Each district was visited by at least one visitation team. The visitation teams were composed of one program auditor from the Department of Education and two administrators from school districts other than the one visited. After two days of interviewing teachers and reviewing instructional materials, a team would prepare a report of findings and impressions about the accuracy of the district report.

The fourth portion of the study consisted of surveys given in a randomly selected school within each school district to students in an English or Social Studies class selected at random within the school by the visitation team. The survey asked the students whether they had been taught the skills tested by the competency exam at any point during their educational careers. In all, thirty-two hundred students completed this survey.

At trial, the state introduced the study results, over the objection of the

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appellants that the results constituted inadmissible hearsay. The state also presented three expert witnesses who concluded on the basis of the data from the IOX study that Florida was teaching what it was testing. One expert was Dr. Popham, designer of the study, who relied in large part on a "Mastery Exposure Index" prepared by the Department of Education. The Index is a distillation of the survey data and purportedly demonstrates that each student is given an average of 2.7 opportunities over the length of his educational career to master test skills. Dr. Popham testified that one such opportunity would be enough to make the competency exam "instructionally valid"--a fair test of that which is taught.

All three experts for the state testified that their conclusions of instructional validity were bolstered by the state's extensive remedial efforts to help students who initially fail the test pass it before graduation. [FN3]

FN3. As discussed infra pp. 1410-1411, students first take the SSAT-II in 10th grade and have four more opportunities to pass the test before graduation.

Two experts testified on behalf of the appellants that the IOX study did not prove instructional validity. One expert opined that the survey was not a reliable indication of what had been taught to the Class of 1983 because it focused only on the 1981-82 school year, rather than the twelfth graders' entire school careers. The other expert testified that the survey demonstrated that in-school districts with high rates of SSAT-II failure, students were not taught test skills.

On the basis of the evidence presented at trial, particularly the evidence of remedial *1409 programs and efforts, the district court concluded that the competency exam is instructionally valid because "students are afforded an adequate opportunity to learn the skills tested on the SSAT-II before it is used as a diploma sanction." 564 F.Supp. at 186.

Appellants raise three objections to the district court's finding that the SSAT-II is instructionally valid.

A. Legal Standard

[1] First, the appellants argue that the district court applied an improper legal standard in determining the validity of the test's content. They claim that the Fifth Circuit opinion required direct evidence that students were "actually taught" the subjects tested. In essence, they argue that the district court erred by considering circumstantial evidence. [FN4]

FN4. Parts of what the appellants attack as an "improper legal standard" are properly characterized as the inferences the district court drew from circumstantial evidence. For example, the appellants argue that the district court employed an "improper legal standard" by inferring that test skills were "actually taught" on the basis of evidence that test skills are included in the curriculum and that a majority of teachers realize they should teach the test skills. This is an attack on the district court's

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finding of fact, not on the legal standard it employed. We address the court's finding of fact in the next section.

We think that appellants read the prior opinion of this court too restrictively. The opinion gives no indication that in requiring that the state prove "that the test covered things actually taught in the classroom," 644 F.2d at 405, the panel meant to limit the proof to direct evidence of classroom activities. [FN5] In the absence of such an indication, the normal rule that evidence, whether direct or circumstantial, may be considered if relevant, see Fed.R.Evid. 402, should apply.

FN5. In fact, a passage in the opinion stating that the test would be invalid if "it tests matters outside the curriculum," 644 F.2d at 406, indicates just the opposite, i.e., that proof of the contents of the curriculum would be important and that proof need not be limited to direct proof of classroom activities.

Contrary to appellants' contentions, the district clearly understood the question posed to it by the panel opinion: "Put simply, the task assigned to this Court by the Court of Appeals was to find out if Florida is teaching what it is testing." 564 F.Supp. at 180.

B. Factual Findings

[2] Appellants challenge on several grounds the district court's factual finding that students are afforded an adequate opportunity to learn the SSAT-II skills. In examining these contentions, we bear in mind that the district court's findings of fact and inferences drawn therefrom are clearly erroneous only when "the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *United States v. Gypsum Co.*, 333 U.S. 364, 395, 68 S.Ct. 525, 541, 92 L.Ed. 746 (1948).

1. The Focus on the 1981-82 School Year

The appellants object that the IOX study, relied on by the state's experts and the district court, is invalid because it evaluated only the 1981-82 school year. They argue that the most the study can show is that in 1981-82 Florida was providing instruction in grades 2-12 that, considered cumulatively, would prepare a student for the SSAT-II. Thus, they maintain that the study proves that the Class of 1983 was taught the SSAT-II skills only if one assumes that what was taught in Florida schools in 1981-82 has been taught in Florida schools since 1971. Appellants argue that such an assumption is contradicted by the district court's own 1979 findings that "there is evidence that certain skills were not taught in Florida public schools," that instruction prior to 1977 "was neutral and devoid of the present objectives," and that results of the 1977 test "reflect the obvious inadequacy of the prior instruction in the standard objectives." 474 F.Supp. at 263, 264. It was partially on the basis of these findings that the court in 1979 issued its *1410 four-year injunction against use of the test as a diploma sanction. *Id.* at 267.

The testimony of Dr. Popham, the designer of the IOX study and expert witness

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for the state, seems to support the appellants' argument that the study proves instructional validity as to the Class of 1983 only if one assumes that the same instruction was offered since 1971. He testified that "definitive, conclusive evidence" as to what the twelfth graders in the Class of 1983 had been taught could have been obtained only by tracking them back to second grade, 40 R. 73, but that this would have required prohibitively "elaborate and expensive mechanisms." 41 R. 222. Therefore, he devised a "cross-sectional" study of grades 2-12 from which "we could draw reasonable inferences regarding what had transpired at the earlier grade levels." 40 R. 73. Popham concluded that such inferences would be reasonable because there had not been "dramatic modifications in instruction, certainly [not] after the introduction of this legislation." 40 R. 74. Popham had no evidence to support this conclusion, other than his own judgment that "most of the basic reading skills and mathematic skills have probably always been emphasized in Florida schools in most grades." 42 R. 286 (emphasis added).

Another of Florida's expert witnesses, Dr. Robert Gagne, also based his opinion that then current twelfth graders had been taught SSAT-II skills on the assumption that the skills taught in 1981-82 had been taught "over a period of years." 46 R. 707. In addition, however, he relied on the extensive remedial programs Florida offers to students who initially fail the SSAT-II. Id.

One of appellants' experts, Dr. Robert Linn, challenged the assumption that instruction had been the same throughout the twelfth graders' careers as it was in 1981-82. He testified that institution of the SSAT-II in 1976 would have created a change in the emphasis the Florida teachers placed on test skills. 45 R. 533.

The district court did not directly address the charge that the study was invalid because it demonstrated only what was taught in grades 2-12 in 1981-82. However, the court, by emphasizing evidence of Florida's remedial efforts, indicated its view that the evidence of such efforts compensated for any such deficiency in the IOX study.

To the extent that the IOX study relies on an inference that what was taught in 1981-82 was taught as far back as 1971, we acknowledge some concern, given the district court's 1979 findings and the abysmal results of the first SSAT-II administration in the fall of 1977. [FN6] Even Dr. Popham's testimony indicated his belief that enactment of the 1976 Educational Accountability Act prompted a dramatic modification in instruction. 40 R. 74.

FN6. Seventy-eight percent of the black students and twenty-five percent of the white students taking the test in 1977 failed one or more sections of the test. 644 F.2d at 401.

On the other hand, there was a clearly reasonable inference that the instruction revealed in the 1981-82 survey was substantially the same as the post-Act instruction, i.e., beginning in 1977. Our question about the pre-1977 instruction undermines to some extent our confidence in portions of the IOX study, such as the teacher survey and the Master Exposure Index relied on by Dr.

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Popham. However, we are not convinced that our doubts concerning the pre-1977 inference would seriously affect our conclusion. There was evidence that "the bulk of the [SSAT-II] instruction occurs in the latter years" of a child's educational career, which in this case would be the years since 1977. 41 R. 211 (testimony of Dr. Popham). Moreover, other portions of the study do not rely on the questionable inference at all. For instance, the evidence of high school remedial programs as they relate to the Class of 1983 and subsequent classes, and the results of the student survey are not dependent on any inference of what transpired before 1977.

Florida's remedial efforts are extensive. The state provides funds to each school district to be used solely for providing remedial *1411 instruction to students who need additional assistance in mastering basic skills. Fla.Stat. Ann. § 236.088 (West Supp.1983). Students have five chances to pass the SSAT-II between 10th and 12th grades, and if they fail, they are offered remedial help. Students may also elect to remain in school for an additional year on a fulltime or parttime basis to receive, at the state's expense, "special instruction designed to remedy [their] identified deficiencies." Fla.Stat. Ann. § 232.246(4) (West Supp.1983). [FN7] If they then pass the SSAT-II, they are awarded their diplomas.

FN7. Students who have obtained a certificate of completion, awarded to students who have satisfied all requirements for graduation except passing the SSAT-II, may also take adult education classes aimed at remediating SSAT-II skills. Fla.Stat. Ann. § 228.072 (West Supp.1983). They may then retake the SSAT-II and receive diplomas if they pass. A student who has received a certificate of completion may also take the SSAT-II after leaving school even if he or she is not enrolled in adult education classes. 564 F.Supp. at 185 n. 16.

The state's experts testified at length about the breadth and effectiveness of the state's remedial efforts. [FN8] All agreed that the efforts were substantial and bolstered a finding of instructional validity. Dr. Robert Gagne testified "that with suitable instructional programs, and I see a good deal of evidence that those exist, that the skills which may be initially failed on the test, let's say, in 10th grade ... could readily be learned by the next administration of the test or some next administration of the test in any case." 46 R. 675.

FN8. 41 R. 206-07 (testimony of Dr. Popham); 44 R. 454-77 (testimony of Dr. Henderson); 46 R. 663-64; 674-80; 707-08 (testimony of Dr. Gagne).

Significantly, appellants' experts, Dr. Linn and Dr. Calfee, did not examine in any detail the district reports that described the remedial programs. 45 R. 573 (testimony of Dr. Linn); 48 R. 895-97 (testimony of Dr. Calfee). [FN9] Dr. Linn did not examine responses from remedial teachers because they were not available to him. He conceded that such responses "would be very desirable information to have for this instructional validity question." 45 R. 603. [FN10]

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FN9. Dr. Calfee thought the district reports were "too indirect" to prove instructional validity. 48 R. 897.

FN10. Appellants argue that the existence of remedial instruction has no significance because the state produced no specific evidence about what was taught in the remedial classes. It is true that the district surveys did not contain questions about what skills were taught in remedial programs. However, Dr. Gagne testified that lists of remedial materials contained in the district reports demonstrated that the remedial programs concentrated on SSAT-II skills. 46 R. 677. Moreover, Dr. Popham thought it was clear that SSAT-II skills would be taught in remedial classes specifically designed to help students pass the SSAT-II. 42 R. 263. We cannot disagree with the district court's significant reliance on the remedial programs.

The results of the student survey are also impressive. Ninety to ninety-nine percent of the students surveyed statewide said they had been taught the test skills. 41 R. 186. Dr. Popham found this "very powerful evidence" of instructional validity. Id. [FN11]

FN11. Appellants' expert Dr. Linn questioned the results of the student survey because it was not strictly random. 45 R. 545. Schools to be visited by survey teams were selected by a random sampling technique and the teams were instructed to choose a class in the school at random and administer the survey to it. Dr. Linn was concerned that the second step, because it depended on the discretion of the survey team, would not produce random results. However, he had no evidence that this skewed the results of the survey. 45 R. 591. We find the survey results persuasive.

[3] The remedial efforts and the student survey, in addition to the evidence that most instruction is provided in the later school years, persuade us that there was adequate evidence to support the district court's finding of instructional validity, notwithstanding our reservations about the inference concerning the pre-1977 instruction. We are also persuaded in this regard by the SSAT-II pass rate in the Class of 1983. After four of five test administrations, 99.84 percent of the class had passed the communications portion of the test and 97.23 percent had passed the math portion. 564 F.Supp. at 180. Appellants' *1412 expert Dr. Calfee in fact conceded the instructional validity of the communication section of the test, 49 R. 1011, as did appellants' counsel at oral argument before this court.

2. Dr. Calfee's Correlation

Dr. Robert Calfee, an expert witness for the appellants, testified that the results of the IOX teacher survey when compared with pass rates in the different school districts demonstrate a correlation between the amount of instruction reported by teachers and performance on the test. Calfee found that students failed the test in greatest numbers in districts where teachers reported teaching

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the fewest test skills. 47 R. 811. Dr. Calfee concluded that the SSAT-II is not instructionally valid as to some districts.

The state's experts testified on the basis of the results of the same teacher survey that students in all of Florida's districts were given an opportunity to learn the SSAT-II skills before the end of 12th grade. The district court chose to credit the state's experts over Dr. Calfee.

"It is settled law that the weight to be accorded expert opinion is solely within the discretion of the judge sitting without a jury In the ultimate analysis, the trier of fact is the final arbiter as between experts whose opinions may differ...." *Pittman v. Gilmore*, 556 F.2d 1259, 1261 (5th Cir.1977). *Accord Ludlow Corp. v. Textile Rubber and Chemical Co.*, 636 F.2d 1057, 1060 (5th Cir.1981). We think that the district court was within its discretion in crediting the state's experts over Dr. Calfee. [FN12]

FN12. The district court itself elicited from Dr. Calfee that his study did not look at which skills teachers from a district reported teaching but only how many. 48 R. 845. Thus, if two teachers each reported teaching eight of thirteen skills, Calfee's analysis assumed that they each taught the same eight skills, whereas they might have taught all thirteen between the two of them. Moreover, Dr. Calfee testified that in the case of six or seven school districts his correlation between teacher responses and pass rates completely broke down. 48 R. 851. Dr. Calfee attributed this to "noise in the data," *id.* at 850, although he also said he did not understand why this happened: "Here, I scratched my head." *Id.* at 853.

3. Failure to Focus on Students Who Failed

The appellants object that the state offered no direct and specific evidence that students who never passed the SSAT-II were taught test skills. Appellants assert that these students should have been the focus of the inquiry into instructional validity.

[4] None of the experts at trial suggested that an instructional validity study must focus on students who have failed the test. The experts conceded that there are no accepted educational standards for determining whether a test is instructionally valid. Under these circumstances, we reject the unsupported assertion that the state study does not prove that the SSAT-II is a fair test of that which is taught because it did not focus specifically on students who had failed the test.

4. Inferences Drawn by the Trial Court

[5] The appellants argue that the district court was clearly erroneous in inferring that skills were actually taught from circumstantial evidence presented at trial. Such evidence included evidence of inclusion of the skills in the curriculum, inclusion of the skills by individual teachers in their course of instruction, the existence of remedial efforts, and evidence from the student survey that students remembered receiving instruction in the skills. We cannot say that this inference is clearly erroneous. As our discussion above makes clear, we believe the evidence at trial was such that the district court could

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reasonably infer that the students were actually taught what was necessary to pass the exam.

C. Admissibility of the Study Results

The appellants argue that the trial judge improperly admitted the IOX study results into evidence.

*1413 "The trial judge has broad discretion in the matter of admission or exclusion of evidence and will not be overturned absent an abuse of this discretion." ADP-Financial Computer Services v. First National Bank, 703 F.2d 1261, 1266 (11th Cir.1983) (citing Salem v. U.S. Lines Co., 370 U.S. 31, 82 S.Ct. 1119, 8 L.Ed.2d 313 (1962)).

The district court ruled that the study results, although hearsay, were admissible under Fed.R.Evid. 803(24), [FN13] which provides in part:

FN13. Alternatively, the district court admitted the study results under Fed.R.Evid. 703. Because we hold here that the study results were admissible under Rule 803(24); we need not evaluate this alternative ground.

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(24) Other exceptions. A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of the material facts; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence....

Appellants maintain that the study results do not satisfy two conditions of 803(24). First, they argue that the results were not more probative on the point for which they were offered than any other evidence that the proponent could procure through reasonable efforts. The appellants assert that their experts' testimony demonstrated that there were less expensive methods of obtaining information about instructional validity that would have more directly demonstrated that Florida is teaching what it is testing. Dr. Popham testified, however, that he had considered and rejected these methods as either impractical, prohibitively expensive, or less reliable. See, e.g., 40 R. 53, 81-82; 41 R. 229-30. Given this expert testimony, the district court was within its discretion in determining that the results were more probative than other available evidence.

Second, the appellants claim that the results did not possess sufficient circumstantial guarantees of trustworthiness. They claim that the trustworthiness of the results is questionable because the study respondents were aware of the purpose of the survey, the study was conducted by the state itself, and instructions to respondents placed pressure on them to give answers favorable to the state.

[6] It is true that study respondents were aware of the study's purpose and that

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the state conducted this study. However, the study did possess guarantees of trustworthiness. For instance, site visitors verified the accuracy of the district reports, and site visitors were told that other visiting teams might audit their reports. 41 R. 163. Dr. Popham testified that steps were taken to remove pressure from teachers to respond positively to the teacher survey: responses were anonymous, teachers were encouraged to answer honestly, and all teachers, not just math and language arts teachers, were surveyed to remove even the perception that the state was seeking only positive responses. 40 R. 73; 41 R. 100. The district court relied on steps taken to safeguard trustworthiness in determining that the study was trustworthy. 564 F.Supp. at 182 n. 7. The district court also noted that appellants' expert Dr. Calfee "had no problem with the study procedures." Id. Under these circumstances, the district court was within its discretion in determining that this study was sufficiently trustworthy to qualify for admission under 803(24).

We therefore find no error in the admission of the IOX study results. See also *Jellibeans, Inc. v. Skating Clubs of Georgia, Inc.*, 716 F.2d 833, 844-45 (11th Cir.1983) (consumer survey admissible in trade name case; "alleged technical deficiencies affect the survey's weight and not its admissibility"); *C.A. May Marine Supply* *1414 (Cite as: 730 F.2d 1405, *1414) *Co. v. Brunswick Corp.*, 649 F.2d 1049, 1055 n. 10 (5th Cir.1981) (consumer survey in wrongful dealership termination case inadmissible only because irrelevant; "[i]f the inadequacies in the survey had been technical, such as the format of the question or the manner in which it was the survey [sic] was taken, those shortcomings would have borne on the weight of the evidence, not its admissibility"); *Holiday Inns, Inc. v. Holiday Out*, 481 F.2d 445, 447 (5th Cir.1973) (consumer survey admissible in trade name case; "format of the questions and the manner of conducting the survey" go to weight of evidence).

II. "VESTIGES" OF PAST DISCRIMINATION

The prior Fifth Circuit opinion in this case held that if, upon remand, the state demonstrated that the SSAT-II is a fair test of that which is taught, the trial court should examine the relationship between continuing "vestiges" of past intentional segregation and the test's racially discriminatory impact. Use of the test as a diploma sanction would be permissible only if the state satisfied the test set forth in *McNeal v. Tate County School District*, 508 F.2d 1017 (5th Cir.1975), by demonstrating either (1) that the disproportionate failure of blacks was not caused by the present effects of past intentional segregation, or (2) that the use of the test as a diploma sanction would remedy those effects. 644 F.2d at 407. [FN14]

FN14. *McNeal v. Tate County School District* held that ability grouping that has a racially discriminatory impact "may nevertheless be permitted in an otherwise unitary system if the school district can demonstrate that its assignment method is not based on the present results of past segregation or will remedy such results through better educational opportunities." 508 F.2d at 1020. Appellants contend that *McNeal* requires in all cases as a threshold matter that a school system be "unitary" in the sense that its

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operation has eliminated all vestiges of discrimination. We disagree. An absolute requirement that there be no present effects of past discrimination would be incompatible with both prongs of McNeal. Proof that the present effects of past discrimination did not cause the disparate impact, i.e., the first McNeal prong, and proof that the test or procedure at issue would remedy such vestiges of past discrimination, i.e., the second prong, both assume the continued presence of vestiges of past discrimination. In McNeal, the school district, simultaneous with its court-ordered transition from a dual or segregated to a unitary system, employed an ability grouping plan that resulted in substantial classroom segregation. The language of the McNeal opinion on which plaintiffs rely barred the use of ability grouping until the school "district can show that steps to bring disadvantaged students to peer status have ended the educational disadvantages caused by prior segregation." 508 F.2d at 1021. In the instant appeal, however, Florida dismantled its dual system in 1971, and the diploma sanction at issue will not be implemented until the students taking the test shall have attended all 12 of their school years after 1971. Although the district court acknowledged the continued existence of some vestiges of past discrimination in its 1979 decision, and that such vestiges continued "to some extent" at the time of the 1983 hearing, the court found that such vestiges "did not significantly affect the educational opportunities of black students who started school after 1971." 7 R. 1542; 564 F.Supp. at 187; 474 F.Supp. at 252, 256. Accord *Debra P. v. Turlington*, 644 F.2d at 407 (approving the application of the two-prong McNeal test in the instant case).

Following the trial of this issue on remand, the district court concluded that vestiges of past purposeful segregation still exist to some extent in Florida schools. The district court found that some individual teachers have racial biases that impair their teaching abilities. 564 F.Supp. at 187. The court also noted the plaintiffs' evidence "that black students are still being suspended more often than white students, that several counties still do not have black administrators, that racial stereotypes still persist, and that blacks are being assigned to EMR [educable mentally retarded] classes more readily than whites." *Id.*

The court also noted the undisputed fact that the SSAT-II failure rate among black students is still disproportionately high. Fifty-seven percent of the students in the Class of 1983 who have failed the test are black, even though blacks constitute only 20% of the class. 564 F.Supp. at 186; 50 R. 20-21.

However, the court found on the basis of the evidence at trial that there is no causal *1415 link between the present effects of past school segregation and the disproportionate failure rate. 564 F.Supp. at 188. The district court found, moreover, that even if there were a causal connection, the state had proven that the test will help remedy those effects. *Id.* The appellants challenge these last two factual findings as clearly erroneous.

A. The Finding of No Causal Link

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The district court based its finding that there is no causal link between effects of past discrimination and the SSAT-II's disproportionate impact partly on the testimony of Dr. Barbara Lerner, an expert witness for the state. The court credited her testimony that the existing vestiges of school segregation do not affect performance on the SSAT-II. Dr. Lerner testified that other factors, such as the educational background of a student's parents, class size, attendance, and amounts of homework, more directly relate to student performance.

The district court also based its finding on evidence that black students in counties where there are black administrators have not performed appreciably better on the SSAT-II than black students in counties where there are no black authority figures, and that more than 90% of black students have passed the test. Finally, the court credited testimony of appellants' expert Dr. Na'im Akbar that many of the impediments to learning faced by black students arise outside the classroom.

[7] We think that this was sufficient evidence upon which to base a finding that whatever vestiges of discrimination remain do not cause the disproportionate failure rate among black students. We are particularly impressed by the very high percentages of blacks who in fact have passed the test. Ninety-nine and one-half percent of the black members of the Class of 1983 passed the communications portion of the test, and ninety-one percent passed the mathematics portion. According to appellants' experts, vestiges of past intentional segregation operate statewide and therefore presumably touch all black students. The fact that ninety-one to ninety-nine percent of the black students nonetheless pass the SSAT-II is strong evidence that the vestiges do not cause blacks to fail the test. [FN15]

FN15. We also think that Florida's remedial efforts play a role in severing any possible link between vestiges and poor performance by black students. Even assuming that discriminatory vestiges contributed to a student's initial failure to pass the SSAT-II, it seems that the state's extensive remedial programs would enable the student to pass the test before graduation despite the effects of discrimination. It seems unlikely that remedial programs designed specifically to help students who have failed the SSAT-II would be infected by the same vestiges that exist to some extent in other parts of the school system.

The appellants vigorously argue that their evidence demonstrates that racial stereotypes, which the district court found still persist to some extent in Florida schools, cause teachers to have lower expectations of black students, which negatively affects the performance of those students. Dr. Lerner's testimony disparaged this lower expectation theory. Dr. Lerner did not suggest that lower teacher expectations do not result in lower performance. However, she testified that numerous studies demonstrate that teachers very quickly correct initial expectations in light of their actual experience with students. 52 R. 232. Appellants contend that the studies relied on by Dr. Lerner were done outside the context of desegregation. Dr. Lerner testified, however, that

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actual experience will correct initial expectations based on race, except in the case of profoundly bigoted persons. 53 R. 275. Although Dr. Lerner's experience with the problems of desegregation in Florida may have been less than desirable, the district court was entitled to credit her testimony, which was also corroborated by the high pass rate among black students indicating that any lower expectations among Florida teachers did not have a significant effect.

Although the evidence before the district court was far from conclusive, after a careful review of the record, we are convinced *1416 that the inferences and conclusions drawn by the district court are reasonable and supported by the evidence. We conclude that the district court's findings on causation were not clearly erroneous. [FN16]

FN16. The appellants also argue that the district court employed the wrong legal standard in determining that there was no causal link between present effects of past intentional segregation and the SSAT-II's disproportionate impact. We do not understand the basis for this claim. The district court was instructed to determine on remand whether present effects caused the disproportionate impact. This is precisely the question the district court examined and answered. There was no legal error.

B. The Finding that the Diploma Sanction Remedies Vestiges

The district court also found that, even assuming there was a causal link between vestiges and disparate impact, the state had satisfied the second prong of the McNeal test by demonstrating that use of the SSAT-II as a diploma sanction would remedy the vestiges of past intentional segregation. The district court relied, again, on Dr. Lerner's testimony. Dr. Lerner testified that the best way to encourage student performance is by setting objective standards and creating a "climate of order" to motivate students. Dr. Lerner cited studies showing that such a climate is responsible for greater student achievement in Catholic schools. Dr. Lerner concluded that the use of the SSAT-II as a diploma sanction will "necessarily remedy" vestiges of past segregation by contributing to objective standards and a "climate of order" that motivates students. 52 R. 243.

This evidence supports the district court's finding that the diploma sanction is needed to remedy the present effects of past segregation in Florida's schools. The district court finding is also supported by another fact alluded to by the district court, and of which we take judicial notice, namely, that the diploma sanction will motivate teachers and administrators, as well as students. Although the sanction is to deny the student the diploma, diploma denial reflects adversely on the teachers and administrators of the school system responsible for the student's education. We think it is clear that teachers and administrators will work to avoid this stigma, thus tending to remedy any lingering lower expectations on the part of teachers.

The remarkable improvement in the SSAT-II pass rate among black students over the last six years demonstrates that use of the SSAT-II as a diploma sanction will be effective in overcoming the effects of past segregation. Appellants

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argue that the improvement has nothing to do with diploma sanctions because the test has not yet been used to deny diplomas. However, we think it likely that the threat of diploma sanction that existed throughout the course of this litigation contributed to the improved pass rate, and that actual use of the test as a diploma sanction will be equally, if not more, effective in helping black students overcome discriminatory vestiges and pass the SSAT-II.

Thus, we affirm the finding that use of the SSAT-II as a diploma sanction will help remedy vestiges of past discrimination. We acknowledge a heavy sense of discomfort over the unfairness if discriminatory vestiges (albeit much attenuated) have in fact caused a student to fail the SSAT-II. [FN17] However, that apparent unfairness would be outweighed by the demonstrated effect of the diploma sanction in remedying the greater unfairness of functional illiteracy.

FN17. For purposes of analysis under the second prong of McNeal, we have assumed arguendo that there may be a causal link between vestiges and SSAT-II failure by black students. Of course, we have already found in Section II.A, supra, that the state demonstrated that there is no such link.

CONCLUSION

We affirm the district court's findings (1) that students were actually taught test skills, (2) that vestiges of past intentional segregation do not cause the SSAT-II's disproportionate impact on blacks, and (3) that use of the SSAT-II as a diploma sanction *1417 will help remedy the vestiges of past segregation. Therefore, the State of Florida may deny diplomas to students (beginning with the Class of 1983) who have not yet passed the SSAT-II.

AFFIRMED.

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United States Court of Appeals,
Fifth Circuit.

Unit B

DEBRA P., a minor by Irene P., her mother and next friend et al., Plaintiffs-
Appellees, Cross-Appellants,

v.

Ralph D. TURLINGTON, individually and as Commissioner of Education et al.,
Defendants-Appellants, Cross-Appellees.

No. 79-3074.

May 4, 1981.

Florida high school students brought class action challenging constitutional and statutory validity of Florida State Student Assessment Test, Part II, which is designed to measure functional literacy and passage of which is condition to receipt of high school diploma. The United States District Court for the Middle District of Florida, George G. Carr, J., 474 F.Supp. 244, found the diploma aspect unconstitutional, and appeal and cross appeal were taken. The Court of Appeals, Fay, Circuit Judge, held that: (1) students' expectation of a diploma if they satisfied attendance requirements and passed required courses was an implied property interest for constitutional purposes; (2) if test covered materials not taught it was unfair and violated equal protection and due process; (3) there was no due process or equal protection violation because test was given only in public schools; (4) immediate use of diploma sanction violated equal protection as punishing black students for vestiges of prior dual school system; and (5) there was neither a constitutional nor statutory violation in using test results as a mechanism for remediation only.

Affirmed in part, vacated in part and remanded.

West Headnotes

[1] Federal Courts 942
170Bk942

Since state of Florida did not make any effort to make certain whether functional literacy test required for high school diploma covered material actually studied in the classroom and since record was insufficient in proof on that issue, constitutional challenge to such requirement was remanded for further finding. West's F.S.A. § 232.246(1)(b), (4); U.S.C.A.Const. Amend. 14.

[2] States 4.4(3)
360k4.4(3)
(Formerly 360k4.6)

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State's plenary powers over education come from the powers reserved to the states through the Tenth Amendment. U.S.C.A.Const. Amend. 10.

[3] States 4.4(3)

360k4.4(3)

(Formerly 360k4.6)

As long as it does so in a manner consistent with the mandates of the Federal Constitution, a state may determine the length, manner and content of any education it provides. U.S.C.A.Const. Amends. 10, 14.

[4] Federal Courts 172

170Bk172

Federal courts interfere with state educational directives only when necessary to protect freedoms and privileges guaranteed by the United States Constitution. U.S.C.A.Const. Amends. 10, 14.

[5] Civil Rights 127.1

78k127.1

(Formerly 78k127, 78k9)

If a state provides an educational system, it must do so in a nondiscriminatory fashion. West's F.S.A.Const. Art. 9, §§ 1-5; U.S.C.A.Const. Amends. 10, 14.

[6] Constitutional Law 277(1)

92k277(1)

In establishing a system of free public education and in making school attendants mandatory, the state of Florida has created an expectation in students that if they attend during the required years and take and pass required courses they will receive a diploma, and such expectation constitutes "property interest" as that term is used constitutionally; although state constitutionally might not be obligated to establish and maintain a school system, its action in doing so, requiring attendance and creating a mutual expectation that a student who is successful will graduate with a diploma gives rise to an implied property right. West's F.S.A. Const. Art. 9, §§ 1- 5; U.S.C.A.Const. Amend. 14.

[7] Constitutional Law 242.2(5.1)

92k242.2(5.1)

(Formerly 92k242.2(5))

[7] Constitutional Law 278.5(5.1)

92k278.5(5.1)

(Formerly 92k278.5(5))

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Requirement for Florida high school diploma that a student pass a functional literary test would violate equal protection and due process clauses of Federal Constitution if the test covered material not taught the students. West's F.S.A. § 232.246(1)(b), (4); U.S.C.A.Const. Amend. 14.

[8] Constitutional Law ☞ 213.1(1)

92k213.1(1)

When the state encroaches on the concepts of justice lying at the basis of our civil and political institutions, it is obligated to avoid action which is arbitrary and capricious, does not achieve or even frustrate the legitimate state interests, or is fundamentally unfair. U.S.C.A.Const. Amends. 5, 14.

[9] Schools ☞ 178

345k178

A state may condition the receipt of a public school diploma on the passing of a test so long as it is a fair test of that which was taught. West's F.S.A. § 232.246(1)(b), (4); U.S.C.A.Const. Amends. 10, 14.

[10] Constitutional Law ☞ 242.2(5.1)

92k242.2(5.1)

(Formerly 92k242.2(5))

[10] Schools ☞ 178

345k178

Having a functional literacy examination as a requirement for a public high school diploma bars a rational relation to a valid state interest in public education; however, such a test must be a fair test of that which was in fact taught and if it is not fair, i. e., covers matter that was not taught in the classroom, it cannot be said to be rationally related to a state interest and its use violates equal protection. West's F.S.A. § 232.246(1)(b), (4); U.S.C.A.Const. Amend. 14.

[11] Constitutional Law ☞ 242.2(5.1)

92k242.2(5.1)

(Formerly 92k242.2(5))

[11] Constitutional Law ☞ 278.5(5.1)

92k278.5(5.1)

(Formerly 92k278.5(5))

Florida's state student assessment test, i. e., functional literacy test required to secure public high school diploma, does not violate due process or equal protection because it is given only in public schools; not only does a state

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need not correct all problems of education in one fell swoop but it has a stronger interest in those for which it pays the cost and the state presently exercises very limited control over private schools. West's F.S.A. §§ 232.021, 232.246(1)(b), (4); U.S.C.A.Const. Amend. 14.

[12] Constitutional Law Ⓢ242.2(5.1)

92k242.2(5.1)

(Formerly 92k242.2(5))

In considering equal protection attack on Florida requirement that students pass a functional literacy test to receive a high school diploma trial court was to consider impact of legislative action on the community, historical background and sequence of events leading up to such requirement, including fact that until 1967 Florida operated a dual school system and that from 1967 to 1971 segregation persisted and predominantly black schools remained inferior and that greater failure rate of blacks on the test could be attributed to unequal education they received during the "dual schools" period. West's F.S.A. § 232.246(1)(b), (4); U.S.C.A.Const. Amend. 14.

[13] Constitutional Law Ⓢ220(3)

92k220(3)

Absent failure to demonstrate either that disproportionate failure of black students on functional literacy test required for Florida public high school diploma was not due to present effects of past intentional segregation or, that as presently used, the diploma sanction was necessary to remedy those effects, immediate use of the diploma sanction was impermissible as punishing black students for deficiency created by prior dual school system. West's F.S.A. § 232.246(1)(b), (4); U.S.C.A.Const. Amend. 14.

[14] Civil Rights Ⓢ127.1

78k127.1

(Formerly 78k127, 78k9.5)

If Florida state student assessment test, which was designed to measure functional literacy, was a fair test of what was taught in the public schools, its use as a graduation requirement, i. e., condition for diploma, would not violate Title VI of Civil Rights Act, i. e., prohibition against exclusion from participation in or discrimination under federally assisted programs on ground of race, etc. West's F.S.A. § 232.246(1)(b), (4); Civil Rights Act of 1964, § 601, 42 U.S.C.A. § 2000d.

[15] Schools Ⓢ178

345k178

Since Florida state student assessment test, which was designed to measure

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functional literacy and passage of which was prerequisite to receipt of high school diploma, perpetuated past racial discrimination as to black students the diploma sanction violated Equal Educational Opportunities Act which requires an educational agency to take affirmative steps to remove the "vestiges" of dual school systems. West's F.S.A. § 232.246(1)(b), (4); Equal Educational Opportunities Act of 1974, § 204, 20 U.S.C.A. § 1703.

[16] Civil Rights ☞127.1

78k127.1

(Formerly 78k127, 78k9)

[16] Constitutional Law ☞242.2(5.1)

92k242.2(5.1)

(Formerly 92k242.2(5))

[16] Constitutional Law ☞278.5(5.1)

92k278.5(5.1)

(Formerly 92k278.5(5))

Using results of Florida state student assessment test, which is designed to measure functional literacy, a mechanism for remediation only, as opposed to diploma denial for failure to pass, violates neither federal constitutional guarantees of due process and equal protection or Title VI of Civil Rights Act of 1964 or Equal Educational Opportunities Act. West's F.S.A. § 232.246(1)(b), (4); Civil Rights Act of 1964, § 601, 42 U.S.C.A. § 2000d; Equal Educational Opportunities Act of 1974, § 204, 20 U.S.C.A. § 1703; U.S.C.A.Const. Amend. 14.

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David Rubin, Stephen J. Pollak, Richard M. Sharp, Washington, D. C., amicus curiae.

Appeal from the United States District Court for the Middle District of Florida.

Before FAY and VANCE, Circuit Judges and ALLGOOD [FN*], District Judge.

FN* District Judge of the Northern District of Alabama sitting by designation.

FAY, Circuit Judge:

The State of Florida, concerned about the quality of its public educational

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system, enacted statutory provisions leading to the giving of a competency examination covering certain basic skills. Many students passed the examination but a significant number failed. The failing group included a disparate number of blacks. This class action, brought on their behalf, challenges the right of the state to impose the passing of the examination as a condition precedent to the receipt of a high school diploma. The overriding legal issue of this appeal is whether the State of Florida can constitutionally deprive public school students of their high school diplomas on the basis of an examination which may cover matters not taught through the curriculum. We hold that the State may not constitutionally so deprive its students unless it has submitted proof of the curricular validity of the test. Accordingly, we vacate the judgment of the district court and remand for further findings of fact.

I.

In 1976, the Florida Legislature enacted the Educational Accountability Act of 1976. Laws of Florida 1976, Vol. 1, Ch. 76-223, pp. 489-508. The intent of the legislature was to provide a system of accountability for education in the state and to ensure that each student was afforded similar educational opportunity regardless of geographic location. Fla.Stat.Ann. s 229.55(2)(a) (West 1977). The legislature established three standards for graduation from Florida public schools. First, the students were required to complete a minimum number of credits for graduation. Second, they were required to master certain basic skills. Third, they were required to perform satisfactorily in functional literacy as determined by the State Board of Education.[FN1] *401 Each school district was directed to develop procedures for remediation, and a statewide testing program was outlined. Fla.Stat.Ann. s 229.57 (West 1977 & Supp.1980). In 1978, the Act was amended to require passage of a functional literacy examination prior to receipt of a state high school diploma.

FN1. The requirements are set out in Fla.Stat.Ann. s 232.246 (West Supp.1980) to which we will frequently refer:

232.246 General requirements for high school graduation

(1) Beginning with the 1978-1979 school year, each district school board shall establish standards for graduation from its schools which shall include as a minimum:

(a) Mastery of the minimum performance standards in reading, writing, and mathematics for the 11th grade, established pursuant to ss. 229.565 and 229.57, determined in the manner prescribed after a public hearing and consideration by the state board; (b) Demonstrated ability to successfully apply basic skills to everyday life situations as measured by a functional literacy examination developed and administered in a manner prescribed after a public hearing and consideration by the state board; and

(c) Completion of a minimum number of academic credits, and all other applicable requirements prescribed by the district school board pursuant to s. 232.245.

(2) The standards required in subsection (1), and any subsequent modifications thereto, shall be printed in the Florida Administrative Code

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even though said standards are not defined as rules.

(3) The state board shall, after a public hearing and consideration, make provision for appropriate modification of testing instruments and procedures for students with identified handicaps or disabilities in order to ensure that the results of the testing represent the student's achievement, rather than reflecting the student's impaired sensory, manual, speaking, or psychological process skills, except when such skills are the factors the test purports to measure.

(4) A student who meets all requirements prescribed in subsection (1) shall be awarded a standard diploma in a form prescribed by the state board; provided that a school board may, in lieu of the standard diploma, award differentiated diplomas to those exceeding the prescribed minimums. A student who completes the minimum number of credits and other requirements prescribed by paragraph (1)(c), but who is unable to meet the standards of paragraph (1)(a) or paragraph (1)(b), shall be awarded a certificate of completion in a form prescribed by the state board. However, any student who is otherwise entitled to a certificate of completion may, in the alternative, elect to remain in the secondary school on either a full-time or a part-time basis for up to 1 additional year and receive special instruction designed to remedy his identified deficiencies. This special instruction shall be funded from the district's state compensatory education funds. (5) The public hearing and consideration required in paragraphs (a) and (b) of subsection (1) and in subsection (3) shall not be construed to amend or nullify the requirements of security relating to the contents of examinations or assessment instruments and related materials or data as prescribed in s. 232.248.

At the time of the trial of this lawsuit, the examination, the SSAT II, had been administered three times. The failure statistics showed a greater impact on black students than on white students. In the Fall, 1977 administration, 78% of the black students taking the exam failed one or more sections of the test as compared with 25% of the white students. Of the 4,480 black students taking the test for the second time in Fall, 1978, 74% failed one or both sections. Twenty-five percent of the whites retaking the test failed. On the mathematics section alone, 46% of the blacks retaking the test failed. The results of the third administration in Spring, 1978, which were released during trial, indicated that 60% of the blacks taking the mathematics exam for the third time failed as compared with 36% of the whites. In May, 1979, of the approximately 91,000 high school seniors in Florida public schools, 3,466, or 20.049% of the black students had not passed the test as compared with 1,342, or 1.9% of the white students. [FN2]

FN2. Debra P. v. Turlington, 474 F.Supp. 244, 248-249 (M.D.Fla.1979).

Plaintiffs-appellees, Florida high school students, filed this class action in the United States District Court for the Middle District of Florida, challenging

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the constitutionality of the Florida State Student Assessment Test, Part II (SSAT II) under the due process and equal protection clauses of the Fourteenth Amendment. They also challenged the test under Title VI of the Civil Rights Act of 1964, 42 U.S.C. s 2000d (1976) and the Equal Educational Opportunities Act, 20 U.S.C. s 1703 (1976). Plaintiffs were certified in three classes:

Class A all present and future twelfth grade public school students in the State of Florida who have failed or hereafter fail the SSAT II

Class B all present and future twelfth grade black public school students in the State of Florida who have failed or who hereafter fail the SSAT II

Class C all present and future twelfth grade black public school students in Hillsborough County, Florida, who have failed or hereafter fail the SSAT II

Class A, B, and C claimed that appellants [FN3] designed and implemented a testing *402 program which is racially biased and violates the Equal Protection Clause of the Fourteenth Amendment. These three classes also claimed that appellants violated the Fourteenth Amendment in instituting a program denying diplomas without sufficient notice or time to prepare for the exam.

FN3. Named defendants-appellants are: Commissioner of Education Ralph D. Turlington; the Florida State Board of Education: Governor Bob Graham, Secretary of State George Firestone, Attorney General Jim Smith, Comptroller General Gerald A. Lewis, Treasurer William Gunter, Commissioner of Agriculture Doyle Conner; the Florida Department of Education (DOE); the School Board of Hillsborough County, Florida: Roland H. Lewis, Cecile W. Essrig, Carl Carpenter, Jr., Ben H. Hill, Jr., A. Leon Lowrey; and Superintendent of Schools of Hillsborough County, Raymond O. Shelton. Defendants were sued in their individual as well as official positions.

Classes B and C, the black students, claimed that the SSAT II is a device for resegregating the Florida public schools in violation of the Fourteenth Amendment, 42 U.S.C. s 2000d, and 20 U.S.C. s 1703 because those failing the test are placed in remedial classes which tend to contain more blacks than whites. Plaintiffs sought declaratory and injunctive relief.

The District Court, *Debra P. v. Turlington*, 474 F.Supp. 244 (M.D.Fla.1979) found that Fla.Stat.Ann. s 232.246(1)(b) [FN4] as applied in the present context, violated the equal protection clause of the United States Constitution, Title VI of the Civil Rights Act of 1964, and the Equal Educational Opportunities Act as to plaintiffs in classes B and C. It held that section 232.246(1)(b) (West Supp.1981) violated the due process clause of the United States Constitution as to plaintiffs in classes A, B, and C. Defendants-appellants were enjoined from the use of the test as a requirement for receipt of diplomas until the 1982-1983 school year. The court found that the use of the examination for remediation violated neither the Constitution nor statutes.

FN4. See note 1 supra.

On appeal, the appellants contend that the court erred in finding that the use

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of the test violates due process because there was adequate notice and no property right was involved. They contend that the graduation requirement is not a punishment, does not deprive students of a "liberty" interest and does not violate the equal protection clause. Appellants contend that the court erred in finding 20 U.S.C. s 1701 and 42 U.S.C. s 2000d to be applicable. In their cross-appeal, plaintiffs-appellees contend that the district court erred in limiting the period of the injunction to four years and in upholding the validity of the examination.

[1] We find, based upon stipulated facts, that because the state had not made any effort to make certain whether the test covered material actually studied in the classrooms of the state and because the record is insufficient in proof on that issue, the case must be remanded for further findings. If the test covers material not taught the students, it is unfair and violates the Equal Protection and Due Process clauses of the United States Constitution.

II.

[2][3] At the outset, we wish to stress that neither the district court nor we are in a position to determine educational policy in the State of Florida. The state has determined that minimum standards must be met and that the quality of education must be improved. We have nothing but praise for these efforts. [FN5] The state's plenary powers over education come from the powers reserved to the states through the Tenth Amendment, and usually they are defined in the state constitution. [FN6] As long as it *403 does so in a manner consistent with the mandates of the United States Constitution, a state may determine the length, manner, and content of any education it provides.

FN5. As of March, 1978, 33 states had taken some type of action to mandate minimum competency standards, and movements were under way in three more. See C. Pipho, Minimum Competency Testing in 1978: A Look at State Standards, 59 Phi Delta Kappan 585 (1978); M. S. McClung, Competency Testing Programs: Legal and Educational Issues, 47 Fordham L.Rev. 651 (1959).

FN6. Florida's original grant of educational authority appeared in the Constitution of 1868, Art. VIII, s 2. The section stated that the "legislature shall provide a uniform system of common schools, and a university," and further provided that they would be free. Present authorization is found in the Florida Constitution of 1968, Art. IX, ss 1-5.

[4] The United States courts have interfered with state educational directives only when necessary to protect freedoms and privileges guaranteed by the United States Constitution. In 1899, for example, in the case of Cumming v. Board of Education, 175 U.S. 528, 20 S.Ct. 197, 44 L.Ed. 262, the Court upheld the decision of a local board to close a black school while keeping a white school open. Finding that the decision was based on economic reasons, the Court said: (T)he education of the people in schools maintained by state taxation is a matter belonging to the respective States, and any interference on the part of Federal authority with the management of such schools cannot be justified except

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in the case of a clear and unmistakable disregard of the rights secured by the supreme law of the land.

175 U.S. at 545, 20 S.Ct. at 201, 44 L.Ed. at 266. While the outcome of the Cumming case might be questioned in this post Brown era, it must be remembered that it was not until just before the First World War that compulsory school attendance laws were in force in all states.[FN7] Public education was virtually unknown at the time of the adoption of the Constitution. In 1647 Colonial Massachusetts directed its towns to establish schools, and in 1749, Franklin proposed the Philadelphia academy. Until after the turn of the century, education was primarily private and usually sectarian. *Lemon v. Kurtzman*, 403 U.S. 602, 645-47, 91 S.Ct. 2105, 2127-28, 29 L.Ed.2d 745, 774-75 (1976). Once part of the government, however, education became a significant governmental responsibility. As the Court noted in *Brown v. Board of Education*, 347 U.S. 483, 493, 74 S.Ct. 686, 691, 98 L.Ed. 873, 880 (1954):

FN7. *Brown v. Board of Education*, 347 U.S. 483, 489-90 n.4, 74 S.Ct. 686, 691, n.4, 98 L.Ed. 873, 878 n.4 (1954).

Today, education is perhaps the most important function of State and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society.

Stating that the provision of education ranks at the apex of the functions of a state, the Court in *Wisconsin v. Yoder*, 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1971) was required to balance the state's need for its citizens to be educated against the citizens' hallowed right to free exercise of religion. "There is no doubt," the Court said, "as to the power of a state, having a high responsibility for education of its citizens, to impose reasonable regulations for the control and duration of basic education." 406 U.S. at 213, 92 S.Ct. at 1532, 32 L.Ed.2d at 24.

[5] Though the state has plenary power, it cannot exercise that power without reason and without regard to the United States Constitution. Although the Court has never labeled education as a "fundamental right" automatically triggering strict scrutiny of state actions, see *San Antonio School District v. Rodriguez*, 411 U.S. 1, 93 S.Ct. 1278, 36 L.Ed.2d 16 (1972), it is clear that if the state does provide an educational system, it must do so in a non-discriminatory fashion. "Among other things, the State is constrained to recognize a student's legitimate entitlement to a public education as a property interest which may be protected by the Due Process Clause..." *Goss v. Lopez*, 419 U.S. 565, 574, 95 S.Ct. 729, 736, 42 L.Ed.2d 725, 734 (1975).

III.

[6] It is in the light of the foregoing discussion of the relationship between the state and federal governments that we must analyze the plaintiffs' claims that SSAT II violates the equal protection and due process clauses of the Fourteenth Amendment. It is clear that in establishing a system of free public education and in *404 making school attendance mandatory, [FN8] the state has

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created an expectation in the students. From the students' point of view, the expectation is that if a student attends school during those required years, and indeed more, and if he takes and passes the required courses, he will receive a diploma. This is a property interest as that term is used constitutionally. See *Goss v. Lopez*, 419 U.S. 565, 579, 95 S.Ct. 729, 738, 42 L.Ed.2d 725, 737 (1975). Although the state of Florida constitutionally may not be obligated to establish and maintain a school system, it has done so, required attendance and created a mutual expectation that the student who is successful will graduate with a diploma. This expectation can be viewed as a state-created "understanding" that secures certain benefits and that supports claims of entitlement to those benefits. *Board of Regents v. Roth*, 408 U.S. 564, 577, 92 S.Ct. 2701, 2709, 33 L.Ed.2d 548 (1972). As the trial court noted, "graduation is the logical extension of successful attendance." 474 F.Supp. at 266; and as appellees note in brief, before SSAT II, a student completing the necessary number of credits would graduate with a diploma. (Brief of Appellees at 52).

FN8. Fla.Stat.Ann. s 232.01 (West Supp.1981) mandates that children between the ages of 6 and 16 attend school.

[7] Based upon this implied property right, we find that the trial court was correct in holding that the implementation schedule for the test violated due process of law. In its finding, the court quoted from the report of the state's own task force:

The problems created by the abrupt schedule for implementing the Functional Literacy Test were most severe for the members of Florida high school graduation class of 1979. At the eleventh hour and with virtually no warning, these students were told that the requirements for graduation had been changed. They were suddenly required to pass a test constructed under the pressure of time and covering content that was presumed to be elementary but that their schools may or may not have taught them recently, well, or perhaps at all.

In retrospect, the Task Force believes that the schedule for implementing statewide high school graduation standards was too severe. We feel that most of the problems that are identified in later sections of this report are the result of trying to do too much in too little time. Consequently, we believe that the problems can and will be solved over time. Task Force on Educational Assessment Programs, Competency Testing in Florida Report to the Florida Cabinet (Part 1) 4 (1979).

474 F.Supp. at 265.

[8] The due process violation potentially goes deeper than deprivation of property rights without adequate notice. When it encroaches upon concepts of justice lying at the basis of our civil and political institutions, the state is obligated to avoid action which is arbitrary and capricious, does not achieve or even frustrates a legitimate state interest, or is fundamentally unfair. See *St. Ann v. Palisi*, 495 F.2d 423, 425 n.5 (5th Cir. 1974). [FN9] We believe that the state administered a test that was, at least on the record before us, fundamentally unfair in that it may have covered matters not taught in the

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schools of the state.

FN9. In St. Ann, two students were indefinitely suspended because of their mother's behavior. The court considered this punishment without personal guilt to be a violation of a fundamental concept of liberty. Although the St. Ann case is factually dissimilar to the one we here consider, it is clear that in neither case can the state arbitrarily interfere. The case of Mahavongsanan v. Hall, 529 F.2d 448 (5th Cir. 1976) is distinguishable in that in that case the plaintiff sought to require the state to give her a college diploma despite her failure to take a comprehensive examination. The court found that there was no denial of procedural or substantive due process because plaintiff had refused the university's efforts to tailor a special program to her needs. The expectations of college and high school students would certainly be different.

Testimony at trial by experts for both plaintiffs and defendants indicated that several types of studies were done before and after the administration of the test. *405 The experts agreed that of the several types of validity studies, [FN10] a content validity study would be most important for a competency examination such as SSAT II. The trial court apparently found that the test had adequate content validity, 474 F.Supp. at 261, but we find that holding upon the record before us to be clearly erroneous. In the field of competency testing, an important component of content validity is curricular validity, defined by defendants' expert Dr. Foster, as "things that are currently taught." (Tr.2845) [FN11] This record is simply insufficient in proof that the test administered measures what was actually taught in the schools of Florida.

FN10. Basic types of validity as defined by the American Psychological Association, Standards for Educational and Psychological Tests (1974) are as follows:

Criterion related validity measurements of how well the test items predict the future performance of the test takers and how well the test results correlate with other criteria which might provide the same type of information.

content validity measurements of how well a test measures a representative sample of behaviors in the universe of situations the test is intended to represent.

construct validity how well the test measures the construct (defined as the theoretical idea developed to explain and organize some aspects of existing knowledge) for which it was designed. For an excellent discussion of the APA Standards as they relate to competency testing, see M.S. McClung, Competency Testing Programs: Legal and Educational Issues, 47 Fordham L. Rev. 651, 683 (1979).

FN11. There is evidence in the record that care was taken in constructing a test which would match the objectives of the schools. The trial court's

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discussion of the development 474 F.Supp. at 257-259, indicates that the test was probably a good test of what the students should know but not necessarily of what they had an opportunity to learn.

During the course of pre-trial litigation, defendant-appellants stipulated as follows:

No effort was made by the Florida Department of Education to ascertain whether or not all the minimum student performance standards were in fact being taught in Florida public schools. (Stipulation 114)

The Florida Department of Education did not conduct any formal studies which showed whether or not the skills measured on the test were in fact taught in the public schools in the State of Florida. (Stipulation 117)

On oral argument before this Court, counsel for the appellants stated that the stipulations meant only that the state did no formal studies of the correspondence between what was tested and what was taught. She assured this Court that the state could prove that the test covered things actually taught in the classrooms. That may be the case, but this record does not establish such proof.

Dr. Thomas H. Fisher, Administrator of the Student Assessment Section, Department of Education, testified that the DOE merely assumed that things were being taught. (Tr.2844) Dr. John E. Hills, professor of Educational Research at Florida State University, testified that the test reliably and validly assessed applications of basic communications and math skills to everyday situations (Tr.2945), but he agreed that everything on the test might not have been taught. [FN12] Appellants placed into evidence *406 some math books and communications teaching materials, but at least one teacher, Mr. Carihfield, testified that he did not cover the whole book in class. (Tr.3055).

FN12. A portion of Dr. Hill's testimony appears below:

Q You're saying then that an item which might include an element that had not been taught in school might cause some problems in this regard?

A Well, an item which is not part of the objectives of what we're trying to teach in school. I don't think you can probably comfortably say that every single thing that a person might have to do on a practical application problem has to be specifically taught. I would feel uncomfortable with that, because I don't think schools can teach every single thing. But the objective may be. They can apply the problem, the techniques to a tin roof. Did we teach about tin roofs in school? Well, I don't know that we do. But you sort of assume that that's available to most people.

Q We have no way of knowing though whether something that is included in an objective is in fact included in all of the classrooms in the State of Florida. We have already had that testimony from Dr. Fisher. So it would be possible that a test item might impact more severely on a particular minority group because those children simply did not have as part of their educational experience attention to that particular matter?

A Well, if they have not been taught the basics that it seems are part of

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(Cite as: 644 F.2d 397, *406)

the schools' essential material, then I'd say you're right. You know, there's let's turn now to construct validity.

We acknowledge that in composing items for a test, the writer is dealing with applications of knowledge, and therefore the form of the test question would not necessarily be the same as the form of the information taught in class. We think, however, that fundamental fairness requires that the state be put to test on the issue of whether the students were tested on material they were or were not taught.

[9] We note that in requiring the state to prove on remand that the material was covered in class, we are not substituting our judgment for that of the state legislature on a matter of state policy. See *Ferguson v. Skrupa*, 372 U.S. 726, 731, 83 S.Ct. 1028, 1031, 10 L.Ed.2d 93, 98 (1963); *Memphis Light, Gas and Water Division v. Craft*, 436 U.S. 1, 9, 98 S.Ct. 1554, 1560, 56 L.Ed.2d 30, 39 (1978). We do not question the right of the state to condition the receipt of a diploma upon the passing of a test so long as it is a fair test of that which was taught. Nor do we seek to dictate what subjects are to be taught or in what manner. We do not share appellants' fear that our decision would prevent new items from being added to the curriculum. Those decisions would properly be left with the school authorities. As the United States Supreme Court said in *San Antonio School District v. Rodriguez*, 411 U.S. 1, 43, 93 S.Ct. 1278, 1302, 36 L.Ed.2d 16, 49 (1972):

The ultimate wisdom as to these and related problems of education is not likely to be divined for all time even by the scholars who now so earnestly debate the issues. In such circumstances, the judiciary is well advised to refrain from imposing on the States inflexible constitutional restraints that could circumscribe or handicap the continued research and experimentation so vital to finding even partial solutions to educational problems and to keeping abreast of ever-changing conditions.

Just as a teacher in a particular class gives the final exam on what he or she has taught, so should the state give its final exam on what has been taught in its classrooms.

[10] It follows that if the test is found to be invalid for the reason that it tests matters outside the curriculum, its continued use would violate the Equal Protection Clause. In analyzing the constitutionality of the examination under the Equal Protection Clause, the trial court stated, "(i)f the test by dividing students into two categories, passers and failers, did so without a rational relation to the purpose for which it was designed, then the Court would be compelled to find the test unconstitutional." 474 F.Supp. at 260. Analyzing the test from the viewpoint of its objectives, the court found that it does have adequate construct validity, that is, it does test functional literacy as defined by the Board.[FN13] We accept this finding and affirm that part of the trial court's opinion holding that having a functional literacy examination bears a rational relation to a valid state interest. That finding is, however, subject to a further finding on remand that the test is a fair test of that which was taught. If the test is not fair, it cannot be said to be rationally related to a

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(Cite as: 474 F.Supp. 244)

United States District Court, M. D. Florida,
Tampa Division.

DEBRA P., a minor, by Irene P., her mother and next friend, Wanda W., a minor, by Ruby W., her mother and next friend, Luwanda K., a minor, by Willa K., her mother and next friend, Terry W., a minor, by Doris W., his mother and next friend, Brenda T., a minor by Willie T., her father and next friend, Vanessa S., a minor, by Mamie S., her mother and next friend, Thomas J. H., Jr., a minor by Thomas J. H., Sr., his father and next friend, Gary L. B., a minor, by Ezell B., his father and next friend, Valisa W., a minor, by Charles W., her father and next friend, Huey J., a minor, by Melvin G., his guardian and next friend, on behalf of themselves and all other persons similarly situated,
Plaintiffs,

v.

Ralph D. TURLINGTON, Individually and as Commissioner of Education, Florida State Board of Education, Governor Bob Graham, Individually and as Chairman thereof, Secretary of State George Firestone, Attorney General Jim Smith, Comptroller Gerald A. "Jerry" Lewis, Treasurer William Gunter, Commissioner of Agriculture Doyle Conner, Commissioner of Education Ralph D. Turlington, all Individually and as members thereof, Florida Department of Education, School Board of Hillsborough County, Florida, a Corporate Body Public, Roland H. Lewis, Individually and as Chairman thereof, Cecile W. Essrig, Carl Carpenter, Jr., Ben H. Hill, Jr., A. Leon Lowery, Sam Rampello, and Marion Rodgers, all Individually and as members thereof, and, Raymond O. Shelton, Individually and as Superintendent of Schools of Hillsborough County, Defendants.

No. 78-892 Civ. T-C.

July 12, 1979.

As Amended Aug. 7 and 8, 1979.

Plaintiffs brought action challenging constitutional and statutory validity of Florida state student assessment test, a functional literacy examination. The District Court, Carr, J., held that: (1) in view of history of segregation in Florida public schools, test unlawfully discriminated against black children in violation of equal protection clause; (2) test had adequate content and construct validity and bore rational relation to valid state interest; (3) plaintiffs failed to establish that test was racially or ethnically biased; (4) failure to apply test to private school was not unconstitutional; (5) inadequacy of notice provided prior to indication of diploma sanction, objectives, and test was a violation of due process clause; (6) use of test to classify students for remediation was constitutionally permissible, and (7) state would be enjoined from requiring passage of test as requirement for graduation for period of four years.

Ordered accordingly.

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West Headnotes

[1] Schools ⚔13(5)
345k13(5)
(Formerly 78k9)

[1] Constitutional Law ⚔220(3)
92k220(3)

Where de jure segregation existed in Florida public schools from 1885 to 1967, where racial discrimination existed from 1967 through 1971, where, by commencement of school term 1971-1972, actual physical integration of schools was generally completed but remediation with specifically delineated objectives and programs did not commence until 1977, where there existed intent to discriminate through 1971 and, although proof of present intent to discriminate was insufficient, past purposeful discrimination affecting black pupils was perpetuated by Florida state student assessment test, a functional literacy test, use of test as a requirement for receipt of high school diploma violated equal protection clause and federal statutes, U.S.C.A.Const. Amend. 14; Civil Rights Act of 1964, § 601, 42 U.S.C.A. § 2000d; 20 U.S.C.A. § 1703.

[2] Constitutional Law ⚔215
92k215

Disproportionate impact is not sole touchstone of invidious racial discrimination forbidden by Constitution, but it is a relevant factor to be considered.
U.S.C.A.Const. Amend. 14.

[3] Schools ⚔163
345k163

Florida state student assessment test, a functional literacy test, was a valid and reasonable measure for dividing students into classifications for purpose of high school graduation and reasonably evaluated objectives established by Florida State Board of Education, as test has both adequate content validity and adequate construct validity. U.S.C.A.Const. Amend. 14; West's F.S.A. § 229.57 et seq.

[4] Constitutional Law ⚔220(3)
92k220(3)

Florida state student assessment test, a functional literacy test, was not unconstitutionally racially or ethnically biased against black students. West's F.S.A. § 229.57 et seq.; U.S.C.A.Const. Amend. 14.

[5] Constitutional Law ⚔220(3)
92k220(3)

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Strict scrutiny test did not apply in determining constitutionality of Florida's failure to require private school students to pass functional literacy examination as a condition of receiving high school diplomas, where ability to attend private schools was clearly affected by student's or his parents' financial resources, even though blacks were, as a class, without substantial financial resources. U.S.C.A.Const. Amend. 14.

[6] Constitutional Law ☞209
92k209

Fact that decisions of legislative or administrative bodies affect certain groups disproportionately does not signal strict scrutiny analysis in determining whether decisions violated equal protection clause of Fourteenth Amendment. U.S.C.A.Const. Amend. 14.

[7] Schools ☞163
345k163

Florida's legislative decision to apply state student assessment test, a functional literacy examination, only to public schools, over which state had significant curricular, instructional, and financial control, was both reasonable and constitutional, as state was not required to correct all problems of education in one clean sweep but could attack problems in a logical fashion. West's F.S.A. § 229.57 et seq.; U.S.C.A.Const. Amend. 14.

[8] Constitutional Law ☞278.5(5.1)
92k278.5(5.1)
(Formerly 92k278.5(5))

[8] Schools ☞178
345k178

Notice given by state of Florida prior to and since implementation of functional literacy testing program, as well as adequacy of time to prepare for examination after objectives were first established, was constitutionally inadequate and violated due process rights, where passage of examination was condition to receiving a diploma, as high school students had property right in graduation from high school with a standard diploma if they had fulfilled requirements for graduation other than passage of examination and students also had liberty interest in being free of adverse stigma associated with receiving certificate of completion which was given to students who failed examination but otherwise satisfied requirements for graduation. U.S.C.A.Const. Amend. 14; West's F.S.A. § 229.57 et seq.

[9] Constitutional Law ☞251.1
92k251.1

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Due process is a flexible standard dependent upon facts and circumstances of each individual case. U.S.C.A.Const. Amend. 14.

[10] Schools ↪ 13(2)

345k13(2)

(Formerly 78k9)

Utilization of Florida state student assessment test, a functional literacy examination, to classify and group students for remediation pursuant to Florida Compensatory Education Act of 1977 did not unlawfully discriminate against black students even though compensatory education program for those students who failed examination was disproportionately composed of black children because more black children failed examination than white children, where purpose of compensatory education program was to assist students and not to resegregate them, where legislature had given program ample financial support, where pupil alignment in programs was not static, and where program constituted only at most two classes or hours per day. West's F.S.A. § 236.088; U.S.C.A.Const. Amend. 14; Civil Rights Act of 1964, § 601, 42 U.S.C.A. § 2000d; 20 U.S.C.A. § 1703.

[11] Schools ↪ 13(20)

345k13(20)

Where Florida statute requiring passage of functional literacy examination as a condition to receiving high school diploma unconstitutionally discriminated against black students due to history of past discrimination in Florida public schools, state would be enjoined from requiring passage of examination as a requirement for graduation for period of four years but would be allowed to utilize examination as a requirement for graduation in the school term 1982-1983; in the interim, the examination could be administered and directed by state to assist in the identification and remediation of examination's skill objectives and scores could be retained in a fashion consistent with manner in which state retained other achievement test scores. West's F.S.A. § 232.246(1)(a-c).

*246 Morris W. Milton, St. Petersburg, Fla., Stephen F. Hanlon, Robert J. Shapiro, Bay Area Legal Services, Tampa, Fla., Diana Pullin, Roger L. Rice, Richard Jefferson, Center for Law and Education, Cambridge, Mass., Terry L. DeMeo, Legal Services for Greater Miami, Miami Fla., for plaintiffs.

James D. Little and Judith A. Brechner, State Board of Education, Tallahassee, Fla., W. Crosby Few, Tampa, Fla., for Hillsborough County defendants.

MEMORANDUM OPINION

CARR, District Judge.

I

THE CLAIMS AND CLASSES

The Plaintiffs in the instant action present a broad based constitutional and

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statutory challenge to the Florida Functional Literacy Examination (i. e. State Student Assessment Test, Part II; hereinafter referred to either as the SSAT II or the functional literacy examination). Fla.Stat. s 229.57, Et seq. Plaintiffs contend in a complaint filed October 16, 1978, that the SSAT II violates their Fourteenth Amendment due process and equal protection rights and also violates their rights pursuant to 42 U.S.C. s 2000d and 20 U.S.C. s 1703.

The Court on March 21, 1979, certified three classes of Plaintiffs:

Class A are all present and future twelfth grade public school students in the State of Florida who have failed or who hereafter fail the SSAT II.

Class B are all present and future twelfth grade black public school students in the State of Florida who have failed or who hereafter fail the SSAT II.

Class C are all present and future twelfth grade black public school students in Hillsborough County, Florida who have failed or who hereafter fail the SSAT II.

The Defendants in the case are Commissioner of Education, Ralph D. Turlington, the Florida Board of Education, Governor Bob Graham, Secretary of State George Firestone, Attorney General Jim Smith, Comptroller Gerald A. Lewis, Treasurer William Gunter, Commissioner of Agriculture Doyle Conner, [FN1] the Florida Department of Education (hereinafter referred to as the DOE), the School Board of Hillsborough County, Florida, Roland H. Lewis, Cecile W. Essrig, Carl Carpenter, Jr., Ben H. Hill, Jr., A. Leon Lowery, Sam Rampello, Marion Rodgers, [FN2] and Superintendent of Schools of Hillsborough County, Raymond O. Shelton.

FN1. The preceding named individual Defendants are the members of the Florida State Board of Education (i. e. the Governor and Florida Cabinet).

FN2. The preceding named individual Defendants through Mr. Lewis are the members of the Hillsborough County School Board.

A brief summary of the Plaintiffs' claims in conjunction with the certified classes will facilitate an understanding of the Court's opinion. [FN3] The first claim asserts that the *247 Defendants have either designed or implemented a test or testing program (i. e., SSAT II) which is racially biased and/or which violates the equal protection clause of the Fourteenth Amendment, 42 U.S.C. s 2000d, and 20 U.S.C. s 1703. The first claim relates to Classes A, B and C.

FN3. A more extensive and analytical review of the Plaintiffs' claims is presented in Parts IV, V and VI.

The second claim contends that Defendants have instituted a program of awarding diplomas without providing the Plaintiffs with adequate notice of the requirements (i. e., passage of the SSAT II) or adequate time to prepare for the required examination in violation of the Fourteenth Amendment. The second claim, like the first, relates to Classes A, B and C.

The third claim asserts that the Defendants have used the SSAT II in conjunction with Fla.Stat. s 236.088 as a mechanism for resegregating the Florida public schools through the use of remedial classes for those students failing the

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examination in violation of the Fourteenth Amendment, 42 U.S.C. § 2000d, and 20 U.S.C. § 1703. The third claim relates to Classes B and C.

The Plaintiffs' prayer for relief seeks a declaratory judgment finding that the requirement for passage of the SSAT II as a prerequisite for a normal graduation diploma is a violation of the due process and equal protection clauses of the Fourteenth Amendment, 42 U.S.C. § 2000d and 20 U.S.C. § 1703. The Plaintiffs additionally request an injunction restraining the Defendants from requiring SSAT II passage as a prerequisite to receiving a high school diploma. Finally, Plaintiffs seek an injunction to both purge their scholastic records of any acknowledgement of the SSAT II failure and to issue an Order prohibiting the utilization of the SSAT II results as a means of structuring classes in remediation.

II

JURISDICTION

The Court has jurisdiction to consider the Plaintiffs' claims pursuant to 28 U.S.C. § 1343(3) and (4) and 28 U.S.C. §§ 2201, 2202.

III

HISTORICAL AND LEGISLATIVE BACKGROUND

A. THE TEST

In 1976, the Florida Legislature enacted a comprehensive piece of legislation known as the "Educational Accountability Act of 1976." Laws of Florida 1976, Vol. 1, Chapter 76-223, pp. 489-508. Part of the stated intent of the legislature was:

(a) (to p)rovide a system of accountability for education in Florida which guarantees that each student is afforded similar opportunities for educational advancement without regard to geographic differences and varying local factors . . . (d) (to g)uarantee to each student in the Florida system of public education that the system provides instructional programs which meet minimum performance standards compatible with the state's plan for education . . . (f) (to p)rovide information to the public about the performance of the Florida system of public education in meeting established goals and providing effective, meaningful and relevant educational experiences designed to give students at least the minimum skills necessary to function and survive in today's society. Fla.Stat. § 229.55(2)(a), (d), (f).

In a subsection of the Act entitled "Pupil Progression" the legislature established three standards for graduation from Florida public high schools. Fla.Stat. §§ 232.245(3) (1977); 232.246(1)-(3). The first requirement mandated that the students complete the minimum number of credits for graduation promulgated by their school board. The second requirement made compulsory the mastery of basic skills and the third required "(s)atisfactory performance in functional literacy as determined by the State Board of Education" Fla.Stat. § 232.245(3) (1977). The pupil progression subsection also provided that each school district must develop procedures for remediation of students who were unable to meet the required standards. The legislation also provided for a comprehensive testing program to evaluate basic skill development at periodic intervals. Fla.Stat. § 229.57.*248 [FN4] In 1978, the Act was amended by the Florida Legislature to require passage of a functional literacy examination prior

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to receipt of a state graduation diploma. Those students who completed the minimum number of required high school credits but failed the functional literacy examination would receive a certificate of completion. Fla.Stat. s 232.246.[FN5]

FN4. Fla.Stat. s 229.57 provides:

(1) Statewide Testing. The primary purpose of the statewide testing program is to provide information needed for state-level decisions. The program shall be designed to:

(a) Assist in the identification of educational needs at the state, district, and school levels. (b) Assess how well districts and schools are meeting state goals and minimum performance standards.

(c) Provide information to aid in the development of policy issues and concerns.

(d) Provide a basis for comparisons among districts and between districts, the state, and the nation, when appropriate.

(e) Produce data which can be used to aid in the identification of exceptional educational programs or processes.

(2) The Statewide Assessment Program. The Commissioner is directed to implement a program of statewide assessment testing which shall provide for the improvement of the operation and management of the public schools. The statewide program shall be timed, as far as possible, so as not to conflict with on going district assessment programs. As part of the program the commissioner shall:

(a) Establish, with the approval of the state board, minimum performance standards related to the goals for education contained in the state's plan, including, but not limited, to basic skills in reading, writing and mathematics. The minimum performance standards shall be approved by April 1 in each year and they are established, for a period of no less than three, nor more than five, years. (b) Develop and administer in the public schools a uniform, statewide program of assessment to determine, periodically, educational status and progress and the degrees of achievement of approved minimum performance standards. The uniform statewide program shall consist of testing in grades 3, 5, 8, and 11 and may include the testing of additional grades and skill areas as specified by the Commissioner.

FN5. Fla.Stat. s 232.246 provides: General requirements for high school graduation.

(1) Beginning with the 1978-1979 school year, each district school board shall establish standards for graduation from its schools which shall include as a minimum:

(a) Mastery of the minimum performance standards in reading, writing and mathematics for the 11th grade, established pursuant to ss. 229.565 and 229.57, determined in the manner prescribed by rules of the state board; and (b) Demonstrated ability to successfully apply basic skills to everyday life situations as measured by a functional literacy examination developed and administered pursuant to rules of the state board; and

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(c) Completion of a minimum number of academic credits, and all other applicable requirements prescribed by the district school board pursuant to s. 232.245 (3) A student who meets all requirements prescribed in subsection (1) shall be awarded a standard diploma in a form prescribed by the state board; provided that a school board may, in lieu of the standard diploma, award differentiated diplomas to those exceeding the prescribed minimums. A student who completes the minimum number of credits and other requirements prescribed by paragraph (1)(c), but is unable to meet the standards of paragraph (1)(a) or paragraph (1)(b), shall be awarded a certificate of completion in a form prescribed by the state board.

At the time of trial the SSAT II had been administered on three separate occasions: Fall, 1977; Fall, 1978; Spring, 1979. A review of the results of the three administrations will be discussed in the following section.

B. THE TEST RESULTS

A review of the results of the October, 1977, administration of the SSAT II indicates that there were substantial numbers of students who failed the test. Of the 115,901 students taking both sections of the test, approximately 41,724 or 36% Failed one or both sections. A breakdown of the results on a racial basis shows that 78% Of the black students failed one or both sections as compared to 25% Of the white students. On the communications section of the SSAT II, 26% Of the black students failed as compared to 3% Of the white students.

The second administration results followed a similar pattern. Of the 4,480 black-students taking the test for a second time, 3,315 or 74% Failed one or both sections. The percentage of failure among white students retaking both sections was 25% Or 1,675 students. Of the 13,345 black students *249 being reexamined on the mathematics section 46% Or 6,139 failed.

The results of the third administration of the SSAT II which were released during the trial illustrate the same disparity in the failure rates among white and black students. Sixty percent (60%) of the black students retaking the mathematics section of the test for a third time failed as compared to 36% Of the white students. Between October, 1977, and May, 1979, the number of students who were in Florida public high schools first as juniors and then as seniors had been reduced to 91,000 students. Of the approximately 91,000 high school seniors, 3,466 or 20.049% Of the black students had not passed the test compared to 1,342 of 1.9% Of the white students. The failure rate among black students was approximately 10 times that among white students. In all, approximately 5,300 students or 5.8% Had failed to pass the SSAT II by the time of the end of their senior year in high school.

C. THE EFFECTS

Rather than following a specific item by item format for the findings of fact, the Court will utilize a narrative approach. The Court notes that in resolving conflicts in the testimony it relied upon its evaluation of the witnesses and their demeanor while testifying.

The denial of a standard diploma based on the failure of the SSAT II triggers a number of economic and academic deprivations. The State of Florida Career Service

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Department, for instance, employs only 10% Of its labor force from those people who do not have high school diplomas. The jobs found in this 10% "no diploma" category have been described as both "menial" and "dead end" positions. The State of Florida requires only a high school diploma for another 10% Of its work force. The remaining 80% Of the jobs in state government require a high school diploma and experience or some higher academic degree. A certificate of completion will not be considered a diploma for purposes of employment with the State of Florida.

Similarly, admission to one of the nine universities in Florida is predicated upon receipt of a high school diploma. A certificate of completion will not be considered an adequate substitute for the diploma. The denial of a diploma has a disproportionate effect on the college attendance of black students.[FN6]

FN6. The evidence provided by Dr. Eckland clearly illustrates that large numbers of black students who graduate in the lowest two deciles of their high school classes go on to participate in higher education if they have a diploma. The black students in the lowest two deciles roughly correlates to those black students who failed the SSAT II. Dr. Eckland's review of the National Longitudinal Study showed that the denial of a diploma to the black students in Florida who failed the SSAT II upon the second administration would result in a 20% Decline in black students college attendance.

The stigma which results from the failure of the SSAT II is a very serious problem. Students who have failed the test are often branded with the label "functionally illiterate."

D. ADMITTED FACTS AND JUDICIAL NOTICE

Prior to the commencement of the trial, the parties agreed that certain facts need not be proved. A list of those facts is contained in the parties' pretrial stipulation filed April 23, 1979. Those facts pertain primarily to the statutory duties and responsibilities of the Florida State Board of Education and the Florida Department of Education. There is agreement as to the existence of a dual school system in Florida, although the agreement is without temporal boundaries, and as to the fact that historically black children have not fared well on standardized tests in Florida schools.[FN7]

FN7. Numerous other facts have been admitted which if relevant, will be discussed in the Section IV, V and VI of this Memorandum Opinion. Further recitation of those facts in this section is unnecessary.

The Court on the first day of trial took judicial notice of certain relevant facts, statutes, and judicial decisions. The majority of the matters which Plaintiffs requested *250 that the Court judicially notice were previously admitted by the Defendants.[FN8] The Court has specifically taken judicial notice both of the de jure segregation of Florida schools in the period 1885 to 1967 and that as a result of attending segregated schools prior to the implementation of unitary school systems many members of Classes B and C received an unequal education to that received by white students during those years. Brown v. Board

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of Education, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954).

FN8. The Court's colloquy on the record with counsel as to those matters is clear as to which facts were admitted and which were judicially noticed. See also Parties' Pretrial Stipulation.

E. RACIAL DISCRIMINATION AND FLORIDA PUBLIC EDUCATION (1885-1967)

Although the Court's principal focus concerning racial discrimination in Florida public education revolves around the period 1967-1979, and more specifically 1967-1971, it is helpful to provide a historical over-view of the conditions existing prior to 1967.[FN9] From 1890 to 1967 Florida public education operated a dual school system; dual in the sense that there were two complete and separate school systems for black and white Florida public school children. See *Green v. County School Board of New Kent County*, 391 U.S. 430, 88 S.Ct. 1689, 20 L.Ed.2d 716 (1968); *Singleton v. Jackson Municipal Separate School District*, 419 F.2d 1211 (5th Cir. 1969). Likewise, there was absolute segregation of school faculty on a racial basis. Black and white teachers even maintained separate professional associations and unions. The physical facilities, the size and scope of the curricula, the libraries, the duration of the school day and year, the supplies, and the texts in black schools were inferior to those in white schools. Black schools during this period were obviously inferior.[FN10] The dual school system and its inherent inequality was perpetuated not only by the policies and practices of local school boards, but also by the Florida Constitution and statutes. [FN11] Although the Supreme Court's holding of separate but equal was the law of the land during the bulk of this period, the corresponding component of equality was constantly overlooked and never enforced in relation to black Florida public schools. *Plessy v. Ferguson*, 163 U.S. 537, 168 S.Ct. 1138, 41 L.Ed. 256 (1896).

FN9. The Court at the commencement of trial specifically limited the focus of the inquiry into discrimination to the period 1967 to present, but permitted Plaintiffs to present expert opinion evidence regarding an overview of the history of discrimination in the Florida public schools.

FN10. On this issue, the Court cannot help but refer to Judge Heebe's statement in a case involving similar issues:

It becomes readily apparent to anyone familiar with the nature of white and black schools in the South that children going to the white school would be provided with better facilities, faculties, educational materials than their counterparts in the black schools. *Moses v. Washington Parish School Board*, 330 F.Supp. 1340, 1345 (E.D.La.1971).

FN11. See Paragraphs 9 to 16 in Plaintiffs' Proposed Request for Judicial Notice. These matters were admitted by the Defendants.

IV

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FIRST CLAIM

A. INTRODUCTION

[1] The Plaintiffs' first claim is a multi-pronged equal protection, Title VI and Equal Educational Opportunities Act challenge to the SSAT II. The essence of the claim is the Plaintiffs' contention that SSAT II perpetuates and reemphasizes the effects of past purposeful discrimination. Beyond this core allegation, Plaintiffs contend (1) that the test is unreliable, invalid and not correlated to the public school curriculum, (2) that the test instrument is racially biased, and finally (3) that passage of the test was not required for graduation in Florida private schools. Plaintiffs further contend that the higher percentage of black twelfth grade failures was the probable and foreseeable consequence of enactment and *251 implementation of the statutory scheme by the Defendants.

B. RACIAL DISCRIMINATION AND FLORIDA PUBLIC EDUCATION (1967-1971)

All three classes of Plaintiffs embarked upon their public school educations in the school term 1967-1968. The testimony has clearly indicated that almost all of the Plaintiffs attended segregated public schools which were part of the dual school alignment of the earlier period. While the expert witness testimony on this issue confirms the existence of segregated schools in Florida on a broad geographic scale, the Plaintiffs have placed special emphasis on Hillsborough County, Florida. A review of the appendix to Judge Krentzman's Opinion in *Mannings v. The Board of Public Instruction of Hillsborough County, Florida*, No. 3554 Civ. T-K (unpublished opinion, May 11, 1971) [FN12] illustrates the attendance during 1967-1971 by race at selected Hillsborough County public schools. The evidence is clear and convincing that Hillsborough County schools in the period 1967-1971 were uniformly racially segregated and that a unitary school system did not exist during that period. This finding is applicable to the state as a whole during the same period.

FN12. Although Judge Krentzman's Opinion in *Mannings* has been often cited as a model decision in the area, it was never published. In *Mannings v. Board of Public Instruction of Hillsborough County, Florida*, 427 F.2d 874 (5th Cir. 1970), the Fifth Circuit reversed Judge Lieb's desegregation order and held:

We proceed to a determination of the status with respect to each of the six essential elements which go to disestablish a dual school system. Tested in this frame of reference, we find the Hillsborough system deficient in student assignments to certain schools, and to a degree in faculty and staff assignment throughout the system. *Mannings*, supra at 876.

The Fifth Circuit's finding above was made on May 11, 1970, exactly one year before Judge Krentzman's final desegregation Order was entered. See also *Mannings v. Board of Public Instruction of Hillsborough County, Florida*, 277 F.2d 370 (5th Cir. 1960).

In *Brown v. Board of Education*, the Supreme Court held:

We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal.

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Therefore, we hold that the Plaintiffs and other similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of equal protection of the laws guaranteed by the Fourteenth Amendment. Brown, supra, 347 U.S. at 495. 74 S.Ct. at 692.

Thus, it is clear that the separate facilities in Florida public schools for white and black children during the period 1967-1971 violated Plaintiffs' equal protection rights under the Fourteenth Amendment. The Brown finding that separate facilities were inherently unequal is manifestly applicable. [FN13]

FN13. See Plaintiff's "Request for Court to take Judicial Notice of Facts," No. 23, filed April 20, 1979. The Court at the commencement of trial in light of Brown and with the substitution of the word "unequal" for the word "inferior" took judicial notice of Request No. 23. While Brown made an inherent inequality finding, Judge Krentzman in Mannings found factual inequality in Hillsborough County Schools.

Beyond the question of inherent inequality due to segregation is the question of the inferiority of black schools during the same period. While Plaintiffs contend that a Brown showing which has been made is sufficient to shift the burden to Defendants, the Plaintiffs produced vast amounts of evidence of the inferiority in fact of black schools during the period 1967-1971. The evidence clearly indicates that black public schools in Florida were inferior in their physical facilities, course offerings, instructional materials, and equipment. There is little doubt but that the pervasive racial isolation condemned in Brown [FN14] in conjunction with the inferiority of black schools created an atmosphere which was not as conducive to learning as that found in white schools. [FN15] Further, this educational *252 environment constituted a serious impairment to Class B and C Plaintiffs' ability to learn, especially in the early grades which most educators view as a formative stage in intellectual development. [FN16]

FN14. Brown, supra note 11, at 494, 74 S.Ct. 686.

FN15. The Defendants at trial attempted to illustrate that at least one white school was older, or more in need of repair, than a black school. The inequality of only one school vis-a-vis only one other school is not the issue in this case. The class action proportion of the instant suit has forced the Court to view the relative quality of the black and white schools from a very broad perspective.

FN16. See Fla.Stat. s 230.2311:

(1) The Legislature recognizes that the early years of a pupil's education are crucial to his future and that mastery of the basic skills of communication and computation is essential to the future educational and personal success of an individual. . . . Early childhood and basic skills development programs shall be made available by the school districts to all school age children, especially those enrolled in kindergarten and grades

474 F.Supp. 244

(Cite as: 474 F.Supp. 244, *252)

one through three, and shall provide effective, meaningful, and relevant educational experiences designed to give students at least the minimum skills necessary to function and survive in today's society.

C. THE TRANSITION PHASE (1971-1979)

By the commencement of the school term 1971-1972, the actual physical integration of Florida public schools was generally completed. With integration came a host of human problems. Although children of all races suffered in the initial years of integration, black children suffered to a greater degree. The most significant burden which accompanied black children into the integrated schools was the existence of years of inferior education. Plaintiffs in Classes B and C had attended segregated schools which were inferior for the first four years of their education. Other problems presented to black children were disparate busing schedules, lingering racial stereotypes, disproportionate terminations of black principals and administrators, and a high incidence of suspensions. While the problems enumerated above do not constitute the denial of an equal educational opportunity during this period, they do attest to the difficulty in making significant academic gains. Additionally, the state during part of this period did not offer the leadership or the funding to mount a wide-scale attack on the educational deficits created during segregation. Remediation with specifically delineated objectives and programs did not commence until 1977.

Black children in the period after segregation ended were presented with numerous problems. Not only did the Class B and C Plaintiffs have to adjust to social, cultural and linguistic differences of the integrated schools, but they had to do so without an adequate educational foundation. The vestiges of the inferior elementary education they received still are present and affect their performance. Although remediation is now underway in a meaningful sense, the effects of past purposeful segregation have not been erased or overcome.

D. THE INTENT TO DISCRIMINATE

[2] While *Washington v. Davis*, 426 U.S. 229, 96 S.Ct. 2040, 48 L.Ed.2d 597 (1977), is instructive that disproportionate impact is "not the sole touchstone of invidious racial discrimination forbidden by the Constitution", it is a relevant factor to be considered. *Id.* at 242, 96 S.Ct. at 2049. The disproportionate impact of the diploma sanction on black school children imposed by failure of the SSAT II is clear. See *Castaneda v. Partida*, 430 U.S. 482, 97 S.Ct. 1272, 51 L.Ed.2d 498 (1977). The results of the first

KENAI PENINSULA BOROUGH SCHOOL DISTRICT

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February 9, 2001

To: Representative Con Bunde
Senator Lyda Green
Senator John Torgerson

From: Dr. Ed McLain, Assistant Superintendent, Instruction, KPBSD

CC: Dr. Donna Peterson, Superintendent, KPBSD
Members, Board of Education, KPBSD

Senator Jerry Ward
Senator Georgianna Lincoln
Representative Mike Chenault
Representative Drew Scalzi
Representative Ken Lancaster

Re: Information and Documentation related to the AK HSGQE and KPBSD Certified Diploma

Thank you for your work and leadership regarding the state High School Graduation Qualifying Exam. This memo is follow up to my phone conversation with Karen McCarthy on Friday, February 9, 2001.

The attached is information regarding the AK State HSGQE and the Kenai District Certified Diploma initiative.

The attached set of documents serves as a one-source overview of the status of the Kenai District Certified Diploma and its relationship with the current AK Benchmark and HSGQE exams and the AK Bench Mark and AK HSGQE cut scores

The Kenai Peninsula Borough School District began its efforts to develop a certified diploma in the mid 90's with passage of board policy directing that all students must demonstrate established levels of competency in key content areas. The year after the Kenai District undertook its effort, the state legislature passed the HSGQE legislation. The state DOE began its work on the test and on the Quality Schools Initiative shortly thereafter.

There are significant points of agreement and differences between the two certification-of-competency approaches.

It is my hope that the material may be helpful in your current review and consideration of the AK HSGQE.

I have discussed this material at length with Senator Torgerson and other members of the Kenai legislative delegation. Please let me know if you have questions, or comments on the following documents, or on the relationship of the district and state assessment and certification efforts, or suggested steps for their development.

As background on my role in the study and development of state and district standards and assessments: I have been actively involved in the development and review of standards and testing at the state and district level in rural and urban settings, for over ten years. I co-chaired the original state math standards committee and have been on state oversight and review committees related to the state standards and the state assessment program continuously throughout its development. I serve on the state's technical review committee for assessment.

I was recently appointed to co-chair the state math content review committee. This committee is charged with examining the current math standards and the state assessment program - Benchmark tests, and the High School Graduation Qualifying Exam. We began this work on February 1st and 2nd, 2001.

AK HSGQE and KPBSD Certified Diploma, McLain, page - 1 -

ANCHOR POINT COOPER LANDING HOMER HOPE KACHEMAK SELLO KFNAI MOOSE PASS NANWALEK NIKISKI NIKOLAEVSK
NINILCHIK PORT GRANTHAM RAZDOUNA SELDOVIA SEWARD SOLDOTNA STERLING TUSTUMENA TYONEK VOZNESENKA

"Target and Taught Skills and Content" versus "Essential Skills and Content"

For each of the skills or content in a discipline or field of study, we can ask the question – is this something we want our students to know and be able to do.... The answers to this question provide direction and content for our schools' curriculum and instruction. Those skills and content are identified and described by content and performance standards. The *Alaska State Performance Standards* list and describe what we want our students to know and be able to do in reading, writing and math. The *Alaska State Performance Standards* identify the targeted and taught skills and content in our schools. The *Alaska State Performance Standards* are a guide to good instruction and solid curriculum.

The "Essential Skills and Content" is a sub set of the targeted skills and content. These are the skills and knowledge that a person would need to have or know to function at a basic or introductory level in our society.

To determine if a given performance standard or exam question reflected an **essential** skill or content," a committee of community members, business people, and educators asked the following question: would you deny a diploma to a person if he or she did not have that skill or know that content?

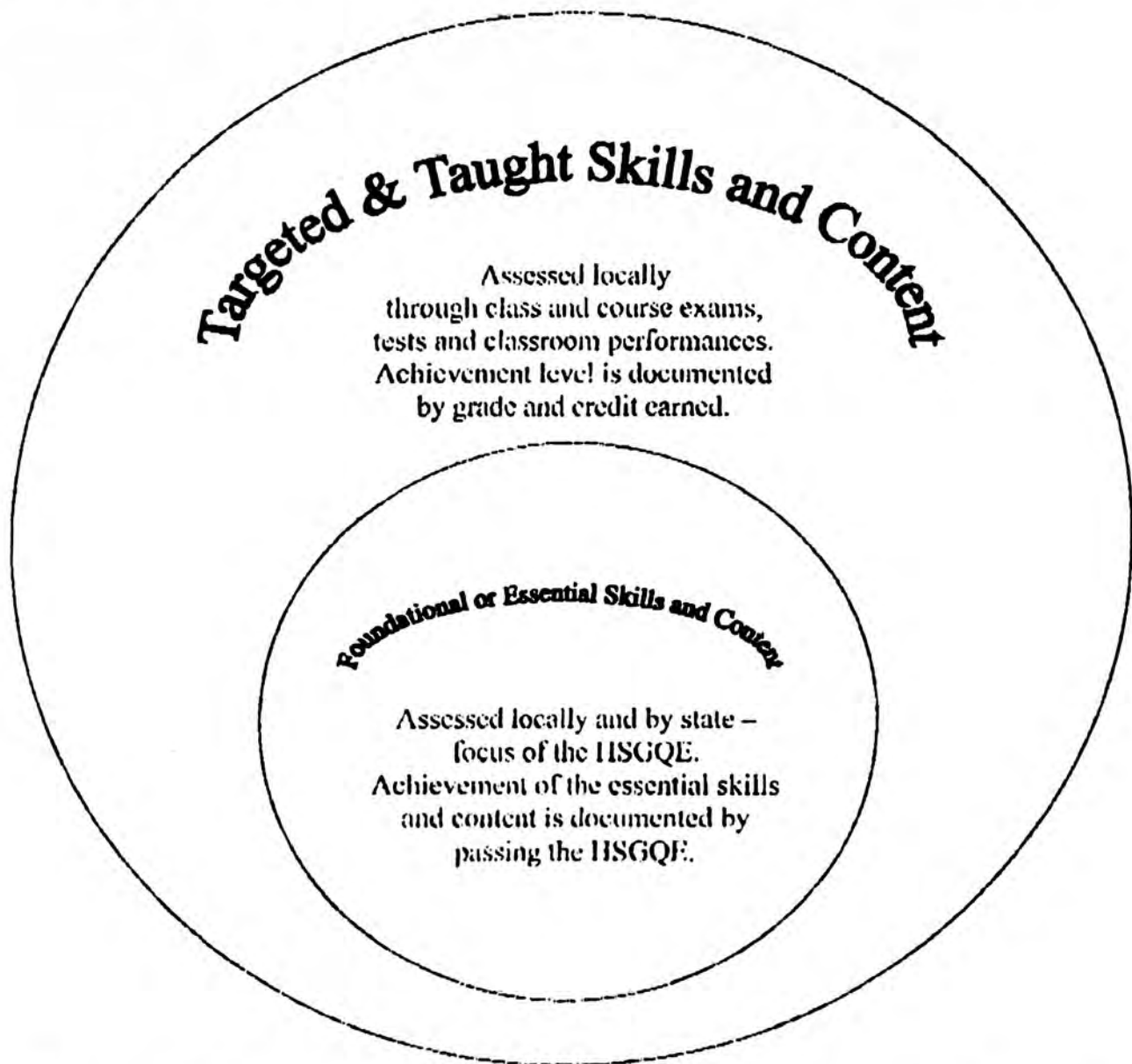
These are two different questions (1) what do we want our students to know, be able to do? (2) would you deny a diploma to a student if he or she did not have that skill or know that content?

These two questions are being confused with each other in the current AK HSGQE debate.

The following diagram provides an overview of the relationship of the targeted skills and content (described by the performance standards) and the foundational / essential skills and content.

Essential Skills as a sub set of the Targeted and Taught Curriculum

State performance standards list and describe the "targeted and taught skills and content" in reading, writing and math. These standards describe what we "want our students to know and be able to do." The state performance standards are a guide to good instruction and solid curriculum.



The "Essential Skills and Content" is a sub set of the targeted skills and content. These are the skills and knowledge that a person would need to have or know to function at a basic or introductory level in our society.

To determine if a given performance standard or exam question reflected an essential skill or content," the committee asked the following question: would you deny a diploma to a person if he or she did not have that skill or know that content?

The following documents outline the District Certified Diploma and provide discussion related to its solution of multiple cut points - three levels of certified achievement:

1 **The first document presented is the KPBSD "flight path" showing the Benchmark Achievement Levels (attached #1) -**

This document presents the district's foundational, proficient and advanced "flight paths."

The document indicates that the **proficient level is the district curriculum target level**. The district advanced cut scores denote achievement above the proficient level. **The foundational level indicates performance or achievement that is below the target of proficient, but meets a certain "bottom line"** (perhaps similar in concept to NAEP "Basic" or "got to have" level of performance. The foundational level for High School is described or detailed in an attached district document.)

The first three large boxes indicate state Benchmark test achievement scores for proficient and advanced levels at the 3rd, 6th, and 8th grade. (The smaller box above the 4th grade indicates a KPBSD foundational skill indicator for the CAT 5 at the 4th grade.) The fourth large box places the state HSGQE passing cut scores along with the KPBSD certified diploma foundational, proficient and advanced levels.

The NWEA level test score cut points indicated at the 8th grade reflect demonstration of minimal foundational skills for graduation as described in the district document on foundational skills. While the foundational cut scores document the "got to have" level of performance required of KPBSD students, the "proficient" scores indicate target achievement levels for the District. This distinction is critical in that it (1) allows the district to maintain instructional focus on proficiency; (2) clearly informs the public and the student regarding level of skills or knowledge demonstrated by students; and (3) avoids confusion of "basic" foundational levels of skills or knowledge with the target of "proficient" achievement. A student may graduate with a demonstration of foundational skills, but neither the student nor the public is misled that the demonstrated skill level represents a "proficient" level of performance.

In November and December 2000, the KPBSD is working with an outside consultant to correlate / match up our in-district NWEA "level test" scores with the state benchmark test cut scores levels. This work may result in some adjustments or fine-tuning to our district proficient and advanced cut scores at the 8th grade point and guide placement at the 3rd and 6th grade points.

Relationship of AK HSGQE cut scores and KPBSD Certified Diploma foundational and proficient levels:

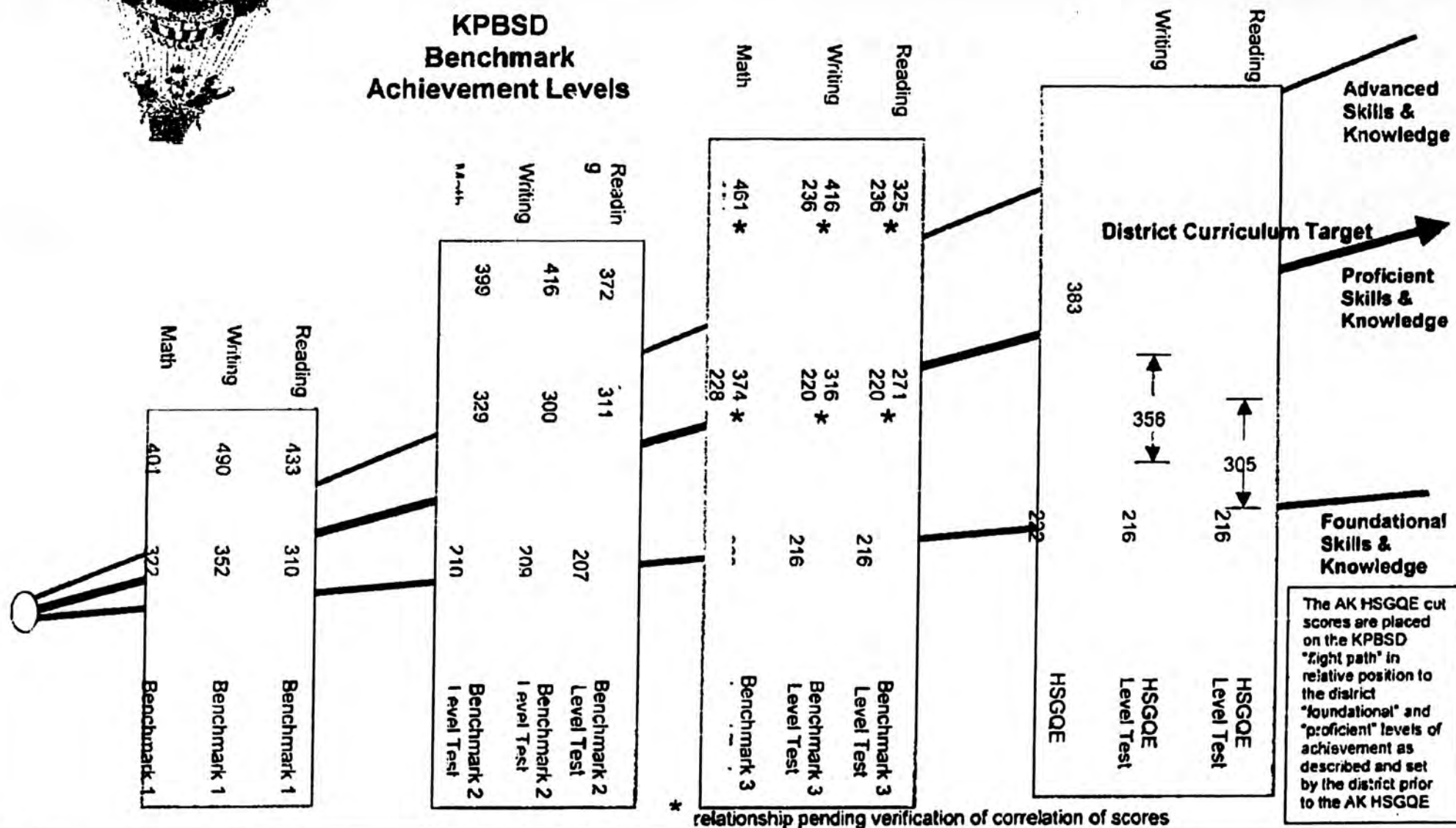
The AK HSGQE cut scores are placed on the KPBSD "flight path" in relative position to the district "foundational" and "proficient" levels of achievement as described and set by the district prior to the AK HSGQE cut score setting.

In light of the KPBSD description of foundational and proficient skills, it appears that:

- (1) The AK HSGQE cut score in Math is set at the district HS "proficient" level;
- (2) The AK HSGQE reading cut score denotes achievement slightly above what the district has set as a "foundational" level of achievement in reading;
- (3) The AK HSGQE cut score in writing appears to be slightly above the district foundational and proficient levels.



**KPBSD
Benchmark
Achievement Levels**



relationship pending verification of correlation of scores

Note that the NWEA 'ave' tes' score cut points indicated at the 8th grade reflect demonstration of minimal foundational skills for graduation as described in the district document on foundational skills. The "proficient" scores indicate target achievement levels for the District.

2 This document provides the KPBSD Description of the IIS Foundational skill level (attachment #2 follows this page.)

This KPBSD district document provides a summary overview of the foundational skill and content levels for the district certified diploma. The document also discusses aspects or characteristics of the foundational level skills and content. As is evident from this document, the foundational skill level is not a target or goal of the district for any student. It is rather a description of those skills and content that our district is saying represents a sound "foundation" for later learning and acquiring the essential skills and content - the foundational skills and content describe the skills and content a person has "got to have." They are minimums for a person entering into our society to be able to progress and grow.

As stated in the foundational skills document, the district envisions the very real possibility that these foundational levels may or will change. They may well need to be raised as the District - students, and staff - gain experience and skills and as the demands of society evolve or increase.

Attachment #2

Foundational Skills

1. The foundational skills are the minimum "competency guarantees" that should be made regarding our KPBSD graduates.

Defined skill level minimums are not a target or end goal for our students. Rather, the minimums represent the basis for a sound foundation for our students. Once these minimum guarantees are reached, students can pursue a full set of skills and content appropriate for their needs, strengths, and requirements for successful and full participation in our society. If a student does not reach these minimums in the appropriate time frame, something else needs to happen within the school. The intervention and remediation strategies should be geared to the student. Some levels of understanding inferred by the minimums are:

- a. Be able to read and understand (decoding and reading for meaning as minimums) a newspaper, job application, election ballot, basic (technical) instructions (how-to manual), Department of Motor Vehicles Rules of the Road booklet, restaurant menu, and literature for pleasure.
- b. Be able to write a letter to a business, five-paragraph essay, résumé, application, catalog order, goal statement and plan of action, directions (reflecting logical thinking), critique or response to a reading, and do word processing.
- c. Be able to perform such "real world" math skills as addition, subtraction, multiplication, division (and know when, how, and why to use each); use fractions and decimals, money, time; and understand and use liquid, solid, and linear measurement.
- d. Acquire and demonstrate essential social studies skills and content. The student should know how government works or functions, know the rights and responsibilities of citizens, know how we relate to others in a social contract, and demonstrate a cultural understanding.
- e. Acquire and demonstrate essential science skills and content including knowledge of the scientific process and the importance of science in society.

2. The defined skill level identified as "foundational" in the essential academic areas is not a target or end goal of competency. These minimums represent the basis for a sound foundation for our students in their high school and later learning and acquiring the full set of skills and content appropriate for the students' needs, strengths, and requirements for successful and full participation in our society.

Students would be able to obtain proficiency ratings and endorsement areas in addition to the minimum skills required for graduation. Endorsement opportunities should be developed in skill or behavior areas related to school, life, and work successes. Some examples might include endorsements for work skills demonstrated through community service, computer applications, and initiative or responsibility projects. Endorsement opportunities should also be available in content related skills for performance exceeding a pre-set standard of excellence. An example for a student showing an aptitude or interest in science might include course requirements completed with a B+ grade or better along with an additional project or paper demonstrating higher-level mastery of a topic. Questions regarding equitable opportunities for students and how and if the endorsements will be reflected on the transcript need to be addressed.

3. Initial assessment of a foundational skill or content should occur at a point closest to its instruction and be aligned with the appropriate grade level for that skill. For example, a sixth grade reading level should first be assessed as part of the sixth grade program.

There will be multiple opportunities for students to demonstrate required proficiency at varying points in the K-12 continuum.

Appropriate instruction and, when needed, intervention and/or remediation tied to the targeted skills must be offered to the student at appropriate points in their K-12 experience.

A student's journey toward graduation includes benchmark indicators. If targets are not met, an automatic process including intervention and remediation occurs at the school level. The five areas listed below may include the following spring benchmarks:

- a. Reading and Understanding: designated scores on third and sixth grade reading test.
- b. Writing: designated score on sixth and ninth grade AWA papers.
- c. Math: Computation test at fourth grade pre-algebra test at eighth grade.
- d. Social Studies: U.S. citizenship test at the high school level.
- e. Science: Foundational science test at the high school level.

4. The foundational skills should not be seen as forever "fixed" at a given proficiency level.

The defined levels of proficiency required to be demonstrated may be raised as the students, staff, and District gain experience, become more skilled, or the demands of society evolve or increase.

Care, sufficient notice to all involved, and appropriate adjustment in instructional support and materials need to be made as the proficiency assessment "bar" is raised for our students.

5. Passing the "qualifying" assessment(s) or test(s) is not sufficient for graduation; rather it is a part of the total graduation requirement.

Meeting the minimum skill requirements called for by the certified diploma is not the end product or target of our efforts. The responsibility of the District is to guarantee and provide an opportunity to learn and to uphold its diploma and accompanying curriculum, instruction, remediation, and assessment processes.

The total graduation requirement is as follows:

- a. Earning twenty-two academic credits in a course of study taken over a minimum of eight semesters.
- b. Passing a qualifying exam as prescribed by the State of Alaska.
- c. Demonstration of minimum skills as outlined below:
 - Be able to read and understand.
 - Be able to write to communicate.
 - Be able to perform basic math operations and understand liquid, solid, and linear measurement.
 - Acquire and demonstrate essential social studies skills and content.
 - Acquire and demonstrate science skills and content including knowledge of scientific process and recognizing the importance of science in society.

The goal of the District is for each student to graduate as "a well rounded human being." Meeting the minimum skill requirements called for by the certified diploma is a part of this picture, but it is not the end product or target of our efforts. The responsibility of the District is to guarantee and provide an opportunity to learn and to uphold its diploma and accompanying curriculum, instruction, remediation, and assessment processes.

3 This document presents the KPBSD Assessment and Indicator Continuum

This KPBSD document outlines the indicators at 3rd, 6th, 8th, and HS graduation envisioned for the KPBSD certified diploma for foundational, proficient and advanced certifications. The attached explanation page describes the options available for recording specific areas or levels of achievement by sites or the district for individual students.

The foundational level indicators are intended to trigger review by appropriate school and District staff of individual student scores or performance in the target content areas of reading, writing and math. The school will notify the student and parent when a student's performance is found to be below the foundational skill or content level for a the given grade level, or below the "proficient" level set by the state in their benchmark tests.

4 11/7/00 Draft KPBSD Assessment and Indicator Continuum			
3 rd Grade	6 th Grade	8 th Grade	High School Graduation
Advanced State Advanced Benchmark score	Advanced State Advanced Benchmark score Reading Level Test 231 Math Level Test 238 Writing Level Test 229 AWA 4.0	Advanced State Advanced Benchmark score Reading Level Test 236 Math Level Test 254 Writing Level Test 236 AWA 4.0	Advanced Pass HSGQE R W M Complete required course sequence Possibly GPA 3.5- or 3.75+? AWA (none lower than 4) CAT 5 / ACT / SAT (top 10%?) (For above - 3 of 4 indicators or all)
Proficient State Proficient Benchmark score	Proficient State Proficient Benchmark score Reading Level Test 213 Math Level Test 215 Writing Level Test 214 AWA 3.0	Proficient State Proficient Benchmark score Reading Level Test 220 Math Level Test 228 Writing Level Test 220 AWA 3.0	Proficient Pass HSGQE R W M X yrs math / science (define courses) CAT5? Post Algebra test Reading, Writing ACT/SAT? Possibly GPA 3 - 3.5? AWA (none lower than 3.0?)
Foundational R, W, M State Benchmark scores? Reading CAT5 32nd%ile Reading CBM99 Math CAT5 32nd%ile Writing CAT5 24th%ile	Foundational R, W, M State Benchmark scores? Reading Level Test 207 Math Level Test 210 Writing Level Test 209 AWA 2.5	Foundational R, W, M State Benchmark scores? Reading Level Test 216 Math Level Test 222 Writing Level Test 216 AWA 2.5?	Foundational Required courses and credits Pass HSGQE Reading, Writing, Math Level Tests - R 216, M 222, W 216 Pass Science foundational test (Either stand alone or embedded) Pass Social Studies sequence (With embedded assessments) AWA?
Below Proficient State Below Proficient Benchmark score	Below Proficient State Below Proficient Benchmark score	Below Proficient State Below Proficient Benchmark score	Ineligible for graduation
Not Proficient State Not Proficient Benchmark score	Not Proficient State Not Proficient Benchmark score	Not Proficient State Not Proficient Benchmark score	Ineligible for graduation

Administration recommends the following as a draft outline for the design of the District Certified Diploma:

The District offers a certified diploma:

This diploma certifies that the student has completed the required course and credit requirements and has demonstrated competency in each of the five areas (reading, writing, math, social studies and science). Students demonstrate this competency by achieving scores at the foundational level or higher in each area

The District awards general endorsements of an advanced or proficient level of performance:

These are awarded to students who demonstrate competency at the proficient or advanced level across the five competency areas. An advanced or proficient endorsement represents a high level of performance and competence. Students earn these endorsements by achieving such indicators as: completing one of a prescribed set courses*, maintaining a set GPA, securing high scores in designated tests.

(*The District will need to identify specific course sequences to be considered, but examples of courses might include AP courses, advanced math, science or arts, third or fourth year world language etc.)

These general endorsements of advanced and proficient competency are analogous to "honors" diplomas or "regent" type diplomas or perhaps to the attainment of "eagle" scout in the boy scouts' hierarchy of recognition.

The district and individual sites develop and offer individual endorsements:

The individual endorsements recognize specific demonstrations of advanced or proficient levels of accomplishment. Examples might include business, health care, community service, technical or creative writing, advanced industrial design etc

These endorsements are analogous to "merit badges" or other such achievement bars and awards.

The general and specific advanced and proficient endorsements offer additional recognition and value added meaning to the district certified diploma.

The advanced and proficient endorsements provide incentive and recognition for our students who strive for and accomplish at higher levels of performance.

The current AK HSGQE is a minimum competency test. The cut point (or passing grade) is labeled "proficient." By contrast - The KPSD Certified Diploma recognizes three levels of certified achievement - foundational, proficient and advanced;

A competency or qualifying test with only one cut score is by definition a minimal competency test - that is - however high or low one sets the bar, that bar is the minimum you need to pass.

The single cut score for each test (reading, writing, math) sets the minimum performance level for that test. The high stakes of graduation eligibility attached to getting over that bar places the focus of the student and public on that minimal level.

Identifying that minimal competency level as "proficient" versus "essential" or "foundational" or "basic" is causing confusion among the stakeholders involved in this test. Either the skill level is truly set at "proficient" which implies that students who have basic or essential skills or content will not pass. This would mean that students who can demonstrate mastery of essential skills would be denied a diploma.

The other possibility is that the level though labeled "proficient" is in fact - lower than proficient - perhaps closer to basic - but mislabeled and not truly at a "proficient" level. In this case, the test results can be misleading for both the students as well as the public.

There are two separate and valid questions that could be asked by state or district education stakeholders:

- (1) What do we want students to know and be able to do (describing the targeted and content - and level of performance)
- (2) What is essential for a person to know and be able to do in order to participate in our society and economy? (describing the minimum skills and content - those for which, we would deny a diploma to a student if they did not know or could not do...)

The NAEP (National Assessment of Educational Progress) assessment is a voluntary but generally accepted standard for rating demonstrated student achievement. In contrast to the state HSGQE with its one cut score, NAEP recognizes and distinguishes between four levels of skills and knowledge: advanced, proficient, basic and not proficient. The NAEP continuum recognizes that there is a level of performance that can be documented that is above proficient - that is "advanced." NAEP distinguishes two levels below "proficient" - they are "basic" and "not proficient." "Basic" level describes a minimal performance level... Not up to the targeted standard of proficient, yet still reflective - as its name implies - of some "basic" skill and content acquisition.

These four levels of performance in NAEP allow NAEP to report information on the number and percentage of students at each of the four levels. Distinguishing four levels of student performance can be a useful accountability tool. Ex: Progress - or lack of progress - can be measured by changes in the percentages of students in each of the four groupings: how many students move from basic to proficient, from proficient to advanced? How do the percentages of students in each of the four groups change over time? Etc.

By contrast to the HSGQE, the Alaska state elementary benchmark tests use a four level structure.

As discussed above, identifying the cut off (passing) score as "proficient" compounds the problem. It opens the cut score setting task to a no-win dilemma.

The dilemma is inherent in setting the HSGQE test at the "proficient" or target level. It leaves no room for those students who demonstrate achievement which may be lower than the target of "proficient", but also still at a marginal or basic level.

Setting the passing score truly at the "proficient" level - which would be higher than basic - means that students who are marginally competent - that is have basic skills - will not pass and thus will not graduate.

By labeling the single cut score at the target level of "proficient," one could assume that there are students who possess "basic" or essential skills but not quite "Basic." These students have not acquired all that the school or system would aim for, or want as a goal for our students but they do, at least demonstrate a minimally competent performance level, set of skills or content.

Note by comparison to Alaska's test, Texas identifies its required test as a test of basic skills, and does not require a "proficient" level to pass. The public and the students are not led to believe that passing the test demonstrates "proficient" level of skills or knowledge. Basic or minimal competence is truly at a lower level than "proficient."

As contrasted with Alaska HSGQE requirement of "proficient" to pass, the Texas test of basic skills identifies its passing score cut point as a basic skill level. This basic level is not identified nor marketed as "proficient."

Setting the cut score low -- that is at a "basic" level but identifying it as "proficient" - makes it difficult to maintain credibility with the public that the level is indeed "proficient." It makes it difficult for the system in designing its curriculum and setting targets for its students.

By contrast to the AK state HSGQE, the KPBSD certified diploma recognizes a foundational level and distinguishes that basic level from "proficient." This structure allows the district to certify the demonstrated skill and knowledge of its graduates and to provide useful information to the school and district stakeholders. We will be able to report and compare the number and percentage of students who graduate with foundational skills, number and percentage that graduate with proficient skills and advanced skills. The certified diploma neither misrepresents nor inflates the meaning of the foundational level or proficient level.

By providing certification at the three levels, foundational, proficient and advanced, the diploma provides the graduate and the community objective information based on demonstrated performance.

The attached information was presented to the Finance Subcommittee on Education by the Department of Education.

10,217 students were enrolled statewide as of October 1999 who were supposed to take the first, mandatory, administration of the High School Competency Test.

Only 8,371 of those students did take that test. The Department of Education (DoE) does not know what happened to the missing students. They have not identified them.

Only the first administration of the test was mandatory. DoE and Representative Mulder expressed concern about the diagnostic aspect of the test not being fully realized.

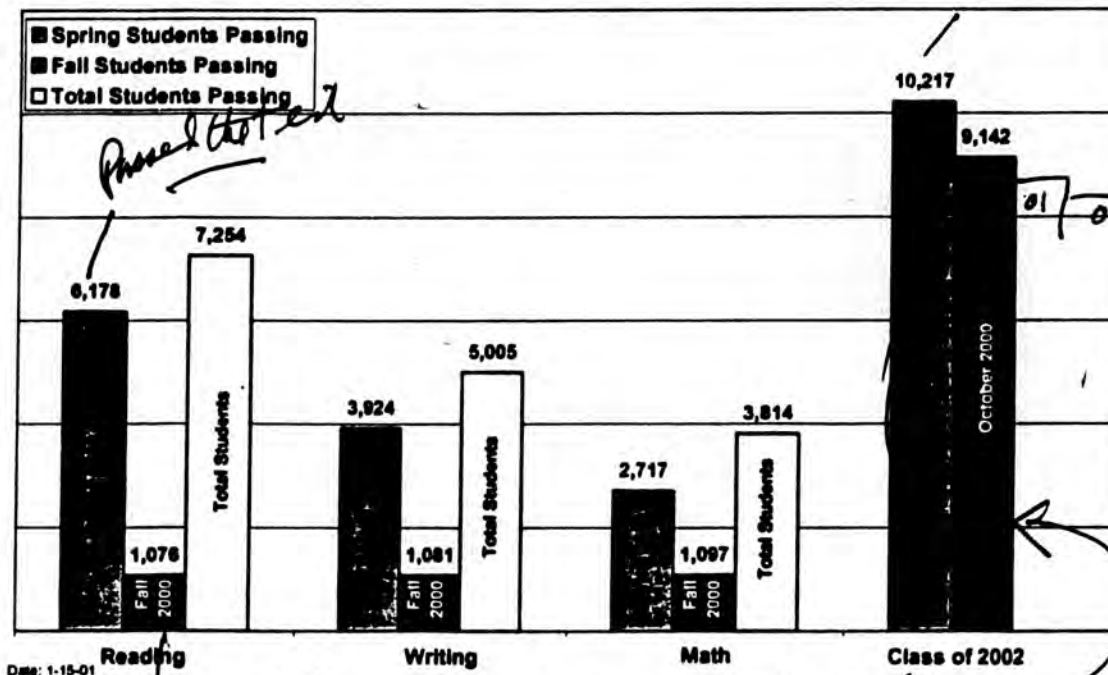
The State Board of Education does not want the test to be mandatory. It was even difficult for DoE to get them to make the first administration of the test mandatory.

DoE is reporting test results this way (including reports to the press) -- who passed as a percentage of enrollment, not as who passed as a percentage of those who took the test. They will, however, be providing the information both ways in subsequent years. They will also report the information by class for sophomores, juniors and seniors. This was added as a new measurement of DoE's mission.

Please see the attached sheet.

measuring student performance for the class of 2002. The exam will be offered in October and March of each year. Students are eligible to take the exam for the first time in the spring of their sophomore year.

High School Class of 2002 Number of Students Passing the HSGQE



Background and Strategies:

State law requires a comprehensive system of student assessments including a developmental profile for students entering kindergarten or first grade, benchmark assessments in reading, writing, and mathematics at grades 3, 6, and 8, and passage of the High School Graduation Qualifying Exam in order to receive a high school diploma beginning in 2002. The department has:

1. Provided school districts with state performance standards in reading, writing, and mathematics.
2. Developed the graduation qualifying examination in reading, writing, and mathematics.
3. Provided professional development opportunities for standards based instruction.
4. Provided technical assistance to school districts in aligning curriculum to state standards.

The following pages contain Year 2000 Alaska State Assessment Results for grades 3, 6, and 8, and the high school graduation qualifying examination by school district:

Fresh between Soph. is greatest satisfaction

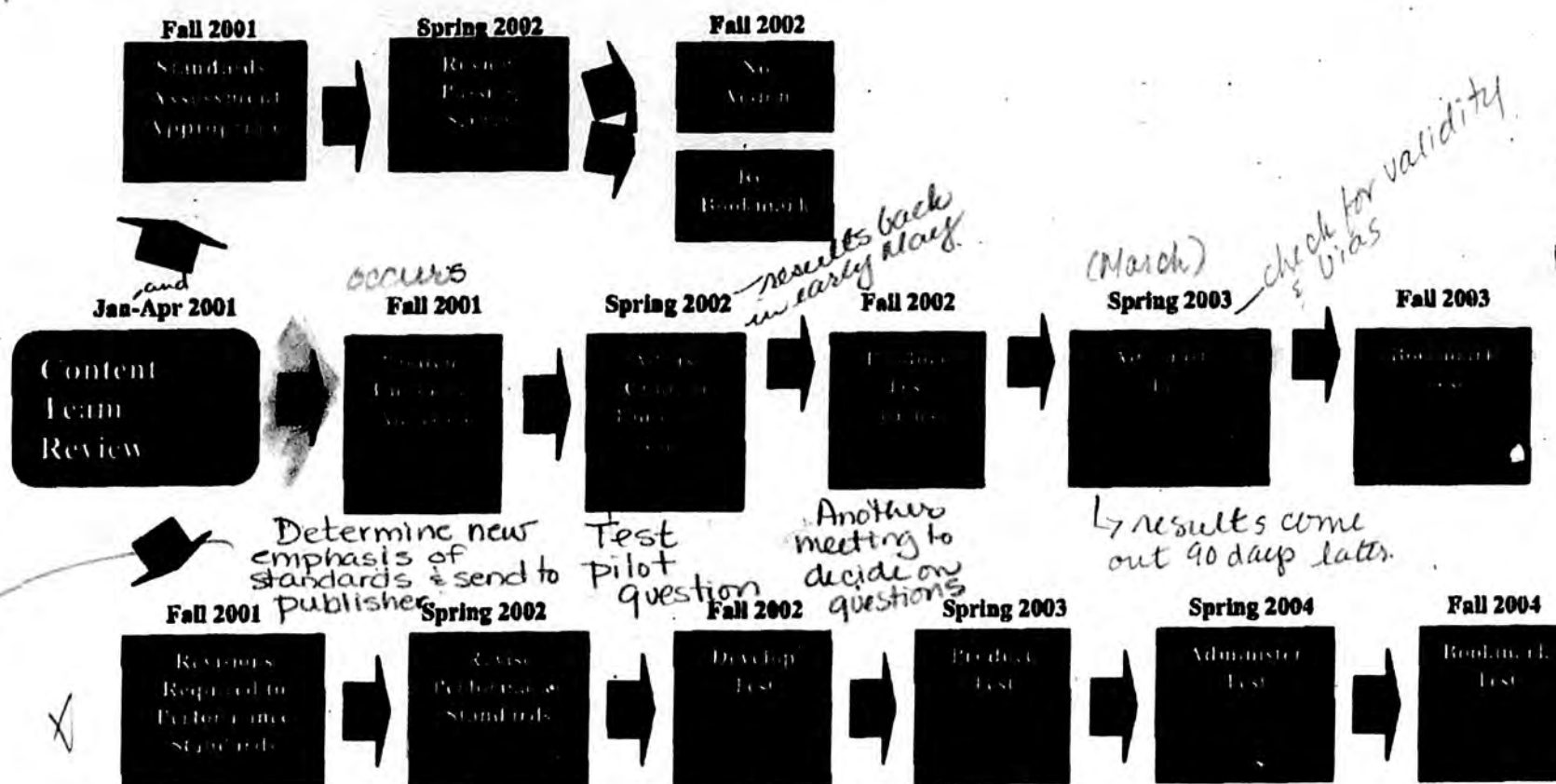
Percent of Seniors Who Graduated in 2000 by District

State of Alaska			
Department of Education & Early Development			
	10/1/1999		
	Grade 12	2000	%
District Name	Enrollment	Graduates	Graduating
Alaska Gateway Schools	38	32	84%
Aleutian Region Schools	3	2	66%
Aleutians East Borough	15	13	86%
Alyeska Central School	165	34	20%
Anchorage School District	3,238	2,334	72%
Annette Island Schools	31	27	87%
Bering Strait Schools	82	73	89%
Bristol Bay Borough	17	18	94%
Chatham Schools	14	14	100%
Chugach Schools	14	3	21%
Copper River Schools	49	42	85%
Cordova City Schools	33	30	90%
Craig City Schools	33	28	84%
Delta/Greely Schools	94	56	59%
Denali Borough Schools	24	24	100%
Dillingham City Schools	28	22	78%
Fairbanks North Star	850	808	95%
Galena City School District	145	109	75%
Haines Borough Schools	28	28	100%
Hoonah City Schools	22	16	72%
Hydaburg City Schools	6	5	83%
Iditarod Area Schools	28	27	96%
Juneau Borough Schools	369	344	93%
Kake City Schools	7	7	100%
Kashunamiut Schools	15	10	66%
Kenai Peninsula Borough	819	691	84%
Ketchikan Gateway Borough	144	129	89%
Klawock City Schools	19	20	105%
Kodiak Island Borough	151	133	85%
Kuspuk Schools	28	25	89%
Lake & Peninsula Schools	23	18	78%
Lower Kuskokwim Schools	150	122	81%
Lower Yukon Schools	73	56	76%
Mat-Su Borough Schools	840	708	84%
Mt. Edgecumbe High School	67	48	71%
Nenana City Schools	33	4	12%
Nome City Schools	31	32	103%
North Slope Borough	108	104	96%
Northwest Arctic Borough	95	77	81%
Pelican City Schools	2	2	100%
Petersburg City Schools	42	43	102%
Pribilof School District	4	5	125%
St. Mary's Schools	8	6	75%
Sitka School District	150	112	74%
Skagway City School	4	4	100%
Southeast Island Schools	17	16	94%
Southwest Region Schools	26	22	84%
Tanana City Schools	6	6	100%
Unalaska City School District	21	17	80%
Valdez City Schools	51	50	98%
Wrangell Public Schools	44	38	86%
Yakutat School District	8	8	100%
Yukon Flats Schools	21	15	71%
Yukon/Koyukuk Schools	24	38	158%
Yupik School District	24	13	54%
*Statewide Totals	8,381	6,668	80%
*Statewide Totals include All Districts, Mt. Edgecumbe, and Alyeska Central School.			

Alaska Standards-Based Assessment Initiative

FRAMEWORK FOR CONTINUOUS RENEWAL

CTB McGraw-Hill
to 2/14 hearing



\$264/day
to pay
groups
meetings take
4-6 days total.

CTB/McGraw
Hill only willing
to do things
one way —
defensibility.

Fall 2001
series of meetings of
Alaskans to determine
what % of what standards
& send info to publisher

Spring 2002
tweaking of
questions &
send approves
& changes to
McGraw-Hill

Fall 2002
nothing
happens

Spr 2002
test
questions
piloted

Fall 2003
Re-bookmark
for new
passing
scores.

Next mtg in April

- look at standards & which go w/ what questions.

- all three portions are being re-done. Writing-emphasis should be adjusted from $\frac{1}{3}$ proof $\frac{1}{3}$ - $\frac{1}{3}$ writing to 50% writing.

State Board votes on recommendation in June.

They have not identified specific standards to be passed first. Before, they picked good questions & they went w/ standards.

Is test valid? Yes. But does it test the right skills? The test does what was intended. But now a different group has determined that something else should be intended.

Highly unlikely that test is defensible because Dept hired people who want to change it.

**PRIORITIES AND RECOMMENDATIONS FOR CHANGE
IN ALASKA'S BENCHMARK AND
HIGH SCHOOL GRADUATION EXAMINATION REQUIREMENTS**

A Position Paper by the Governor's Council on Disabilities and Special Education
State Special Education Advisory Panel

The Governor's Council on Disabilities and Special Education has grave concerns about the impact of the current law regarding assessment and high school graduation of Alaskan students. When legislation and regulations that affect students with disabilities are being discussed and drafted, we as advocates have the responsibility to take part in the dialog. ~~After a great deal of research and internal debate over the last two years,~~ the Education Committee of the Council agreed on the following three priorities:

- 1. Alaska must create an assessment system that affords a reasonable and fair opportunity for all students to receive a diploma upon graduation from high school.**
- 2. Alaska must ensure fair accommodation and modification procedures for students with IEPs or 504 plans who participate in benchmark tests and the High School Graduation Qualifying Examination.**
- 3. Alaska must provide the opportunity for additional non-standardized assessments for students who have mastered the content standards but who are unable to pass the benchmark tests or the HSGQE.**

These priorities, along with specific recommendations for their inclusion in the legislation under consideration, are discussed in greater detail below. We welcome the opportunity to work for change that will enhance the lives of students with disabilities. We are ready to collaborate with other stakeholders and the legislature to ensure that the results of educational reform benefit ALL students.

1. Create an assessment system that affords a reasonable and fair opportunity for all students to receive a diploma upon graduation from high school.

- A. Students will continue to take Benchmark tests and High School Graduation Qualifying Examinations (HSGQE), with the use of accommodations and modifications students with IEPs and 504 plans specified and permitted.
- B. The current practice of awarding a single undifferentiated diploma will change to a system that awards a basic diploma, an endorsed diploma, or an individual education diploma.

- 1. A basic diploma will be awarded to students who earn the credits required for graduation by the State of Alaska and their local school board.

- 2. An endorsed diploma will be awarded to students who attain mastery of specific content standards as indicated by a passing score on part or all of the HSGQE.

- a. At this time, reading, writing, and math content standards are tested, so endorsements in these three areas will be awarded.

- b. As assessment instruments for remaining standards are developed by the Department of Education and Early Development, additional endorsements will be awarded.

- c. The Department will create a schedule for additional testing of Alaska content standards that begins with an assessment meeting employability standards.

- d. Students will be eligible for endorsements whether they take the test during high school or in the three years following high school graduation.

- 3. An individual education diploma will be awarded to students with IEPs who participate in the Alaska Alternate Assessment. A small number of Alaskan students (estimated at one to two percent) have disabilities so significant that participation in the general education, benchmark testing, and the HSGQE is unlikely. These students will participate in the AAA and will receive individual education diplomas at graduation.

- C. Transcripts will document HSGQE scores and endorsements.

2. Ensure fair accommodation and modification procedures for students with IEPs or 504 plans who participate in Benchmark and High School Graduation Qualifying Examinations.

- A. The State Special Education Advisory Panel (Governor's Council on Disabilities and Special Education) and the Department of Education and Early Development shall collaborate to produce a document that details allowable accommodations and modifications.

1. The document shall be distributed to parents or guardians of students with IEPs or 504 plans along with the notice of rights and procedural safeguards.
2. Personnel involved in benchmark and HSGQE testing shall receive notice of and training in the use of accommodations and modifications.

B. Testing accommodations and modifications shall be planned for and practiced prior to testing.

1. Accommodations and modifications for use in testing must be documented in the current IEP or 504 plan.
2. Accommodations and modifications must be specified by content area.
3. A student will be allowed multiple accommodations and/or modifications.
4. The accommodations/modifications must have been used during instruction for at least three months prior to the assessment.
5. Assistive technology used by the student in the classroom for instructional and learning activities may be used to participate in HSGQE assessments.

C. Accommodations/modifications acceptable for use in presentation of test directions and items.

1. Presentation without modification or interpretation: Braille, large print version, signed or read to student, or student use of tape-recorded readings.
2. Setting: special lighting, seating, amplification, smaller group size, or individual testing.
3. Scheduling: a single test may be delivered in shorter sessions.

D. Accommodations acceptable for response to test items.

1. Student responds verbally; answer sheet filled by another.
2. Student signs responses to an interpreter.
3. Student uses scribe or voice-recognition software to compose answers for constructed-response items and essays.
4. Student circles answers rather than fills in "bubbles."
5. Student uses answer sheet that has been enlarged.
6. Student uses word processor/electronic Braille writer without access to spell or grammar check.

3. Alaska must provide the opportunity for additional non-standardized assessments for students who have mastered the content standards but who are unable to pass the benchmark tests or the HSGQE.

A. Portfolio-based assessments, interviews, and oral presentation opportunities will be offered as an option for those students who are unable to pass benchmark tests or part or all of the HSGQE (after three attempts.)

B. SOMETHING HERE ABOUT WHO DETERMINES WHAT.....