

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILES 8672

2894 SCOMM 125: HOUSE SPECIAL COMMITTEE ON EDUCATION 2001-02

Subject: Reed Martin, J.D (http://www.reedmartin.com/iepgoalsinregulareducation.html)

Date: Wed, 25 Apr 2001 11:10:33 -0800

From: "FAMILY" <family@ptialaska.net>

To: "Rep. Con Bunde" <Representative_Con_Bunde@legis.state.ak.us>,

"Sen. Lyda Green" <Senator_Lyda_Green@legis.state.ak.us>,

"Senator Robin Taylor" <Senator_Robin_Taylor@legis.state.ak.us>,

"Rep. Bill Williams" <Representative_Bill_Williams@legis.state.ak.us>

CC: "HARRY MARTIN" <martinh@kgbsd.org>, "John Laird" <lairdj@kgbsd.org>,

"Hannah Ramiskey" <amye@ptialaska.net>, "Pickrell Sue" <spickrell@kictribe.org>,

"Dorothy Smestad" <fuzzpaws@worldnet.att.net>, "Earlene Brown" <earlene@ktn.net>,

"Choc Schafer" <ccschafer25@hotmail.com>, "Al Johnson" <ajohnson@ktn.net>

I don't know if any of you subscribed to Reed Martin's free email newsletter but his article "YOUR CHILD'S IEP GOALS SHOULD BE TO SUCCEED IN REGULAR EDUCATION" should be of interest to you. This is especially timely given the recent vote in finance to add an alternative assessment for those with IEP's. I understand the emotional aspect of this, but I am disappointed in Rep. Williams with his vote, along with others who voted to add this alternative assessment. If the alternative is not a dummed down version, everyone should have equal access to take it. Will regular students be denied the opportunity to take the alternative assessment? Note his last paragraph, "No more fake "A's" and no more fake "promotion." The school has to produce on goals of raising the student to grade level equivalency." Share this article with anyone you wish.

Dr Bill

Getting Your Child With Autism What They Are Entitled To Under Federal Laws	Getting Control of the IEP Process Manual	ASK REED Answers to Special Education Questions	 Are You Really Ready To Ask For A Due Process Hearing?	Join us in the Special Education Chat Room for Parents
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Special Education Law

Reed Martin, J.D.

Your Child's IEP Goals Should Be To Succeed In Regular Education

Taken from Reed's manual:

Getting Your Child's Regular Education Teachers To Do What The Law Requires Them To Be Doing For Your Child

When your child's annual goals are related to academics that are objectively measurable, the goal should be to raise the student to grade level equivalency -- just like any other student in regular education.

A common problem for many students with special needs, as acknowledged by Congress in the 1997 IDEA, is the lowering of expectations by regular education teachers. Students are often allowed to progress at a slower rate so you should make sure the goal for your child is to achieve one grade level of growth for each year of instruction.

If your child's disability makes that difficult then that is exactly what evaluation is to explore, it is exactly what the IEP committee is to discuss and it is exactly what the Comprehensive System of Personnel Development is required for -- to acquire and disseminate promising educational practices that will enable your child's teachers to attempt to enable your child to have the same rate of accomplishment as other children in the class.

It is common to see regular education teachers expecting students with special needs to have a difficult time and to be performing below grade level. So if your child's evaluation shows a deficit, for example in reading of several years below the grade level of the rest of the class, then your goal should be more than one year's growth for one year of instruction -- it should be to get up to grade level. Your child has a right to the same goals and expectations of everyone else in regular education. Being behind in reading will drag your child behind in everything.

Worse, being behind in a regular class can lead to teasing by other students in the class and that must be addressed as well. Recent federal court cases such as *Leslie B. v. Winnacunnet Coop. Sch, Dist.*, 28 IDELR 271 (D.NH 1998) showed that regular education teachers could be liable, as well as the school district being liable, when a student is allowed to fall behind and allowed to be teased to the point that they can no longer attend school.

Some school personnel seem to accept performance below grade level for students with disabilities who are being served in regular classes, but the U.S. Supreme Court does not find that acceptable. The U.S. Supreme Court in *Board of Education v. Rowley*, at pages 203-04, defined the Congressional requirement for grade level equivalency. "Regular examinations are administered, grades are awarded, and yearly advancement to higher grade levels is permitted for those children who attain an adequate knowledge of the course material. The grading and advancement system thus constitutes an important factor in determining educational benefit. Children who graduate from our public school system are considered by our society to have been educated at least to the grade level they have completed." The Court goes on to say that the specially designed education "must meet the state's educational standards" and "must approximate the grade levels used in the state's regular education."

The Supreme Court continues: "The IEP, and therefore the personalized instruction, should be formulated in accordance with the requirements of the Act, and, if the child is being educated in the regular classroom of the public education system, should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade."

No more fake "A's" and no more fake "promotion." The school has to produce on goals of raising the student to grade level equivalency.

Subject: shorter, short story

Date: Wed, 25 Apr 2001 17:26:06 -0900

From: Barbara Lefler <lefler@alaska.net>

To: Representative Con Bunde <Representative_Con_Bunde@legis.state.ak.us>

Hi Karen,

How's this. I think it hits the high points without eliminating the 'heart'. It is less than 1 page in 12 point. Short enough? Barb

We, Barbara and Doug Lefler are motivated to share our story with you. We believe this story is representative of what pro active parents must endure to insure their children's rights under the IDEA. Our story revolves around our son Neal. Neal is dyslexic.

By the time Neal was 3 years old, we knew he didn't process information the same way you and I do. Over the years we have spent thousands of dollars and thousands of hours trying to teach our son to read. We were determined that there was something out there to help our son. We paid for vision therapy, Kinesthetic learning, 3 years of 1:1 Slingerland tutoring, etc.

When we tried to have Neal tested in school, not until he repeated first grade twice did he qualify for special education. During Neal's entire school career, every meeting we attended with school staff we were assured that Neal was a nice boy, who was making progress. Despite our efforts in the private sector and the "stylized approach" used by the schools, by the time Neal reached age 16.5 he read at a third grade level. It was a hopeless feeling. Fortunately, we learned of a private clinic in Anchorage who used a method called the Lindamood-Bell Learning Process (LBLP).

Because we believe that every child has a right to read and every school has a responsibility and obligation to teach this basic skill, we turned to our school district for support in our efforts for Neal to learn to read. We have records of over 80 documents (letters, graphs, etc.) used to negotiate with our school district. We even have a recording of a member of district staff stating that "It would be a waste of taxpayer dollars" to provide the specific requested methodology. We lost numerous hours of work and pay while attending no less than 10 IEP meetings. We had to go to the point of mediation (the step before due process) with our school district for support in our efforts to insure an appropriate education for our son. It took at least 40 hours of preparation for mediation and that meeting lasted 8 hours. We settled at mediation. Without disclosing the terms of our agreement, we left assured that Neal would be provided what was needed.

Last March, Neal read at a 3rd grade level even though he had been provide specially designed instruction at school for most of his life. In April and May, Neal attended that private clinic and, 20 hours per week for 7 weeks received intensive remediation using the (LBLP). According to an Independent Educational Evaluation (IEE) (at district expense), Neal's reading went up 2 grade levels.

When Neal returned to school for his junior year in September, 2000, he received support in his classroom by his trained teacher 1:1, 45 minutes per day, 5 days per week. Following another IEE administered in October, 2000 we had evidence that Neal did not regress but gained another year and was reading on a 6th grade level. Today, Neal can read college level text!

It is unfortunate that most children do not have parents who are as familiar with the 'system' as we are. These children are depending on you, the law makers to insure their access to the education they

Subject: FW: Special Educ. Bill

Date: Thu, 26 Apr 2001 00:52:28 -0000

From: Latta Jarock Mr 3MSS/DPF <LattaJ@ELMENDORF.af.mil>

To: Representative Con Bunde <Representative_Con_Bunde@legis.state.ak.us>

> Please continue to fight for regular diplomas for Sp. students. If the
> State is allowed to let this happen are kids will be second class. I have
> seen the incompetence of the Anchorage School District. 25% of children
> graduate not even knowing how to read. My son was warehoused at the
> Whaley Center. Has to stop. I testified at the Nov. Board meeting about
> lack of curriculum in reading. Each teacher does their own thing,
> confusing children since they have a different teacher each year. The
> Supt. say there is curriculum. She needs to get out more! Please help
> us. Rocky Latta 522-0370.

Jerock Latta, D-22

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE BUNDE

TO: HCS CSSB 133(FIN)

1 Page 3, lines 17 – 24:

2 Delete all material and insert:

3 "(1) a child with a disability who is receiving educational services
4 through an individualized education program under AS 14.30.278 may qualify for the
5 issuance of a secondary school diploma by

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

8 (B) passing all portions of the examination described under (a)
9 of this section with the accommodations approved by the student's
10 individualized education program team;

11 (C) demonstrating, through a portfolio of work, mastery of
12 state performance standards established by the board; or

13 (D) successfully completing an alternative assessment program
14 required by the student's individualized education program or required in the
15 education plan developed for the student under 29 U.S.C. 794; an alternative
16 assessment program must, to the maximum extent possible, conform to state
17 performance standards established for the competency examination required
18 under (a) of this section; this subparagraph does not apply to a student unless
19 the department determines that the student has taken and failed to pass the
20 examination described under (A) or (B) of this paragraph and does not qualify
21 under (C) of this paragraph, and the student entered the system late or has a
22 rare or unusual circumstance meriting the award of a diploma under this
23 subparagraph; and" *The department concurs that the*
24 *alternative assessment is appropriate for that*
student.

1 Page 4, lines 13 - 14:

2 Delete all material.

3

4 Reletter the following subsections accordingly.

5

6 Page 4, line 16:

7 Delete "(c)(1)"

8 Insert "(c)(1)(D)"

9

10 Page 4, line 17:

11 Delete "(c)(1)"

12 Insert "(c)(1)(D)"

13

14 Page 7, lines 19 - 21:

15 Delete all material and insert:

16 "REQUIRED REPORT. The Department of Education and Early Development shall,
17 by February 15, 2002, report to the Alaska State Legislature with recommendations for

18 (1) an appeals process for a student who is denied a high school diploma;

19 (2) establishing a process that allows issuance of a high school diploma to a
20 child with a disability based on a portfolio of work, as described under
21 AS 14.03.075(c)(1)(C), enacted in sec. 3 of this Act; and

22 (3) evaluating the process described under (2) of this section."

Con- FYI. Karen.

Subject: disabled students and exit exams

Date: Fri, 27 Apr 2001 12:47:19 -0800

From: Representative Con Bunde <Representative_Con_Bunde@legis.state.ak.us>

Organization: Alaska State Legislature

To: kchristie@ecs.org

Kathy:

I have searched your website and have not been able to find information about any court decisions, federal memos, or any other information about students with disabilities and exit exams.

I know that the federal IDEA 97 requires all disabled kids to take part in statewide assessments, whether that is through the regular or an alternate assessment. I know that the alternate assessment is for those with severe cognitive disabilities.

What I don't know is whether states can hold learning disabled students -- those with average or above intelligence but with dyslexia or something like that -- accountable for passing the same test as "regular" students in order to get a diploma. Or, must those types of students be allowed a diploma only based on completion of their IEP?

Can you please let me know what you have on that question? This is the question that is holding up our state's competency test legislation this year.

Time is of the essence, I'm afraid.

Thanks for your help!
Karen McCarthy
Committee Aide,
House Special Committee on Education
Rep. Con Bunde, Chair

AMENDMENT

OFFERED IN THE HOUSE

TO: HCS CSSB 133 (FIN)

BY: REPRESENTATIVE BUNDE

Page 3, lines 17 - 24

Delete all material and replace with:

"(1) a 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 student's individualized education program team;

(C) demonstrating, through a portfolio of work, mastery of state performance standards established by the board; or

(D) successfully completing an alternative assessment program required by the student's individualized education program or required in the education plan developed for the student under 29 U.S.C. 794; an alternative assessment program must, to the maximum extent possible, conform to state performance standards established for the competency examination required under (a) of this section; this subparagraph does not apply to a student unless the department determines that the student has taken and failed to pass the examination described under (A) or (B) of this paragraph and does not qualify under (C) of this paragraph, and the student entered the system late or has a rare or unusual circumstance meriting the award of a diploma under the subparagraph; and"

Page 4, Lines 12 - 14

Delete all material

Page 4, Line 17

Delete "(c)(1)"

Replace with "(1)(D)"

1 Page 7, Lines 19-21

2 Delete all material and replace with:

3

4 "REQUIRED REPORT. The Department of Education and Early Development shall, by
5 February 15, 2002, report back to the Alaska State Legislature with recommendations for

6 (1) an appeals process for a student who is denied a high school diploma;

7 (2) establishing a process that allows issuance of a high school diploma to a child
8 with a disability based on a portfolio of work, as described under AS
9 14.03.075(c)(1)(C), enacted in sec. 3 of this Act; and

10 (3) evaluating the process described under (2) of this section."
11

EXPLANATION:

Page 3:

- 1) This amendment would delete the language allowing each school, or each IEP team, to develop an alternative assessment for each special education student.
- 2) Currently, many special education students, who are not severely cognitively disabled, are not being educated to their potential. If school districts are allowed to continue awarding diplomas based only on reaching the goals in the IEP, and not the state performance standards, there will be no incentive for those districts to educate these children up to their potential.
- 3) This amendment requires that students take the Competency Test, with or without accommodations. If they fail, they may apply to the department to be able to take the alternative assessment.
- 4) This amendment would at least encourage districts to educate special education students up to their potential, as federal law requires.

Page 4, Lines 12 - 14:

- 1) This part of the amendment deletes the language that permanently puts endorsements on students' diplomas and transcripts for areas of the competency test the student has passed.
- 2) This would set up a differentiated diploma system in which special education students would predominantly receive non-endorsed diplomas, while "regular" students would tend to receive endorsement. This could set special education students up for discrimination, which is illegal.

Page 4, Line 17:

- 1) Technical change for numbering only.

Page 7, Lines 17 - 19:

- 1) This part of the amendment replaces the requirement that the department advise the Legislature about whether a portfolio assessment is possible. If it is possible, the department would further advise the Legislature how that process would work.

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FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

May 1, 2001

SUBJECT: High school exit exam - (HCS CSSB 133(FIN) am X.1)

TO: Representative Con Bunde
Attn: Karen

FROM: Michael F. Ford 
Legislative Counsel

You have asked for an explanation of amendment X.1, to HCS CSSB 133(FIN). This amendment primarily addresses the issue of what type of alternative assessment should be provided to a child with a disability who is receiving educational services under an individual education program. The existing language of the finance CS allows a child with a disability who fails the competency examination to receive a high school diploma by completion of an alternative assessment program or a program required under federal law, and requires the Department of Education and Early Development to establish uniform assessment standards by regulation.

The amendment would substitute language that specifies that a child who is receiving educational services under an individual education program could receive a diploma by (1) passing the competency examination; (2) passing the competency examination with accommodation; (3) demonstrating mastery of state performance standards through a portfolio of work; or (4) completing an alternative assessment program required under an individual education program or required under federal law; this last provision only applies if the student first takes and fail to pass the competency examination and if the student qualifies either as a late entrant to the school system or has some other rare or unusual circumstance meriting the award of a diploma.

This amendment also make several technical changes, removes subsection (f) requiring that the student's diploma and transcript indicate the areas of the competency examination that were passed, and changes the information in the required report from the department in sec. 9.

Please contact me if you have further questions.

MFF:lmb
01-149.lmb

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Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

May 1, 2001

SUBJECT: Sectional Summary of HCS CSSB 133(FIN)

TO: Representative Con Bunde
Attn: Karen

FROM: Michael F. Ford 
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Purpose and intent section.

Section 2. Requires a student to pass a competency examination to receive a high school diploma, unless the student receives a waiver from the local school board. Prohibits issuance of a waiver until the final semester of attendance. Provide for retesting students and excludes from testing certain students who are children with disabilities.

Section 3. Provides for a student who is a child with a disability to receive a diploma by completing an alternative assessment program and for awarding diplomas to students who transfer into the school system. Provides for the award of a certificate of achievement for certain students. Requires the department to establish certain uniform standards by regulation. Provides for students to receive an endorsement identifying the areas of the examination successfully passed on the diploma and transcript.

Section 4. Establishes an annual report by the department.

Section 5. Requires that certain waiver statistics be included in a report from public schools.

Section 6. Requires the state Board of Education to adopt certain regulations regarding the competency examination, including waiver criteria.

Section 7. Delays the start of the exit exam requirement until February 1, 2004.

Section 8. Establishes interim competency examination requirements, beginning February 1, 2002, and ending January 31, 2004.

Section 9. Requires the department to provide recommendations for an appeals process for a student who is denied a high school diploma.

Section 10. Requires the department to report on criteria and procedures for granting a diploma by waiver and statutory changes necessary to maintain school accountability provisions of AS 14.03.123.

Section 11. Effective date for sec. 3, relating to the competency examination.

Section 12. Effective date for all sections except sec. 3.

MFF:lmb
01-150.lmb

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE BUNDE

TO: HCS CSSB 133(FIN)

1 Page 3, lines 17 – 24:

2 Delete all material and insert:

3 "(1) a child with a disability who is receiving educational services
4 through an individualized education program under AS 14.30.278 may qualify for the
5 issuance of a secondary school diploma by

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

8 (B) passing all portions of the examination described under (a)
9 of this section with the accommodations approved by the student's
10 individualized education program team;

11 (C) demonstrating, through a portfolio of work, mastery of
12 state performance standards established by the board; or

13 (D) successfully completing an alternative assessment program
14 required by the student's individualized education program or required in the
15 education plan developed for the student under 29 U.S.C. 794; an alternative
16 assessment program must, to the maximum extent possible, conform to state
17 performance standards established for the competency examination required
18 under (a) of this section; this subparagraph does not apply to a student unless
19 the department determines that the student has taken and failed to pass the
20 examination described under (A) or (B) of this paragraph, the student does not
21 qualify under (C) of this paragraph, and the department approves the student's
22 alternative assessment program described under this subparagraph; and"

23

24 Page 4, lines 13 - 14:

1 Delete all material.

2

3 Reletter the following subsections accordingly.

4

5 Page 4, line 16:

6 Delete "(c)(1)"

7 Insert "(c)(1)(D)"

8

9 Page 4, line 17:

10 Delete "(c)(1)"

11 Insert "(c)(1)(D)"

12

13 Page 7, lines 19 - 21:

14 Delete all material and insert:

15 "REQUIRED REPORT. The Department of Education and Early Development shall,

16 by February 15, 2002, report to the Alaska State Legislature with recommendations for

17 (1) an appeals process for a student who is denied a high school diploma;

18 (2) establishing a process that allows issuance of a high school diploma to a

19 child with a disability based on a portfolio of work, as described under

20 AS 14.03.075(c)(1)(C), enacted in sec. 3 of this Act; and

21 (3) evaluating the process described under (2) of this section."

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MEMORANDUM

May 5, 2001

SUBJECT: High school exit exam - (HCS CSSB 133(FIN))

TO: Representative Con Bunde
Attn: Karen

FROM: Michael F. Ford 
Legislative Counsel

You have asked if amendment X.1 or X.2 to HCS CSSB 133(FIN) relating to granting a high school diploma to a child with a disability by completion of an alternative assessment program raises any legal difficulties. I do not think that it does. Students with disabilities are entitled to be included in state assessment programs and to receive appropriate accommodations, if necessary. See Brookhart v. Illinois State Bd. of Ed., 697 F.2d 179 (7th Cir. 1983). The use and structure of an alternative assessment program for a child with a disability is within the policy powers of the legislature.

Please contact me if you have further questions.

MFF:med
01-085.med

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MEMORANDUM

May 5, 2001

SUBJECT: High school exit exam - (HCS CSSB 133(FIN))

TO: Representative Con Bunde
Attn: Karen

FROM: Michael F. Ford 
Legislative Counsel

You have asked if a student who is a child with a disability can be included in the statewide public school testing process without making appropriate accommodation for the disability when necessary. The answer is no. Under the 1997 amendments by Congress to the Individuals with Disabilities Education Act, as a condition of eligibility for federal funds, states must have policies and procedures to ensure that students with disabilities are included in general assessment programs, but with appropriate accommodations.

Specifically, an individualized education program must include a statement of any individual modifications in the administration of statewide assessments of student achievement. If the I.E.P. specifies that the student should be excluded from the regular assessment program, the state must ensure development of alternate assessments.

Please contact me if you have further questions.

MFF:med
01-086.med



Alaska State Legislature

House Special Committee on Education Representative Con Bunde, Chair

State Capitol
Juneau, AK 99801-1182
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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: May 5, 2001

TO: Representative Kott, Rules Committee Chair
Representative Kohring
Representative McGuire
Representative Morgan
Representative Porter
Representative Berkowitz
Representative Joule

FROM: Representative Con Bunde, Chair *Con Bunde*

RE: Amendment to HCS CSSB 133 (FIN) Version X

I am distributing the attached amendment "X.2" for your information. The previous amendment, "X.1" has been changed to remove language that might be inflammatory to some people.

A special education student would still take the High School Competency Test with or without accommodations. If the student fails, the student's IEP team could still recommend that the student take an alternative assessment -- a modified Competency Test. The only change between Amendment "X.1" and the attached Amendment "X.2" is that instead of qualifying for the alternative assessment by being a student who entered the school system late or having a rare or unusual circumstance, any special education student who fails the test and has the recommendation of his IEP team could take an alternative assessment if the Department of Education concurs.

I feel the Department's concurrence will help to ensure that every special education student receives an appropriate education with the highest possible standards. I also feel that the Department's concurrence will insulate districts from undue pressure from parents who would support inappropriately low standards for their child.

I hope that you will support this amendment.

22-LS0607X.4

Ford

5/6/01

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE ~~BUNDE~~ *McGuire*

TO: HCS CSSB 133(FIN)

*Rules Unit #1
adopted*

1 Page 3, line 18, following "section":

2 Insert ", with or without accommodation,"

3

4 Page 3, line 24, following "section;":

5 Insert "this paragraph does not apply to a student unless the department determines
6 that the student has taken and failed to pass the competency examination with or without
7 accommodations and the department approves the student's alternative assessment program
8 described under this paragraph;"

9

10 Page 6, line 7:

11 Delete "and"

12 Insert "[AND]"

13

14 Page 6, line 9, following "AS 14.30.420":

15 Insert "and"

16

17 (8) the number and percentage of students in each school who take
18 and who successfully complete an alternative assessment program in reading,
19 English, or mathematics; and the number and percentage of pupils in each school
20 who successfully complete the alternative assessment program but who do not
21 reach the state performance standards at the competency exam level in reading,
22 English, or mathematics; a school may not report results under this paragraph
23 unless the school complies with the family educational rights and privacy
requirements of 34 C.F.R. 99"

22-LS0607\X.5
Cook/Ford
5/7/01

AMENDMENT

OFFERED IN THE HOUSE

TO: HCS CSSB 133(FIN)

- 1 Page 4, lines 13 and 14:
- 2 Delete all material.
- 3
- 4 Reletter the following subsections accordingly.

Amr #2
adopted

www.nytimes.com

The New York Times
ON THE WEB

April 24, 2001

Regents Study Shows Gains for Students in Special Ed

By KATE ZERNIKE

ALBANY, April 23 — The number of special-education students who took and passed state tests in New York has jumped sharply over the past five years, suggesting the preliminary success of a plan to stem the use of special education as a dumping ground for difficult students, the Board of Regents said today.

After a decade of steady increases in the percentage of students classified as disabled in New York State, the level remained steady last year. For the first time, the percentage of students who were "mainstreamed" — placed in regular education classrooms most of the time — was higher than the national average.

State figures also show that more students are being transferred from special education at an early age, when traditionally, all but a small percentage of students who entered special education languished there.

State education officials said the statistics strongly suggested that many special-education students should not have been classified as "disabled" in the first place, and were given the designation only because schools did not know what else to do with them.

"When we started, people said children would be harmed by high expectations," said Richard P. Mills, the state education commissioner. "What we're seeing is that children thrive under high expectations."

Only about 5 percent of the 402,000 special-education students in New York are mentally retarded. The bulk of them, 54 percent, are classified as "learning disabled," while about 15 percent are classified as emotionally disturbed. Critics say those two categories are often catchalls for difficult students.

The new figures show progress still lagging in some areas. The percentage of Hispanic students in special education has increased, and the number of Hispanics and blacks in special education remains disproportionately high.

The Regents pointed to continued problems in New York City schools. The number of students taking the state tests rose to 3,084 last year from 1,074 in 1998, and the number who passed increased as well, to 1,375 from 407 for the same period.

NYTimes.com/health

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But those numbers are still small over all. Only 2.1 percent of students in New York City were transferred from special education last year. .

✱ Still, officials said, the overall message is that if the state sets high standards, students will rise to them. Advocates for disabled students praised the results, but cautioned that there was still much more progress to be made.

"What's really great is that more kids are getting tested, which means that they are more likely to get access to the same curriculum as kids in the general-education classrooms," said Jill Chaifetz, executive director of Advocates for Children. "Now, what are we going to do to make sure they're passing at a higher level?"

The Regents began an overhaul of the state's special-education programs in 1996, aiming to reduce the number of students classified as disabled and educated in the largely segregated classrooms. Ultimately, disabled students will have to take the Regents exams to graduate, as their peers in regular classrooms do.

✱ Last year, the percentage of students in special education remained at 11.8, after rising steadily from 9.9 percent in 1992-93. And even as more students are taking and passing the tests — given in fourth and eighth grades and in high school — dropout rates, which many predicted would soar, have declined slightly.

✱ The results are particularly striking on the Regents tests, where the number of students passing the tests in 2000 was far higher than the number of students who even took them in 1997. The percentage of special- education students graduating with a Regents diploma — meaning they passed the English exam as well as met requirements for course credits — increased to 8 percent in 2000, up from 6.1 percent in 1999.

Carl T. Hayden, the Regents chancellor, said this indicated that the students' disabilities were "nominal" and that for a long time, teachers had referred students to special classrooms not because they were disabled but because they were difficult.

"What you see is evidence of a different mind-set," Mr. Hayden said. "Teachers are beginning to see it's O.K. to have high expectations for students with disabilities. That's a sea change."