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WORK SESSION DOCUMENT
ASSEMBLY COMMITTEE ON EDUCATION
SENATE BILL

SENATE BILL 34.....TAB A
SENATE BILL 306.....TAB B

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ASSEMBLY EDUCATION
DATE: 5/14/03 ROOM: 3143 EXHIBIT L
SUBMITTED BY: CAROL STONE FIELD

TAB

A

Sponsor: Legislative Committee on Education

The measure contains two provisions relating to a child's progress in school: early admittance of a child to kindergarten and retention of a pupil in 8th grade

Nevada's compulsory school attendance law, contained in NRS 392.040, establishes the cutoff for admittance to kindergarten as September 30. A child must be 5 years of age on or before that date to be admitted to kindergarten and counted for apportionment. SB 34 would make the following changes:

- parents or guardians may request the admittance of a child who is not age 5 by September 30
- the school district may allow the child to enroll if the school district determines that
 - (1) the child is gifted, as defined by the State Board of Education (NAC 388.043) and
 - (2) it would be in the best interest of the child to be enrolled in kindergarten.

The parents or guardians must pay any costs associated with determining if the child is gifted.

Section 2 of the bill relates to retention of a pupil in 8th grade. It proposes to resolve an apparent conflict between NRS 392.125, which provides that no pupil may be retained more than one time in the same grade. (1981), and NRS 392.033, which prohibits a board of trustees from promoting a pupil to high school if the pupil has not completed the credits required for promotion. (1997). Attorney General Opinion No. 1999-29 noted the conflict but resolved the issue by authorizing a school board to prohibit the promotion of a pupil to high school even if that decision requires the retention of that pupil in the 8th grade more than one time.

Proponents: The changes authorizing district discretion with regard to enrolling gifted children in kindergarten and allocating the cost of assessment to the parents of the child improve the bill over the version introduced.

Opponents: An equity issue is created because children from upper income families will assess at a higher level of readiness and can afford to pay for the assessment. The two largest school districts find useful a definite cut date. The screening provision will create a demand, which, if the districts choose to meet it, will increase need for staffing, space and programs for younger children. Clark County School District and Carson City School District testified that they do not maintain a program for gifted children in first or second grade.

Fiscal Note: Presumably none for the first reprint.

Proposed Amendments: None

OPINION NO. 1999-29 SCHOOL DISTRICTS, EDUCATION, PUBLIC SCHOOLS: Pursuant to NRS 392.033, a pupil who reaches the eighth grade and does not complete the requirements for promotion to high school must not be promoted. The requirement of NRS 392.125 is applicable to all other grades.

Carson City, August 25, 1999

Dr. Keith Rheault, Deputy Superintendent, Instructional, Research, and Evaluative Services,
Department of Education, 700 East Fifth Street Carson City, Nevada 89701-5096

Dear Dr. Rheault:

You have asked the Attorney General for an opinion regarding two statutes that concern the promotion of pupils.

QUESTION

Can a board of trustees of a school district prohibit a student from being promoted to high school as required by NRS 392.033 for more than one year in light of NRS 392.125, which prohibits the retention of a pupil in the same grade more than once.

ANALYSIS

NRS 392.033(2) prohibits a board of trustees of a school district from promoting a pupil to high school if the pupil has not completed the course of study or credit required for promotion to high school. The statute provides that "the state board shall adopt regulations which prescribe the courses of study required for promotion to high school, which may include the credits to be earned." NRS 392.033(1). See NAC 389.445. The application of NRS 392.033 is complicated by NRS 392.125 which prohibits a school district from retaining a pupil more than one time in the same grade. Since it is highly probable that a school district will be faced this school year with retention of an eighth grade student who was retained last year as well, the question arises as to which statute controls.

NRS 392.125 addressed the issue of retention of a pupil generally by providing, before the pupil is retained in the same grade, that the pupil's teacher or principal must make a reasonable effort to arrange a meeting with the pupil's parents or guardian to discuss the reasons and circumstances of that decision. The 1981 amendment to the statute clarified that the decision is to be made jointly by the principal and teacher and they have the final authority to retain the pupil. A.B. 563, Act of June 2, 1981, ch. 449, 1981 Nev. Stat. 871. The amendment further provided that no pupil may be retained more than one time in the same grade. See NRS 392.125(2)–(3).

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Sixteen years later our Legislature adopted NRS 392.033 as part of the broad approach to education reform embodied in Assembly Bill 376 (A.B. 376). A.B. 376, Act of July 17, 1997, ch. 522, 1997 Nev. Stat. 2487. The broad reforms set in motion by the 69th Session of the Legislature included a method and mandate to increase academic standards at the elementary and secondary level and the means to ensure that students meet those standards. The high school proficiency examinations, which all students must pass to receive a regular high school diploma, became more rigorous and the passing score raised much higher. Part of these broad reforms is the recognition that sufficient mastery of the courses of study in middle school is a key building block to satisfactory performance of the high school standards.

The original language of section 15 of A.B. 376 set forth the criterion of at least 15 units of credit in order for a pupil in middle or junior high school to be promoted to high school. The issuance of credits and the attendant transcript for middle or junior high school would have been a departure from the established practice. During consideration of A.B. 376, the Legislature deleted a provision which would have required implementation of summer school or other special programs to complete the courses of study required for promotion to high school. The Legislature also deleted a proposed mandate to institute a credit system with a 15-credit minimum requirement at the middle or junior high school level. The language prohibiting the promotion of a pupil to high school who has not completed the courses of study prescribed by the State Board of Education remained steadfast.

The legislative history of section 15 of the bill demonstrates a clear intent that a pupil must not be promoted to high school who has not met the requirements for promotion. This intent was articulated by the bill's sponsor each time she presented the bill to a committee of the Assembly or Senate. In presenting the bill to the Assembly Committee on Ways and Means, she described section 15 of the bill as a "key section."

The provisions of NRS 392.033(2) and NRS 392.125(3) are in direct conflict where an eighth grade student fails to meet requirements for promotion after having been retained in eighth grade for a year. Under these circumstances, NRS 392.033(2) prohibits his promotion and NRS 392.125(3) prohibits his retention in the eighth grade.

Where two statutes on the same subject are in conflict, the more recent statute controls over the earlier statute. *Laird v. Nevada Pub. Employees Retirement Bd.*, 98 Nev. 42, 45, 639 P.2d 1171, 1173 (1982). Therefore, the board of trustees of a school district can prohibit a pupil from being promoted to high school even if such decision requires retention of the pupil in the eighth grade more than one time.

CONCLUSION

A pupil who reaches the eighth grade and does not complete the requirement for promotion to high school must not be promoted to high school. The pupil who does not complete the requirements after having been retained for one year must continue to be retained and not promoted to high school. The requirement of NRS 392.125 that a pupil may be retained in a grade only one time is applicable to all other grades.

FRANKIE SUE DEL PAPA
Attorney General

By: MELANIE MEEHAN-CROSSLEY
Deputy Attorney General

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