

1982 WL 189153 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 28, 1982

\*1 Dr. Josef F. Stulac, II  
Director  
The South Carolina Educator Improvement Task Force  
1602 Bull Street (at Taylor)  
Columbia, South Carolina 29201

Dear 'Buzz':

You have requested the opinion of this office as to a matter concerning Act 187, Acts and Joint Resolutions of S.C., 1979 ([§ 59-26-10, et seq., Code of Laws of South Carolina \(1976\)](#)) which provides for the training, certification, initial employment, and evaluation of teachers. Your question is whether a provisional contract school teacher may be dismissed for reasons other than the teacher's deficiencies on the evaluation instrument used to assess his or her teaching performance.

The APT is your name for the evaluation instrument that the Educator Improvement Task Force is required to develop for the use of school districts in assessing the performance of persons who are teaching under provisional contracts. §§ 59-26-30(b)(3), and 55-26-30(g)(3) and 59-26-40. Initially, after receiving a teaching certificate, teachers are employed under provisional contracts. § 59-26-40. If their evaluations indicate that their teaching ability is deficient, their school districts may not re-employ them. *Id.* They may be re-employed under a provisional contract by another district, but their total employment as a provisional teacher may last no longer than two years. A fully certified teacher who successfully completes a provisional period of employment may be employed under an annual contract. *Id.*<sup>1</sup>

Section 59-26-40 sets forth no specific requirements for successfully completing a provisional period of employment other than successful written evaluations using the APT; however, an opinion of this office dated January 18, 1982, which I wrote, noted that the stated intent of Act 187 pertained only to matters of knowledge and classroom skills and that nowhere did that law state that those matters were the only ones which could be considered in the certification or employment of teachers. That opinion concluded that Act 187 would not appear to restrict the State Board of Education from considering such qualifications as good character and moral fitness prior to awarding a teaching certificate. Accordingly, this law does not appear to prevent school districts from considering matters other than teaching performance in deciding whether to continue to employ a teacher who had served a provisional year. The same conclusions should be true for teachers serving under annual or continuing contracts.

Direct statutory authority exists independently of Act 187 for dismissing a teacher for 'evident unfitness for teaching' as manifested by conduct, '. . . such as, but not limited to . . . persistent neglect of duty, wilful violation of [school district] rules . . . drunkenness, conviction of a violation of [state or federal law], gross immorality, dishonesty, [or] illegal use, sale, or possession of drugs or narcotics.' § 59-25-430, as amended. Associated law provides detailed procedure for the dismissal of a teacher. §§ 59-25-440 thru 59-25-520.

\*2 Although § 59-26-40 provides that the employment and dismissal provisions of § 59-25-410, *et seq.* should not apply to teachers serving under provisional or annual contracts, this exemption clearly is directed only to that part of those laws which grants notice and hearing rights to teachers who are to be dismissed. Section 59-26-40 expressly provides that those procedural rights shall apply to continuing contract teachers while setting out more limited procedure for annual contract teachers and none for provisional contract teachers. To conclude that § 59-26-40 intended to exempt teachers under any of these contracts from dismissal for evident unfitness for teaching as set out in § 59-25-430 could lead to such absurd situations as a district's having

to retain a teacher who had passed the APT but who was exhibiting conduct that the legislature had declared could constitute unfitness for teaching. Nowhere does Act 187 indicate that the legislature's intent had changed so as to provide for the repeal of provisions for teacher dismissal on those grounds.

The opinion of this office is that a provisional, annual, or continuing contract teacher may still be dismissed for evident unfitness for teaching as defined in § 59-25-430; however, this office is expressing no opinion at this time as to whether, under that law or other authority, a school district may set higher standards for a provisional contract teacher's teaching skills than those required by the APT.

If we may be of further assistance, please let me know.

Yours very truly,

J. Emory Smith, Jr.  
Assistant Attorney General

#### Footnotes

- 1 Teachers who successfully complete one annual contract receive continuing contracts. § 59-26-40. Their performance is also to be judged by evaluation instruments, but these instruments do not have to be identical with those used for provisional teachers (Id.); however, the instruments must meet minimum criteria of The State Board of Education § 59-26-40. Act 187 does not mandate that the continued employment of a teacher under a continuing contract be contingent upon their evaluation under such an instrument but it does require that such evaluations be made. § 59-26-30(j).

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