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Office of the Attorney General

State of South Carolina

Opinion No. 81-14

February 20, 1981

***1 Subject: Education, Teachers**

I and II. The applicability of Act 187's provisions varies according to the type of requirement and the teaching or educational status of the person concerned.

III. The State Board of Education has the authority to define an 'approved' out-of-state teacher training program.

IV and V. Act 187 appears to require approval of graduate and undergraduate programs which lead to degrees in education.

VI. ROTC teachers are not subject to Act 187.

VII. The State Board has no authority to issue emergency certificates and temporary certificates, except as provided in § 59–26–40.

VIII. School psychologists, guidance counselors, and support personnel are excluded from taking the Basic Skills examination and state-developed area teaching examinations.

IX. Act 187 permits the State Board to continue its requirements for maintaining the validity of a certificate.

X. Act 187 program approval standards should be implemented beginning in the 1982–83 school year, and thereafter, course-by-course analysis cannot be applied in a manner which would circumvent the use of those standards.

XI. The Basic Skills examination should be administered only to future undergraduate teacher education program students who were not enrolled in such programs in the Fall of 1982.

XII. MAT students are not required to take a full semester of student teaching.

XIII. A teacher employed under a continuing contract in one district may obtain employment under such a contract in another district.

XIV. A teacher who had left the teaching profession for a number of years could be employed under continuing contract upon return.

XV. Act 187 requires that a teacher have successfully completed area teaching examinations that cover each area in which he or she teaches.

XVI. Only the Legislature has the power to revise the implementation dates in Act 187.

XVII. The Basic Skills examination may be administered no more than twice a year.

XVIII. The State Department of Education may continue to upgrade certificates previously issued.

XIX. A teacher who had not successfully completed two provisional years of teaching could be employed for a third year in that district under an emergency permit.

TO: Charles G. Williams
State Superintendent of Education

I and II

QUESTIONS:

Does Act 187 permit a phase-in period for any of its mandates?

What requirements of Act 187 are to be executed retroactively?

CONCLUSION:

The applicability of Act 187's provisions varies according to the type of requirement and the teaching or educational status of the persons concerned.

DISCUSSION:

Act 187 requires that most of its mandates be implemented fully by or beginning on July 1, 1982.¹ This intention of the Legislature is embodied in § 59–26–30(c) which directs that the Basic Skills examination, the teacher evaluation instrument, and the teaching examination be administered on or before July 1, 1982; however, because the Basic Skills examination (§ 59–26–20(e)) and student teaching requirements (§ 59–26–20(h)) do not go into effect until the 1982–83 school year and because regular elementary, secondary, and college classes would not be in session on July 1, 1982, the examinations and evaluation instruments could not be readily used on that date. Thus, § 59–26–30(c) must require only that the examinations and the evaluation instruments be ready to be administered by that time. Under this interpretation, the new teaching area examinations developed under § 59–26–30(c) should also be ready to be administered no later than July 1, 1982. See also § 59–26–30(i). As for the contract procedure, because it is contingent on the use of evaluation instruments which are to be ready by July 1, 1982, the inference is that the Legislature intended that the procedure be applied beginning in the 1982–83 school year. The persons affected by these requirements at the time of their initial application vary according to the type of mandate.

*2 The Basic Skills examinations should be administered to all future undergraduate teacher education program students who were not enrolled in such programs in the Fall of 1982. See Points VIII and X, infra. A student enrolled in a teacher education program during or prior to the Fall of 1982 does not have to take the Basic Skills examination because it is designed as an admission requirement for teacher education programs and he or she would have already been admitted (§ 59–26–30(e)).

The student teaching requirement appears to apply without exception to all students enrolled in undergraduate teacher education courses during the 1982–83 school year and thereafter, § 59–26–20(h); see Point XII, infra.

The appropriate certification examinations must now, at least, be taken by all prospective classroom teachers (§ 59–26–30(f))² and the newly developed teaching examinations are to be substituted for the Common examinations as soon as they are ready. § 59–26–30(i). See Point VIII, infra. A student who had completed a certification examination prior to August 2, 1979 with a score meeting that set by the State Board of Education after that date, would not have to retake the examination. See Opinions of this Office dated October 16, 1979, (by J. Emory Smith, Jr., Assistant Attorney General) and September 6, 1979 (by Paul S. League, Assistant Attorney General).

Finally, the Act's staged requirements for obtaining provisional, annual, and continuing contracts should apply in the 1982–83 school year and thereafter to any person who has received a teaching certificate as provided in § 59–26–30 and who has not taught before under a contract equivalent to a continuing contract. § 59–26–40. Because a teacher must successfully complete a provisional contract before being hired under an annual contract and successfully complete both of those contracts before receiving a continuing contract, the only contract alternative for a 1982–83 first time teacher would be to be hired under a § 59–26–40 provisional contract. Teachers who had successfully completed such contracts could then be subject to consideration for annual contracts as early as the 1983–84 school year and for a continuing contract as early as the 1984–85 school year. If they left the profession before successfully completing this procedure, they would have to finish it upon their return, but if they had obtained a continuing contract before leaving, they would be entitled to this contract upon their return without their repeating § 59–26–40 procedure. See Point XIV, *infra*. Teachers who had held or were holding contracts prior to or during the 1981–82 school year with full procedural rights of employment and dismissal would not be subject to the § 59–26–40 procedure for obtaining contracts because they would have already held contracts similar to the continuing contracts and would not be beginning teachers. See Points XIII and XIV, *infra*. Because § 59–26–40 provides for only three types of teaching contracts, the first two of which would not be applicable to those teachers, they should be eligible for continuing contracts.

III

QUESTION:

*3 Is the authority left with the State Board of Education to define an ‘approved’ out-of-state college or university?

CONCLUSION:

The State Board of Education (State Board) has the authority to define an ‘approved’ out-of-state teacher training program

DISCUSSION:

The State Board still has rule making power in certification except where its exercise would be limited by Act 187 or other provisions of law. See § 59–25–110 of the Code; Opinions of this Office, September 6, 1979, (by Paul S. League, Assistant Attorney General). Thus, when Act 187 does not define the ‘approved [out-of-state] teacher training program[s]’ to which it refers (§ 59–26–40), the State Board has the authority to define, by regulations, the standards for approval³ unless it is otherwise restricted by law. This conclusion is consistent with the Board's authority under Act 187 to upgrade standards for program approval of in-state teacher training programs and its having previously regulated such programs under its rules. Rule 43–90, Vol. 24 of the Code, and the amendments thereto.

IV and V

QUESTIONS:

Does Act 187 include supervisors and evaluators (principals and superintendents) in the ‘approved program’ requirements for certification?

Should the State Department of Education develop program approval standards for prospective personnel for whom no approval standards exist?

CONCLUSION:

Act 187 appears to require approval of graduate and undergraduate programs which lead to degrees in Education

DISCUSSION:

Paragraph (a) of § 59–26–20 requires the development and implementation of ‘ . . . a plan for the continuous evaluation and upgrading of standards for program approval of undergraduate and graduate education training programs of colleges and universities’; however, it does not specify the scope of the training programs covered and thus, the prospective education personnel included.⁴ Despite this lack of express definition, paragraph (e) of § 59–26–20 seems to provide an explanation of the terms. It requires that all colleges and universities that offer undergraduate degrees in education require a student to complete successfully a Basic Skills examination before final admittance into ‘ . . . the undergraduate teacher education program’. Thus, this Section links the teacher education program with undergraduate degrees in education. Accordingly, the undergraduate and graduate ‘education training programs’ in paragraph (a) appear to be those which lead to degrees in education. Thus, the State Board must develop standards for program approval for all undergraduate and graduate programs which lead to degrees in education.⁵ Although the programs for which the Board must develop standards would include all persons seeking degrees in education, not all educational personnel are required to obtain such degrees. The only education requirement imposed on prospective personnel is that persons successfully complete the scholastic requirements for teaching at an approved college or university before obtaining a teaching certificate. This requirement applies to classroom teachers and would probably not include supervisors or evaluators. See Note 2, *supra*; however, the State Board, under its general certification power, is not precluded from requiring that certain supervisors and evaluators obtain degrees in education or that they obtain teaching certificates.

VI

QUESTION:

*4 Are R.O.T.C. teachers subject to all component requirements of Act 187?

CONCLUSION:

R.O.T.C. teachers are not subject to Act 187

DISCUSSION:

Reserve Officer Training Corps (ROTC) courses are treated specially under South Carolina Law and should be exempt from the scope of Act 187. § 59–29–110 of the Code permits boards of trustees of school districts to install and maintain United States Junior ROTC units under State Board of Education rules. The more recently adopted § 59–29–80 expressly refers to those programs as being sponsored by one of the military services. This statutory recognition of the military sponsorship of these programs indicates that they are to be operated under military guidelines subject to the requirements of Act 187. This conclusion is consistent with the statutory indication that these optional programs are essentially collateral to the normal curriculum except as they are permitted to be substituted for physical education by § 59–29–80.

VII

QUESTION:

If the State Board of Education retains authority to issue emergency permits, shall it have authority to issue temporary certificates and out-of-field permits to graduates of unapproved programs?

CONCLUSION:

The State Board has no authority to issue emergency certificates and temporary certificates, except as provided in § 59–26–40

DISCUSSION:

At least all prospective classroom teachers are required to complete successfully an approved teacher training program and the appropriate examination before being certified. See Note 2, supra; Opinion of this Office, May 23, 1980 (by Paul S. League, Assistant Attorney General). The same rationale on which the May 1980 Opinion based its conclusion that these requirements apply without exception should also support a finding that § 59–26–40 mandates that only a teacher properly certified under § 59–26–30 may be employed by a school district. See also § 59–25–20. Provisions for ‘emergency certificates’ in § 59–26–40 create no exception here. These ‘certificates’ cover the continued employment of persons who have completed the maximum years that can be covered by provisional or annual contracts but who have not been awarded the subsequent annual or continuing contracts. Although these exceptions refer to ‘emergency certificates [emphasis added]’, their usage indicates that they merely permit the continued employment of persons already holding regular certificates. That these emergency ‘certificates’ were made express exceptions only for persons who had previously been employed supports the conclusion that they are not available for those who are not certified. See R43–63, Volume 24 of the Code and the amendments thereto. See Point XV, infra as to ‘out-of-field’ permits.

VIII

QUESTION:

Are school psychologists, guidance counselors, and support personnel excluded from taking the Basic Skills examination and excluded from state-developed area teaching examinations?

CONCLUSION:

***5** School psychologists, guidance counselors, and support personnel are excluded from taking the Basic Skills examination and state developed area teaching examinations

DISCUSSION:

The Basic Skills examination is required of those entering a ‘teacher education program’ and the examinations for certification are ‘teaching’ examinations. §§ 59–26–20 and 59–26–30. Thus, they apply only to those persons who intend to be teachers. See Note 2, supra. School psychologists, guidance counselors, and other persons who are not to be teachers are not required to take these examinations.

IX

QUESTION:

Does Act 187 prohibit the State Board of Education from continuing the current requirements of six hours of credit every five years for retention of certification by a teacher?

CONCLUSION:

Act 187 permits the State Board to continue its requirements for maintaining the validity of a certificate

DISCUSSION:

The Act does not appear to prevent the Board of Education from maintaining its present requirements that a certified teacher obtain six hours of credit every five years to retain certification. R43–62(h), as amended.⁶ As noted supra, Point III, the State Board still has rule making authority in certification except where its exercise would be limited by the provisions of Act 187 or other provisions. Its requirements for renewal are consistent with the Act's intention to upgrade the standards for education (§ 59–26–10(a)) and with its provisions for the periodic evaluation of all classroom teachers § 59–26–30(j). Moreover, they seem to have been expressly recognized in § 59–26–30(k) which pertains to 're-certification'. Although that Section does not define that term, its usage indicates that it refers to the renewal requirements. Section 59–26–30(k) merely requires that the Board adopt regulations which insure that course credits for re-certification be earned in courses that are relevant to the area in which the teacher is re-certified. Thus, Act 187 permits the State Board to continue to require renewal of certificates subject to the provisions of § 59–26–30(k).

X

QUESTION:

On what date shall the 'course-by-course' analysis process now in existence cease in the certification of South Carolina teachers?

CONCLUSION:

Act 187 program approval standards should be implemented beginning in the 1982–83 school year and, thereafter, course-by-course analysis cannot be applied in a manner which would circumvent the use of those standards

DISCUSSION:

The course-by-course analysis presently used cannot be applied to circumvent program approval standards which are required to be implemented under Act 187. Those persons who must have teaching certificates (Note 2, supra), are required by § 59–26–30(f) to complete the scholastic requirements for teaching at an approved college or university. In addition, although graduation from approved programs is not expressly required of other educational personnel by Act 187, the Board must adopt approval standards for all programs which lead to degrees in education. Points IV and V, supra. If the Board required a degree in education for the certification of personnel who do not have to have a § 59–26–30(f) teaching certificate, then course-by-course analysis should not violate the program approval standards for that degree.

***6** The time for phasing out the course-by-course analysis is dependent upon the implementation schedule for the standards. See infra. Thus, a student graduating from a program to which those standards applied fully cannot have his work reviewed under that analysis; however, the Board can provide rules for persons desiring certification who graduated from programs to which Act 187 standards were applied only partially or not applied at all. These rules could provide for partial or complete use of the course-by-course analysis, additional courses for persons long out of college or any other reasonable method of determining the qualifications of a candidate for certification.

The Act places no specific deadline on the development of approval standards (§ 59–20–20) except as they apply to undergraduate teacher education programs. Beginning in the 1982–83 school year, program approval standards which require the Basic Skills examination and student teaching must be implemented. Undergraduate teaching students graduating in that year or later would have to have completed programs which included student teaching before they could be certified since certificates can be awarded only to those who have completed the scholastic requirements for teaching at an approved college or university (§ 59–26–30). For the same reason, those students who entered teacher education programs after the Fall of 1982 (see Point XI, infra) could not be certified following their graduation unless they had successfully completed a Basic Skills examination. A reasonable conclusion is that the Board should implement any other desired program approval standards for those who are in undergraduate teaching programs so that they will, at least, apply to those starting such programs after the Fall

of 1982. Requiring the Basic Skills examination for otherwise unapproved programs would seem to be inconsistent with the Act's intention to upgrade standards for educators in a fair, professional and reasonable manner.

The Basic Skills examination and student teaching are not required of graduate level teaching programs, such as the M.A.T. (see Point XII, *infra*), but those students must still graduate from approved programs to be certified. Applying program approval standards no later than to those students entering the programs after the Fall of 1982, would be consistent with the treatment given to undergraduate programs.

The Act sets no deadline for approval standards for education training programs other than those for teacher training. See Points IV, V, and VIII, *supra*. Implementing them for students entering after the Fall of 1982 would certainly be consistent with the purpose of the Act and with the Act's treatment of approval standards for teacher education programs.

XI

QUESTION:

Shall all students in teacher education programs in South Carolina colleges and universities take the Basic Skills examination beginning in the Fall of 1981?

CONCLUSION:

*7 The Basic Skills examination should be administered only to future undergraduate teacher education program students who were not enrolled in such programs in the Fall of 1981

DISCUSSION:

Section 59-26-20(e) directs that, beginning with 1982-83 school year, the successful completion of the Basic Skills examination be required of students before 'final admittance' to the undergraduate teacher education program. The 'final' aspect of admittance must refer to the one-year conditional admittance allowed students who have not passed the examination. If the examination were required to be given to students enrolled in teacher education programs during the Fall of 1982, those students would be conditionally admitted and would have to pass the examination that year (§ 59-26-20(e)). Because the statute prescribes that the examination be given twice a year (see Point XVII, *infra*), a student enrolled in the teacher education program in the Fall of 1982 might not get his statutory three chances to pass the examination. Thus, the Legislature must not have intended for the examination to be given to those students. Instead, the requirements for it should apply to all future undergraduate teacher education program students who were not enrolled in such programs in the Fall of 1982. See Point I, *supra*.

XII

QUESTION:

Will students in M.A.T. (Master of Arts in Teaching) programs be required to take a full semester of student teaching?

CONCLUSION:

M.A.T. students are not required to take a full semester of student teaching

DISCUSSION:

The student teaching requirement is imposed only on colleges which offer undergraduate degrees in education which implies that it applies only to students in undergraduate teacher education programs. § 59–26–20(h). Thus, the Act does not require student teaching of students enrolled in M.A.T. or other graduate level education programs; however, the State Board is not precluded from adopting approval standards for M.A.T. programs which include student teaching.

XIII

QUESTION:

Under what contract may a teacher be employed if the teacher held a continuing contract in one school district and obtains employment in a different district?

CONCLUSION:

A teacher employed under a continuing contract in one district may obtain employment under such a contract in another district

DISCUSSION:

Act 187 clearly implies that a teacher may obtain a continuing contract in a district after having already obtained one in another district. It indicates that the provisional and annual contracts serve only as trial periods for the teachers during which his or her fitness to teach in this state is judged. A stated intention of the Act is to ‘enable the use of evaluation standards that will aid in determining whether beginning teachers can apply fundamental teaching skills in the classroom [emphasis added].’ Because a teacher who had held a continuing contract would have successfully passed evaluation standards applied to annual and provisional contracts and would no longer be a ‘beginning’ teacher, no purpose of the Act would be served by requiring the teacher to repeat these steps in another district.

XIV

QUESTION:

***8** Under what contract may a teacher be employed if the individual left teaching for a particular number of years and wishes to be re-employed?

CONCLUSION:

A teacher who had left the teaching profession for a number of years could be employed under a continuing contract upon return

DISCUSSION:

A teacher who had held a continuing contract or its equivalent (see Point I, supra) would not be a ‘beginning’ teacher when she returned to teaching after a period of absence from the profession. See Point XIII, supra. Thus, such a teacher would be eligible for a continuing contract only and would not have to follow § 59–26–40 procedure to obtain it; however, a teacher who had held an annual or provisional contract and was not eligible for a continuing contract when she left the profession would have to continue to follow the § 59–26–40 procedure upon her return.

XV

QUESTION:

Is the Act silent on the subject of multiple certification?

CONCLUSION:

Act 187 requires that a teacher have successfully completed area teaching examinations that cover each area in which he or she teaches

DISCUSSION:

Act 187 does not speak directly to the subject of ‘multiple certification’ which this office assumes means certification to teach in more than one area; however, that certificates are awarded to persons who successfully complete the examinations that they are required to take (§ 59–26–30(f)) and § 59–26–30(i)), and the very fact that area examinations are given, makes clear that a teacher is to be certified to teach only in those areas covered by area examinations which he or she has successfully completed. § 59–26–30(i). This conclusion is supported by provisions for recertification which require that credits be earned in courses relevant to the ‘. . . area in which the teacher is recertified’. (§ 59–26–30(k)). See Point IX, supra.

Because the State Board retains rule-making authority with respect to certification, it can define the teaching areas which it considers to be adequately covered by a particular area examination. This authority may be sufficient to allow the Board to issue out-of-field permits for areas in which a teacher is not certified when employment conditions warrant, the teacher's areas of certification are sufficiently compatible and the spirit of Act 187 would not be violated. See Point VII, supra.

XVI

QUESTION:

In that the State Board of Education is required to effect the mandates of Act 187, shall it assume jurisdiction on the implementation of the activities created by the Act?

CONCLUSION:

Only the Legislature has the power to revise the implementation dates in Act 187.

DISCUSSION:

Most of the implementation dates in Act 187 relate to the examinations and evaluation instruments which are to be developed by the Educator Improvement Task Force, and administered by the State Board. §§ 59–26–20(e) and 59–26–30(b)(2), (c), and (i). If any of these components are incomplete by these dates or the State Board is otherwise unable to begin timely implementation, the Legislature must authorize an extension or revision of the dates. The dates are mandatory and the Board does not have the discretion to revise them.

XVII

QUESTION:

***9** May the Basic Skills examination be administered more than twice a year?

CONCLUSION:

The Basic Skills examination may be administered no more than twice a year

DISCUSSION:

Section 59–26–20(f) states that ‘the State Board . . . shall . . . (f) [a]dminister the Basic Skills examination . . . two times per year.’ This provision is one of the few in the Act specifying a number which is not qualified by such words as ‘at least’, ‘no more than’, ‘maximum’, or ‘shall not exceed’. See § 59–26–40. The ceilings on the numbers fix limits on the chances or time given to teachers and prospective teachers to complete requirements, but they allow them the option of completing the tasks in a shorter length of time. Other limitations seem to have been intended to give officials the minimum boundaries within which they could act while giving them the discretion to go beyond them. The absence of either a minimum or maximum qualification on the Board’s duty to give the examinations must mean that the Board is to do exactly what the provision states: ‘[a]dminister the . . . examination . . . two times per year’. The Board is to give it no more or no less than twice.

XVIII

QUESTION:

Does Act 187 prohibit the State Department of Education from upgrading certificates previously issued and graded as B, C, and D according to the scores earned on the National Teacher Exam?

CONCLUSION:

The State Department of Education may continue to upgrade certificates previously issued.

DISCUSSION:

The State Department of Education has previously had a policy of using NTE scores to upgrade the B, C, and D certificates given under a previous system of certification. Act 187 certification requirements do not apply to those certificates because they were awarded before its effective date. The State Board, acting through the State Department, continues to have authority to adopt and implement certification rules with respect to that group of certificates; however, the Common Examinations can no longer be used to upgrade certificates when the new teaching examinations are ready. § 59–26–30(i). The area examinations could be used for that purpose instead, but a teacher taking one should not be upgraded to a certificate equivalent to those provided under Act 187 unless he or she makes the score required for an Act 187 certificate.

XIX

QUESTION:

Could a teacher who had not successfully completed two provisional terms of teaching be employed for a third year in that district under an emergency permit?

CONCLUSION:

A teacher who had not successfully completed two provisional terms of teaching could be employed for a third year in that district under an emergency permit

DISCUSSION:

Under the provisions for a provisional contract, a teacher who had unsuccessfully completed two provisional years of teaching could be employed for a third year as a provisional teacher in any district under ‘. . . an emergency certificate in extraordinary

circumstances if such employment is approved by the State Board of Education.’ § 59–26–40. The employment of the teacher under this ‘certificate’ is not affected by the other requirements in the paragraph in which the provisions for the emergency certificate are set out. As noted, supra Point VII, this certificate is essentially a work permit for a person already certified and it should be in some form of written approval by the State Board of the employment.

***10** J. Emory Smith, Jr.
Assistant Attorney General

Footnotes

- 1 On February 10, 1981, the Legislature passed House Bill 2120 which extends all implementation dates in Act 187 by one year, except for the termination date for the Educator Improvement Task Force (§ 59–26–40(n)). Thus, for example, tasks previously required to be completed by July 1, 1981, now do not have to be finished until July 1, 1982. Although this Bill has not yet been signed by the Governor and ratified, that action is anticipated. This Opinion reflects the changes made in § 59–26–10, et seq. by that Bill.
- 2 The dictionary definitions of ‘teach’ and ‘teaching’ (see Webster's Third New International Dictionary (1976)) indicates that § 59–26–30(f) teaching certificates are for classroom teaching. Thus, they would at least be required of prospective classroom teachers; however, the State Board has the rule making authority (see Point III, infra) to require these certificates of personnel other than classroom teachers.
- 3 This authority could include the Board's choosing to approve contracts under § 59–27–10, et seq., the Interstate Agreement on Qualifications of Educational Personnel.
- 4 A May 23, 1980 Opinion of this Office (by Paul S. League, Assistant Attorney General) analyzed at length the scope of varying references in the Act to public educators, teachers, classroom teachers, and public school teachers, etc. It stated that they, at least, included teacher supervisors and evaluators, as well as classroom teachers, but that the specific duties of a given job would determine whether a particular position was covered. The Opinion did not describe all of the personnel that would be covered by each part of Act 187.
- 5 The reference in paragraph (e) to ‘teacher education programs [emphasis added]’ does not appear to limit the scope of paragraph (a)'s reference to ‘education training programs’. § 59–26–10(c) states that an intention of the Act is to ‘. . . [i]mprove the educator training programs [emphasis added]’ and the May 23, 1980 Opinion concluded that ‘educator’ included personnel other than teachers. That paragraph (a)'s education programs would include persons other than prospective teachers is consistent with this purpose and with the variety of education programs offered on the graduate level.
- 6 The absence of time restrictions on the validity of a certificate were discussed in this Office's May, 1980 opinion only with reference to the evaluation procedures of §§ 59–26–30 and 59–20–40. That discussion is inapplicable to the question presented here.

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