

1982 WL 189174 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

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*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':

Act 187, Acts and Joint Resolutions of South Carolina, 1979 (§ 59-26-10, [et seq. of the Code of Laws of South Carolina \(1976\)](#) as amended) sets up a procedure through which a teacher must successfully progress through three stages of contracts, provisional, annual, and continuing, or be barred from teaching in this State. § 59-26-40. You have requested an opinion of this office as to whether a school district may impose higher employment standards for teaching skills for its teachers than those provided under the Act 187 procedure. An opinion of this office dated January 28, 1982, which I wrote, concluded that Act 187 does not prohibit a district from dismissing teachers for evident unfitness for teaching under § 59-25-430, as amended, for such matters as drunkenness or conviction of crimes.

Act 187 standards for provisional teachers are embodied in an evaluation instrument which the Educator Improvement Task Force (Task Force) is required to develop. §§ 59-26-30(b)(3) and (g)(3) and 59-26-40. 'If the evaluations indicate the provisional teacher is deficient in teaching ability, the school district shall not continue to employ him.' § 59-26-40. Thus, the evaluation instruments, at least, form a bottom line. Failure on them results in a denial of re-employment; however, a district is not required to adhere to the converse of this situation by Act 187. The law states only that a teacher who successfully completes a provisional period of employment 'may be employed [emphasis added]' under an annual contract by any district. This statement may be more of a recognition of a teacher's eligibility than a grant of discretion to a teacher's provisional district, but this eligibility allows for the adoption of a higher standard of review by a district. Because of the emphasis on evaluation of teachers with uniform instruments and the consequences of their failure on them, the successful completion to which the statement refers must be the evaluations. Therefore, a teacher who satisfactorily completes the Act 187 evaluation process is eligible for employment by any district.¹ If a district chose not to give an annual contract to such an 'eligible' teacher because he or she did not meet the additional standards set out by that district, the teacher would not be barred from obtaining one in another district.

That Act 187 allows for such additional standards is supported by part of the statement of the intent behind that law which is '[to] [e]nable the use of evaluation standards that will aid in determining whether beginning teachers can apply fundamental teaching skills in the classroom [emphasis added].' § 59-26-10(e). Thus, the evaluation instrument is to be used only to determine basic skill levels. To construe the law to prevent a district from adopting higher standards would directly conflict with the law's stated intent to '[u]pgrade the standards for educators' Such a construction would be similar to requiring any district to hire the first certified teacher who applied for a vacancy. Although § 59-26-40 does state, in what appears to be mandatory language, that a 'teacher shall receive a continuing contract [emphasis added]' after successfully completing a provisional year and one annual contract,² it allows for a district to use its own evaluation instrument for teachers serving under annual contracts so long as they 'at least' meet State Board of Education criteria. Thus, a district could incorporate its own higher standards in those instruments for annual contract teachers.

*2 The opinion of this office is that local school districts may set higher standards for re-employing its provisional contract teachers than mere, satisfactory evaluations under the evaluation instruments; however, because the law does not expressly address this matter, legislative clarification might be desirable.

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

Yours very truly,

J. Emory Smith, Jr.
Assistant Attorney General

Footnotes

- 1 Act 187 provides for no certificate of eligibility; however, the evaluation instrument or a letter from the school district might be satisfactory for that purpose.
- 2 This mandatory language would not prevent a school district from refusing to rehire a teacher under § 59-25-430 for the described evident unfitness for teaching. See opinion of this office, January 28, 1982, supra. It also would not appear to prevent a district from denying a continuing (cont'd on p. 3) contract to a teacher for whom it did not have any funds to do so. Such a construction would give an annual contract teacher more rights than a continuing contract teacher. Here again, the evaluation instrument or a letter from the school district could serve as evidence of a teacher's having satisfied Act 187 standards under an annual contract although he or she was not given a continuing contract for other reasons.

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