

1978 WL 35263 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 11, 1978

*1 Hon. Cyril B. Busbee
State Superintendent of Education
Room 1006, Rutledge Bldg
Columbia, South Carolina 29201

Dear Dr. Busbee:

This letter is in response to your request for an Attorney General's opinion concerning the proviso in the 1978-1979 General Appropriations Act for the automatic establishment of a 975 score on the National Teacher's Examination (NTE) for teacher certification should the legislature otherwise fail to take action during the 1979 session. See 1978 Act #644, § 31 found at 1978 Statutes at Large pages 1975-1976. You specifically asked about the risk of further legal action if the scores were set at 975.

In my opinion any score on an employment test without sufficient validation raises a substantive due process question of arbitrariness. At present, the NTE validation study made in 1975 would only support a score of 975 for the certification area of agriculture in those areas in which a composite score was adopted. The attached table shows the test scores arrived at as a result of the above study and the three standard deviations, which statistically represent the margin of possible error below the score established by this study. As you can see, only agriculture, which has a score of 907 at the third standard deviation, would encompass the 975 score proposed by this proviso. (Note, a composite score was not adopted for German, which has a score of 919 at the third standard deviation.)

The importance of the presence or absence of a validation study of employment tests can be readily seen in the results of the case law. For example, the United States Supreme Court decision in [Washington v. Davis](#), 426 US 229, 96 S. Ct. 2040, 48 LEd 2d 597 (1976) and the summary affirmance by the Supreme Court in [US v. South Carolina](#), — US —, — S. Ct. —, 542 LEd 775 (1978), where there were proper test validations, should be contrasted to the results of cases where the courts held that there was not adequate validation: [Baker v. Columbus Municipal Separate School District](#), 462 F2d 1112 (5th Cir. 1972); [Walston v. County School Board of Nansemond County, Virginia](#), 492 F2d 919 (4th Cir. 1974); [U. S. v. Chesterfield County School District](#), 484 F2d 70 (4th Cir. 1973); [Pickens v. Okolona Municipal Separate School District](#), 527 F2d 358 (5th Cir. 1976) and [Georgia Association of Educators v. Nix](#), 407 F Supp 1102 (N.D. Ga. 1976). Consequently, the use of a score of 975 on the NTE for certification purposes (except for agriculture) has no study to support its use at this time, and the risk of legal action is great without such a validation.

With kind regards.

Yours very truly,

Daniel R. McLeod
Attorney General

Table 34

Percentages of South Carolina Examinees above Selected Composite Score Values ^a

Study	Study Estimate of Score StandardMinus:
Estimate	

Area Examination	Number of Examinees	of Score								% above 974
		Standard		1 SE		2 SE		3 SE		
				meas		meas		meas		
		Value	% above	Value	% above	Value	% above	Value	% above	
Agriculture	10 ^b	1006	70	973	80	<u>940</u>	90	907	90	80
Art Education	105	1104	58	1072	69	<u>1040</u>	75	1008	80	87
Biology & Gen. Sci.	150	1196	53	1169	59	1142	69	<u>1115</u>	76	89
Business Education	156	1167	37	1135	42	1103	47	<u>1071</u>	53	71
Chem., Phys., & Gen. Sci.	29 ^c	1158	76	1129	79	<u>1100</u>	83	1071	93	100
Early Childhood Education	611	1124	66	1088	74	<u>1052</u>	81	1016	86	90
Educ. in the Elem. School	1463	1194	46	1163	54	<u>1132</u>	62	1101	70	88
Educ. of the Ment. Ret.	189	1234	34	1196	44	1158	54	<u>1120</u>	66	92
Eng. Lang. & Literature	299	1069	81	<u>1041</u>	85	1013	89	985	91	92
French	50 ^d	1210	34	1177	42	<u>1144</u>	58	1111	70	84
German	9 ^e	1015	67	983	67	951	67	919	78	67
Home Economics Education	85	1143	58	1109	65	<u>1075</u>	67	1041	71	84
Industrial Arts Education	28 ^f	1162	75	1131	82	<u>1100</u>	86	1069	86	93
Mathematics	206	1203	44	1173	50	1143	61	<u>1113</u>	67	87
Media Specialist	28 ^f	1238	43	1208	43	1178	50	<u>1148</u>	50	79
Music Education	178	1086	78	1053	83	<u>1020</u>	85	987	87	88
Physical Education ^g	417	1195	37	1160	48	<u>1125</u>	58	1090	67	85
Social Studies	535	1148	54	1117	60	<u>1086</u>	65	1055	71	83
Spanish	34 ^c	1163	47	<u>1132</u>	62	1101	62	1070	68	88
Speech-Comm. & Theatre	22 ^h	1168	73	1125	86	1082	91	1039	91	95

Footnotes

- a Based on NTE examinees during the period November 1973 through July 1975 who were seniors at one of the 25 participating institutions at the time that they took the NTE. Only first-time scores were included in the distributions, although the Common Examinations and the Area Examination may have been taken at different administrations during the senior year.
- b One examinee is represented by 10 percentage points.
- c One examinee is represented by 3 percentage points.
- d One examinee is represented by 2 percentage points.
- e One examinee is represented by 11 percentage points.
- f One examinee is represented by 4 percentage points.
- g Percentages are based on the combined group of 227 men and 190 women.
- h One examinee is represented by 5 percentage points.

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