

1976 S.C. Op. Atty. Gen. 335 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4476, 1976 WL 23093

Office of the Attorney General

State of South Carolina

Opinion No. 4476

October 5, 1976

*1 The State Board of Education may implement the new certification requirements based on NTE scores despite the pending litigation challenging the use of the NTE. Pursuant to the new regulations, all persons with incomplete applications on file with the State Department of Education would be subject to the new requirements. Further action of the State Board of Education is necessary in order to reinstate and/or revise the regulation relating to adding endorsements to valid certificates.

TO: Charlie G. Williams
Deputy State Superintendent of Education
Division of Instruction

I.

QUESTION:

Should the State Board of Education delay implementation of the new certification regulations until the District Court decides the pending litigation challenging the use of NTE scores for certification?

DISCUSSION:

The Court in Order No. I of U.S. v. S. C. (CA No. 75-161 gave a protective order allowing the State Board of Education to continue the current certification system without personal liability. The reason for requesting such a protective order was the apparent necessity of a more extensive score validation as outlined in U.S. v. N.C. (DSNC CA No. 4476, filed August 27, 1975) and the portend personal liability for continuing the current system in light of the above North Carolina decision under the principles of personal liable established in Wood v. Strickland (U.S. Supreme Court No. 73-1285, February 25, 1975). Now that the South Carolina State Board of Education has validated the use of the NTE and specific cutoff score the Board may revise the current system based on this validation study without fear of personal liability. The plaintiffs have not sought to enjoin the implementation of this new system, and the Co has not on its own motion prohibited the implementation of this new certification system, effective November 1, 1976.

CONCLUSION:

The State Board of Education may proceed with implements of the new certification system, effective November 1, 1976, even though litigation is still pending challenging the use of the NTE in such a system.

II.

QUESTION:

Should all persons completing application procedures on or after November 1, 1976, be subject to the new certification requirements?

DISCUSSION:

The minutes of the State Board of Education, dated June 11, 1976, p. 12, state that the new certification procedure shall 'be implemented and made applicable to all persons applying for certification on or after November 1, 1976.' (Emphasis added. In order to apply for a teaching certificate a person must have on file an application form (including college recommendation with satisfactory completion of a degree program), medical record, college transcripts, and NTE results. Rules and Regulations of the State Board of Education as amended December, 1972. The State Department of Education will set up a file on a person even though the application is not complete. Until the file is complete, there is no basis for the State Board of Education to proceed. Furthermore, the communications of the State Department of Education clearly show that the application is not complete until the above enumerated items have been filed with the State Department of Education. See attachments. An incomplete application does not constitute an application for purposes of qualifying for certification requirements at the time of filing such an incomplete application. See [Earls v. Resor, 45 F.2d 1126 \(2d Circuit 1971\)](#)).

CONCLUSION:

*2 Persons completing applications on or after November 1, 1976, are subject to the new certification requirements.

III.

QUESTION:

Is further State Board action necessary in order for teachers to add endorsements in teaching areas or levels to existing certificates?

DISCUSSION:

On June 11, 1976, the State Board of Education adopted a recommendation that the provision for adding endorsements 'be suspended until the policy can be reviewed with ETS personnel and a specific recommendation prepared for the Board's consideration.' While the context of the above quote pertains to NTE scores, this quote does not limit itself to NTE requirements and therefore should be considered to cover the entire provision for adding endorsements which includes both NTE scores and course requirements. Since the suspension recommendation does not begin until November 1, 1976, further action of the State Board of Education would be necessary in order to reinstate and/or revise the regulations for adding endorsements.

CONCLUSION:

Effective November 1, 1976, the entire endorsement regulation is suspended until further action of the State Board of Education. Teachers can, however, obtain multiple certification by meeting both course and NTE requirements in each area, level or specialty.

Hardwick Stuart, Jr.
Assistant Attorney General

1976 S.C. Op. Atty. Gen. 335 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4476, 1976 WL 23093