



NEW YORK CITY LAW DEPARTMENT
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Press Release

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For Immediate Release

**FEDERAL COURT UPHOLDS USE OF
CERTIFICATION EXAMS THAT SEEK TO GUARANTEE
QUALIFIED CANDIDATES FOR POSITIONS AS TEACHERS**

DETERMINES THAT TESTS ARE "JOB-RELATED" AND NOT DISCRIMINATORY

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New York, Sept. 5, 2003 - Judge Constance Baker Motley of the Southern District of New York yesterday upheld the use of New York State teacher certification examinations by the City Department of Education and the State Department of Education in *Gulino v. New York City Board of Education*. (The City Board of Education is now called the Department of Education.)

The plaintiffs had challenged the National Teachers Examination Core Battery (NTE), an exam formerly used to evaluate preparedness to work as a teacher, as well as the Liberal Arts and Sciences Test (LAST), the test currently being used for that purpose. The tests measure a teacher or an applicant's general liberal arts knowledge and ability to communicate effectively. As the Court's decision indicated, performance on the tests is intimately related with a teacher's ability to perform his or her job. "The Court does find that both the Core Battery and the LAST are job-related," Judge Motley wrote in her opinion.

The plaintiffs had challenged the tests in court as having a disparate impact on African-American and Hispanic teachers. The Court, however, noted that the trial record showed the test content on the NTE was related to the job of a New York teacher. Accordingly, the Court rightly concluded that even if the test had a disparate impact, the NTE had a manifest relationship to the job of teaching and was not discriminatory. Although the plaintiffs were all New York City teachers and former teachers, the tests are mandated by the State Education Department and are used throughout the state.

The Court found that there was insufficient documentation to make a determination about the validity of the LAST. The Court concluded, however, that even without a formal validity study, the defendants easily demonstrated that the LAST was job-related. In particular, the Court was impressed with the fact that a full 20 percent of a teacher's LAST score was based on a written essay. As the Court observed, "It should go without saying that New York City teachers should be able to communicate effectively in both spoken and written English." Accordingly, the Court held that the defendants had met their burden of showing that the two tests were job-related, and held that plaintiffs were unable to show that there were any less discriminatory alternatives to these tests.

The decision is a significant one, because it affirms that teachers should be held to high standards. The Court's decision upholds the right of the State Education Department and the City Department of Education to require that those entrusted with teaching our children be adequately prepared and be able to communicate with a broad spectrum of students and other members of the school community.

New York City Corporation Counsel Michael A. Cardozo said, "This reaffirms the principle that

government employers can ensure their staff have the highest training and credentials to do their jobs effectively.”

Lead attorney Donald Sullivan noted, "Although plaintiffs had challenged the tests as discriminatory, the trial record showed that the City Department made great efforts and great strides in increasing the percentage of teachers who are minority group members. Further, the teachers and applicants were given multiple opportunities to pass the tests, and study courses were available for those who were having difficulty passing." For example, he noted that of the 921 persons identified by the plaintiffs as belonging to one sub-class, 332 apparently never even tried to take the examination. He also noted that evidence at trial showed that 92 percent of the LAST test-takers passed, including nearly 83 percent of the African-American candidates and 81 percent of the Latino candidates.

“Accordingly, no one can seriously argue that the Department of Education's use of these tests was discriminatory,” Sullivan noted. “Instead, as the testimony and the evidence showed and the Court ruled, performance on the tests is directly related to a teacher's effectiveness and ability to communicate with all components of the school community.”

New York City Law Department Senior Counsel Donald C. Sullivan of the Labor & Employment Law Division represented the New York City's Department of Education. The State Education Department was also a defendant and was represented by several attorneys, including lead counsel Assistant Attorney General Bruce McHale.

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