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THE LEGAL ASPECTS OF COMPETENCY-BASED TESTING FOR HIGH
SCHOOL GRADUATION

The University of North Carolina at Greensboro

ED.D.

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THE LEGAL ASPECTS OF COMPETENCY-BASED TESTING
FOR HIGH SCHOOL GRADUATION

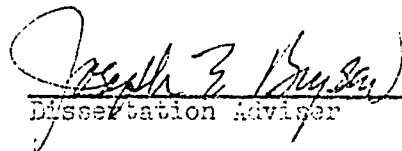
by

Rupert N. Blanton

A Dissertation Submitted to
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Approved by


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APPROVAL PAGE

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The purpose of this study was to ascertain the legal status of competency-based testing for the high school diploma in the United States. A study of background factors, the use of a questionnaire, and a search for applicable court cases constituted the methods of research used.

The research on background factors revealed the following conditions important in providing a pro-competency testing atmosphere during the late seventies: a fourteen-year decline in scores on the Scholastic Aptitude Test, a decline in public school standards and achievement over the past two decades as measured and publicized by national agencies, and pressures for reform from a wide spectrum of the non-educational establishment.

The questionnaire, constructed by the writer, was used to survey the fifty states and the District of Columbia on a number of items deemed necessary to show the state of competency testing for the high school diploma across the United States. The chief findings from this survey (December 1978) were: (1) fifteen states required competency testing as one requirement for the high school diploma; (2) five of these states required these tests by statute; (3) mathematics and reading were tested by all fifteen states; (4) most of the fifteen states mandated remediation for those failing these tests.

States and administrative districts using and implementing competency tests as a requirement for high school graduation may be open to legal attack in courts if any of these conditions exist: a history of discrimination based on race, the use of improper phase-in procedures, the use of tests not based on classroom instruction.

Two conclusions emerged from the study: state legislatures are increasingly involved in competency-testing programs, and states using these testing programs will have to implement them with great care in order to withstand the legal and constitutional challenges likely to arise.

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CHAPTER I
INTRODUCTION

Generic Problem Area

A movement rapidly gaining favor among educational agencies and state departments of education is that of competency testing. What is encompassed by this term is ordinarily regarded as some type of written or oral tests to determine if a student or a candidate has sufficiently mastered the skills or competencies required for graduation from an institution or certification for some position.

The concept of competency testing is not of recent origin. New York State, for example, has for a number of years awarded its Regents diploma to students who have demonstrated certain achievement levels in specified subjects.¹ It must be remembered, though, that the Regents exams are optional, and only a small percentage of high school students try for this diploma. Another well-known competency test is the National Teachers Examinations which have been used for many years by various states as a part of the certification process for teachers.² Two other well-known competency

¹Shirley Boes Neill, The Competency Movement (Sacramento, California: Education News Service, 1978), p. 7.

²Oscar Krisen Buros, ed., The Fifth Mental Measurements Yearbook (Highland Park, New Jersey: The Gryphon Press, 1959), p. 538.

tests are the law and medical board tests given to aspiring lawyers and doctors throughout the United States.³

The use of competency tests for the high school diploma is increasing at a fast rate. As of this writing, thirty-three states are involved in some form of minimum competency activities, with more than a dozen making the passing of competency tests a requirement for the high school diploma. Most educational experts feel that within a few years competency testing will be an accomplished fact nationwide.

Inasmuch as compulsory testing for the high school diploma is relatively new and seems destined to become an integral part of the graduation process, many questions and problems will arise related to the implementation and significance of this educational phenomenon. One can imagine the debates and controversies emerging from questions of what competencies to test, what skills should a high school graduate possess, what levels of achievement should be attained for high school graduation, what percentage should pass the tests, and for what purpose should the tests be used? The possibilities and opportunities for research in this area will be rich and varied.

Statement of the Problem

This is a descriptive study of the status of competency-based testing for high school graduation in the United States. The research employs a two-fold approach: an analysis of state legal requirements

³William E. Hopke, ed., The Encyclopedia of Careers and Vocational Guidance, Vol. II, Careers and Occupations (New York: Doubleday & Company, Inc., 1967), pp. 245-290.

for competency testing and an extensive search for state and federal court cases relevant to this kind of testing. The investigation is concerned with the historical bases for competency testing, the analysis of selected aspects of testing on a state-by-state basis, and the legal challenges to competency testing as seen in courts of law. Specifically, this study will seek answers to these questions:

1. Which states require minimum competency testing as a prerequisite to high school graduation?
2. Which states operate their competency-testing programs under statutory mandates, and which ones operate these programs under nonstatutory mandates?
3. What are the skills to be measured by these tests?
4. What levels of performance are required for a passing score on these tests?
5. What provisions are made for remediating students failing these tests?
6. What happens to students who are incompetent, i.e., those who are unable to pass these tests?
7. What alternatives to the high school diploma exist for those unable to pass these tests?
8. Are the competency-testing activities in the various states under state or local control, or some combination of the two?
9. What cases dealing directly or indirectly with the competency-testing movement have been tried in the federal and state courts?
10. Does the use of competency testing for high school graduation constitute discrimination?

Significance of the Study

As indicated previously, compulsory competency testing is relatively new and appears destined in the opinion of educators to

become a common practice within a few years. Much controversy, discussion, and litigation can be expected to occur with the implementation on a massive scale of such a new process. Particularly important will be the guidelines and skills required by various agencies since there is a strong probability of wide divergence of requirements and purposes across the United States. An analysis of these statutory requirements will for the first time reveal different concepts of minimal competency as state legislatures begin the difficult task of trying to identify, specify, and quantify what a high school graduate should know.

Therefore, this study is significant in that it will provide a reference for those educational decision makers who must in some way have some part in the implementation of a competency-testing program. It also will serve as a guide to any interested layman who just wants to keep abreast of one of the most controversial trends on the American educational scene in the last two or three decades.

Scope of the Study

This study will deal generally with high school competency testing and specifically with testing for high school graduation. Testing in elementary schools and post-secondary schools does not come within the purview of this analysis. However, court cases studied will include some landmark cases from the collegiate and professional levels inasmuch as there are common issues and challenges made about competency testings from all strata of education.

The investigation will consider legal aspects as revealed by state statutes, rulings, decrees, regulations and court cases, both federal and state. Technical details of competency testing such as reliability, validity, item analysis, etc. will not be studied per se, but only as these details bear on legal aspects.

Definition of Terms

affirm - to ratify, make firm, confirm, establish, reassert.

alternative schools - schools offering different curricula, programs, requirements, administration and organization than the typical comprehensive school.

amicus curiae - a friend of the Court.

competency tests - tests to determine whether students have mastered a specified minimum amount of skills, competencies, etc.

criterion-referenced tests - tests measuring the specific level of performance on some skill.

due process - law in its regular course of administration through courts of justice.

en banc - in the bench.

enjoin - to require; command, positively direct. To require a person by writ of injunction from a court of equity to perform, or to abstain or desist from some act.

NAEP - National Assessment of Educational Progress.

norm-referenced tests - tests showing the relative positions of students on skills.

per curiam - a phrase used in the reports to distinguish an opinion of the whole court from an opinion written by any one judge. Sometimes it denotes an opinion written by the Chief Justice or presiding judge.

remand - to send back.

reverse - to overthrow, vacate, set aside, make void, annul, repeal or revoke.

supra - above, upon.

validity of tests - the ability of a test to measure some trait or skill it has been designed to measure.

Method of Procedure

The following references will be used throughout this study as a method of locating relevant articles: Education Index, Reader's Guide to Periodical Literature, Resources in Education, Review of Educational Research, Dissertation Abstracts, Eric Documents, and the card catalogs at Jackson Library and those at other North Carolina universities and colleges.

Aids to be used in locating pertinent cases, federal and state, are legal encyclopedias such as American Jurisprudence, Corpus Juris, and Corpus Juris Secundum; Century, Dicennial, and General Digests of the American Digest System; state reports and National Reporter System; Index to Legal Periodicals and Index to Periodical Articles Related to Law.

Data will be gathered in the main by two methods. One approach will be to gather data from all states using competency tests. This state-by-state data will be gathered by a questionnaire mailed to state superintendents and by a search of state codes at law libraries. From the data thus collected an analysis of many pertinent variables will be made using charts, tables, figures, etc.

The other approach will involve a study of all pertinent state and federal court cases. An attempt will be made to identify landmark

cases according to the criteria set forth by Bolmeier (1973) as the extent to which the decision has shaped educational policy and the extent to which the decision has aroused public concern.

Organization of Remainder of Study

The study will be divided into five chapters. Chapter I, presented here, will be an introductory chapter.

Chapter II comprises the review of literature together with an expository treatment of the possible causes of the competency movement. Preparation of this chapter will rely heavily on dissertation abstracts, professional journals, appropriate indexes, reports and books.

Chapter III will be an analysis of state-by-state aspects of competency testing. Similarities and dissimilarities among the various states will be noted and meaningful comparisons will be made by use of tables and figures. This chapter will seek answers to those questions presented in the section on statement of the problem.

Chapter IV will present an analysis of state and federal court litigation bearing on competency testing and other aspects of the competency movements. Particularly important in this chapter will be an effort to determine whether courts have held these tests to be discriminatory. Also, cases involving so-called educational malpractice suits will be studied to see what the trends are in this vital area.

Chapter V will present conclusions and summaries based on the analysis and facts advanced in the first four chapters. Some recommendations for further study and guidance for educators will also be presented.

CHAPTER II

BACKGROUND OF THE COMPETENCY MOVEMENT

Before the Seventies

The first competency test probably originated when primitive man turned his son loose in the wild for the first time to hunt food and to fend for himself against enemies and wild beasts. Much later in man's evolution, when an agrarian society had replaced a nomadic existence, fathers taught their sons the various skills necessary for maintaining a living from the soil and from the raising of livestock. The ancient Jews felt it incumbent on themselves to teach their sons the father's trades and skills, and they were commanded to give religious instruction to their children:

And these words which I command you this day shall be upon your heart; and you shall teach them diligently to your children, and shall talk of them when you sit in your house, and when you lie down, and when you rise. And you shall bind them as a sign upon your hand, and they shall be as frontlets between your eyes. And you shall write them on the doorposts of your house and on your gates.¹

As far back as ancient Greece, attempts were made to make practitioners of the learned professions of law, medicine, and the physical sciences competent in their chosen fields. In various fields such as engineering, education, nursing, accounting as well as those mentioned in the preceding sentence, tests have been used

¹Deuteronomy 6:6-9.

to ascertain proficiency, to grant license to practice, and to determine eligibility for promotion. Needless to say, tests also have been an integral part of our educational system for centuries.

More than one hundred years ago, New York State began using special tests to determine a student's mastery of subjects in several areas. Those students passing the exams were awarded a Regents diploma which has come to signify a high level of performance. It must be remembered, though, that these Regency exams are optional, and only a small percentage of high school students try for this diploma.

Some years later, during the first part of the twentieth century, a method of standardization in measuring achievement on the high school level was adopted. Andrew Carnegie, a wealthy industrialist and benefactor of education, invested ten million dollars and used the interest from the investment to provide pensions for ageing college professors. Since the amount derived from the fund would not provide pensions for all qualified professors, some sort of ranking for eligibility had to be set up. The trustees of the Carnegie Foundation therefore defined a "college" as one whose freshman class was comprised of students who had completed a four-year high school course of at least fourteen units. These units were designated by the College Entrance Examination Board. Thus, the Carnegie Unit became a standard symbol of competency on the high school level throughout the United States.²

²Stuart G. Noble, A History of American Education, (New York: Rinehart and Company, Inc.), p. 409.

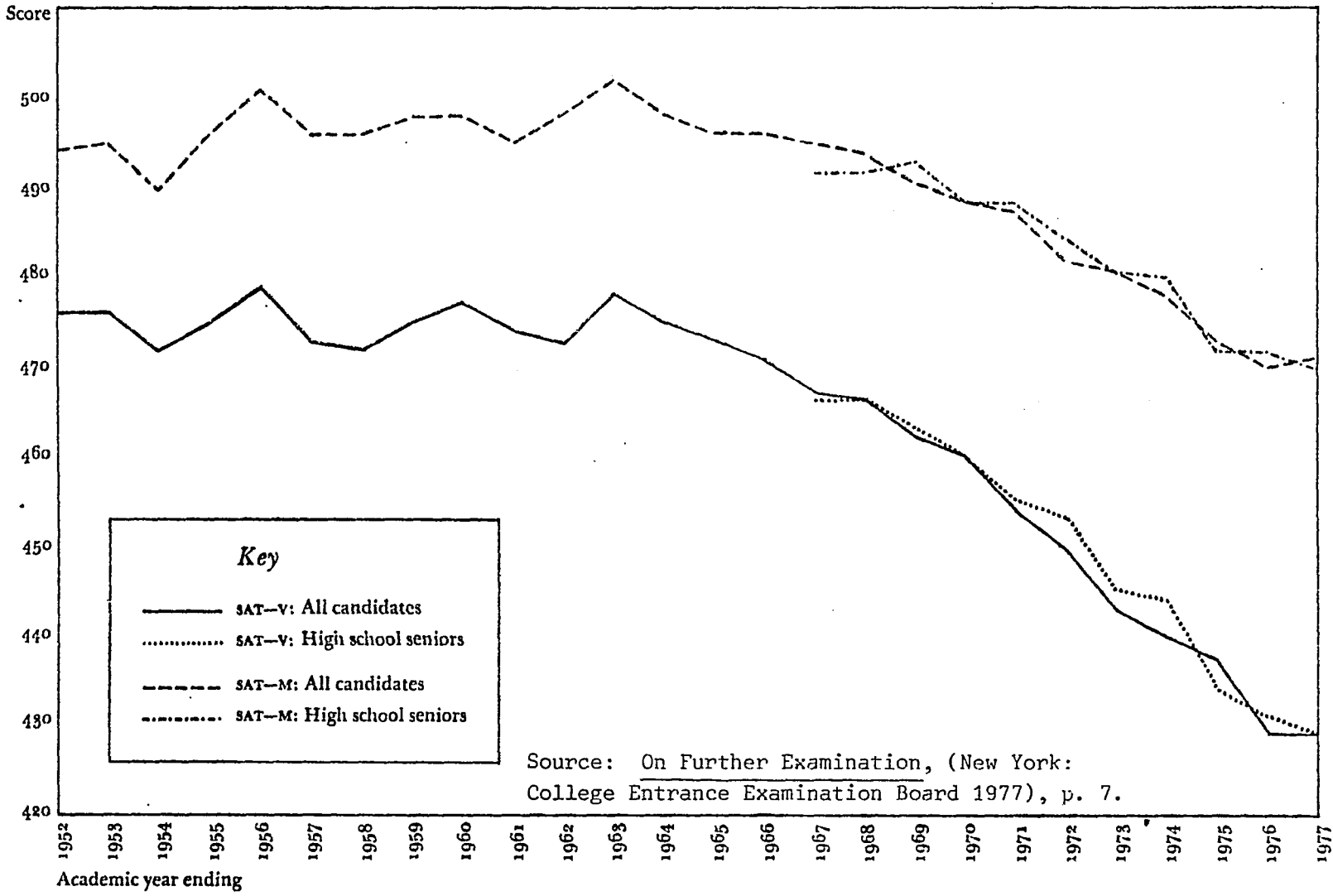
Therefore, there have been efforts before the present generation to insure competency in American high school students via examinations, Regents exams and Carnegie units, but the present-day impetus and clamor for competency and competency tests is a fairly recent phenomenon.

The Discontent of the Seventies

Several events and movements have joined together in recent years to get the competency movement rolling. The following influences should not be regarded as all-inclusive or exhaustive, but rather as some of the more important precipitating causes.

The Scholastic Aptitude Test score decline. Perhaps the weightiest factor contributing to a pro-competency-test atmosphere has been the gradual but marked decline in scores on the Scholastic Aptitude test for the past fourteen years. Beginning about 1962-63 scores on both the verbal and mathematical portions of the Scholastic Aptitude Test have declined steadily (see Figure 1). In 1973, upon release of the scores of Scholastic Aptitude Test-takers, the College Entrance Examination Board (CEEB) once again announced a decline in the scores. The media gave wide dissemination to the report and soon educators and the public alike were demanding explanations and offering explanations for the decline. The widespread publicity called attention not only to the preparation of college-bound students, but also to the quality of American public school education in general. In particular, citizens began to ask questions about

Scholastic Aptitude Test Scaled Score Means, 1952 to 1977



Source: On Further Examination, (New York: College Entrance Examination Board 1977), p. 7.

Figure 1

the preparation of students in the basic subjects of reading, writing, and mathematics.

The Scholastic Aptitude Test is the most widely used college entrance examination. It consists of two parts, verbal and mathematical. Scores range from 200 to 800 on each part.³ The exam is designed to measure skills and aptitudes that have been acquired and developed by the student over a lifetime. Thus, agencies in addition to the school would have some part in determining a student's preparation for the Scholastic Aptitude Test.

This exam is used as one measure among many to predict a student's academic success in college. Figure 1 shows an apparent drop in preparation for college that began back in 1962-63. Beginning in that year a steady decline is noted in both verbal and mathematical scores that continued until 1976. The drop in verbal scores for these years is 49; for the mathematical score, 32. One apparent bright spot: the scores on both parts have apparently stopped declining in 76-77 for all Scholastic Aptitude Test-takers.

The panel investigating the decline stated: "... a decline of this magnitude continuing over a 14-year period, following a previous period of stable or even slightly rising score averages, is clearly serious business."⁴ So serious, indeed, that a panel

³Report of the Advisory Panel on the Scholastic Aptitude Test Score Decline, On Further Examination, (New York: College Entrance Examination Board, 1977), p. 3.

⁴Ibid., p. 5.

was appointed to investigate it. S. P. Marland, Jr., president of the College Board on commissioning this investigation said:

No topic related to the programs of the College Board has received more public attention in recent years than the unexplained decline in scores earned by students on the Scholastic Aptitude Test. The trustees and the officers of the College Board believe that we must do all that we can to investigate and interpret this phenomenon to the public at large...

We are appointing a blue-ribbon panel to assist in making sense out of the complex and interrelated issues involved. The panel will be asked to audit the steps already taken to insure the psychometric integrity of the tests, to suggest additional ones if appropriate, to examine other kinds of research already done, and to identify research that still needs to be done in order to deal effectively with the score decline issue as it relates to candidate population, secondary education, and society.⁵

One of the first questions faced by the panel was the matter of test constancy. Over the years, had the Scholastic Aptitude Test changed despite the fact that it was designed to be an unchanging measurement? The panel clearly rejected this hypothesis after lengthy exploration of the possibility with this statement:

The ETS procedures for "equating" successive editions of the test (by including in each new edition key questions from earlier tests and then "scaling" raw scores according to the performance on these questions) and for checking against "item obsolescence" are as sophisticated and reliable as the state of the psychometric art permits. We find complete agreement about this in the profession, and we have pressed the matter to the point of adequate lay understanding and concurrence.

Then, if the decline in scores cannot be attributed to an unchanging standard (the test itself), the researcher must look

⁵Ibid., prefatory note, p. iii.

⁶Ibid., p. 8.

next to students taking the test and to events, changing cultural values, and other concomitants of a turbulent era for the youth of this nation.

The panel found that the score decline came in two distinct stages. The first six or seven years of the decline came at a time when the composition of the test-takers was changing markedly. The sixties marked a monumental effort by the government and other agencies to ensure equality of educational opportunity for all disadvantaged students which included minority students who, with minor exceptions, had always scored lower on standardized school tests. Concurrent with this effort came an all-out attack on the dropout problem in the public schools. Another factor: more students than ever before were planning to go on to postsecondary institutions. All these developments resulted in a lower-scoring body of test takers. The panel was very careful to avoid attributing causation to the new mix of test-takers. If minorities, disadvantaged, and the poor do less well on tests than advantaged and more affluent students, then the causes for poorer performance lie in the reasons these groups score lower. The panel stated its conclusion on the first stage decline this way:

We find, therefore, that the largest part of the SAT score decline between 1963 and about 1970 was identifiable with compositional changes in the mix of the SAT-taking group considered both in terms of the test takers coming from higher- and lower-scoring groups and in terms of their plans for going on to college. Although precise identification of the degree to which these changes explain that part of the decline is impossible, fairly careful

calculation indicates that they account for between two-thirds and three-fourths of it.⁷

The panel next turned to the second stage of the score decline over the past 6 or 7 years. This decline affected high-scoring and low-scoring groups alike. As part of their analysis, the panel looked at what had been happening on other standardized tests. The other widely used college entrance exam, the American College Testing (ACT) Program, shows a comparable decline over the same period. Other well-known aptitude and achievement tests also showed declines, but some tests (see Table 1) showed no changes or even increases in scores.

Table 1.
Test Trends, 1965-75

<u>Declines</u>	<u>Increases or No Changes</u>
American College Test (Composite)	Air Force Qualifications Test
Composite Test of Basic Skills	American College Test (Science)
Iowa Tests of Basic Skills (later grades)	Iowa Test of Basic Skills (early grades)
Iowa Tests of Educational Development	National Assessment of Educa- tional Progress: Reading Achievement
Minnesota Scholastic Aptitude Test	Preliminary Scholastic Aptitude Test
National Assessment of Edu- cational Progress: Science & Functional Literacy	Project TALENT
Scholastic Aptitude Test	

Source: Declining Test Scores, National Institute of Education, February, 1976.

⁷Ibid., p. 8.

The panel felt that the changes over the past few years were attributed to a group of more "pervasive" forces in school and society at large. Searching for causes here is essentially an exercise in conjecture, but the panel was able to bring forth a number of critical elements that seem to be implicated in this more recent score decline.

First, the panel looked at schools and the curricula. Much has been heard in recent years about declining standards and fewer required "tougher" courses. The decline in reading and writing skills was noted by the panel:

Our firmest conclusion is that the critical factors in the relationship between curricular change and the SAT scores are (1) that less thoughtful and critical reading is now being demanded and done, and (2)⁸ that careful writing has apparently about gone out of style.

The decline in learning standards in American schools over the past 10 to 15 years was considered. Under this classification are high rates of absenteeism tolerated by schools and accompanied by less learning; grade inflation, giving A's and B's to students who formerly would have received C's, D's and even F's; the infamous social promotion; a decrease in reading level by textbook authors who have been told to "keep it simple"; and the widespread use of objective tests that require only underlining, filling in blanks, selection from a multiple choice in place of careful writing. According to the panel: "... we find that there has been a

⁸Ibid., p. 27.

lowering of educational standards and that this is a factor in the decline in SAT scores."⁹

What effects, if any, have the quality of teachers and administrators and the provisions of educational facilities had on the score decline? Here the panel admits that its composition makes it a poor judge in this respect, but nevertheless, the panel did feel some responsibility should fall on educators for tolerating high levels of absenteeism, adopting less demanding textbooks, and requiring less reading and writing.¹⁰

Out-of-school factors considered were effects of television, student motivation, and family influence. The panel was firm in its castigation of the television-viewing habits of typical students, going so far as to state that the time devoted to television took away time that could more profitably be used for reading and homework. Is television a cause of the score decline? The panel's answer:

Yes, we think it is. This cannot be proved, and we don't know how much a factor it is. ... Neither the difficulty of proof nor the impossibility of measurement, however, warrants diluting the answer.¹¹ Television has become surrogate parent, substitute teacher.

In summing up, the panel said there was no one cause or one pattern of causes. Others echo this same thought:

⁹Ibid., p. 31.

¹⁰Ibid., pp. 32-33.

¹¹Ibid., p. 35.

There is no sole and solitary cause for declining achievement test scores. Several factors have differentially contributed to the decline, and their precise assessment is hampered by complex interrelations...¹²

Back to Basics. A movement reinforcing and contributing to competency testing is the back-to-basics philosophy currently in vogue in many educational districts. Ben Brodinsky, writing in Phi Delta Kappan, states that back-to-basics advocates have demanded:

1. Emphasis on reading, writing, and arithmetic in the elementary grades. Most of the school day is to be devoted to these skills. Phonics is the method advocated for reading instruction.
2. In the secondary grades, most of the day is to be devoted to English, science, math, and history, taught from "clean" textbooks, free of notions that violate traditional family and national values.
3. At all levels, the teacher is to take a dominant role with "no nonsense about pupil-directed activities."
4. Methodology is to include drill, recitation, daily homework, and frequent testing.
5. Report cards are to carry traditional marks (A, B, C, etc.) or numerical values (100, 80, 75, etc.), issued at frequent intervals.
6. Discipline is to be strict, with corporal punishment an accepted method of control. Dress codes should regulate student apparel and hair styles.
7. Promotion from grades and graduation from high school are to be permitted only after mastery of skills and knowledge has been demonstrated through tests. Social promotion and graduation on the basis of time spent in courses are out.
8. Eliminate the frills. The National Review, a conservative journal, put it this way: "Clay modeling, weaving, doll construction, flute practice, volleyball, sex education, laments about racism and other weighty matters should take place on private time."
9. Eliminate electives and increase the number of required courses.

¹²Annegut Harnischfeger and David E. Wiley, "The Marrow of Achievement Test Score Declines," Educational Technology, 16:1:13, 1976.

10. Ban innovations (a plague on them!). New math, new science, linguistics, instruction by electronic gadgets, emphasis on concepts instead of facts--all must go.
11. Eliminate the school's "social services"--they take time from the basic curriculum. "Social services" may include sex education, driver education, guidance, drug education, and physical education.
12. Put patriotism back in¹³ the schools, and live for one's country, and for God.

This list admittedly would encapsulate the purest form of the back-to-basics movement. Perhaps most protagonists of the movement would term the above statements somewhat extreme, but extreme as they might be, one can discern the probable origin of the competency testing movement from the conditions and philosophy espoused therein.

As for the whys and wherefores of the back-to-basics movement, Brodinsky states that they can be found in these developments:

1. Parents, often at the behest of educators, have taken a larger part in school affairs. As they delve deeply into the task, they don't like, or don't understand, what they see. They try to reshape policies and programs in accordance with their views.
2. Blacks and Hispanics claim, rightly or wrongly, that their children are ignored or shortchanged with respect to instruction in basic skills. The ghetto has been a hotbed for the basics.
3. Over the years, teachers have been urged to focus on creativity, on humanistic objectives, on development of independent thinkers. It has not always been clear to the classroom practitioner whether these were to be in addition to, or instead of, mastery of the skills. Confusion of educational goals has opened the way for the single-minded advocates of the three R's.
4. Employers have long complained that high school graduates do not make productive workers because allegedly they cannot read instructions on the job and lack ability in arithmetic. To the slogan, "Johnny can't read, write, or figure," Forbes, a journal for industrialists, added, "And Johnny can't work, either."

¹³Ben Brodinsky, "Back To The Basics: The Movement and Its Meaning," Phi Delta Kappan, 58:7:522, 1977.

5. Colleges have also long complained that the typical high school graduate is unprepared for college. Consequently, colleges have had to lower their standards of admission and to resort to remedial courses in English, math, and science. College officials join in the clamor that the schools should do a better job of teaching fundamentals.
6. As proof of their complaints, employers and colleges cite the 12-year drop in national test scores, which allegedly show a decline in student achievement. When the Gallup poll asked a sampling of parents in 1975 what, in their opinion, was the reason for the dropping scores, 22% of the respondents said, "Courses are too easy, there is not enough emphasis on basics."
7. Partisans of the basics often revolt against (A) the growth of super-professionalism in education and (B) the proliferation of the school's services and activities. The charge is that, first, educationists have made the schools a theater for experimentation - more in their self-interest than in the interest of the children. Neither the new report card, new math, nor the new textbooks have improved the educational product, they tell us "Educators keep on making changes for the sake of change," said a Pasadena critic during a recent battle over basics. The second charge is that the public schools have grown into huge bureaucratic machines, with over-stuffed curricula and over-sized staffs. The schools have taken on services and programs which belong to the home, the church, and social agencies - from serving breakfasts to giving the pill to schoolgirls. And the schools seek to hide their shoddy performance under a mantle of "professionalism" and by using cover up lingo which makes no sense to the layman.
8. Finally, there is the financial crunch. It is cheaper to finance a bare-bones, stripped-down school program than the runaway programs of the past decade. Such fundamentalist reasoning scores with taxpayers beset by inflation and rising school budgets.¹⁴

Declining standards. This item has previously been considered in connection with possible causes of Scholastic Aptitude Test score declines, but it will be considered here in a much broader context.

¹⁴Ibid., p. 523.

One agency in particular has had the best opportunity to measure any decrease or increase in learning across the board in the American educational system. This agency is the National Center for Education Statistics and its federally funded project that assesses educational progress is the National Assessment of Educational Progress. The agency is specially charged with measuring the nation's educational progress by determining the skills, knowledge, and attitudes possessed by American youth. Ten areas are assessed periodically at four age levels. The results from recent assessments do not paint as gloomy a picture as that portrayed by the Scholastic Aptitude Test panel. In some learning areas scores have declined, but in others they have gone up. In 1975, the tests revealed an increase in reading for the elementary school level and a bag of mixed results on the newly introduced functional literacy test. Nationally, 87% of the 17-year-olds reached the minimum standard and therefore were considered functionally literate. A breakdown by race reveals 92% of whites were functionally literate as opposed to only 58% of black youths.¹⁵

As noted before, the areas of weaknesses revealed by the tests and the comparatively poorer performance by minority students have added fuel to the competency movement.

Perhaps no educational practice has come in for more severe condemnation than has social promotion. This practice of promoting

¹⁵ Shirley Boes Neill, The Competency Movement, (Sacramento, California: Education News Service, 1978), pp. 34-35.

students who haven't mastered subject material has been widespread over the past two or three decades. The rationale behind social promotion is that you will do more harm to the totality of the student by retaining him in grade than you will do good by such retention. Stated another way, advocates of social promotion feel that the social development of the student in question will be greatly enhanced by lockstep promotion with students of his own age and that retention, although it might be indicated, will stigmatize the child as a failure.

This practice is so widespread that the illiterate high school graduate is becoming more common each year. The 10th annual Gallup Education Poll is revealing on this subject. See Table 2.

Table 2

In your opinion, should children be promoted from grade to grade only if they can pass examinations?

	National Totals %	No Children In Schools %	Public School Parents %	Parochial School Parents %
Yes, they should	68	71	60	59
No	27	24	35	38
<u>Don't Know/no answer</u>	5	5	5	3

Source: The 10th Annual Gallup Poll, Institute for Development of Educational Activities

Thus a majority of more than two to one favors promotions only by passing examinations.

External pressures. The impetus and origins of the competency movement have stemmed more from external pressures than from any

reform movement within education itself, although there are educators in the vanguard of the movement. The Critical Issues survey by the American Association of School Administrators asked school administrators to list reasons behind the competency and basic movements. The most significant external pressures cited were those from community and parents, from state legislative action, and from the media in the form of declining test scores.¹⁶

The media have been particularly effective in keeping the state of American education before the citizen. Television reporters, popular publications, and editorial writers all have had a field day on the subject, and much of what has been spoken and written has been unfavorable toward American education. A case in point was a three-part Special Reports broadcast by Columbia Broadcasting System on August 22, 23, and 24. Some findings reported and based on nationwide sampling by CBS were:

- 83% oppose social promotion
 - 79% are for the back to basics movement
 - 41% believe education is worse than a generation ago
 - 84% believe discipline is not strict enough
 - 15% of young people (age 17) can't function properly in society.
- (This last datum from HEW Secretary Califano.)

Most media publicity has generally been favorable to the competency testing concept if properly implemented. Some few columnists have pointed out inequities and pitfalls that may lie ahead for the minority student. Vernon Jordan says:

¹⁶ Ibid., p. 18.

Simplistic reliance on competency tests is a political response to citizen concern about the schools' inadequacy. But despite the rhetoric by the tests' supporters, there's little evidence that competency tests will result in better remedial programs or improved school accountability. ... disproportionate numbers of black children will leave school without a diploma. Instead of being a tool for locating learning problems, the tests become a tool for sorting and sifting and labeling minority children as failures.¹⁷

The last two statements of Jordan are in reference to the fact that students from low socioeconomic strata score lower on these tests and form a disproportionately high rate of failure on them.

Much of the public sector has taken up the cause of accountability. Schools and teachers must be held accountable for what their pupils learn or don't learn; a dollar's worth of results for every dollar spent. Nat Hentoff, a well-known critic of American education, writes about this lack of accountability in a recent book. He documents examples of lower expectations by teachers of the disadvantaged, of teachers who are more interested in tenure and benefits than in teaching, and of teachers who resort to brutal corporal punishment to control their pupils.¹⁸

A case from Kansas points up an unusual aspect of accountability. There some University of Kansas English professors set up some remedial writing classes, had the program approved by the University only to have their request for funds turned down by the

¹⁷Vernon Jordan, "Competency Tests Are Unfair," The Charlotte Observer, August 31, 1978, p. 19A.

¹⁸Nat Hentoff, Does Anybody Give A Damn?, (New York: Alfred A. Knopf, 1977), p. 239.

State because "the taxpayer should not be charged a second time for something they had already paid the high schools to accomplish."¹⁹

A sobering trend allied to the call for educational accountability has been observed in recent years. It has often been referred to as the "taxpayers' revolt" and its manifestations include scores of rejected school bond issues and passage of Proposition 13 types of legislation. This new wave of fiscal conservatism and its effects on school bond elections can be seen by reference to Figure 2. This graph shows an increase in rejection rates for school bond elections from 25% in 1965 to 54% in 1975.

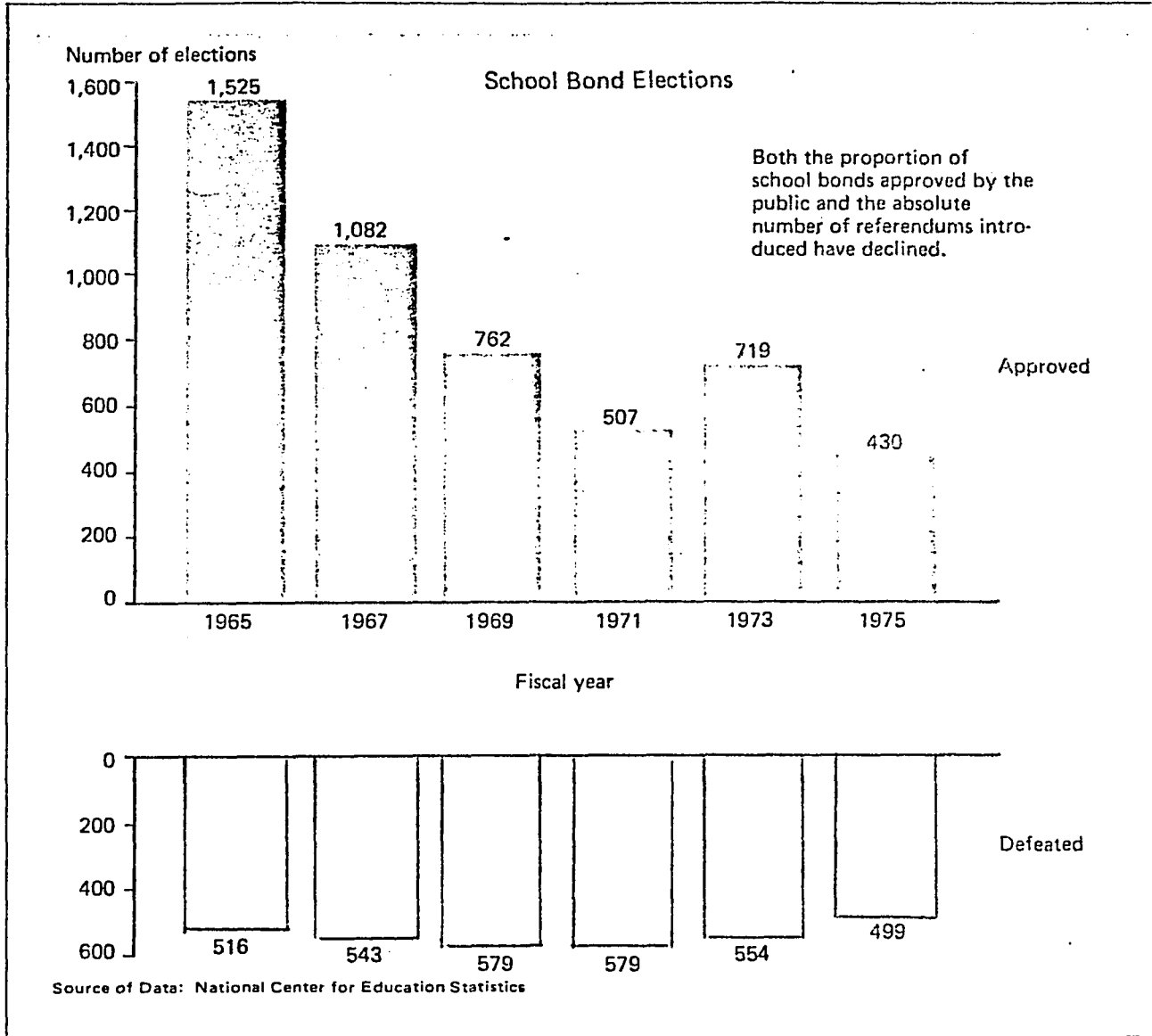
Not to be overlooked in any assessment of external pressures is the part politicians have played in setting up competency-testing programs through legislation. It is generally felt that state legislators are reacting to voter discontent with the schools. Whether the legislators have acted out of a deep-felt need for reform in the school system or from political expediency or from a combination of these two motives cannot be ascertained. But act they have, as will be seen in the next chapter.

Summary

A brief account of the historical basis of the competency movement was presented at the beginning of this chapter. Then four factors that are implicated in the present competency movement were considered in the latter part of the chapter:

¹⁹Joan Baum, "The Politics of Back-to-Basics," Change, 10:10:33, 1976.

Figure 2



(1) the score decline, (2) the back-to-basics movement, (3) the decline in standards, and (4) the pressures from outside the educational establishment. Other factors probably could be added to this list, but the four cited appear to cover the major explanations advanced. These factors apparently react with one another in complex relationships to produce the competency-testing movement.

The following are other examples of research that have been done in the field of competency testing for the high school diploma:

Chris Piphos works include reports on state-by-state activity in minimum competency testing. Activities are reported based on five categories: (1) Minimum proficiency skills; (2) Testing; (3) Finance; (4) Students; and (5) Staff.²⁰

A special task force of the national Association of Secondary School Principals prepared a special report that examines current trends in graduation requirements, the meaning of the diploma, alternative approaches to the diploma, and articulation with post-secondary education.²¹

Shirley Boes Neill has written a detailed Critical Issues Report for the American Association of School Administrators that

²⁰Chris Piphos, "Minimal Competency Testing: A Look at State Standards," Educational Leadership, 34:7:516-520, 1977.

²¹James Clark and Scott Thomson, Competency Tests and Graduation Requirements, U.S., Educational Resources Information Center, ERIC Document ED 126 160, 1976.

gives a rather comprehensive treatment of the problems and solutions of the competency movement.²²

White in his dissertation found that a majority of California school respondents felt that passing the California Proficiency Examination was a viable alternative to completing high school.²³

Weston in her dissertation investigated factors that were significantly related to students remaining in high school after passing the California Proficiency Exam. High scores in advanced math were positively related to staying in high school.²⁴

(A search of Dissertation Abstracts turned up only the two dissertations cited above on competency testing, both of them dealing with the California proficiency tests.)

²²Neill, The Competency Movement.

²³Willie Ray White, "A Case Study of Selected High Schools Regarding the California High School Proficiency Examination as a Viable Alternative for High School Completion" (Ed.D. dissertation, University of Oregon, 1977).

²⁴Sara Taylor Weston, "The California High School Proficiency Examination: The Decision of Students About School Enrollment after Passing the CHSPE" (Ed.D. dissertation, Brigham Young University, 1977).

CHAPTER III
ANALYSIS OF SELECTED VARIABLES
ON A STATE-BY-STATE BASIS

A questionnaire was developed and mailed to all chief state school officers to elicit data for this chapter. The complete inquiry consisted of a letter of introduction, a cover letter from Dr. Craig Phillips, Superintendent of The North Carolina Department of Public Instruction, and a questionnaire of nine items with necessary explanations. Items 1, 2, and 3 were one-part items; items 4, 5, 6, 7, 8, and 9 had two parts. The responses to the items will be presented by tables.

This questionnaire was mailed in early December 1978 to the chief state school officers in all fifty states and the District of Columbia. By late January 1979, forty-two responses had been received. Telephone calls were made to the nine states which did not respond to the first mailing. Sufficient data were obtained by telephone to complete the questionnaires for seven of these states and questionnaires were mailed a second time to secure a reply from the two remaining states with the final result being a 100 percent response to the inquiry.

Items 1 and 2 called for the respondent to identify his state and to indicate whether or not his state had a competency test as a requirement for graduation. Table 3 presents the responses to these two items.

As can be seen from Table 3, 15 states (29 percent) reported a competency testing requirement for the high school diploma as of December 1978. One or two other states indicated that competency tests were imminent in their states but they have not been tabulated in the "with" column of Table 3 since the data presented in this chapter is based on accomplished fact.

Table 3
Competency Tests for the High School Diploma (Fall-78)

States with Competency Test Requirement for High School Diploma	States Without Competency Test Requirement for High School Diploma
Alabama	Alaska
Arizona	Arkansas
California	Colorado
Delaware	Connecticut
Florida	District of Columbia
Georgia	Hawaii
Maryland	Idaho
Nevada	Illinois
New York	Indiana
North Carolina	Iowa
Oregon	Kansas
Tennessee	Kentucky
Utah	Louisiana
Vermont	Maine
Virginia	Massachusetts
	Michigan
	Minnesota
	Mississippi
	Missouri
	Montana
	Nebraska
	New Hampshire
	New Jersey
	New Mexico
	North Dakota
	Ohio
	Oklahoma
	Pennsylvania
	Rhode Island
	South Carolina
	South Dakota
	Texas
	Washington
	West Virginia
	Wisconsin
	Wyoming

The remaining items dealt only with those states indicating a competency-test requirement for the high school diploma. Thus all remaining tables will include only those states mandating a test for high school graduation.

Item 3 called for respondents to indicate the source of the competency-test mandate. Four choices were offered: (1) mandate by legislative enactment, (2) State Board of Education ruling, (3) State Department of Education mandate, (4) Other (please specify). See Table 4.

Chapter II cited the public's dissatisfaction with the measurable outcomes of public schooling as one possible factor contributing to the competency-testing movement. This questionnaire did not attempt to determine motivation behind statutes, decrees, etc. mandating tests, but it is interesting to note that one third (5) of the states requiring competency tests do so by order of their state legislatures, and it is possible that the 10 states using these tests by mandate of state boards of education and state departments of education were responding to pressures from a disaffected public. However, motivation and reasons for requiring competency tests for the high school diploma have not been researched to any great extent and would make an important area for future research.

Table 4
Sources of Mandates for Competency Tests

State	Legislative Enactment	State Board of Education Ruling	State Department of Education Mandate	Other
Alabama		X		
Arizona			X	
California	X			
Delaware		X		
Florida	X			
Georgia		X		
Maryland		X		
Nevada	X			
New York		X		
North Carolina	X			
Oregon		X		
Tennessee		X		
Utah		X		
Vermont		X		
Virginia	X			

Item 4 asked the respondents to check skill areas assessed by their competency tests. See the analysis presented by Table 5. Mathematics and reading are two skill areas tested by every state having a competency-test requirement, with three associated skill areas, writing, computing, and basic skills, being the next most popular areas for testing in descending order. Areas tested common to only two or three states are spelling, grammar, free enterprise, life skills, health and communication. This array of skills is thus heavily weighted in favor of what is usually called the basic subjects or the three R's.

A few states require tests only in two or three areas while Florida, Georgia, and Utah require testing of several areas. Some

Table 5

Skill Areas Assessed by Competency Tests

State	Basic Skills	Reading	Writing	Consumer Economics	Spelling	Drugs Education	Grammar	Free Enterprise Survival Skills	Math	Computing	Functional Literacy	Life Skills	Health	Communication	Other
ALA.	X	X	X		X		X		X						
ARIZ.		X	X						X						
CALIF.		X	X						X						
DEL.		X	X						X						
FLA.	X	X	X		X		X		X	X	X			X	
GA.	X	X	X	X				X	X	X		X	X		--(a)
MD.		X	X(b)	X(b)				X(b)	X(b)	X(b)		X(b)			--(c)
NEV.		X	X						X						
N.Y.		X	X						X						
N.C.	X	X						X	X	X					
ORE.	X	X	X						X	X					
TEXN.		X	X		X				X		X			X	
UTAH	X	X	X	X					X	X	X				--(d)
VER.		X	X						X						--(e)
VA.		X						X	X	X					

(a) Career skills.

(b) Under consideration by State Bd./Ed.

(c) Leisure, citizenship, World of Work under consideration.

(d) Also speaking, listening, democratic governance, problem solving.

(e) Also speaking, listening, reasoning.

mandates for areas to be tested are brief. For example, Nevada's statute states:

389.015 proficiency examinations.

1. The board of trustees of each school district shall administer examinations in all public schools within its district to determine the proficiency of pupils in:

- (a) Reading;
- (b) Writing; and
- (c) Mathematics.

The examinations shall be administered before the completion of grades 3, 6, 9, and 12.

Other mandates, such as Georgia, are much more detailed, encompassing two or three pages spelling out several areas to be tested and the methods used to ascertain proficiency. (See appendix)

The second part of item 4 asked the respondents to indicate whether the assessed areas checked in the first part of item 4 were mandated by statutory authorization or nonstatutory authorization (state board of education policy, decree, ruling, etc.).

This item was included to determine the extent to which legislatures as opposed to professional agencies (state board of education, etc.) mandated the substance of the competency tests. See Table 6. Eleven of the 15 states give the authority to specify the areas to be tested to state boards of education, while four states spell out the areas to be tested in legislation pertaining to their competency-testing programs.

Table 6
Sources of Mandates Specifying Areas to Be Assessed

States with Statutory Mandates	States with Nonstatutory Mandates
California	Alabama
Florida	Arizona
Nevada	Delaware
North Carolina	Georgia
	Maryland
	New York
	Oregon
	Tennessee
	Utah
	Vermont
	Virginia

Much speculation and controversy have revolved around the level of performance authorities would require for a passing score on these competency tests. Item 5, part one, sought data on required passing scores. The item asked: What levels of performance are required for a passing score on these tests?

Performance on most educational and achievement tests is reported in terms of grade-level equivalent. Tests that give grade level equivalent scores are norm-referenced tests which show the relative positions of students on skills. But most states do not use this type of test in competency-testing programs. See Table 7. Since competency tests are regarded as criterion-referenced tests (tests which measure the specific level of performance on some skill without regard to the relative positions of other students), measurements are usually reported as percentages of correct responses

Table 7
Levels of Performance Required

States	8th Grade Level	9th Grade Level	10th Grade Level	11th Grade Level	12th Grade Level	Adult Level	Other
Alabama							---(a)
Arizona		X					
California							---(b)
Delaware							---(c)
Florida							---(d)
Georgia							---(e)
Maryland					X(f)		
Nevada							---(g)
New York							---(h)
North Carolina							---(i)
Oregon							---(j)
Tennessee	X						
Utah							---(k)
Vermont							---(l)
Virginia							X(m)

- (a) Has not yet been determined.
 (b) Each district sets own level.
 (c) Appropriate level of performance to be established by 1981 by State Board of Education.
 (d) Criterion-referenced tests--not appropriate for grade level standards.
 (e) Grade level not specified for these tests.
 (f) 80 percent accuracy.
 (g) Not specifically determined.
 (h) Standards not related to "Grade Level."
 (i) 72 percent accuracy on Reading; 68 percent accuracy on Math. These standards not specified in terms of grade level.
 (j) Each district sets its own performance levels.
 (k) Levels are established by individual local school districts.
 (l) 80 percent accuracy on basic competencies--not specified as grade level.
 (m) Everyday skills.

on test items or objectives. A percentage of correct responses on the tests is usually set as the passing score; thus most states make no reference to any grade level. Maryland, North Carolina, and Vermont are examples of states that require a certain percentage of correct responses; Arizona and Tennessee are the only two states using grade level standards of performance. Three states, California, Oregon, and Utah, require their local districts to set the performance levels for a passing score.

The second part of item 5 asked: Are the levels of performance you checked above (Table 7) specified by (Check one) statute? or by nonstatute?

This question was an attempt to pursue further the extent of involvement by state legislatures in the mechanics of the various competency testing programs. As can be seen by reference to Table 8, all of the states leave the setting of passing standards to state boards of education and/or local districts.

Table 8

Sources of Mandates Specifying Passing Levels

States with Statutory Mandates	States with Nonstatutory Mandates
	Alabama Arizona California Delaware Florida Georgia Maryland Nevada New York North Carolina Oregon Tennessee Utah Vermont Virginia

There seems to be almost universal agreement that remediation should be provided to those who fail the tests. The next item (6) asked: Is remediation mandated for those failing the competency tests?

Eight of the states directly mandate remediation for students failing their competency tests. See Table 9. The remaining seven states either make no provision for remediation or have not as yet decided this matter or else just assume that there will be some remediation.

Table 9
States Mandating Remediation

States	Yes	No
Alabama	X	
Arizona		X(a)
California	X	
Delaware		X(b)
Florida	X	
Georgia	X	
Maryland	X	
Nevada	X	
New York	X	
North Carolina	X	
Oregon		X
Tennessee		X(c)
Utah		X(d)
Vermont		X(e)
Virginia		X

- (a) Not specifically determined.
 (b) Not specifically determined.
 (c) Not at present mandated, though this is implied.
 (d) Not directly mandated, but assumed.
 (e) Not specifically determined, but assumed.

The second part of item 6 asked respondents to indicate the sources of the remediation mandate -- either a statutory or a non-statutory mandate.

Continuing the investigation of the extent of legislative involvement in the details of these testing programs, Table 10 shows that of the eight states mandating remediation for failing students, four require remediation by statute and four require it by some nonstatutory decree.

Table 10
Sources of Remediation Mandate

States with Statutory Mandates	States with Nonstatutory Mandates	States with No Mandates
California	Alabama	Arizona
Florida	Georgia	Delaware
Nevada	New York	Oregon
North Carolina	Maryland	Tennessee
		Utah
		Vermont
		Virginia

The next item (7) asked: What alternatives to the high school diploma exist for those unable to pass these tests? Three choices were offered to the respondents.

An analysis of Table 11 indicates that nine of the states make some provision for awarding some kind of document to a failing student while six states have made no decision as of yet on this important matter. A certificate of attendance appears to be the most popular alternative.

Table 11
 Alternatives to Diploma for Students Failing Tests

States	Certificate of Attendance	Transcript of Credits	Other
Alabama			Special Education
Arizona			--(a)
California			--(b)
Delaware			--(c)
Florida	X		
Georgia			Certificate of Performance
Maryland			None
Nevada	X		
New York	X	X	
North Carolina		X	
Oregon		X	
Tennessee			--(d)
Utah			Certificate of Progress (e)
Vermont			--(f)
Virginia			--(g)

- (a) Has not yet been determined.
 (b) Not decided yet.
 (c) Not decided yet.
 (d) No alternative devised as of 1978.
 (e) May be awarded -- local district option.
 (f) Not decided yet.
 (g) This area is now being considered by Board of Education.

The second part of item 7 asked respondents to indicate whether the alternatives shown in Table 12 were mandated by statutory or non-statutory authorization.

Legislative involvement here is limited to only two states while five states have mandates from some agency other than a legislature. Eight states indicated that this item was not applicable to them.

Table 12
Sources of Mandates Specifying Alternatives
To the High School Diploma

States with Statutory Mandates	States with Nonstatutory Mandates	States with No Mandates
Florida Nevada	Alabama Georgia North Carolina Oregon Utah	Arizona California Delaware Maryland New York Tennessee Vermont Virginia

Item 8 asked: Who sets the standards used in your competency program? Four choices were given to respondents.

Nine states set standards in their competency-testing programs from a central state agency while four states, interestingly enough all Western States, require the local districts to set the standards used in their programs. See Table 13. Only one, Georgia, requires cooperation in standard setting between the state and local districts.

Table 13
 Agencies Setting Standards in
 State Competency Programs

States	A State Agency	Local Units	Shared State/Local	Other
Alabama	X			
Arizona		X		
California		X		
Delaware	X			
Florida	X			
Georgia			X	
Maryland	X			
Nevada	X(a)			
New York	X			
North Carolina	X			
Oregon		X		
Tennessee	X			
Utah		X		
Vermont				—(b)
Virginia	X			

- (a) Lack of clarity here is considered to be potential problem.
 (b) Response to this item not ascertainable from questionnaire.

The second part of item 8 asked respondents to indicate whether standard setting is mandated by statutory or nonstatutory authorization.

According to Table 14, four states prescribe by statute who is to set standards and eleven prescribe standard setting by some nonstatutory authorization. It is interesting to note that Nevada and Virginia allow their state boards to set standards even though their competency programs are ordered by state law.

Table 14

Setting of Standards Mandated by Statutory
Or Non-Statutory Authorizations

States with Statutory Mandates	States with Nonstatutory Mandates
California	Alabama
Florida	Arizona
North Carolina	Delaware
Tennessee	Georgia
	Maryland
	Nevada
	New York
	Oregon
	Utah
	Vermont
	Virginia

The last item (9) on the questionnaire asked respondents to indicate by "yes" or "no" whether students failing the tests could retake them after leaving high school.

Table 15 indicates that the majority (9) of states will allow students with unsatisfactory test scores to retake these tests after they leave high school thus enabling the failing student a chance to pass the test and therefore obtain the high school diploma after his normal high school education has terminated. Two states, Nevada and Tennessee, at the present time have no provisions for these re-examinations, and in four states, this matter has not as yet been clearly decided.

Table 15
Postsecondary Re-examination

States Allowing Unsuccessful Students To Retake Tests After They Leave High School	States Not Allowing Unsuccessful Students To Retake Tests After They Leave High School	Under Consideration
Alabama	Nevada	Arizona
Florida	Oregon	California
Georgia	Tennessee	Delaware
Maryland		Vermont
New York		
North Carolina		
Utah		
Virginia		

The second part of item 9 asked: What authority specifies whether or not students failing the tests may retake them after leaving high school?

Table 16 shows that a majority (9) of states leave the matter of postsecondary testing to the discretion of their state departments of education with only one state covering this subject by statute. Five states have not yet clarified this issue.

Table 16
Sources of Mandates Covering
Postsecondary Re-examinations

States with Statutory Mandates	States with Nonstatutory Mandates	States with No Mandates
Nevada (a)	Alabama Florida Maryland New York North Carolina Oregon Tennessee Utah Virginia	Arizona California Delaware Georgia (b) Vermont

(a) Indirectly.

(b) Georgia marked this item on the questionnaire "not applicable."

Summary: The significant findings detailed in this chapter are as follows:

- Fifteen states (29 percent) as of December, 1978 have a competency test requirement for the high school diploma.
- Ten of these states mandate these tests by nonstatutory authorization and five mandate them by statutory authorization.
- Reading and mathematics are tested by all the fifteen states; less popular skill areas tested are health, life skills, free enterprise, spelling, and consumer economics.
- Four states specify by law what is to be tested.
- Most states do not report scores on these competency tests in terms of grade level performance.

- A majority of these states mandate remediation for students failing these tests.
- For students who cannot pass these tests, most of the states will award documents such as Certificates of Attendance, Transcripts of Credits, Certificates of Progress or Certificates of Performance.
- A majority of these states give the responsibility for implementation of these programs to a centralized state agency, most often the state board of education.

CHAPTER IV

A REVIEW OF SELECTED CASES

Competency tests appear to be vulnerable to court challenges on several counts. This chapter is a review of applicable cases related to or dealing with competency testing for the high school diploma from four areas where legal challenges have been made:

(1) racial discrimination in competency testing, (2) improper phase-in procedures in competency testing, (3) curriculum/test mismatch in competency testing, and (4) malpractice litigation as it relates to the competency movement. Some of the cases studied are from noneducational settings, but their applicability is obvious nonetheless.

Litigation Involving Racial/Minority/Disadvantaged Discrimination.

Many blacks see a racial motive behind the current movement to competency testing for the high school diploma. These blacks say that the matter of competency testing was not considered until schools were desegregated, and then competency tests were introduced to "protect standards." As a result of these tests, schools can be resegregated from within as a result of minority students scoring lower on these tests. And to minority parents it is widely known that, generally speaking, black, poor, and disadvantaged students score lower than whites on competency tests.¹

¹Merle Steven McClung, "Competency Testing: Potential for Discrimination," Clearinghouse Review, September, 1977, p. 442.

From a constitutional viewpoint, many legal authorities feel that educators and state legislatures are treading on thin legal grounds in requiring these tests for graduation in districts that were formerly segregated. Federal courts have held unconstitutional practices that perpetuate the effects of prior racial discrimination. For example, consider the following case:

Gaston County, N.C. v. United States
United States Supreme Court
 89 S. Ct. 1720 (1969)

This case had its genesis in the Voting Rights Act of 1965.

This act

suspends the use of any test or device as a prerequisite to registering to vote in any election, in any State or political subdivision which, on November 1, 1964, maintained a test or device, and in which less than 50% of the residents of voting age were registered on that date or voted in the 1964 presidential election.²

The phrase 'test or device' shall mean requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the vqcher of registered voters or members of any other class.³

Responsibility for determining noncompliance with this act was given to the Attorney General and the Director of the Census. On March 29, 1966, Gaston County, North Carolina was declared in

²Voting Rights Act of 1965, Sec. 4 (a), 79 Stat. 433, 42 U.S.C. Sect. 1973b (a) (1964 ed., Supp. III).

³Ibid., Sec. 4 (c), 79 Stat. 438, 42 U.S.C. Sect. 1973b (c) (1964 ed., Supp. III).

violation of the Voting Rights Act of 1965, and shortly thereafter, the State's literacy test within the county was suspended. On August 18, 1966, the county sought declaratory judgment to reinstate the literacy test for voter registration. The United States District Court for the District of Columbia, sitting as a three-judge court, denied application and appeal was taken.

The District Court denied relief on the ground that Gaston County's use of the literacy test had denied or abridged the right to vote on account of race or color in that Gaston County had provided unequal and inferior schools for its Negro citizens and, therefore, a lower literacy rate. Gaston County could not prove that its use of the literacy test had not discriminatorily deprived Negroes of the franchise.

In affirming the action of the district court the Supreme Court pointed out the blighting effects of a segregated and inferior education:

It is only reasonable to infer that among black children compelled to endure a segregated and inferior education, fewer will achieve any given degree of literacy than will their better-educated white contemporaries.⁴

It should be noted that the effects of this inferior education would fall most heavily on older Negro citizens who were compelled to attend inferior, segregated schools as young people. The court makes clear the distinction between young Negroes who have attended integrated schools and older Negroes who have attended segregated schools:

⁴Gaston County, N.C. v. United States, 89 S. Ct. 1720 (1969).

Appellant (Gaston County) urges that it administered the 1962 reregistration in a fair and impartial manner, and that in recent years it has made significant strides toward equalizing and integrating its school system. Although we accept these claims as true, they fall wide of the mark. Affording today's Negro youth equal educational opportunities will doubtless prepare them to meet, on equal terms, whatever standards of literacy are required when they reach voting age. It does nothing for their parents, however. From this record, we cannot escape the sad truth that throughout the years Gaston County systematically deprived its black citizens of the educational opportunities it granted to its white citizens. "Impartial" administration of the literacy test today would serve only to perpetuate these inequities in a different form.⁵

Thus any practice which carries forth the effects of prior racial discrimination would be suspect, be it a literacy test or a competency test for the high school diploma.

Courts also have prohibited ability grouping in the immediate years following desegregation.⁶ Obviously, such grouping would tend to track black and minority students into remedial classes and low ability curricula - another example of the "prior effects" principle. Clearly, any black student affected by this principle and subsequently denied a high school diploma for failure on a competency test would have sound basis for legal remedy.

⁵Ibid.

⁶McNeal v. Tate County School Dist., 508 F. 2d 1017 (5th Cir. 1975); Moses v. Washington Parish School Bd., 456 F. 2d 1285 (5th Cir. 1972); Lemon v. Bossier Parish School Bd., 444 F. 2d 1400 (5th Cir. 1971); Singleton v. Jackson Municipal School Dist., 419 F. 2d 1211 (5th Cir. 1969).

Griggs v. Duke Power Company
United States Supreme Court
91 S. Ct. 849 (1971)

This case arose out of alleged employment violations of the Civil Rights Act of 1964. Negroes sued in a class action against the employer, Duke Power Co., in the Middle District of North Carolina, but their complaint was dismissed. Plaintiffs appealed to Court of Appeals which held that the requirement of a high school education and the passing of a standardized general intelligence test as a condition of employment did not violate the Civil Rights Act of 1964. Plaintiffs then sought a writ of certiorari and it was granted.

Briefly, the facts in this case are as follows: Duke Power Company at its Dan River dam at Draper, North Carolina had a policy requiring a high school education for anyone assigned to any department other than Labor. On Jan. 2, 1965, the date on which Title VII of the Civil Rights Act became effective, Duke Power promulgated another requirement for its employees. Hereafter, to qualify for placement in any department other than Labor it was necessary to pass two professionally prepared aptitude tests, as well as to have a high school education. Neither requirement was designed to measure an applicant's fitness for a particular job. The Court of Appeals held that there was no discriminatory purpose in the adoption of these tests and graduation requirements.

The Supreme Court turned to guidelines issued by the Equal Employment Opportunity Commission for an interpretation of the

intent of Congress in permitting employment tests. The controversial section of the Civil Rights Act, Title VII states:

Sec. 703 "(h) Notwithstanding any other provision of this title, it shall not be an unlawful employment practice for an employer * * * to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin."⁷

The Equal Employment Opportunity Commission issued guidelines on employment-testing procedures which provide that employers using tests have available

"data demonstrating that the test is predictive of or significantly correlated with important elements of work behavior which comprise or are relevant to⁶ the job or jobs for which candidates are being evaluated."

What is clearly permitted according to Equal Employment Opportunity Commission guidelines and congressional intent is the use of job-related tests. What is proscribed is the use of general intelligence tests and other measurements of the individual which do not measure the applicant for the job sought.

The Supreme Court held that Duke Power was prohibited from requiring a high school education or the passing of a general intelligence test where neither standard was shown to be significantly related to successful job performance. The final paragraph of the decision reinforces this prohibition and clarifies acceptable uses of employment tests:

⁷78 Stat. 255, 42 U.S.C. Sect. 2000-2.

⁸Guidelines on Employee Selection Procedures, 29CFR Sect. 1607, 35 Fed. Reg. 12333 (Aug. 1, 1970).

"Nothing in the Act precludes the use of testing or measuring procedures: obviously they are useful. What Congress has forbidden is giving these devices and mechanisms controlling force unless they are demonstrably a reasonable measure of job performance. Congress has not commanded that the less qualified be preferred over the better qualified simply because of minority origins. Far from disparaging job qualifications as such, Congress has made such qualifications the controlling factor, so that race, religion, nationality, and sex become irrelevant. What Congress has commanded is that any tests used must measure the person for the job and not the person in the abstract."⁹

This case has implications for any competency-testing program requiring the passing of a test as a prerequisite for a high school diploma. There is the obvious question of racial discrimination in any general test of intelligence or competency test where blacks and other disadvantaged minorities have traditionally scored lower than majority groups. And there is the possibility that the so-called competency tests are not "job related" in that they do not accurately test or measure competencies needed for successful participation in modern society. Involved here is the matter of predictive validity - a measure of how well a test predicts future performance of test takers. Hence, competency tests that do not meet predictive validity standards, as well as others, may be discriminatory and illegal.

Lau v. Nichols
U.S. Supreme Court
94 S. Ct. 786 (1974)

Children whose mother tongue is not English may be particularly susceptible to discrimination in competency-testing programs,

⁹Griggs v. Duke Power Company, 91 S. Ct. 849 (1971).

especially children who do not know English well enough to participate in and derive benefits from the educational program of the schools. The case of Lau v. Nichols speaks to the issue of discrimination involving non-English-speaking students.

This case arose in the San Francisco Unified School District. There Chinese students alleged that they had been denied equal educational opportunities in that they had not received instruction in the English language, and that, therefore, they had been denied their rights under the Fourteenth Amendment. The District Court denied relief, the Court of Appeals affirmed, and the Supreme Court granted a petition for certiorari because of the public importance of the question presented.

The Supreme Court in emphasizing the importance of English stated:

Basic English skills are at the very core of what these public schools teach. Imposition of a requirement that, before a child can effectively participate in the educational program, he must already have acquired those basic skills is to make a mockery of public education. We know that those who do not understand English are certain to find their classroom experiences wholly incomprehensible and in no way meaningful.¹⁰

It is interesting to note that in reversing the Court of Appeals, the Supreme Court did not do so on the basis of any violation of the Fourteenth Amendment, but rather on violation of the Civil Rights Act of 1964, 42 U.S.C. Sect. 2000d.

¹⁰Lau v. Nichols, 94 S. Ct. 786 (1974).

This section bans discrimination based on the ground of race, color, or national origin in any program or activity receiving federal financial assistance. The San Francisco district involved in this litigation had received large amounts of federal financial assistance. The Department of Health, Education, and Welfare, which has authority to promulgate regulations prohibiting discrimination in federally assisted school systems, issued a guideline to the effect that school systems were responsible for assuring that students of a particular race, color, or national origin were not denied the opportunity to obtain the education generally obtained by other students in the system. In 1970, the Health, Education, and Welfare Department made the guideline more specific by requiring school districts that were federally funded to rectify any language deficiency in order to open the instruction to students who had linguistic deficiencies. These guidelines:

Where inability to speak and understand the English language excludes national origin-minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students.

Any ability grouping or tracking system employed by the school system to deal with the special language skill needs of national origin-minority group children must be designed to meet such language skill needs as soon as possible and must not operate an educational deadend or permanent track.¹¹

Not only is purposeful discrimination banned, but also any practice which has the effect of discriminating against individuals on the ground of race, color, or national origin.

¹¹35 Fed. Reg. 11595.

A recipient may not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.¹²

Justice Potter Stewart in a concurring opinion wrote of the central question of this case which revolves around the extent and scope of Health, Education, and Welfare guidelines under authority of section 601. Do these guidelines go beyond the authority of section 601?

He stated that the Court had previously held that a regulation promulgated under a general authorization provision such as section 602 of Title VI will be sustained so long as it is reasonably related to the purposes of the enabling legislation. Justice Stewart's concluding statements are unequivocal:

I think the guidelines here fairly meet that test. Moreover, in assessing the purposes of remedial legislation we have found that departmental regulations and consistent administrative construction are entitled to great weight. The Department has reasonably and consistently interpreted section 601 to require affirmative remedial efforts to give special attention to linguistically deprived children.¹³

Thus, States having substantial numbers of students speaking languages other than English will have to take great care to remedy any linguistic deficiencies in these students' education so that a competency test written in English would be fully comprehensible to them.

¹²45CFR Sect. 80.3 (b) (2).

¹³Lau v. Nichols, 94 S. Ct. 786 (1974).

Washington v. Davis
96 S. Ct. 2040 (1976)

It was previously noted in Gaston County v. United States that Federal courts have ruled unconstitutional practices that perpetuate the effects of prior racial discrimination. But in situations where there has been no prior discrimination or desegregation, the constitutionality or legality of practices such as employment tests is not so clear. A landmark case covering such a situation was argued and decided in 1976.

In this case, Washington v. Davis, two Negroes who had been rejected as applicants for police officers on the District of Columbia police force, claimed that the Police Department's recruiting procedures, including a written personnel test (Test 21), were racially discriminatory and violated the due process clause of the Fifth Amendment. Test 21 is generally administered to prospective Government employees to determine which applicants have acquired a particular level of verbal skills. The Negroes maintained that the tests have no relationship to job performance and excluded a disproportionately high number of Negro applicants.

The United States District Court for the District of Columbia held that the test was fair, had been validated, and did not discriminate against blacks. On appeal, the Court of Appeals reversed and directed summary judgment in favor of the Negroes and certiorari was granted.

Some pertinent points of law developed in this case are:

1. The standard for adjudicating claims of invidious racial discrimination under the due process clause of the Fifth Amendment is not identical to the standards applicable under the Equal Employment Opportunity Act-Civil Rights Act of 1964, sect. 701.
2. The central purpose of the equal protection clause of the Fourteenth Amendment is the prevention of official conduct discriminating on the basis of race. U.S.C.A. Const. Amend. 14.
3. Though the due process clause of the Fifth Amendment contains an equal protection component prohibiting the government from invidious discrimination, it does not follow that a law or other official act is unconstitutional solely because it has a racially disproportionate impact regardless of whether it reflects a racially discriminatory purpose, U.S.C.A. Const. Amend. 5.
4. A statute, otherwise neutral on its face, must not be applied so as invidiously to discriminate on basis of race. U.S.C.A. Const. Amends. 5, 14.
5. An invidious discriminatory purpose in application of a statute may often be inferred from the totality of the relevant facts, including the fact, if it is true, that the law bears more heavily on one race than another. U.S.C.A. Const. Amends. 5, 14.
6. Disproportionate impact of a statute is not irrelevant, but it is not the sole touchstone or an invidious racial discrimination forbidden by the Constitution and standing alone, does not trigger the rule that racial classifications are to be subjected to the strictest scrutiny and are justifiable only by the weightiest of considerations. U.S.C.A. Const. Amends. 5, 14.
7. In proper circumstances, the racial impact of a law, rather than its discriminatory purpose, is the critical factor in determining a constitutional violation. U.S.C.A. Const. Amends. 5, 14.
8. The Constitution does not prevent the government from seeking through a written test of verbal skill modestly to upgrade the communicative abilities of its employees rather than to be satisfied with some lower level of competence, particularly where the job requires special ability to communicate orally and in writing. U.S.C.A. Const. Amends. 5, 14.
9. Negro applicants for employment as police officers could no more successfully claim that written test of verbal skill denied them equal protection than could white applicants who also failed the test. U.S.C.A. Const. Amend. 5.

10. The disproportionate impact on Negroes of written test of verbal skill administered to applicants for employment as police officers did not warrant the conclusion that the test, which was neutral on its face, was a purposely discriminatory device. U.S.C.A. Const. Amend. 5.
11. The affirmative efforts of police department to recruit black officers, the changing racial composition of the recruit classes and of the force in general, and the relationship of written test of verbal skill to training program negated any inference that the department discriminated on the basis of race notwithstanding the disproportionate impact of the test on Negro applicants. U.S.C.A. Const. Amend. 5.
12. The statutory standard of review of the Equal Employment Opportunity Act involves a more probing judicial review of, and less deference to, the seemingly reasonable acts of administrators and executives than is appropriate under the Constitution where special racial impact of written personnel test is claimed. Civil Rights Act of 1964, Sect. 701.
13. Positive relationship between test of verbal skill administered applicants for employment as police officers to training course performance was sufficient to validate the test, wholly aside from its possible relationship to actual performance as a police officer. U.S.C.A. Const. Amend. 5.
14. District courts conclusion that test of verbal skill administered to applicants for employment as police officers was directly related to the requirements of the police training program was supported by a validation study as well as by other evidence of record. U.S.C.A. Const. Amend. 5.¹⁴

Particularly germane to competency testing for the high school diploma are the points of law upholding the use of tests that are related to job performance. These points reinforce the findings in Griggs v. Duke Power Co. and augur well for competency tests that have predictive validity.

The constitutional finding that a test having disproportionate impact on racial groups does not of itself constitute discrimination

¹⁴Washington v. Davis, 96 S. Ct. 2040 (1976).

in the absence of a discriminatory purpose appears to give legality to what is happening in competency-testing programs across the nation--a high failure rate among minority groups. But the Supreme Court also stated that in some circumstances a disproportionate racial impact would be evidence of a discriminatory purpose. The Court declined to describe what these circumstances would be. Perhaps Justice John Paul Steven's statements in a concurring opinion could be enlightening here:

"Frequently the most probative evidence of intent will be objective evidence of what actually happened rather than evidence describing the subjective state of mind of the actor. For normally the actor is presumed to have intended the natural consequence of his deeds."¹⁵

It is almost certain that competency-testing programs across the nation will result in marked racial differentiation--indeed, some already have. (Trial tests in Florida and North Carolina have resulted in high failure rates among blacks, with much lower failure rates among whites.)

It should also be noted that the Court held that Title VII (1964 Civil Rights Act, amended 1972) standards are stricter than constitutional standards in regard to testing by employers. Under this stricter standard, any test having the effect of discrimination is prohibited. Thus, an employer in this circumstance would have to validate and show the test to be job related. Title VI, dealing with schools, also incorporates this "effect" principle. Therefore,

¹⁵Ibid.

presumably the Courts could require any competency test failing disproportionate numbers of blacks to be validated in terms of course content and predictive validity (Washington v. Davis).

A well known series of professional examinations, the National Teacher Examination has come under legal attack in recent years. The National Teacher Examinations, a competency test itself, is developed and administered by the Educational Testing Service (ETS). This test attempts to measure one determinant of teaching competence -- subject matter content in a number of fields plus generalized knowledge from other related fields. Some states use scores on the test for certification purposes, and one, South Carolina, uses the test not only for certification, but also as one factor among several to determine the teacher's pay scale.

North Carolina for a number of years has made the National Teacher Examination a requirement for initial certification. (A minimum score of 950 totaled from the Common Examinations and the Area Examinations was set by the State Department of Education as a cutoff score.) In 1975, the Attorney General brought complaint against the state, its board of education, and board members charging invidious discrimination in requirement that applicants for teacher's certificate achieve a minimum test score.¹⁶ Following entry of a memorandum of decision, and filing of order and judgment defendants moved for relief from judgment. The three-judge District Court

¹⁶ United States v. State of North Carolina, 400 F. Supp. 343 (1975), Vacated, 425 F. Supp. 789 (1977).

held that the prior "partial decision" remained subject to revision at any time until all issues and claims had been resolved and judgment entered on the whole case; and that where the underlying basis for such decision appeared questionable in light of subsequent United States Supreme Court decision, it would be vacated and discovery extended. The primary Supreme Court decision making the Court's initial decision appear questionable was Washington v. Davis, above.

In 1977-78, a landmark case involving the use of the National Teacher Examination was argued and decided in United States District Court, D. South Carolina, Columbia Division.

United States of America
v.
State of South Carolina
445 F. Supp. 1094 (1977)

Suit was brought by United States and others against State of South Carolina, various state agencies, educational officials and local school districts challenging as racially discriminatory the use of National Teacher Examinations scores for certification purposes as well as a factor in determining teacher salary. Plaintiffs alleged that use of National Teacher Examinations resulted in violation of constitutional and statutory rights of blacks because historically more blacks than whites had failed to achieve the minimum score necessary for certification.

The Court first considered whether South Carolina's minimum score requirement on the National Teacher Examinations violated the equal protection clause of the Fourteenth Amendment. Plaintiffs

alleged South Carolina's use of the National Teacher Examinations was to create and use a racial classification. To sustain such a charge the plaintiffs had to prove that defendants intended to use such a classification. (Washington v. Davis, supra.) In Village of Arlington Heights v. Metropolitan Housing Development Corp., 97 S. Ct. 555 (1977), the Supreme Court suggested that evidence as to several factors might have probative value in proving intent: historical background, the sequence of events leading up to the challenged decision (including substantive and procedural departures from the norm), legislative history, and testimony from officials.

The Court went back to 1945 to examine four periods of different policies and requirements relative to the use of the National Teacher Examinations. These changes occurred in 1945, 1956, 1969, and 1976. After careful analysis of the facts involved in each change, the court announced that it could find no discriminatory intent by South Carolina. Among reasons cited by the Court in rebutting claims of discriminatory intent by South Carolina:

"the tests (NTE) can be scored objectively and impartially and their use would not be subject to the accusation that they are used for purposes of discrimination.

The State's authority to re-define minimal competence from time to time cannot reasonably be questioned. (After state raised minimum score level in 1969.)

With respect to the constitutional challenge to South Carolina's use of the NTE for certification purposes, we conclude that the plaintiffs have not demonstrated the required discriminatory intent with respect to any of the specific decisions setting certification standards based on NTE scores. This is especially true in connection with the

State's 1976 change in requirements where there is no indication whatsoever that the State and its officers were motivated by anything more than a desire to use an accepted and racially neutral standardized test to evaluate the teacher applicants competing for relatively few jobs in South Carolina.

Neither have plaintiffs been able to establish any defect in the NTE indicating that the examinations themselves discriminate on the basis of race.

The choices as to subject matter and question format are reasonable and well-documented on the record, and although other subject matters or other examination forms might be possible or even preferable, there is no proof of any inherent discrimination. The inference that plaintiffs would have us draw from the statistics which indicate that blacks as a group have lower average scores than whites is rebutted by the evidence with respect to the construction of the tests and their content validity. Since we find that the NTE create classifications only on permissible bases (presence or absence of knowledge or skill and ability in applying knowledge), and that they are not used pursuant to any intent to discriminate, their use in making certification decisions by the State is proper and legal."¹⁷

Thus was the Constitutional challenge to the State's use of the National Teacher Examinations for certification rejected by the Court.

The Court next turned to consider the "rational relationship" standard required by the Fourteenth Amendment of all classifications. This standard has been defined in the following terms:

"Although no precise formula has been developed, the Court has held that the Fourteenth Amendment permits the States a wide scope of discretion in enacting laws which affect some groups of citizens differently than others. The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective. State legislatures are presumed to have acted within their constitutional power despite the

¹⁷United States v. South Carolina, 445 F. Supp. 1094 (1977).

fact that, in practice, their laws result in some inequality. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it."¹⁸

The Court held, therefore, that the State of South Carolina had met the "rational relationship" standard of McGowan v. Maryland and hence its use of the National Teacher Examinations had not violated the equal protection clause of the Fourteenth Amendment.

The Court spoke at length on the State's legitimate objective in using the National Teacher Examinations, noting that the State has the right to use tests properly designed and validated to measure the knowledge necessary to effective teaching. The record supported the conclusion that South Carolina officials were concerned with improving the quality of education in South Carolina and to that end they certified only applicants with the requisite minimum amount of knowledge necessary for effective teaching.

The Court's comments on the National Teacher Examinations are enlightening:

"The record supports the conclusion that the NTE are professionally and carefully prepared to measure the critical mass of knowledge in academic subject matter. The NTE do not measure the content of the academic preparation of prospective teachers. United States v. North Carolina, supra. Like the test at issue in Washington v. Davis, supra, the NTE program "is neutral on its face and rationally may be said to serve a purpose the Government is constitutionally empowered to propose." 96 S. Ct. at 2051.

...Furthermore, there is ample evidence in the record of the content validity of the NTE. The NTE have been

¹⁸ McGowan v. Maryland, 31 S. Ct. 1101, 1105.

demonstrated to provide a useful measure of the extent to which prospective teachers have mastered the content of their teacher training programs. In a similar challenge to a bar examination the Fourth Circuit has held that proof of such content validity is persuasive evidence that the equal protection clause has not been violated. Richardson v. McFadden, 540 F. 2d 744 (4th Cir. 1976). The Supreme Court has held that a substantial relationship between a test and a training program - such as is found here - is sufficient to withstand challenge on constitutional grounds. Washington v. Davis, 96 S. Ct. 2040.¹⁹

The Court further pointed out that the cutoff scores adopted in 1969 and 1976 were lawful exercises of judgment by responsible officials. The scores were not arbitrarily high, but were relatively low. The 1969 minimum score of 975 would have excluded only the lowest 10% of all candidates taking the test in the United States and the range of scores adopted in 1976 was lower than that recommended by Educational Testing Service. Furthermore, these minimum scores were set up by a committee of responsible professionals, who, the court admitted, had to make imperfect and subjective judgments about a minimal competence level. Nevertheless, the Court maintained the minimum score requirements set up by these imperfect and subjective judgments were able to meet a challenge on equal protection grounds.

Next, the Court took up the question of whether the National Teacher Examinations as used by South Carolina was in violation of Title VII of the Civil Rights Act of 1964. In Washington v. Davis, *supra*, the Supreme Court outlined the necessary proof in alleged violations:

¹⁹United States v. State of South Carolina, 445 F. Supp. 1094.

"Under Title VII, Congress provided that when hiring and promotion practices disqualifying substantially disproportionate numbers of blacks are challenged, discriminatory purpose need not be proved, and that it is an insufficient response to demonstrate some rational basis for the challenged practices. It is necessary, in addition, that they be "validated" in terms of job performance in any one of several ways, perhaps by ascertaining the minimum skill, ability or potential necessary for the position at issue and determining whether the qualifying tests are appropriate for the selection of qualified applicants for the job in question."²⁰

As the plaintiffs had shown that the National Teacher Examinations disqualified disproportionate numbers of blacks, it became necessary for the defendants to show that the National Teacher Examinations were (1) rationally related to job performance, (2) properly validated, and (3) a business necessity.

The Court decided under the previous Constitutional issues that the National Teacher Examination was indeed rationally related to job performance. To validate the National Teacher Examination, the State in cooperation with Educational Testing Service commissioned an extensive validity study which met standards of the American Psychological Association Standards as well as guidelines set by the Equal Employment Opportunity Commission. The Court ruled that the validity study was adequate for Title VII purposes and sufficiently trustworthy to sustain defendants' burden under Title VII.

Finally, the Court turned to the "business necessity" requirement set out in Griggs v. Duke Power Co., supra. The crux of this test was to determine whether there were other alternatives

²⁰ Washington v. Davis, 96 S. Ct. 2040 (1976).

available to the employer that would achieve the same employment objective without such a great disparate impact by race. Here plaintiffs offered only one alternative: graduation from an approved teacher-training program. The Court rejected this alternative as not effective in achieving the State's purpose in certifying minimally competent persons equally well as the use of a content-validated standardized test. The Court gave as its major reason for rejecting alternative of graduation from approval program the great variation in admissions, grading standards, course content among teacher-training institutions in the State.

This case gives clear approval to the National Teacher Examination when used in accordance with standards mentioned in the preceding review. The connection between the National Teacher Examination and competency-testing programs in public schools is obvious. Both are competency tests and the requirements for the legal use of tests for the high school diploma are likely to be similar.

Two cases, one in Florida and one in North Carolina, represent the first direct court attack on competency-testing programs for the high school diploma in the United States. Both cases are in federal district courts at this writing (December 1978).

The Florida case, Debra P. v. Turlington, is a challenge to a Florida law requiring the passing of a functional literacy test as a prerequisite to the high school diploma.

The 10 students filing the suit all failed the life-skills portion of the test as did a disproportionate number of blacks

statewide. The plaintiffs allege discrimination under the Fourteenth Amendment and the Civil Rights Act. Other allegations are insufficient time to prepare for the exam and an arbitrarily selected cutoff score on a test whose items have not been tested for reliability and validity. The complainants are asking for a permanent injunction to stop Florida from using test scores as a prerequisite for graduation.²¹

The North Carolina case filed in November, 1978 and pending in United States District Court for Eastern North Carolina is Jones v. Rogers.²² Plaintiffs seek to prevent the State from using scores on the North Carolina Competency Test as a basis for awarding and withholding high school diplomas.

Litigation Involving Improper Phase-In Procedures

Many states have imposed their competency-testing programs on students late in their educational career with little prior notice. In some instances students have had little more than one or two years advance notice that they would have to pass a test that would measure knowledge and skills accumulated over a 10-to 12-year span in their educational careers. Students so affected by this new requirement have observed that older students have been graduated without passing a competency test and thus it comes somewhat as a shock to students

²¹"Newsfront," Phi Delta Kappan, 60:4:266, 1978.

²²Based on personal correspondence between Margaret Baxter, Deputy Clerk of U. S. Dist. Ct. for Eastern North Carolina and the writer, December 5, 1978.

to be told that they now must meet a new requirement which tests them on their entire educational development. Perhaps, if they had been told when they began school or sometime during their elementary schooling that there would be a competency test at the end of their high school careers, they would have studied differently and teachers probably would have taught differently.²³

What are involved here are concepts of fair play and due process which have held traditionally that notice of any new requirement such as a competency test for a diploma should be made early enough so as not to adversely affect a student's educational future or employment prospects. A case which speaks to this issue is:

Mahavongsanan v. Hall
529 F. 2d 448 (5th Cir. 1976)

Mahavongsanan sued the Dean of the School of Education of Georgia State University for refusing to award her a master's degree in education, claiming she was denied procedural and substantive due process, and breach of contract. The district court ordered the University to award her a degree. The Fifth Circuit reversed the decision.

The Fifth Circuit held that the district court had erred in confusing issues of disciplinary matters with academic matters. The Courts right to intervene in academic issues is banned unless the issues are clearly capricious or arbitrary. The student was not denied either substantive or procedural due process in having

²³ McClung, p. 444.

to meet a new requirement (a comprehensive examination) which was introduced relatively early in her master's program (only six months after starting the program). The Court indicated it was a clear exercise of the University's judgment to modify its academic program in performing its educational responsibility.

The holding particularly relevant to the matter of improper phase-in procedures in competency testing was stated thus:

"Moreover, appellee (Mahavongsanan) received timely notice that she would be required to take the comprehensive examination. This is underscored by the fact that the University gave her ample notice to prepare a second time for taking the test. When appellee failed the second examination as well, the University afforded her a further reasonable opportunity to complete additional course work in lieu of the comprehensive examination. The appellee nonetheless chose to spurn the University's²⁴ efforts to tailor a special program to resolve her dilemma.

Thus the student here was given "timely notice" of the new requirement about six months after she started the program. Hence, there was no denial of due process, either substantive or procedural. The implication is that if the new requirement had been introduced much later in the student's program and if she had been notified of the new requirement after she had already completed 80 to 85 percent of her program, there would have been violation of due process. Many competency-testing programs for the high school diploma are being introduced and implemented without timely notice in schools where the affected students have already completed a major portion of their education. McClung states:

²⁴Mahavongsanan v. Hall, 529 F. 2d 448 (5th Cir. 1976).

"Whatever notice is considered adequate in this situation (first grade? fourth grade?), notice after five-sixths of one's educational program is already completed seems clearly inadequate."²⁵

Litigation Involving Mismatch Between Test and Instruction

Most people would agree that a competency test for the high school diploma should test what has been taught in high school and to some extent what has been taught throughout the student's public school career. What is involved here has been referred to as instructional validity or a test whose items are based upon topics which have been taught in the classroom. Even if a competency test is based on the school's stated objectives there is still a very real possibility of lack of instructional validity since many schools are lax in translating objectives into actual classroom instruction.

Many critics see a strong likelihood of constitutional violations in any testing program not specifically based on actual classroom instruction. McClung states:

"A competency test measuring life-skills and used as a basis for denying a diploma when such skills were never taught in the school is arguably so arbitrary as to violate due process of law. A competency test lacking curricular or instructional validity may also violate substantive due process because the school rather than the student can be faulted for poor performance on the test."²⁶

McClung provides some guidelines for assessing violations of the due process clause of the Fourteenth Amendment:

²⁵McClung, loc. cit.

²⁶Ibid., pp. 446-447.

"The legal standard applied in modern substantive due process cases (under the Fourteenth Amendment of the U. S. Constitution or comparable state due process provisions) is usually not spelled out very carefully, but these cases usually invalidate state action which (1) is arbitrary or capricious, (2) does not achieve any legitimate state interests, (3) frustrates any legitimate interest the state might have or (4) is fundamentally unfair.... Whatever the exact wording of the test under substantive due process, the general standard is that state action cannot be unreasonable, with unreasonableness being construed narrowly (e.g., rational persons would not disagree)."²⁷

If students are denied diplomas for failing a test on material that was never taught them and thereby punished or penalized for something clearly not their fault (but the school's), what litigation is available for guidance? The following case speaks to the issues involved here:

St. Ann v. Palisi
495 F. 2d 423 (1974)

This case involves the suspension of students from school for their parents' misconduct. The facts in the case are: Mrs. Eartha St. Ann went to the Martin Behrman Middle School to check in her daughter because she was tardy. While there, Mrs. St. Ann made inquiry about her son's suspension. A disagreement ensued between Mrs. St. Ann and the assistant principal, Mr. Achary. Mrs. St. Ann became enraged and struck Mr. Achary on the face with her fist in which she was holding a key chain.

Because of their mother's attack and pursuant to Orleans Parish School Board Regulation XIX, Mrs. St. Ann's two children were suspended from school by notices dated September 29, 1972. Regulation XIX provides:

²⁷Ibid., p. 444.

"A parent or guardian dissatisfied with the conduct of any teacher toward his child or ward shall first lay his complaint before the teacher, and if not satisfied, may appeal to the principal. The principal shall hear such complaints only in the presence of the teacher concerned. If the matter is not satisfactorily resolved, the parent or guardian may appeal to the assistant superintendent in charge of the district, who shall hear the case only in the presence of the principal and teacher. Should the principal or teacher be called to account or be reprovved in an offensive manner in the classroom or elsewhere verbally or in writing, by a parent or guardian, the child or ward of such parent or guardian shall, by reason of such conduct, be liable to suspension or other punishment. Said suspension or other punishment shall not be made until after the parent or guardian has refused to make proper amends. (Emphasis added.)"²⁸

Mrs. St. Ann sought relief in an action brought in United States District Court for the Eastern District of Louisiana. The Court dismissed the complaint and Mrs. St. Ann appealed to the United States Court of Appeals, Fifth Circuit.

The Court of Appeals vacated and remanded the case back to the District Court. In ruling regulation XIX invalid the Court made the point that "one may be punished only on the basis of his personal guilt."²⁹

Other points made by the court:

"School principals must be given considerable freedom to achieve effective school administration, but courts should not hesitate to act when fundamental constitutional liberties are contravened. Freedom from punishment in the absence of personal guilt is a fundamental concept in the American scheme of justice. In order to intrude upon this fundamental liberty governments must satisfy a substantial burden of justification...."

²⁸ St. Ann v. Palisi, 495 F. 2d 423 (1974).

²⁹ ibid.

The schools policy which attributes a parent's misconduct to other family members is asserted to be guilty by association wholly alien to American liberty."³⁰

Presumably regulation XIX could be sustained if the state could prove a compelling interest or that the regulation in question advanced a valid state interest. This the state was unable to prove, and therefore the Court ruled that the children's constitutional rights under the due process clause of the Fourteenth Amendment was infringed.

Thus this case raises questions of violations of substantive due process under the United States Constitution as well as state constitutions in any competency-testing program where children are denied a diploma because they fail a test that measures what they never were taught.

Litigation Involving Teacher/School Malpractice

The preceding section alluded to the fact that high failure rates on competency tests may reflect failure on the part of the school and teacher more than failure on the part of the student. This is particularly the situation where students are tested on materials not taught at all, or taught so poorly that a student is not able to achieve a satisfactory level of competence. The educational accountability movement of the last few years has focused public attention on the quality and measurable outcomes of public school education to an extent never before witnessed in American

³⁰ Ibid.

schools. Teachers and schools are held responsible for the wise use of taxpayers' money in a day when widespread rejection of school bond votes and Proposition 13 types of spending curtailments are rapidly drying up available sources of badly needed revenue.

Many disaffected patrons and parents are beginning to seek redress of legal grievances through malpractice suits, basing their suits on much the same rationale that has prompted disgruntled patients and clients to sue lawyers and physicians. This account is representative of a typical malpractice suit.

"In one of the most celebrated recent teacher malpractice cases, the parents of a 19-year old graduate of the Long Island, N. Y. school system sued the school district for \$5 million because they claimed the system had failed in its legal obligation to educate their son.

As proof of their claim the parents stated their son could not hold a job because he was unable to read and write, despite the fact the school system had given him a diploma."³¹

Perhaps the best known malpractice suit of all is the Peter W. case in California. In 1972, parents of a graduate of the public school system in San Francisco brought a \$500,000 suit against the school district charging that after a total of 13 years of regular attendance, their son was not able to read. During all his years in school, Peter W. received average marks on all subjects, was never involved in any disciplinary action, and his parents were assured that he was moving along at grade level. Shortly after the youth's

³¹R. C. Newell, "Teacher Malpractice," Case and Comment, 83:4:6, 1978.

graduation, a reading test given by specialists revealed that the youth was only reading on a fifth-grade level.

Each of the student's teachers along with the school district were sued because he had been passed along through the school and graduated without possessing the skills his diploma indicated he had. The case is entitled:

Peter W. v. San Francisco Unified School District
60 C.A. 3d 814

The Superior Court dismissed the case and the parents of the student appealed to the California Court of Appeal which affirmed the dismissal. The Courts rationale in dismissing is instructive:

"Few of our institutions, if any, have aroused the controversies, or incurred the public dissatisfaction, which have attended the operation of the public schools during the last few decades. Rightly or wrongly, but widely, they are charged with outright failure in the achievement of their educational objectives; according to some critics, they bear responsibility for many of the social and moral problems of our society at large. Their public plight in these respects is attested in the daily media, in bitter governing board elections, in wholesale rejections of school bond proposals, and in survey upon survey. To hold them to an actionable "duty of care," in the discharge of their academic functions, would expose them to the tort claims--real or imagined--of disaffected students and parents in countless numbers. They are already beset by social and financial problems which have gone to major litigation, but for which no permanent solution has yet appeared. The ultimate consequences, in terms of public time and money, would burden them--and society--beyond calculation."³²

Even though the case was thrown out, circumstances may be entirely different in a state using competency tests for the diploma since the passing of a test implies certain standards

³²Peter W. v. San Francisco Unified School District, 60 C.A. 3d 814 (1976).

or skills have been mastered. For example, should a student pass his competency exam in reading based on a ninth-grade reading level and is subsequently awarded a diploma on that performance and later on is dismissed from a job because of his inability to read at a seventh- or eighth-grade level, the school may be put in a precarious legal situation since it (the school) has already certified that the student can read at a ninth-grade level.

Summary

Selected cases, federal and state, some from educational settings and others from noneducational settings, have been reviewed in this chapter because of their relevance to the legal implications and ramifications inherent in any competency-testing program for the high school diploma. This review suggests that there are viable legal challenges to any competency-testing program for the high school diploma in areas (1) where there has been a prior history of racial discrimination and/or segregation, (2) where tests are not "job related" in that they do not predict successful participation in modern society, (3) where tests don't accurately measure what they are intended to measure, (4) where non-English-speaking students (and also students who speak English as a second tongue) are not given special help to remedy any language deficiency, (5) where tests have been introduced late in the students' educational careers with little prior notice that they would have to meet a new standard for graduation, and (6) where tests are not based on actual classroom instruction. The final section of the chapter points out a growing

reversal of roles where parents and students are questioning the competence of the schools and teachers themselves by means of malpractice suits.

A more detailed listing of the findings will be found in the fifth chapter.

CHAPTER V
SUMMARY AND CONCLUSIONS

Summary

The central purpose of this investigation was to determine the legal status of competency-based testing for the high school diploma in the United States during the late seventies. This purpose in the main was accomplished by use of a questionnaire and a review of pertinent cases that have come before our state and federal courts.

A questionnaire of several items was constructed and mailed to each chief state school officer in all fifty states and the District of Columbia in early December, 1978. The items elicited data from the respondents on variables deemed important for an overview of competency testing as practiced in the United States. Data from the questionnaire were presented by tables in Chapter III.

The study was initiated by a search of dissertation abstracts and other professional literature to determine the extent and nature of previous research done in the field of competency testing. A computerized search was also made to insure the completeness of the literature review. The findings of these searches were detailed in Chapter II.

Also in Chapter II an attempt was made to determine possible causes for the growth of competency-based testing for the high

school diploma. Four factors cited as possibly contributing to the use of these testing programs were:

(1) The score decline. Scores on the Scholastic Aptitude Test have declined gradually over the past fourteen years. The decline called public attention to the apparent decline in learning achievement in public schools across the nation and began to set in motion demands for accountability and for "something to be done" to arrest our falling standards.

(2) The back-to-basics movement. This movement espouses a return to the basics of reading, writing, and arithmetic, an elimination of frills from the curriculum, strict discipline, dress codes, teacher-dominated classrooms and abolition of social promotions. This trend has apparently contributed to a pro-competency-testing atmosphere.

(3) Declining standards. Studies by some nationally recognized organizations showed that the drop in Scholastic Aptitude Test scores cited above was matched by declining achievement scores all the way from high school down into the elementary grades.

(4) External pressures. Perhaps this factor was more important than the other three in ushering in competency-testing programs. Much of the clamor for competency tests came not from educators but from businessmen, editors, politicians, and the general public which was deeply dissatisfied with the job public schools were doing.

Chapter Three presented the results from the questionnaire by means of tables. Some of the more significant findings reported in this chapter were:

Twenty-nine percent of the states (15) as of December 1978 require competency testing as one requirement for the high school diploma. Two or three other states indicated on the questionnaire that competency testing for high school graduation was imminent in their states. Several states reported some competency-testing requirements for promotion to a higher grade, but the use of competency tests for promotion from grade to grade in school did not come within the purview of this study.

One-third of the states using competency tests for the high school diploma are required by state statutes to administer these tests; the other two-thirds are using these tests at the direction of some central state agency, usually the state board of education.

All 15 states indicated tests of reading and mathematics on their competency programs with writing also frequently specified. Areas less frequently tested are: health, life skills, free enterprise, spelling, consumer economics and drug education.

Four states specify by law what is to be tested.

Most states employing competency tests do not report scores on these tests in terms of grade level performance.

A majority of states mandate remediation for those failing these tests, and, for those who never manage to pass them, the states award

documents such as Certificates of Attendance, Transcripts of Credits, Certificates of Progress or Certificates of Performance.

States along the eastern seaboard and the eastern United States lean heavily toward centralized control of their competency testing programs while most of the states in the far west mandate local control of their programs.

In the fourth chapter a review of court cases, federal and state, was made to determine the extent of litigation involving competency testing. Cases from noneducational and educational settings have been included in the review. The noneducational cases were included since many of the issues arising out of competency testing cut across a wide diversity of occupational and economic fields. The review sustains the viewpoint that competency tests are vulnerable to court challenges on several counts, namely:

- (1) Competency-testing programs for the high school diploma where there has been a prior history of discrimination based on race, minorities, and the disadvantaged.
- (2) Competency-testing programs that have been phased in late in a student's educational career with little or no prior notice of such a new requirement.
- (3) Competency-testing programs that are not specifically based on classroom instruction.
- (4) Competency-testing programs that do not test accurately what they purport to measure. For example, many states tout their tests as an assessment of those skills needed to function in modern society.

If it so turns out that those tests do not accurately predict successful participation in a democratic society, then there is a strong possibility of violation of the student's due process, for students who failed these tests, or even for those who passed.

In a reversal of roles, the review also noted that the competency of the school and the whole educational system is coming under more scrutiny and even attack as revealed by the case of Peter W. v. San Francisco Unified School District, 60 C. A. 3d 814. In this case, disgruntled parents sued the school district for failure to teach their son to read. Although the case was thrown out, circumstances could be different in states where the passing of a competency test implies the mastery of certain skills.

Conclusions

Based on this study the following conclusions are presented:

(1) Legislative involvement in competency programs has become a reality but not as yet a universality. This involvement runs the gamut from a simple statutory mandate requiring competency tests to a comprehensive statutory mandate specifying most of the mechanics of the testing program. Whether this involvement by the legislatures in an area ordinarily reserved for professional educators and state education agencies is, in effect, a vote of no confidence in the educational establishment this research cannot answer. Further research to determine legislative involvement in new competency-testing programs could prove illuminating.

(2) Competency-testing programs for the high school diploma will have to be implemented carefully if these programs are able to withstand the legal and constitutional challenges likely to arise. It may be that some states have acted prematurely in setting up programs without regard to the legal consequences of a hastily conceived program. The legal challenges to these programs are expected to become more numerous as the first classes under the new testing requirements graduate from high school. A follow-up study of those challenges could prove instructive for those educators interested in implementing a competency-testing program for the high school diploma.

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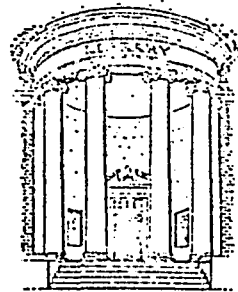
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Appendix A
Questionnaire Materials

THE UNIVERSITY OF NORTH CAROLINA
AT GREENSBORO



December 1, 1978

School of Education

Dear Superintendent:

I am conducting an inquiry into the legal aspects of competency-based testing for high school graduation. Would you kindly respond to the enclosed items? The inquiry is sponsored by the University of North Carolina-Greensboro and has as its main purpose an updating and a contribution of new data to existing studies in the area of competency testing for the high school diploma. A copy of the results will be mailed to you at the conclusion of the study.

Thank you for your consideration.

Sincerely yours,

Rupert Blanton

Enclosure



State of North Carolina

A. CRAIG PHILLIPS
SUPERINTENDENTSuperintendent of Public Instruction
Raleigh 27611

December 5, 1978

M
E
M
O

TO: All Chief State School Officers
FROM: Craig Phillips

One of our fine professional folks in this state, Mr. Rupert Blanton, is conducting an inquiry into legal aspects of competency based testing for high school graduation as a part of several efforts around the state to update our understanding of developments in competency testing around the country.

The attached inquiry form is important to his study. I hope you can have one of your key folks complete it for him and return it to him.

Mr. Blanton is a responsible and competent educator and deserves our help. Hope you can help him.

ACP/mls
11-11
Attachment

A handwritten signature in black ink, appearing to be "A. Craig Phillips", written over a horizontal line.

The University of North Carolina at Greensboro
 Greensboro, North Carolina 27412
 Rupert N. Blanton

Definitions

Competency testing - any program of evaluation, assessment, or testing to determine whether students have mastered a specified minimum amount of skills, competencies, etc. The emphasis is on determining whether individual students have reached a minimum level of performance as distinguished from achievement tests which report data on groups.

Statute - a law passed by a legislative body.

Non-statute - any ruling, regulation, policy, decree, mandate that is not a law passed by a legislative body; examples: state board of education rules, regulations, policies; state department of education rules, regulations, policies, decrees, etc.

Two reminders: I am interested only in states requiring competency testing as a requirement for the high school diploma and in practices that are mandatory.

1. Please give the name of your state. _____
2. Does your state now (Fall 1978) require competency testing as one requirement for high school graduation?

Yes _____ No _____

If your answer is no, check the "no" category and go no further. Return the questionnaire in the stamped, self-addressed envelope. Check the "yes" category if you have a competency testing requirement even though the first graduating class affected might not be until 1980, 1981, 1982, etc.

The remaining items refer only to competency testing programs that are mandated for high school graduation.

The University of North Carolina at Greensboro
 Greensboro, North Carolina 27412
 Rupert N. Blanton

3. Is your competency testing program mandated by: (Check one)
- Legislative enactment (by statute)? _____
- State Board of Education ruling? _____
- State Board of Education mandate? _____
- Other (please specify)? _____

4. Which of the following skill areas are assessed by these competency tests? (Check as many as are applicable)

Basic Skills _____	Survival Skills _____
Reading _____	Math _____
Writing _____	Computing _____
Consumer Economics _____	Functional Literacy _____
Spelling _____	Life Skills _____
Drug Education _____	Health _____
Grammar _____	Communication _____
Free Enterprise _____	Other (please specify) _____

Are the skill areas you checked specified by (check one):

Statute? _____; or non-statute (state board of education ruling, policy, state department of education regulation, etc.)? _____.

5. What levels of performance are required for a passing score on these tests?

8th grade level _____	9th grade level _____
10th grade level _____	11th grade level _____
12th grade level _____	Adult level _____

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Other (please specify) _____

Are the levels of performance you checked above specified by
 (check one): statute? _____ or by non-statute? _____

6. Is remediation mandated for those failing the competency tests?

Yes _____ No _____

If remediation is mandated, is it mandated specifically by
 (check one): statute? _____ or by non-statute? _____

7. What alternatives to the high school diploma exist for those
 unable to pass these tests?

Certificate of Attendance _____

Transcript of Credits _____

Other (please specify) _____

Are the alternatives checked above specified by (check one):
 statute _____ or by non-statute _____?

8. Who sets the standards used in your competency program?
 (Check one)

A state agency _____; local units _____; shared
 setting of standards by state and local units _____;

Other (please specify) _____.

(Check one) Does a statute _____ or a non-statute
 _____ specify who is to set the standards?

9. May students who are unable to pass these tests retake them
 after they leave high school?

Yes _____ No _____

What authority specifies whether or not a student failing the tests may retake them after leaving high school? (Check one)

A statute _____; or a non-statute _____

If your competency testing program is under statutory authorization, it would be of great benefit to me to know the appropriate citations for the statutes. If you know these citations, would you please give them here?

Appendix B

State Statutes Mandating Competency
Testing For High School Graduation.

California

California Education Code - Art. 2.5, Ch. 2, Pt. 28, Div. 4, Title 2.

51216. Beginning in the 1978-79 school year, the governing board of each district maintaining a junior or senior high school, and beginning in the 1979-80 school year, the governing board of each district maintaining an elementary school, shall take appropriate steps to ensure that individual pupil progress towards proficiency in basic skills is assessed in the English language during the regular instructional program at least once during the 4th through 6th grade experience, once during the 7th through 9th grade experience and twice during the 10th through 11th grade experience, provided that any pupil who demonstrates proficiency up to prescribed levels for graduation from high school need not be reassessed. Nothing in this section shall preclude any district from conducting an assessment of any pupil in English and in the native language of such pupil.

It is the intent of the Legislature that pupil assessments measure the progress of each pupil in mastering basic skills rather than the pupil's performance relative to his or her classmates.

In the case of any pupil who does not demonstrate sufficient progress toward mastery of basic skills so that he or she will be able to meet prescribed standards upon exit from the 6th, 8th, or 12th grade, whichever is appropriate, the principal shall arrange a conference among the principal or the principal's designee, the parent or guardian of the pupil, and a teacher familiar with the pupil's progress to discuss the results of the individual pupil assessment and recommended actions to further the pupil's progress.

The secondary school pupil shall attend the conference. The elementary school pupil shall attend the conference unless the principal's designee and the parent or guardian agree that such presence would not be in the pupil's best interest.

The pupil and the parent or guardian shall be requested in writing to attend the conference. Such notice shall be written in the primary language of the parent or guardian, whenever practicable.

Absent a response from the parent or guardian the school shall make a reasonable effort to contact him or her by other means to communicate directly the information contained in the written request.

At the conference, the principal or the principal's designee shall describe the instructional program which shall be provided

to assist the pupil to master basic skills. If the parent or guardian does not attend the conference the principal or the principal's designee shall communicate such information by other means within 10 days of the date of the conference.

Instruction in basic skills shall be provided for any pupil who does not demonstrate sufficient progress toward mastery of basic skills and shall continue until the pupil has been given numerous opportunities to achieve mastery. (Added by Stats. 1977, e. 894, p.--, Sec. 43, urgency, off. Sept. 17, 1977.)

51217. Subsequent to June 1980, no pupil shall receive a diploma of graduation from high school if he or she has not met the standards of proficiency in basic skills prescribed by the secondary school district governing board.

The State Board of Education shall, by February 1, 1978, prepare and distribute to each school district maintaining a junior or senior high school, and by February 1, 1979, prepare and distribute to each district maintaining an elementary school, a framework for assessing pupil proficiency in reading comprehension, writing, and computation skills. Such framework shall include a range of assessment items in each skill area. The assessment framework shall be provided solely to assist each school district in the development of its own pupil assessments as required by Section 51216.

Nothing in this section shall be construed to authorize or permit the State Board of Education to adopt statewide minimum proficiency standards for high school graduation.

(Amended Ch. 893 (AB 2043), Stats. 1978. Urgency. Effective 9/19/78.)

Florida

Florida Education Code

232.246 General requirements for high school graduation

(1) Beginning with the 1978-1979 school year, each district school board shall establish standards for graduation from its schools which shall include as a minimum:

(a) Mastery of the minimum performance standards in reading, writing, and mathematics for the 11th grade, established pursuant to ss. 229.565 and 229.57, determined in the manner prescribed by rules of the state board;

(b) Demonstrated ability to successfully apply basic skills to everyday life situations as measured by a functional literacy examination developed and administered pursuant to rules of the state board; and

(c) Completion of a minimum number of academic credits, and all other applicable requirements prescribed by the district school board pursuant to s. 232.245.

(2) The state board shall make provision in its rules required herein for appropriate modification of testing instruments and procedures for students with identified handicaps or disabilities in order to ensure that the results of the testing represent the student's achievement, rather than reflecting the student's impaired sensory, manual, speaking, or psychological process skills, except where such skills are the factors the test purports to measure.

(3) A student who meets all requirements prescribed in subsection (1) shall be awarded a standard diploma in a form prescribed by the state board; provided that a school board may, in lieu of the standard diploma, award differentiated diplomas to those exceeding the prescribed minimums. A student who completes the minimum number of credits and other requirements prescribed by paragraph (1) (c), but is unable to meet the standards of paragraph (1) (a) or paragraph (1) (b), shall be awarded a certificate of completion in a form prescribed by the state board.

Added by Laws 1978, c. 78-424, Sec. 1, eff. June 27, 1978.

232.247 Special high school graduation requirements for certain exceptional students

A student who has been properly classified, in accordance with rules established by the state board, as "educable mentally retarded," "deaf," "specific learning disabled," or "emotionally handicapped" shall not be required to meet all requirements of s. 232.246 and shall, upon meeting all applicable requirements prescribed by the school board pursuant to s. 232.245, be awarded a special diploma in a form prescribed by the state board; provided, however, that

such special graduation requirements prescribed by the school board shall include minimum graduation requirements as prescribed by the state board. Nothing provided in this section, however, shall be construed to limit or restrict the right of an exceptional student solely to a special diploma. Any such student shall, upon proper request, be afforded the opportunity to fully meet all requirements of s. 232.246 through the standard procedures established therein and thereby qualify for a standard diploma upon graduation. Added by Laws 1978, c. 78-424, Sec. 2, eff. June 27, 1978.

Nevada

Nevada Education Code

389.015 Proficiency examinations.

1. The board of trustees of each school district shall administer examinations in all public schools within its district to determine the proficiency of pupils in:

- (a) Reading
- (b) Writing; and
- (c) Mathematics.

The examinations shall be administered before the completion of grades 3, 6, 9 and 12.

2. Different standards of proficiency may be adopted for pupils with diagnosed learning disabilities.

3. If a pupil fails to pass the proficiency examination administered before the completion of grade 3, 6, or 9, he may be promoted to the next higher grade, but the results of his examination shall be evaluated to determine what remedial study is appropriate. If a pupil fails to pass the high school proficiency examination administered before the completion of grade 12, he shall not be graduated until he is able, through remedial study, to pass that examination, but he may be given a certificate of attendance, in place of a diploma, if he has reached the age of 17 years.

4. The state board of education shall prescribe standard proficiency examinations to be administered pursuant to sub-section 1.

(Added to NRS by 1977, 474)

North Carolina

Article 39A.

High School Competency Testing.

Sec. 115-320.6. Purpose. -- The State Board of Education shall adopt tests or other measurement devices which may be used to assure that graduates of the public high schools and graduates of nonpublic high schools supervised by the State Board of Education pursuant to the provisions of Article 32 of Chapter 115 of the General Statutes possess those skills and that knowledge necessary to function independently and successfully in assuming the responsibilities of citizenship. This Article has three purposes: (i) to assure that all high school graduates possess those minimum skills and that knowledge thought necessary to function as a member of society, (ii) to provide a means of identifying strengths and weaknesses in the education process, and (iii) to establish additional means for making the education system accountable to the public for results. (1977, c. 522, s. 1)

Sec. 115-320.7. Competency Test Commission. -- (a) The Governor shall appoint a Competency Test Commission on or before July 1, 1977, which shall be composed of 15 members who shall hold office for four years or until their successors are appointed. Any vacancy on the Competency Test Commission shall be filled by the Governor for the unexpired term. Five members of the Competency Test Commission shall be persons serving as teachers or principals in high schools; five shall be citizens of the State interested in education; two shall be professional educators from the faculties of institutions of higher education in the State; two shall be persons competent in the field of psychological measurement; and one shall be the superintendent of a local administrative unit in the State. The members shall be entitled to compensation for each day spent on the work of the Competency Test Commission as approved by the State Board of Education and receive reimbursement for travel and subsistence expenses incurred in the performance of their duties at rates specified in G. S. 138-5 or 138-6, whichever is applicable to the individual member. All currently employed teachers serving on the Commission shall be entitled to receive full pay for each day spent on the work of the Commission without any reduction in salary for a substitute teacher's pay.

(b) The Superintendent of Public Instruction, or his designee, shall serve as an ex officio, nonvoting member of the Competency Test Commission. (1977, c. 522, s. 2)

Sec. 115-320.8. Duties of Commission. -- (a) No later than January 1, 1978, the Competency Test Commission shall recommend

to the State Board of Education tests or other measuring devices that may be used to measure those skills and that knowledge thought necessary to enable an individual to function independently and successfully in assuming the responsibilities of citizenship.

(b) After tests have been approved by the State Board of Education and administered, for informational and research purposes only, to all eleventh grade students in the public and nonpublic high schools of the State during the spring semester of 1978, the Competency Test Commission shall review the summaries of these test results.

(c) No later than July 1, 1978, the Competency Test Commission shall provide the State Board of Education with written recommendations as to the adoption of the tests that were administered for research and informational purposes and as to the minimum levels of performance that it believes should be expected of graduating high school seniors.

(d) After the adoption of tests and minimum graduation standards by the State Board of Education, the tests shall be administered annually to all eleventh grade students in the public schools beginning in the fall of 1978. Students who fail to attain the required minimum standard for graduation in the eleventh grade shall be given remedial instruction and additional opportunities to take the test up to and including the last month of the twelfth grade. Students who fail to pass parts of the test shall be retested on only those parts they fail. Students in the eleventh grade who are enrolled in special education programs or who have been officially designated as eligible for participation in such programs may be excluded from the testing programs.

(e) The Competency Test Commission shall annually advise the State Board of Education on matters pertaining to the use of high school graduation competency tests. (1977, c. 522, s. 3.)

Sec. 115-320.9. Duties of State Superintendent of Public Instruction. -- The State Superintendent of Public Instruction shall be responsible, under policies adopted by the State Board of Education, for administering the Competency Testing Program provided for by this Article and for providing necessary staff services to the Competency Test Commission. (1977, c. 522, s. 4.)

Sec. 115-320.10. Duties of State Board of Education. -- The State Board of Education shall adopt tests, graduation standards, and policies and procedures for the implementation of this Article. (1977, c. 522, s. 5)

Sec. 115-320.11. Duties of local school boards. -- Local school boards shall cooperate with the State Board of Education in carrying out the policies and guidelines adopted by the State Board of Education for implementing this Article. (1977, c. 522, s. 6.)

Sec. 115-320.12. Public records exception. -- Any written material containing the identifiable scores of individual students on any test taken pursuant to the provisions of this Article shall not be considered a public record within the meaning of G. S. 132-1 and shall not be disseminated or otherwise made available to the public by any member of the State Board of Education, any employee of the State Board of Education, the State Superintendent of Public Instruction, any employee of the Department of Public Instruction, any member of a local board of education, any employee of a local board of education, or any other person, except as permitted under the provisions of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g. (1977, c. 522, s. 7.)

Virginia

Standards of Quality for School Divisions, (Acts 1978, c. 529)
Chapter 529, Sec. 1, Standard 9.

9--Testing and Measurement

A. Each school division shall administer tests primarily to provide the classroom teacher with information to help in assessing the educational needs of individual students. For primary and intermediate grades such testing shall include, at least annually, the administration of criterion-referenced tests developed or approved by the Department of Education to measure the progress of each student toward achieving educational objectives established under Standard 1B as follows:

Beginning with the school year 1978-79: reading and mathematics objectives, grades 1 through 3.

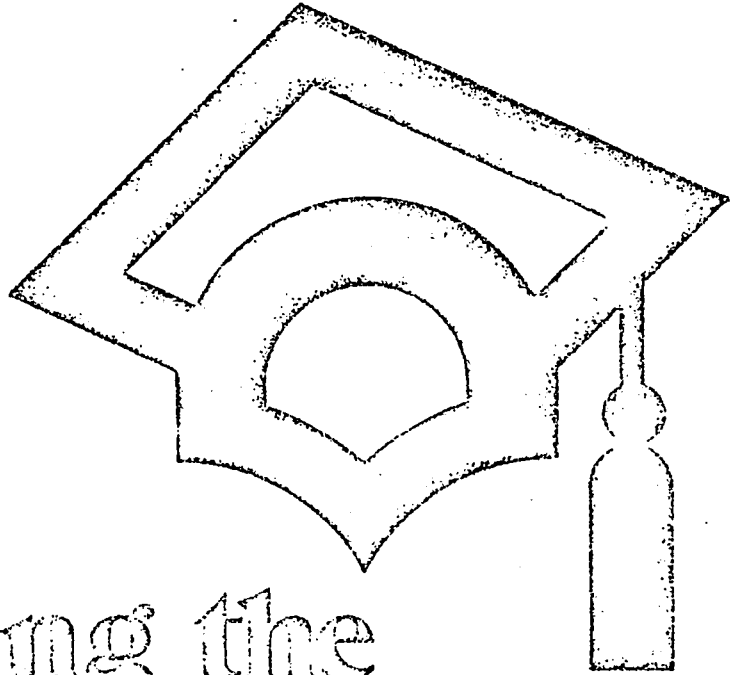
Beginning with the school year 1979-80: reading and mathematics objectives, grade 4.

Beginning with the school year 1980-81: reading and mathematics objectives, grades 5 and 6, communications objectives, grades 1 through 6.

B. Each school division shall administer annually normative tests for the purpose of assessing the educational progress of selected groups of students. The Department of Education shall develop or select such tests, provide scoring services and determine the students to be tested.

C. It is the policy of the Commonwealth that the awarding of a high school diploma shall be based upon achievement. In order to receive a high school diploma from an accredited secondary school after January 1, 1981, students shall earn the number of units of credit prescribed by the Board of Education and attain minimum competencies prescribed by the Board of Education. Attainment of such competencies shall be demonstrated by means of a test prescribed by the Board of Education.

Appendix C
Sample Competency Tests and
Competency Performance Standards



Talking the Competency Test

A Handbook for Students

PREPARED BY THE NORTH CAROLINA DEPARTMENT OF PUBLIC INSTRUCTION

FOREWORD

"What are the minimal skills that a student should possess in order to function in society?" This is a question which recently has been asked by many people. Generally, it is agreed that a student should know the basic skills in reading and mathematics. For this reason, the 1977 General Assembly enacted a law which requires a high school student to pass a basic skills test in order to graduate.

This booklet was prepared to acquaint you with the types of skills which will be tested and to assist you in preparing to take the North Carolina Competency Test. We hope that you will share this booklet with your parents so that each of you will have a better understanding of the test.

A passing score on the Competency Test means that you have mastered certain basic skills which you need to function in society. The test will also identify those students who will be given additional help in mastering those basic skills.



State Superintendent of Public Instruction

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Questions and Answers

1. WHAT IS THE NORTH CAROLINA COMPETENCY TEST?

The North Carolina Competency Test is a basic skills test designed to measure a student's knowledge of reading and mathematics.

2. WHY DO WE HAVE A COMPETENCY TEST IN NORTH CAROLINA?

As a response to increasing national concern over the value of a high school diploma, the North Carolina General Assembly enacted into law the North Carolina Competency Test Program. Now a high school diploma will guarantee that the school system has provided instruction in certain basic skills and that the student has mastered those skills.

3. WHO CHOSE THE COMPETENCY TEST?

The law which established the Competency Test Program also set up a Competency Test Commission. The test which you will take was recommended by the Competency Test Commission and approved by the State Board of Education. The Commission worked very hard to choose a test which will accurately measure basic skills and still be fair to all students.

4. WHO HAS TO TAKE THE COMPETENCY TEST?

Beginning with the class of 1980, all students must take and pass the North Carolina Competency Test in order to graduate.

5. WHEN WILL I TAKE THE COMPETENCY TEST?

Your first opportunity to take the Competency Test will be in the fall of your junior year in high school. Your test will not cost you any money. The reading section and the mathematics section will take about three hours each, and will be given over a two-day period. The test will be given at your school during school hours.

6. HOW WILL I KNOW IF I PASSED THE TEST?

Your guidance counselor or teacher will give you a copy of your test scores as soon as they are returned. From your results, you will be able to tell if:

- you have passed both the reading and mathematics sections.
- you have passed the reading section, but failed the mathematics section.
- you have passed the mathematics section, but failed the reading section.
- you have failed both sections.

Your test scores will arrive approximately six weeks after you take the test.

7. WHAT IF I DON'T PASS THE COMPETENCY TEST?

If you do not pass the Competency Test the first time, you will be given additional help in learning those skills in reading and mathematics which you do not possess. This help has been provided for you by the original legislation which established the Competency Test Program. After additional help, you will be able to take the Competency Test again in the spring. You will retake only the section of the test that you failed. You must pass both sections of the Competency Test to receive a high school diploma; however, if you meet all other requirements for graduation from your high school and do not pass the Competency Test, you may receive a certificate along with a copy of your grades.

8. IF I LEAVE HIGH SCHOOL WITH A CERTIFICATE, CAN I COME BACK AND TAKE THE TEST AGAIN?

Yes, you may return to school for additional help and to take the test as often as is necessary until you are twenty-one.

9. WHAT WILL I BE TESTED ON?

A. In *reading* you will be expected to:

- determine the meaning of words.
- follow written directions correctly and in the proper order.
- select main ideas and related facts from what you read.
- classify information.
- decide what you think a statement means.
- make conclusions about what you read.
- find likenesses and differences in written material.
- organize information.
- locate and apply information.
- interpret maps, charts, and pictures.

Your reading skills will be tested by applying them to materials such as:

- classified ads.
- newspaper and magazine articles.
- telephone directories.
- application forms (auto loans, employment applications, social security cards, library cards, or change of address forms).
- "Do It Yourself" directions, warning labels.
- warranties (automobile, radio, refrigerator).
- business and personal letters.
- charge account agreements.
- dictionary pages.
- highway, street and freeway maps.
- recipes.
- road signs.

B. In *mathematics* you will be expected to add, subtract, multiply, and divide by:

- using numbers, fractions, decimals, and percents.
- solving problems involving money.
- solving problems involving measurement.
- applying geometry to everyday life.
- interpreting mathematical information from maps, graphs, and tables.
- finding averages.
- giving estimated answers to questions.
- solving problems from written information or from given charts and tables.

Your mathematics skills will be tested by applying them to materials such as:

- bills of sale.
- rent receipts.
- pay checks and W-2 forms.
- tax receipts.
- admissions tickets.
- written advertisements.
- income tax forms.
- utility bills (electricity, telephone, water).
- installment purchase agreements (finance charges).
- checkbooks.

How To Take a Test

Test-taking may be described as an art which can be developed. It involves skills that may be polished and applied to numerous life areas in addition to school testing situations.

When faced with the task of taking a test, you may experience a feeling of uneasiness or anxiety. You can reduce or do away with such feelings if you are properly prepared to take a test.

Before the Test

Very few people like to take a test. As a matter of fact, tests make most people very anxious. Even though this is the case, you should do all that you can to prepare yourself emotionally for taking a test. If you are overly anxious about taking the test, much of your energy and potential will be sapped by the anxiety and you will not do as well on the test. One way to relieve the anxiety is to

know all that you can about the test before you take it. Careful reading of this handbook will provide you with much information about the Competency Test and will help to relieve tensions associated with the test.

How you feel physically greatly affects how you perform on the test. Prepare yourself for the test by observing good health habits. The night before the test be sure to get a good night's sleep. If you are well rested, you will be alert and energetic.

At the Test

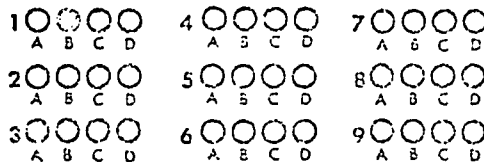
Concentrate on the test. Do not allow yourself to be distracted by noises, things going by the window, or your fellow classmates. The person giving the test will do all he or she can to make the testing situation comfortable and free of distraction.

A. Scheduling your time

1. Arrive on time, this will help you to remain calm.
2. Know how much time you have and how many items are on the test.
3. Allot time wisely; do not take too much time on any one item.
4. Do not stop because others have finished — use all of the time you have.
5. Avoid unnecessary clock watching. It breaks concentration and causes anxiety.

B. Following instructions or directions

1. Pay very close attention to the sample exercises. They are on the test to help you understand what the items on the test will be like and how to properly mark your answer sheet.
2. Keep test booklet and answer sheet together. This saves time and lessens the chance of marking answers in the wrong place.
3. Avoid marking outside the answer circle. Clear marking is sufficient.
4. Read instructions or directions carefully before marking any test questions.
5. If you do not understand the directions for taking the test, raise your hand and ask questions.
6. Below is a sample of how an answer should be marked on your answer sheet.



Do not make any marks, such as doodling or scratch figuring on your answer sheet.

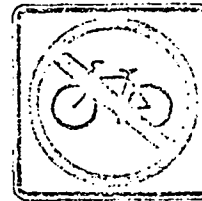
C. How to answer questions

1. Read questions completely, do not give hurried answers.
2. Answer the easiest questions first. Come back to the hard ones and make your best guess on the ones that you don't know. Try to answer every question.
3. Use scratch paper since you may not mark on your answer booklet.
4. Check your answers for mistakes.
5. If you have time after you have finished a section of the test, go back and recheck all of your answers.

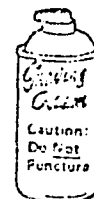
Sample Test Questions

Here are some samples of the kind of reading and mathematics questions which will be asked on the Competency Test. If you feel you need even more practice, ask your teacher or guidance counselor for help.

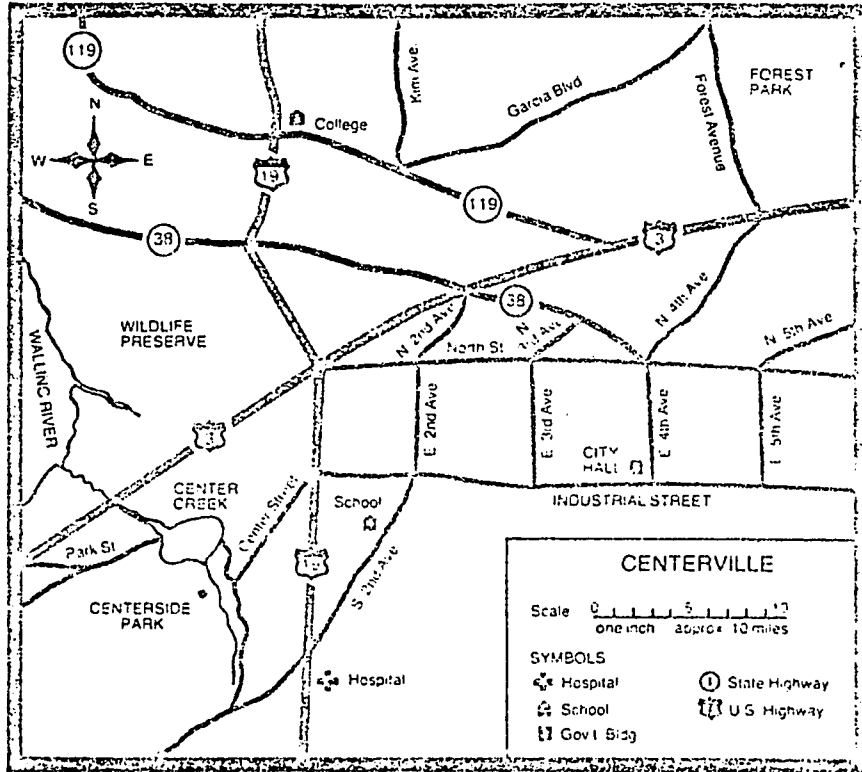
1. What does this sign mean?
 - A Walk your bike
 - B Motorcycles not allowed
 - C No bikes allowed
 - D Bike route



2. The caution on the can means you should *not*
 - A shake the can.
 - B make a hole in the can.
 - C turn the can upside down.
 - D put the can in the refrigerator.



Directions: Using the map below, answer question 3.



3. Which road would you choose to go directly from the college to the hospital?
- A Route 3 East
 - B Route 19 North
 - C Route 3 West
 - D Route 19 South

Directions: Using the telephone directory page below, answer questions 4 and 5.

Goldman Elvira Mrs 1003 Roper Av	565-0287	
Goldman Dean 124 Archer	562-5991	
Goldman John 113 Rondo Dr	584-4321	GLASCO-GRAULICH 43
GOLDMAN CONSTRUCTION INDUSTRIES		
1180 Parkside	778-3489	
Goldsworthy R E 1190 Arroyo Seco	565-8891	
Gombao Geo 239 Cambrian Dr	591-4431	GOULD-SEE ALSO-GOLD
Gomes Anthony 4438 Bonado	565-9971	
Gomes Danl 136 Sonora Wy	652-9735	Gould Elmer D 781 W Santa Ana Dr 591-4489
Gomez Farm Air Service Inc		Gould Frances B 39 S Larkspur Blvd 562-0511
Air Strip 47 Mohito Rd	565-3384	Gould T E 761 San Juan Grdn Rd 652-7381
Ofc 4417 Sanbrn Rd	565-4789	GOULD'S NURSERY
Gomez Felix T 4935 Munroc	657-2243	169 Univ Av 778-5732
Goncalves Floyd 450 Sonora Wy	778-4632	Gourley Marcia 679 Rio Rd 562-9357
Gonzar Harold 450 Sunrse	565-4578	Gourley Clarence V 21 Pedro 565-8990

4. What is the phone number of Daniel Gomes?
- A 565-3384
 - B 657-2243
 - C 652-9735
 - D 565-9971

5. On what street does Frances Gould live?
- A Larkspur Blvd.
 - B University Ave.
 - C San Juan Garden Rd.
 - D W. Santa Ana Dr.

Directions: Using the application blank below, answer question 6.

Personal Data					Date <u>1</u>
Applying for position as <u>2</u>	Salary required <u>3</u>	Date available <u>4</u>			
Name <u>5</u>					
(Last) <u>6</u>	(First)	(Middle)	(Ma son)		
Present address <u>7</u>	(Street)	(City)	(State)	(Zip)	(How long at this address)
Permanent address <u>7</u>	(Street)	(City)	(State)	(Zip)	(How long at this address)

6. Which one of these should go in Blank 5 on the job form?
- A 397-4112
 - B 37 Crescent Ave.
 - C Gary Allan Leter
 - D Leter, Gary Allan

Direction: Read the paragraph below. Answer question 7.

Buying a Used Car

There are many places to look if you want to purchase a used car. You can look in the classified ads and find a private owner who wishes to sell his car. In this situation, you will probably have to pay cash, and you should make sure the car is in good running condition.

Another place to purchase a used car is from a new car dealer. Those dealers usually keep the best of the cars that are traded in. For this reason, a used car might be more expensive than if you bought it from a private individual.

The third place to purchase a used car is from a used car lot. The price of these cars is slightly less, however, than new car dealers. Used car dealers generally get their cars at car auctions or from new car dealers. A good used car may be less expensive, but it is wise to check out the mechanical condition of the car.

7. Which sentence below expresses the *main idea* of this article best?
- A Most of the used cars at a new car dealer are expensive but not in good running condition.
 - B There are many places where you can purchase a used car.
 - C The best place to buy a used car is from a private individual.
 - D Used car lot dealers often buy their cars at auctions.

8.
$$4 \overline{)248}$$

- A 46
- B 62
- C 64
- D 72

9.

$$\begin{array}{r} 758 \\ 967 \\ +549 \\ \hline \end{array}$$

- A 2274
- B 2264
- C 2174
- D 2374

10. $\frac{1}{5} + \frac{1}{15} =$

- A $\frac{1}{20}$
- B $\frac{1}{10}$
- C $\frac{1}{5}$
- D $\frac{4}{15}$

11. If the sales tax is 4%, how much sales tax is there on a bill for \$7.25 in a restaurant?
- A 8¢
 - B 11¢
 - C 28¢
 - D 29¢

Directions: Use the recipe to answer questions 12 through 14.

These are the ingredients for baked squash to serve 8 people:

BAKED SQUASH

6 yellow squash
1 cup cracker crumbs
1/2 cup butter or margarine, melted
6 tablespoons brown sugar
1 teaspoon salt
1/2 teaspoon nutmeg
Serves 8

12. If you were making squash to serve 4 people, how many cups of cracker crumbs would you use?
- A $\frac{1}{4}$
 - B $\frac{1}{3}$
 - C $\frac{1}{2}$
 - D 2
13. If you were making squash to serve 6 people, how many tablespoons of brown sugar would you use?
- A $1\frac{1}{2}$
 - B $4\frac{1}{2}$
 - C 8
 - D 36
14. If you were making squash to serve 2 people, how many cups of butter or margarine would you use?
- A $\frac{1}{8}$
 - B $\frac{1}{4}$
 - C $\frac{1}{2}$
 - D 1

Now that you have worked your way through the handbook, your task on test day should be easier. You know what to expect, and that is half the battle — the rest is up to you. Remember, the purpose of this test is to assure that you have a good basic education. If you fail, don't give up. Your school will provide help on the skills you need and you will have more opportunities to pass the test.

ANSWERS TO SAMPLE TEST QUESTIONS

1. C 2. B 3. D 4. C 5. A 6. D 7. B 8. B
 9. A 10. D 11. D 12. C 13. B 14. A

OCTOBER 1978

Georgia Competency Performance Standards Required For Graduation

Students shall be required to demonstrate competency in the following Performance Standards for High School Graduation as adopted by the State Board of Education.

a. Learner

1. The student reads and interprets communication on a functional level.
2. The student comprehends information received and applies that information in a variety of everyday situations.
3. The student writes legible, appropriate personal and career communications on a functional level.
4. The student receives and transmits oral and visual communication on a functional level.
5. The student employs estimation, approximation and calculation skills in everyday living situations.
6. The student understands and uses various forms of scales and measurements, graphs, charts, tables, symbols and other graphic representations.
7. The student applies basic arithmetic operations (adding, subtracting, multiplying and dividing) in an everyday context.
8. The student recognizes basic geometric shapes and positions necessary for daily mathematical functions.
9. The student uses a variety of information resources to obtain assistance and information.
10. The student employs logical, intuitive and creative thinking processes.

Students shall be required to demonstrate competency in the following Performance Standards for High School Graduation as adopted by each local Board of Education.

b. Individual

1. The student knows appropriate emergency responses to accidents and demonstrates preventive actions for health and safety hazards.
2. The student recognizes and practices sound personal health habits necessary to maintain physical and mental well-being.
3. The student understands the sound health care principles involved in family living, parenting and parenthood.

c. Citizen

1. The student understands the basic structure and functions of the American system of Government and the American economic system.
2. The student knows basic legal rights and responsibilities of the citizen under the American judicial and penal systems.
3. The student recognizes relationships between current societal and environmental problems and the individuals' role and responsibilities.

d. Consumer

1. The student knows the principles of sound personal financial planning and management.
2. The student identifies the legal rights and responsibilities of the consumer in buying and selling goods and services.

e. Producer

1. The student analyzes personal career opportunities and choices in career planning and management.
2. The student demonstrates the skills necessary to obtain employment.

Performance Standards for the adult life role of the Learner will be measured statewide. Performance Standards for the adult life roles of the Individual, Citizen, Consumer and Producer will be measured by the local educational agency through performance indicators. Validation of competency performance standards through performance indicators must be certified by the local board of education and local superintendent.