

TEXAS WORKFORCE COMMISSION LETTER

ID/No: WD 13-07

Date: April 12, 2007

Keyword: All Programs;
Testing

To: Local Workforce Development Board Executive Directors
Commission Executive Staff
Integrated Service Area Managers



From: Laurence M. Jones, Director, Workforce Development Division

Subject: **Use of Commercially Developed Tests to Refer Job Seekers to
Employment Opportunities**

PURPOSE:

To provide Local Workforce Development Boards (Boards) with requirements for using commercially developed tests in Texas Workforce Centers during the selection and referral of job seekers to employment opportunities.

REFERENCE:

Civil Rights Act of 1964, Title VII
Uniform Guidelines on Employee Selection Procedures (41 C.F.R. Part 60-3)
Records to be Made or Kept Relating to Age: Notices to be Posted (29 C.F.R. Part 1627)
Nondiscrimination on the Basis of Handicap in Programs and Activities
Receiving or Benefiting from Federal Financial Assistance (29 C.F.R. Part 32)

FLEXIBILITY RATINGS:

No Local Flexibility (NLF): This rating indicates that Boards must comply with the federal and state laws, rules, policies, and required procedures set forth in this WD Letter and have no local flexibility in determining whether and/or how to comply. Federal and state laws, rules, policies, and required procedures with a “No Local Flexibility” rating are indicated by the acronym, **NLF**, in the margin to the right of the applicable paragraph. Additionally, all information with a “No Local Flexibility” rating is indicated by “must” or “shall.”

Failure to comply with the federal and state laws, rules, policies, and required procedures with a “No Local Flexibility” rating may result in corrective action, up to and including sanction and penalty.

Local Flexibility (LF): This rating indicates that Boards have local flexibility in determining whether and/or how to implement guidance or recommended practices set forth in this WD Letter. All guidance or recommended practices with a “Local Flexibility” rating are indicated by the

acronym, **LF**, located in the margin to the right of the applicable paragraph. Additionally, guidance or recommended practices with a “Local Flexibility” rating are indicated by “may” or “recommend.”

Boards are not subject to corrective action for failure to comply with guidance or recommended practices with a “Local Flexibility” rating.

BACKGROUND:

Tests used in Texas Workforce Centers to refer job seekers to employment opportunities must comply with Title VII of the Civil Rights Act of 1964. In 1978, relevant federal agencies, including the U.S. Department of Labor, adopted the *Uniform Guidelines on Employee Selection Procedures* (guidelines). The guidelines:

- apply to all private employment and federal, state, and local government employment covered by federal equal employment opportunity law;
- establish a uniform set of principles governing the use of employee selection procedures;
- contain federal regulations ensuring that the tests are in compliance with Title VII and other civil rights laws and regulations; and
- provide a framework for determining the proper use of tests.

This WD Letter provides Boards with requirements for using commercially developed tests in Texas Workforce Centers during the selection and referral of job seekers to employment opportunities, including requirements regarding:

- commercially developed test validation requirements;
- software installation;
- administering tests to job seekers at Texas Workforce Centers; and
- records retention of tests.

This WD Letter supersedes and rescinds WD Letter 82-98, issued June 19, 1998, and entitled “Use of Aptitude and Skills Testing for Job Selection and Referral.”

PROCEDURES:

It is recommended that Boards familiarize themselves with the guidelines before purchasing commercially developed tests.

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If commercially developed tests are used to make employment decisions, Boards must ensure that Texas Workforce Center staff is aware that the tests and test administration procedures are subject to the guidelines. Employment decisions include, but are not limited to:

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- selecting a candidate for training;
- selecting a candidate for transfer;
- hiring;
- referring a candidate to a suitable employer; and
- licensing and verification.

Test Validation

Boards must:

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- ensure that purchased tests have been developed in accordance with the guidelines' validation requirements;
- review the manufacturer's most current validation study;
- include language in purchasing contracts requiring the manufacturer to provide copies of current validation studies to the Board upon request and at a negotiated minimal cost; and
- provide copies of the current validation studies to interested parties upon request.

Test Administration

Boards must ensure that Texas Workforce Center staff performs the following actions prior to administering tests to job seekers:

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- Follow appropriate manufacturer guidance to understand the tests and learn how to use the corresponding materials (e.g., software, scoring guidelines, etc.);
- Coordinate with the employer to properly document the skill sets required to perform the responsibilities specified in the job description;
- Ensure that skills tests will be administered only to applicants for jobs requiring the use of the corresponding skills on the job, as set out in the job description;
- Consult with the employer to set appropriate and reasonable benchmarks to determine which job seekers are referred, consistent with normal expectations of acceptable proficiency in the workforce; and
- Provide a suitable testing environment.

Records Retention

Boards must ensure that all test materials—paper and electronic—completed by job seekers in connection with employment decisions are retained for at least one year from the date of administration of the test.

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Boards must maintain and have available for inspection any records disclosing the impact of selection procedures on the employment opportunities. Records must show identifiable race, sex, and ethnic group of any job seeker to whom a test has been administered.

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Boards must adopt safeguards to ensure that records are used only for intended purposes and are not used improperly.

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Boards must ensure that Texas Workforce Center staff maintains confidentiality of all records relating to the selection and referral of job seekers to employment opportunities.

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ACTIONS REQUIRED:

Boards must ensure that appropriate staff is apprised of and complies with the requirements in this WD Letter.

INQUIRIES:

Direct inquiries regarding this WD Letter to the assigned contract manager for your local workforce development area.

Rescissions: WD Letter 82-98

Expiration: None
