



**DOJ Settlements with Virginia Beach and Chesapeake, Virginia  
Regarding Usage of POST Mathematics Section**

August 10, 2007

Dear Association Director:

In light of the Department of Justice's scrutiny of the National Police Officer Selection Test (POST) Mathematics section as used in two Virginia law enforcement agencies, we wanted to provide an update on recent events. Over the past year, we have had conversations with many of you, as well as numerous member agencies in your respective states. We sincerely thank you for your continued support of Stanard & Associates and the POST. Together, through our partnerships, we continue to help law enforcement agencies of all sizes improve their hiring processes. Agencies can increase their confidence that selected officers actually possess the basic skills necessary to succeed in the training academy and on the job, and effectively reduce sunk costs associated with sending ill-prepared candidates to the academy.

As you know, two of our Virginia clients, Virginia Beach and Chesapeake, were the target of Department of Justice scrutiny. In these cases, the DOJ alleged the Math section of the POST had an adverse impact against African American and Hispanic applicants. Soon after the DOJ entered a complaint against Virginia Beach, the City settled with the DOJ. Virginia Beach continues to use the POST, but entered into a consent decree specifying conditions under which it may continue its use. Reaching a settlement quickly was quite understandable given the burden and expense of protracted litigation. In June 2007, about one year after the DOJ entered a similar complaint against the City of Chesapeake, a settlement was announced and filed in District Court. Given these very recent developments, and the importance of these cases, we wanted to review what has transpired over the past year and proactively start a dialogue about the apparent implications of these settlements as they apply to use of the POST.

To recap, in April of 2006, the DOJ entered a complaint in the U.S. District Court for the Eastern District of Virginia, Norfolk Division, against the City of Virginia Beach. It alleged that the POST Math section had an adverse impact against African American and Hispanic applicants for the position of entry-level police officer when scored in such a way that required applicants to achieve a 70% in order to advance in the selection process. The complaint also alleged the Math section of the POST is not job-related and consistent with business necessity. Virginia Beach entered into a consent decree specifying that the POST be scored such that applicants need to achieve a 70% on the Reading Comprehension section, a 70% on the Grammar section, no specific passing point for the Math section, and a 60% overall (i.e., across the three sections; Virginia Beach does not use the Writing section). The DOJ entered a similar complaint against the City of Chesapeake in July of 2006. This complaint also alleged a pattern or practice of unintentional discrimination under provisions of Title VII of the Civil Rights Act of 1964. Chesapeake chose to defend its practice of using a cutoff score of 70% on the Math test, so the DOJ filed a suit against the City. Chesapeake ultimately settled with the DOJ just prior to commencement of the trial, scheduled for the beginning of June 2007. The monetary and human resources required to litigate the case weighed heavily in the City Council's decision. The consent decree in Chesapeake also permits continued use of the POST, but specifies that it be scored such that applicants need to achieve a 66% overall (i.e., across the Reading Comprehension, Math and Grammar sections; Chesapeake does not use the Writing section). Both cities deny being in violation of Title VII. In their consent decree, Chesapeake further denies that its use of the POST Math test discriminated against African-American or Hispanic applicants, asserts that the City's police officers use basic mathematics skills as part of their job, and asserts that its use of the POST Math test is job related for the position in question and consistent with business necessity.



The Virginia Beach and Chesapeake consent decrees may be viewed on the DOJ website, or by pasting the link below in your internet browser.

<http://www.usdoj.gov/crt/emp/papers.html#decree>

Both consent decrees permit the continued use of the POST and POST Math section. We believe there is ample evidence available to substantiate the need for basic skills, including math, in entry-level law enforcement selection. We stand by our technical documentation which shows the direct relationship between POST test content and tasks performed on the job, and which also outlines the statistical relationships between POST test scores and performance both in training and on the job. Despite the vast amount of research we have accumulated, our experience supporting the City of Chesapeake over the past year suggests the DOJ attributes great importance to local content validity studies (a study showing the relationship between the skills measured by the POST and the job as it is performed in the agency using the POST) and criterion-related validity studies (a study showing a statistical relationship between POST test scores and performance on the job). While criterion-related validity studies are not always feasible for smaller agencies, we recommend hiring agencies work with their human resource and legal staffs to document the relationship between the selection tool (i.e., the POST or any entry-level selection instrument) and the requirements of the position.

The single largest implication of the settlements in Virginia Beach and Chesapeake appears to revolve around how the test is used, and the impact the cutoff score methodology has on minority candidates. When developing a cutoff score for a selection battery with multiple subtests or sections, one can use either a compensatory strategy or a multiple hurdle approach. A compensatory strategy involves a single cut score on a composite of all the sub-tests. In other words, an applicant could perform very poorly on one of the tests, but do well enough on other sub-tests to pass the battery overall. A multiple hurdle approach requires candidates to meet some level of competence on each sub-test in a battery. A cutoff score on each section of the POST helps ensure that candidates possess a minimum level of competence in each of the basic skill areas measured. The settlement reached most recently with Chesapeake establishes that a compensatory strategy may be used, with candidates needing to achieve an overall score of 66% across the three POST sections. However, the settlement reached last year with Virginia Beach has elements of both the compensatory and multiple-hurdle strategies (i.e., specific cutoffs on Reading Comprehension and Grammar of 70%, no cutoff on Math, but an overall cutoff of 60%). It is important to note that settlements in both Virginia Beach and Chesapeake prohibit the use of a specific cutoff score for the Math section (although in Virginia Beach, specific cutoffs were permitted on the other test sections). It is also important to note that both settlements establish different cutoff score approaches, yet each was acceptable to the DOJ for these respective agencies. Furthermore, neither consent decree specifies how these specific cutoff configurations were arrived at, or why they are acceptable to the DOJ.

Clearly, the DOJ's goal in these two cases was to establish cutoff score strategies it believes would reduce adverse impact. However, the settlements suggest there is no single best way to accomplish this. Generally speaking, compensatory strategies (overall cutoff scores) should result in less adverse impact than multiple hurdle strategies (a separate cutoff for each test section). Hiring agencies may naturally be concerned, however, that compensatory strategies do not ensure some minimal level of competence in each skill area. While this is understandable, in light of these two settlements, overall cutoff scores might be the most practical alternative for balancing concerns about competence and adverse impact. An analysis of approximately 100,000 archival records of POST data suggests that the average Math section score for those candidates able to achieve a 70% overall (across all 4 POST sections), is approximately 85%, and that approximately 80% of the candidates achieve at least a 70% on each test section. Each user agency, however, is ultimately responsible for establishing a cutoff score it believes best helps it meet its hiring objectives.

Stanard & Associates will continue to support agencies who use the POST. We firmly believe in the utility of the POST for helping the law enforcement community make valid entry-level hiring decisions. However, based on the recent settlements between the DOJ and the cities of Virginia Beach and Chesapeake, a few key points are noteworthy.

- Despite the vast amount of research S&A has accumulated, documenting the relationship between POST content and the job of law enforcement officer, as well as the relationship between POST scores and performance in both training and on the job, **the DOJ appears to place great emphasis on local validation studies.** As a result, user agencies are advised to base their usage of the POST on job analysis data showing the relationship between test content and the job as it is performed in their agency specifically. This includes evidence showing that the basic skills measured by the POST are required upon entry into an agency, and that applicants need to possess the ability to perform basic mathematical operations (e.g., addition, subtraction, multiplication and division), the ability to read and the ability to write on Day 1 of the job (i.e., that these are not skills learned on the job). This applies to the POST or any other entry-level selection tool.
- **The DOJ appears ready to combat usage of any selection instrument resulting in any amount of adverse impact** against protected groups, even if the job-relatedness and validity of the selection tool have been established.
- As evidenced by the uniqueness of the cutoff configurations deemed acceptable to the DOJ in the Virginia Beach and Chesapeake consent decrees, **there is no single cutoff configuration which would uniformly satisfy the DOJ. The decision about which cutoff score configuration should be used rests with the hiring agency.** Generally speaking, it appears compensatory cutoff score strategies are more agreeable to the DOJ than configurations resulting in a designated cutoff score for the Math section specifically. This applies to the POST or any other entry-level selection tool.
- **Hiring agencies should have a rationale in place justifying their use of a particular cutoff score configuration.** This applies to the POST or any other entry-level selection tool. While tradition often leads decision makers to use a 70% score per section or overall, the cutoff score configuration ultimately chosen should have an accompanying rationale. In large agencies, a criterion approach may be used, where a cutoff score configuration is linked to ratings of incumbents' job performance. However, this is impractical for smaller agencies. In agencies where it is not feasible to conduct a local criterion-related validity study, another way this rationale can be created is by using a modified Angoff Technique. The Angoff Technique involves convening a panel of local subject matter experts (SMEs; i.e., those most familiar with the job and its requirements) to evaluate each test item independently. SMEs evaluate each test item in relation to somebody who is minimally qualified to meet the requirements of the position. SMEs then independently make a determination regarding the percentage of minimally qualified job incumbents who would be able to answer each test question correctly. Ratings are then averaged across SMEs for each test item, resulting in a potential cutoff score for each test section, or for the test overall. Our experience with the Angoff Technique has shown that it can lead to stringent cutoff scores. Modifications, however, can be made which result in less stringent cutoff scores, but which still have been derived from raters' original expert opinions.

We hope this helps clarify what we see to be the key implications of the DOJ's settlements with Virginia Beach and Chesapeake. We will be coming out with new order forms shortly, which we ask you to use for future orders. These forms will have an expanded cutoff score section for agencies to choose the cutoff score that works best for their jurisdiction. Thank you again for your continued support. Please feel free to contact us at 800.367.6919 if you have any questions, or if we can assist further.

Best regards,

Stanard & Associates, Inc.