

1980 WL 120685 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 27, 1980

**\*1 Re: Opinion Concerning Minimum Competency Testing in Horry County**

Mr. Bruce E. Davis  
Attorney at Law  
1704 Fair Street  
Camden, South Carolina 29020

Dear Bruce:

By letter dated February 4, 1980, as attorney for the Horry County School District, you have requested an opinion of this Office concerning the legality of a minimum competency test requirement for receiving a high school diploma from a public high school in Horry County. You state that on January 1, 1978, the District Board of School Trustees adopted a policy that would require a student, prior to receiving a high school diploma, in addition to meeting other state requirements, to pass a minimum competency test determined by the district in the areas of language arts, math, and reading.

Public education in South Carolina is a state governmental function, in that the State Constitution requires the General Assembly to provide free public schools under the administration of the State Board and State Superintendent of Education. Constitution of South Carolina, 1895, as revised, Art. XI, §§ 1, 2, 3; and [Moye v. Caughman](#), 265 S.C. 140, 217 S.E.2d 36 (1975). Pursuant to this constitutional authority, the General Assembly has enacted several statutes which bear on the question herein. [Section 59-5-60, Code of Laws of South Carolina](#), 1976, enumerates the powers of the State Board of Education, which powers included authority to, 'Prescribe and enforce courses of study in the free public schools.' Section 59-39-100 dictates the issuance of uniform diplomas by accredited high schools, stating in pertinent part, 'The number of units required by the State Board of Education for a state high school diploma shall not be increased.' Section 59-19-90 specifies the general powers and duties of school district trustees, including general control of educational interests in the district and authority to promulgate rules prescribing scholastic standards of achievement. Section 59-19-110, however, limits the rule making authority of school district trustees as follows, 'The Board of Trustees of the several school districts may prescribe such rules and regulations not inconsistent with the statute law of this state as they may deem necessary or advisable to the proper disposition of matters brought before them.'

The relationship of the above-cited statutes has been considered in two previous opinions of this Office. In No. 1804, Op. Att'y Gen., March 1, 1965, Attorney General McLeod concluded that, ' . . . the State Board of Education is authorized to increase the number of units required for a high school diploma and that local school districts may not impose greater requirements as a condition for diplomas.' This position was reaffirmed in No. 3803, Op. Att'y Gen., June 19, 1974; wherein, Deputy Attorney General C. Tolbert Goolsby, Jr., further stated his opinion that a local school district where not prohibited by the State Board of Education, may specify additional course requirements within the diploma unit requirement prescribed by the State Board. The Horry County School District's requirement of successful passage of a minimum competency test would appear to be a requirement for receiving a state high school diploma over and above the requirements provided by the State Board of Education. See the Defined Minimum Program for South Carolina School Districts.

\*2 Further, the General Assembly has enacted two important pieces of legislation which affect the question herein. First, in enacting the Education Finance Act of 1977, codified as [§ 59-23-10, et seq., Code of Laws of South Carolina](#), 1976, as amended, the General Assembly created a scheme to equalize the foundation educational program in public schools throughout the state. While the Education Finance Act does not expressly prohibit the requirement in question, the Act evinces an intention for uniformity, which intention is further borne out by the Basic Skills Assessment Program, enacted in 1978. [Section 59-30-10, et](#)

[seq.](#), [Code of Laws of South Carolina](#), 1976, as amended, provides a comprehensive plan for the testing of student competencies from grade one through grade eleven. The purpose of the testing at grade eleven is stated in § 59-30-10(e), directing the State Board and State Department of Education to, 'Develop or select, and field test, a minimum achievement test that will measure adult functional competency at the end of grade eleven.' Thus, the General Assembly has authorized the State Board of Education to provide minimum achievement testing, thereby preempting the field as to local school districts. This is so, even though the General Assembly does not make successful passage of the minimum achievement test in the eleventh grade a graduation requirement. The State Board of Education, however, arguably has authority to award high school credentials other than the standard high school diploma for students failing the minimum achievement test. See § 59-30-10(f).

Finally, in a recent court decision, [Debra P. v. Turlington](#), 474 F.Supp. 244 (MD Fla. 1979), the Federal District Court in Florida held that a properly validated minimum competency test could be used in Florida's public schools as a graduation requirement, beginning with the 1982-83 school year. The Court determined that this period of time was necessary to orient students and teachers to the new functional literacy objectives and to eliminate the taint on educational development of certain students, which accompanies the former segregated public school systems. I am not familiar with the history of desegregation in Horry County; however, the just cited case indicates that a minimum competency test should not be required except for students who have received the benefits of a desegregated education from grade one.

Based upon the foregoing discussion, the opinion of this Office is that the Horry County School District is without authority to require successful passage of a minimum competency test as a requirement for obtaining a state high school diploma.

With kindest regards,  
Sincerely,

Paul S. League  
Assistant Attorney General

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