

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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May 29, 2007

Opinion No. 07-82

Certificates of Attendance

QUESTIONS

1. Should students be denied life-long learning and vocational education, college, cosmetology, etc. due to unfunctional certificates and/or diploma [sic] awarded at graduation because of inadequate funding for those living in poverty?
2. How does Tennessee compare with other Southeastern states with graduation requirements? What tests are required to receive a functional diploma?
3. Is an alternative diploma grounds for claiming violation of one's constitutional civil rights if the student is denied post secondary education and/or technical education under the United States Constitution?

OPINIONS

1. We must respectfully decline to respond to this question because it addresses a policy issue rather than seeking to elicit a legal opinion.
2. According to the Department of Education and the State Board of Education, the graduation requirements in Tennessee are comparable to those in other states. Tennessee students are required to pass three "Gateway" exams in order to graduate from high school and receive a diploma.
3. There is no constitutional right to a high school diploma. Nor does the requirement that high school students successfully complete certain basic competency examinations before receiving a diploma violate any state or federal constitutional provision. There is, however, a constitutional right to educational access and the opportunity to achieve a high school degree.

ANALYSIS

Your questions concern the practice of awarding "Certificates of Attendance" to high school students who are unable to pass the examinations necessary for high school graduation and the awarding of a high school diploma. Certificates of Attendance are governed by State Board of Education Rule 0520-1-3-.06, which addresses graduation requirements.

0520-1-3-.06 GRADUATION, REQUIREMENT E.

(1) Graduation Requirements.

(a) High School Diploma, High School Certificate, and Special Education Diploma.

1. The high school diploma will be awarded to students who (1) earn the specified 20 units of credit or satisfactorily complete an individualized educational program, (2) meet competency test or gateway examination standards, and (3) have satisfactory records of attendance and conduct.

2. The high school certificate may be awarded to students who have earned the specified 20 units of credit and who have satisfactory records of attendance and conduct, but who have not met competency test or gateway examination standards.

3. The special education diploma will be awarded to students who have satisfactorily completed an individualized education program, and who have satisfactory records of attendance and conduct, but who have not met competency test or gateway examination standards.

(Emphasis added). *See also* Tenn. Code Ann. § 49-6-6001(a).

Competency tests are first administered in the 9th grade, and are given in two subjects: language arts, and mathematics.¹ Gateway examinations are administered prior to graduation and are devoted to three subjects: mathematics, English language arts, and science.² With regard to both the competency examinations and the gateway examinations, Board of Education rules require that each local school system must provide academic interventions and require the participation of students who have failed to pass any of the examinations. At least one intervention must be offered during the regular school day, and all interventions must be designed to address the individual student's needs and conducted by a teacher endorsed in the subject area.³ Furthermore, any student who previously received either a certificate of attendance or a special education diploma due to his

¹Board of Education Rules, 0520-1-3.06(1)(d)1.

²*Id.*, 0520-1-3-.06(1)(d)2.

³*Id.*, 0520-1-3.06(1)(d)1(ii) and 2(ii).

or her failure to pass an examination is entitled to re-take any competency examination or gateway examination during any regularly scheduled administration of these examinations and, upon passing, be awarded a high school diploma.⁴

It is our understanding, from sources in the Department of Education and the Board of Education, that many other states have similar tests that are required in order to receive a high school diploma and that Tennessee school examinations are, roughly speaking, of average, or perhaps somewhat below average, difficulty compared to other states.

A comparatively small number of Certificates of Attendance are issued each year in Tennessee. For example, in the previous academic year (2005-2006) out of the total number of 121 school systems in Tennessee that issued high school diplomas, 62 systems issued no Certificates of Attendance whatsoever. Of a total number of 53,081 students who were awarded either diplomas, Certificates of Attendance, or Special Education diplomas, 50,359 (roughly 95%) students received diplomas, 2,408 students (roughly 4.4%) received Special Education diplomas, and only 314 (roughly 0.6%) received Certificates of Attendance. And, as noted above, students who may have received a Certificate of Attendance are entitled to re-take any competency or gateway examination and, upon passing, will be awarded a high school diploma.

There is no constitutional right to a high school diploma. As established by the Tennessee Supreme Court in *Tennessee Small School Systems v. McWherter*, 851 S.W.2d 139, 150 (Tenn. 1993)(“Small Schools I”), the Tennessee constitution mandates that the State maintain and support a system of free public schools that provides the **opportunity** to acquire an education.⁵ Students are required, however, to successfully complete certain requirements in order to earn a high school diploma. Nor does the requirement that high school students successfully complete certain examinations before being awarded a diploma run afoul of any constitutional provision.

In *Board of Education of Northport-East Northport Union Free School District v. Ambach*, 457 N.E.2d 775 (N.Y. 1983), *affirming* 436 N.Y.S. 2d 564 (N.Y.A.D. 1982), the Court examined the issue of whether a requirement that a student pass competency tests in reading and mathematics in order to graduate from high school violated the due process and equal protection provisions of the federal and state constitutions, as well as federal handicap discrimination statutes. The Court held that conditioning receipt of a high school diploma upon successful completion of certain competency tests did not discriminate against handicapped children, stating that “the protection of the integrity

⁴*Id.*, 0520-1-3.06(1)(d)1(iii) and 2(iii).

⁵*See also Tennessee Small School Systems v. McWherter*, 894 S.W.2d 734, 735 (Tenn. 1995)(“Small Schools II”)(referring to the General Assembly’s obligation to establish a public school system that would afford “substantially equal educational *opportunities* to the public school students throughout the State.” (emphasis added)); *Tennessee Small School Systems v. McWherter*, 91 S.W.3d 232, 243 (Tenn. 2002)(“Small Schools III”)(“The critical point, however, is that the educational funding structure be geared toward achieving equality in educational *opportunity* for students, not necessarily ‘sameness’ in teacher compensation.”(emphasis added)).

of a high school diploma is both a legitimate State interest and one to which the competency testing program is reasonably related.”⁶

Accordingly, it is the opinion of this Office that the practice of awarding Certificates of Attendance to high school students who have earned the required 20 units of credit and who have satisfactory records of attendance and conduct but who have not met competency test or gateway examination standards is constitutional.

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⁶*Id.*, 458 N.Y.S.2d at 688-689. See also *Brookhart v. Illinois State Board of Education*, 697 F.2d 179, 183-184 (7th Cir. 1983) (holding, *inter alia*, that requiring high school students to pass a minimal competency test is not discriminatory merely because some students who are incapable of attaining a level of minimal competency will fail the test).