



ALAN WILSON
ATTORNEY GENERAL

November 18, 2013

The Honorable Mick Zais
State Superintendent of Education
1429 Senate Street
Columbia, S.C. 29201

Dear Mr. Zais,

You seek an opinion as to whether school districts may issue their own high school diploma to students who do not meet the requirements for a high school diploma under S.C. Code § 59-39-100. You state that "South Carolina law provides for the issuance of 'uniform diplomas'" under § 59-39-100 and "[t]he S.C. Department of Education is concerned that issuing district-level achievements using the 'diploma' nomenclature is causing confusion in business and industry, and in higher education." You also note that "[w]hile the Attorney General's Office has issued opinions in the past involving the question of districts setting additional requirements for the state high school diploma, our research did not uncover an opinion regarding the issue of a district rendering a diploma to an individual who did not meet the state requirements."

Law/Analysis

Article XI, § 3 of the South Carolina Constitution states "[t]he General Assembly shall provide for the maintenance and support of a system of free public schools open to all children in the State" The State Board of Education is established by Article XI, § 1 which provides that its members "shall have such powers and duties as the General Assembly shall specify by law." S.C. Const. Art. XI, § 1. Furthermore, § 3 of Article XI provides for the "State Superintendent of Education who shall be the chief administrative officer of the public education system of the State and shall have such qualifications as may be prescribed by law." S.C. Const. Article XI, § 3.

Based on these constitutional provisions, we stated in a previous opinion that "[p]ublic 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." Op. S.C. Att'y Gen., 1980 WL 120685 (Feb. 27, 1980) (emphasis added). Our State Supreme Court has also stated that "[t]he legislature has wide discretion in determining how to go about accomplishing its duty" under Article XI, § 3. Horry County Sch. Dist. v. Horry County, 346 S.C. 621, 632, 552 S.E.2d 737, 743 (2001).

Consistent with these constitutional duties, the General Assembly has enacted the South Carolina School Code, the provisions of which make up Title 59 of the S.C. Code. According to § 59-1-20, "[t]he purpose of the South Carolina School Code is to provide for a *State system* of public education and for the establishment, organization, operation, and support of such State system." (Emphasis added). The scope

of this system is described as follows: "The *State system* of public education shall consist of such school systems, schools, institutions, agencies, services, and types of instruction as may be provided and authorized by law, *or by rules and regulations of the State Board of Education* within limits prescribed by law." § 59-1-40 (emphasis added).

As you indicate, the General Assembly has also enacted legislation specifically addressing the issuance of high school diplomas:

(A) Diplomas issued to graduates of accredited high schools within this State must be uniform in every respect and particularly as to color, size, lettering, and marking. The number of units required for a state high school diploma is twenty units as prescribed by the State Board of Education. Beginning in the 1986-87 academic year, a minimum of three units must be earned in mathematics and a minimum of two units must be earned in science.

(B) One unit in computer science, if approved by the State Department of Education for this purpose, may be counted toward the mathematics requirement.

(C) Students who earn one unit in science and six or more units in a specific occupational service area will meet the science requirements for a state high school diploma. Career and technology programs operating on a 3-2-1 structure may count pre-career and technology education as one of the six required units.

(D) Beginning with the ninth grade class of school year 1997-98, the number of units required for a high school diploma is twenty-four units as prescribed by the State Board of Education by regulation, with one additional unit required in mathematics, science, and computer science to include keyboarding. For students in a college preparatory track, as defined by the state board, one additional unit must be earned in a foreign language; and for students in a track designed to enter the work force, as defined by the state board, one additional career and technology unit must be earned. Beginning with the ninth grade class of school year 1997-98, if a student counts one unit of computer science toward his mathematics requirement as permitted above, one additional unit of computer science must be earned.

(E) Nothing in this section prohibits local school boards of trustees from awarding recognition to students who complete *additional* units and credits beyond those required by this section.

S.C. Code § 59-39-100 (Supp. 2005) (emphasis added).

The plain language of § 59-39-100 evinces a clear intent on the part of the General Assembly to preclude the establishment or issuance of a high school diploma within this State which differs in form or is based on requirements other than those set forth therein. Subsection (A) mandates the use of a "uniform" state high school diploma. The minimum total number of credit units required for a state high school diploma is set at twenty-four. § 59-39-100(D). Out of this total, the specific units which must be earned in particular subjects is set forth by various provisions in subsections (A) through (D). As for any

remaining credit units not specifically assigned to a particular subject, subsections (A) and (D) expressly authorize the State Board of Education to fill in these gaps and prescribe by regulation how such units must be earned.¹ The only action local school boards are expressly permitted to take with regards to students who earn a state high school diploma is to recognize them for completing "*additional* units and credits beyond those required by this section." § 59-39-100(E) (emphasis added). No other statutory provision expressly grants local school boards the authority to establish and issue their own high school diploma based on different standards.

In consideration of the above, the General Assembly has occupied the field of regulation as to high school diplomas, thus preempting local school boards from creating and issuing their own diplomas or from issuing a state high school diploma based on requirements different from those set forth in § 59-39-100 and the regulations promulgated by the State Board of Education. See Aakjer v. City of Myrtle Beach, 388 S.C. 129, 133, 694 S.E.2d 213, 215 (2010) (a local rule is impliedly preempted "when the state statutory scheme so thoroughly and pervasively covers the subject as to occupy the field or when the subject mandates statewide uniformity"). In Aakjer, our State Supreme Court held a local ordinance requiring motorcycle riders to wear a protective helmet and eyewear was impliedly preempted by sections of the Uniform Traffic Act, §§ 56-5-3660 and -3670, which already addressed such matters. In reaching such a conclusion, the Court stated:

Even assuming, as the City contends, that the Helmet Ordinance does not conflict with the Uniform Traffic Act, we find that the ordinance may not stand as the need for uniformity is plainly evident in the regulation of motorcycle helmets and eyewear. Were local authorities allowed to enforce individual helmet ordinances, riders would need to familiarize themselves with the various ordinances in advance of a trip, so as to ensure compliance. Riders opting not to wear helmets or eyewear in other areas of the state would be obliged to carry the equipment with them if they intended to pass through a city with a helmet ordinance. Moreover, local authorities might enact ordinances imposing additional and even conflicting equipment requirements. Such burdens would unduly limit a citizen's freedom of movement throughout the State. Consequently, the Helmet Ordinance must fail under the doctrine of implied preemption.

Id. at 134, 694 S.E.2d at 215.

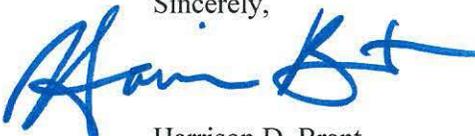
Reasoning similar to that employed in Aakjer applies in the instant case. In addition to the fact that the use of a uniform state high school diploma is mandated by statute, the need for statewide uniformity with regards to the form of, and the requirements necessary to earn, a state high school diploma is plainly evident. As you indicate, to otherwise permit local school districts to issue their own high school diploma to students who do not meet the requirements for a state high school diploma under § 59-39-100 would cause confusion amongst institutions of higher education and potential employers in evaluating whether to accept or employ students receiving such diplomas. These institutions and potential employers would then be forced to familiarize themselves with the individual requirements necessary to receive such a diploma from each individual school district. Accordingly, it is our opinion that local school districts may only issue the uniform high school diploma established by § 59-39-100 to

¹ Consistent with this grant of authority, the State Board of Education has promulgated S.C. Code Regs. 43-234 setting forth the more specific requirements a student must meet to earn a high school diploma.

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students who graduate and meet the requirements set forth therein as well as those prescribed by the State Board of Education. School districts lack the authority to otherwise establish and issue their own diploma to students who do not meet such minimum requirements.

Sincerely,



Harrison D. Brant
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General