

**STATE OF TENNESSEE**

OFFICE OF THE  
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April 27, 2005

Opinion No. 05-065

No Child Left Behind — Additional Requirements for Licensed Teachers

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**QUESTIONS**

1. Whether teachers who have met previously established criteria to obtain their professional license must now meet a new set of criteria to attain a “highly qualified” status.
2. Whether imposing the new criteria on previously licensed teachers constitutes an otherwise prohibited *ex post facto* law.

**OPINIONS**

1. Yes, the federal No Child Left Behind Act of 2001 requires all public school teachers, teaching core academic subjects, to be “highly qualified.”
2. Imposing new criteria on previously licensed teachers does not violate United States and Tennessee constitutional provisions prohibiting *ex post facto* laws.

**ANALYSIS**

In 2001, Congress enacted the No Child Left Behind Act (the NCLB or Act).<sup>1</sup> The Act conditions the receipt of Title I federal funding on compliance with the Act. 20 U.S.C. § 6311(a)(1). The Act requires that a state ensure that by end of school year 2005-06 all teachers of academic core subjects meet the criteria to be a “highly qualified” teacher. Thus, the source of the new “highly qualified” criteria is federal law, with which the State must comply through its NCLB Plan if it wishes to receive Title I funding. The State has not passed a law changing state teacher licensing requirements.

Before a person may teach in any Tennessee public elementary or high school, the person must have a valid teaching license. Tenn. Code Ann. § 49-5-403(a). General licensing requirements

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<sup>1</sup> Pub. L. 107-110, 115 Stat. 1439 (January 8, 2002); 20 U.S.C. §§ 6301, *et seq.*

are found in Tenn. Code Ann. §§ 49-5-101 and 49-5-406 and in regulations. Under Tenn. Code Ann. § 49-5-108(c), the State Board of Education (State Board) has the authority to promulgate rules governing the issuance of teaching licenses. *See* Tenn. Admin. Rules, *State Board of Education*, 0520-2-3 and 0520-2-4. As permitted by statute, the State Board may increase the minimum requirements for licenses. Tenn. Code Ann. § 49-5-108(c)(2). Thus, a teacher's license is conditioned on meeting present and future obligations. *See* Tenn. Code Ann. § 49-5-108(c)(2).<sup>2</sup>

The No Child Left Behind Act of 2001 is a federal grant program, and it requires that public school teachers of core academic subjects<sup>3</sup> be "highly qualified." *See* 20 U.S.C. § 6311(a)(1).<sup>4</sup> Congress passed the Act to further its goal of strengthening and improving elementary and secondary schools. 20 U.S.C. § 6301.<sup>5</sup> The Act requires the states to develop a plan that implements the Act and to submit the plan to the United States Secretary of Education. 20 U.S.C. § 6311(a). The Act does not affect state rights, remedies and procedures under state or federal law or collective bargaining agreements.<sup>6</sup>

The NCLB's plan requirements are comprehensive, and, among other things, require the states to describe the specific steps the state department of education will take to ensure that public school teachers will meet the criteria necessary to be a "highly qualified" teacher. 20 U.S.C. § 6311(b)(8)(C); *see also* 20 U.S.C. § 7801(23) (definition of "highly qualified"). Teachers in Title I funded programs had to be "highly qualified" by the first school day of the 2002-03 school year. 20 U.S.C. § 6319(a); 34 C.F.R. 200.55(a). To teach in a school or program that is not supported by Title I funds, teachers of core academic subjects newly hired after the first day of school in the 2002-03

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<sup>2</sup> Increases are not effective until one (1) year after the State Board promulgates them. Tenn. Code Ann. § 49-5-108(c)(2).

<sup>3</sup>The core academic subject areas are defined as English, reading or language arts, mathematics, science (biology, chemistry, earth science, physics and physical science), foreign languages (French, German, Latin and Spanish), civics and government, economics, arts (visual arts and music), history and geography and all courses that may be offered either as an elective or as a substitute for a core academic course. 20 U.S.C. § 7801(11); *Tennessee NCLB Plan*, pp. 1 and 17 (Appendix D).

<sup>4</sup>Congress passed the NCLB under its spending power found in the United States Constitution, Art. I, § 8, cl. 1.

<sup>5</sup>"The purpose of this subchapter is to ensure that all children have a fair, equal, and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging state academic achievement standards and state academic assessments." 20 U.S.C. § 6301.

<sup>6</sup> *See, e.g.*, Tenn. Code Ann. §§ 49-2-203(a)(6); 49-5-511. The NCLB, 20 U.S.C. § 6316(d) specifically states:

Nothing in this section shall be construed to alter or otherwise affect the rights, remedies, and procedures afforded school or school district employees under Federal, State, or local laws (including applicable regulations or court orders) or under the terms of collective bargaining agreements, memoranda of understanding, or other agreements between such employees and their employers.

school year must meet the requirements by the end of 2005-06 school year. 20 U.S.C. § 6319(a)(1); 34 C.F.R. § 200.55(b). All other licensed teachers in core academic subject areas must be “highly qualified” no later than the end of the 2005-2006 school year. 20 U.S.C. 6319(a)(2); 34 C.F.R. 200.55(b). In other words, the NCLB “highly qualified” requirements apply to all public elementary and secondary teachers who teach core academic subjects, not just to teachers in Title I supported programs.

Tennessee licensure and endorsement requirements are separate from any federal requirements.<sup>7</sup> The new federal requirements are in addition to the state licensing requirements and must be met for a teacher to teach a core academic subject. The federal law’s new requirements are imposed prospectively. Currently licensed teachers, who teach a core subject, have until the end of the 2005-06 school year to complete the “highly qualified” criteria, which were established by the 2001 Act and published in the State’s NCLB Plan in August 2003.

One criterion of the “highly qualified” status is a valid state license<sup>8</sup> to teach. 20 U.S.C. § 7801(23). Imposing the new, federally required criteria for attaining “highly qualified” teacher status does not violate the federal and state constitutional prohibitions against *ex post facto* laws, which apply only to criminal laws. U.S. Const. Art. 1, § 10; Tenn. Const. Art. 1, § 11. Both federal and state constitutions prohibit the states from enacting laws that impair the obligations of contracts. The United States Constitution, Art. 1, § 10 reads in pertinent part as follows: “No **state** shall . . . pass any . . . law impairing the obligation of contracts” (emphasis supplied). The Tennessee Constitution, Art. I, § 20 reads “That no retrospective law, or law impairing the obligations of contracts, shall be made.” The Tennessee Supreme Court has stated that the constitutional provisions are identical. *Lake County v. Morris*, 160 Tenn. 619, 28 S.W.2d 351 (1930).<sup>9</sup>

The State has not passed a law changing state teacher licensing requirements. The source of the new “highly qualified” criteria is federal law, with which the State must comply through its NCLB Plan if it wishes to receive Title I education funding. We conclude that currently licensed public school teachers, teaching core academic subjects, must attain “highly qualified” status according to Tennessee’s NCLB Plan guidelines.

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<sup>7</sup> It is currently possible to hold a valid Tennessee teacher’s license and not meet the NCLB’s “highly qualified” requirements. See *Teacher Plan for Implementing the Teacher and Paraprofessional Quality Provisions of the No Child Left Behind Act of 2001* (issued by the Tennessee Department of Education in August 2003) (the NCLB Plan), p. 3. Tennessee’s NCLB plan may be found at <http://www.gov/education/nclb/index.php>.

<sup>8</sup>With no licensure requirements waived on an emergency, temporary or provisional basis. 20 U.S.C. § 7801(23)(A).

<sup>9</sup> The Tennessee Supreme Court has interpreted Tenn. Const., Art. I, § 20 as follows: “That no retrospective law which impairs the obligation of contracts, or any other law which impairs their obligation, shall be made.” *Townsend v. Townsend*, 7 Tenn. 1, 1821 WL 389, \*12 (Tenn. S.Ct. Err. & App. 1821). “This does not mean that absolutely no retrospective law shall be made, but only that no retrospective law which impairs the obligation of contracts, or divests or impairs vested rights, shall be made . . . . It does not inhibit retrospective laws made in furtherance of the police power of the state; and generally, it does not prohibit remedial legislation.” *Dark Tobacco Growers’ Co-Op v. Dunn*, 150 Tenn. 614, 266 S.W. 308, 312 (1924).

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