

School Law Primer for Educators and School Personnel

**Everything You Need to Know About
School Law and How it Affects the
School Environment**

June 2006

Mississippi Office of Attorney General



**Mississippi Department of Education
Office of Healthy Schools**



IN APPRECIATION

MISSISSIPPI DEPARTMENT OF EDUCATION
Office of Healthy Schools
For Funding the Publishing of the School Law Primer



THE UNIVERSITY OF SOUTHERN MISSISSIPPI
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SCHOOL LAW PRIMER FOR EDUCATORS AND SCHOOL PERSONNEL

Everything You Need to Know About School Law and
How it Affects the School Environment

INTRODUCTION

The Office of the Attorney General, in collaboration with the Mississippi Department of Education, Office of Healthy Schools, with funding through the University of Southern Mississippi, Department of Community Health Services, is pleased to offer you this "School Law Primer for Educators and School Personnel: Everything You Need to Know about School Law and How it Affects the School Environment" for your use and duplication. The Office of the Attorney General and the Mississippi Department of Education, Office of Healthy Schools, is available to assist you with your questions and concerns to help ensure a productive, safe school environment for the children of Mississippi. Please visit our websites, www.ago.state.ms.us and www.mde.k12.ms.us, for more information and resources.

Available Resources from the Office of the Attorney General that Assist in Promoting a Safe and Productive School Environment

Because of the increase in Internet access in schools and homes, the Cyber Crime Unit of the Attorney General's Office provides comprehensive investigation, prosecution, training and public awareness on crimes involving the use of computers and the Internet. For more information on cyber crime, please visit the Cyber Crime Unit's website at www.ago.state.ms.us/divisions/pid/cybercrime/index.html. Also at this website, view the "Workplace Violence Prevention Booklet" in order to learn about recognizing potential, violent behaviors of employees in the workplace.

The Crime Prevention and Victim Services Division of the Attorney General's Office and the State Department of Education continue their collaborative efforts in order to provide training to school superintendents, school board attorneys, school resource officers, teachers and other school personnel on school-safety law, search and seizure issues, discipline, civil liability, drug testing and other school-law issues. The cooperative effort between the agencies has proven very effective in the effort to maintain safe and orderly schools statewide. Please visit the latest information on school and child safety at http://www.ago.state.ms.us/divisions/crime_victim/Youth/schoolsafety.php. Included you will find the:

- School Safety Initiative Booklet
- School Violence Prevention Manual, "Stop School Violence"
- Guide to Parental Awareness and Child Safety
- "Consequences of Misconduct in School" found on the Mississippi Bar's Website at <http://www.msbar.org/misconduct.php>

The Youth Service's Division of the Attorney General's Office is committed to ensuring the safety and well being of Mississippi's children. Prevention efforts continue to reduce juvenile delinquency, truancy, exploitation and child abuse through the creation and promotion of after-school programs, mentoring initiatives and training seminars. This office has partnered with many state agencies, as well as, non-profit organizations to expand the services available to children in need. Some of the programs offered by the Youth Service's Division include:

Youth Patrols: a groundbreaking partnership established by Attorney General Jim Hood with MS CrimeStoppers, and the MS Department of Education Safe & Orderly Schools to improve school safety. This initiative has been accomplished by empowering the school's largest resource, the student body, to assist in preventing and reporting crimes on campus. Patrols work with local law enforcement or a School Resource Officer to increase campus security. Visit the Youth Patrols website at http://www.ago.state.ms.us/divisions/crime_victim/Youth/ycw.php.

Teen Court: a juvenile diversion program available for certain offenders who have waived all right of confidentiality and privilege against self-incrimination. This is a preventive program for juveniles who are not less than thirteen or more than seventeen years of age. Students serve as prosecutor, defense counsel, bailiff, court clerk and jurors. The program is to administer the "sentencing" or disposition phase of the proceedings against offenders who elect to participate and who are eligible. The program is under the guidance of the local youth court and must be approved by the local youth court. The youth court judge, or his designee who is a licensed attorney, presides. The teen court is authorized to require eligible offenders who choose to go to teen court in lieu of youth court to perform up to one hundred twelve hours of community service, require offenders to submit a research paper on any relevant subject, attend counseling and make restitution or any other disposition authorized by the youth court. For more information, please go to www.youthcourt.net.

NetSmartz: an interactive, educational safety resource from the National Center for Missing & Exploited Children and Boys & Girls Clubs of America that uses age-appropriate, 3-D activities to teach children and teens how to be safe when using the Internet. NetSmartz uses the latest technology to create high-impact educational activities that are well received by even the most tech-savvy kids of any age group. Parents, guardians, educators, and law enforcement also have access to resources for learning and teaching about the dangers children may face online. The goal of NetSmartz is to extend the safety awareness of children to prevent victimization and empower them to make responsible decisions whenever they go online. NetSmartz Workshop content is available at no charge to the public at: www.netsmartz.org.

Visit the Attorney General's website often to remain informed about training and new opportunities. NetSmartz training is tentatively scheduled for October 2006.

LEGAL AUTHORITIES

CONSTITUTIONS

United States Constitution

The Constitution of the United States comprises the primary law of the U.S. Federal Government. It also describes the three chief branches of the Federal Government (executive, judicial and legislative) and their jurisdictions. In addition, it lays out the basic rights of citizens of the United States. GPO Access at <http://www.gpoaccess.gov/constitution/index.html>. The U.S. Constitution and its amendments can be accessed at this website. Additionally, the U.S. Constitution can be located on the website for the Secretary of State at www.sos.state.ms.us by clicking on "Education and Publications" and then "Mississippi Code Look-Up."

Mississippi Constitution

The Constitution of the State of Mississippi, established in 1890, describes the chief branches of Mississippi government (executive, judicial and legislative) and can be located on the website for the Secretary of State at www.sos.state.ms.us.

STATUTORY LAW

"Statutory law" is defined as the body of law derived from statutes rather than from constitutions or judicial decisions. *Black's Law Dictionary* 1181 (8th ed. 2005).

Federal Legislative Branch

The United States Constitution provides that all legislative powers of the federal government are vested in a Congress consisting of a Senate and House of Representatives. MISSISSIPPI SECRETARY OF STATE, *Mississippi Official and Statistical Register 2004-2008* (Published 2005). The United States Code is the codification by subject matter of the general and permanent laws of the United States. It is divided by broad subjects into 50 titles and published by the Office of the Law Revision Counsel of the U.S. House of Representatives. GPO Access at <http://www.gpoaccess.gov/uscode/index.html>. GPO Access contains the 2000 and 1994 editions of the U.S. Code, plus annual supplements. The U.S. Code can be researched at this website. The U.S. Code does not include regulations by the executive branch agencies, decisions of the Federal courts, treaties or laws enacted by State or local governments. Regulations issued by executive branch agencies are available in the Code of Federal Regulations. GPO Access at <http://www.gpoaccess.gov/cfr/index.html>. Proposed and recent adopted regulations may be found in the Federal Register. GPO Access at www.gpoaccess.gov/fr/index.html.

Mississippi Legislative Branch

The State Constitution places law-making authority in the Legislature and requires the Legislature to convene yearly on the Tuesday after the first Monday in January. MISSISSIPPI SECRETARY OF STATE, *Mississippi Official and Statistical Register 2004-2008* (Published 2005). Legislative bills can be researched at the website for the Mississippi Legislature at www.ls.state.ms.us by the section of the Mississippi Code being amended, the number of the house bill or senate bill and a word search. The Mississippi Code of 1972 Annotated, as amended, modified and revised from time to time, is the official code of the public laws of the State of Mississippi that are enacted by the Legislature. *Miss. Code Ann.* Section 1-1-8. The *Mississippi Code* is a collection of all laws, or statutes, passed by the legislature and signed by the governor that govern the State of Mississippi. It includes the *Mississippi Constitution* adopted in 1890 and the *Constitution of the United States*. The

Mississippi Code can be researched by code section or a word search on the website for the Secretary of State at www.sos.state.ms.us.

CASE LAW

The law to be found in the collection of reported cases that form all or part of the body of law within a jurisdiction is known as case law. *Black's Law Dictionary* 177-178 (8th ed. 2005).

Federal Court System

U.S. Supreme Court

The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. U.S. CONST. Art. III, Section 1. Opinions of the U.S. Supreme Court can be viewed at www.supremecourtus.gov/

U.S. Court of Appeals for the Fifth Circuit

A United States Court of Appeals is a federal appellate court having jurisdiction to hear cases in one of thirteen judicial circuits of the United States (the First Circuit through the Eleventh Circuit, plus the District of Columbia Circuit and the Federal Circuit). *Black's Law Dictionary* 1281 (8th ed. 2005). The U.S. Court of Appeals for the Fifth Circuit has appellate jurisdiction over cases decided by the United States Districts Court in Louisiana, Mississippi and Texas. Fifth Circuit decisions are controlling in Mississippi. Opinions of the Fifth Circuit can be researched at <http://www.ca5.uscourts.gov>.

Mississippi Northern District Court – Mississippi Southern District Court

The United States District Court in Mississippi is divided into the Northern and Southern Districts. A case may be filed in federal court that deals with a federal question involving the U.S. Government, U.S. Constitution or federal law or deals with diversity of the citizenship of the parties, such as citizens of different states or U.S. citizens and citizens of other countries. Opinions for the Northern District can be researched at <http://www.msnd.uscourts.gov>. The official website for the Southern District is <http://www.mssd.uscourts.gov>.

State Court System

Trial Courts

In Mississippi, the judicial branch of government has three components: the Supreme Court, the Court of Appeals and the Trial Courts. In Mississippi, the court system on the local level is comprised of the justice courts and municipal courts. Appeals from either of those courts go to the county court. If a county court does not exist in a particular county, appeals go to the next level of our court system, circuit and chancery courts. MISSISSIPPI SECRETARY OF STATE, *Mississippi Official and Statistical Register 2004-2008* (Published 2005). Circuit courts have jurisdiction over all civil and criminal matters not vested exclusively in another court. Chancery courts have jurisdiction over matters involving equity, divorce, alimony, probate and guardianship. Appeals from both courts go directly to the Mississippi Supreme Court where the Supreme Court decides if the case will be retained by the Supreme Court or referred to the Mississippi Court of Appeals. MISSISSIPPI SECRETARY OF STATE, *Mississippi Official and Statistical Register 2004-2008* (Published 2005).

Mississippi Supreme Court

The Supreme Court is the state's court of last resort. It is composed of nine elected justices, three from each of the state's three Supreme Court Districts. MISSISSIPPI SECRETARY OF STATE, *Mississippi Official and Statistical Register 2004-2008* (Published 2005). Opinions of the Supreme Court can be researched at <http://www.mssc.state.ms.us>.

Mississippi Court of Appeals

Mississippi's Court of Appeals is relatively new. In 1994, the Supreme Court and the state's legislature established the new appeals court, which allowed the Supreme Court to become more of a philosophical court. The procedural cases go to the Court of Appeals, while the Supreme Court addresses the cases of constitutional impact or broad public policies. MISSISSIPPI SECRETARY OF STATE, *Mississippi Official and Statistical Register 2004-2008* (Published 2005). Opinions of the Court of Appeals can be researched at <http://www.mssc.state.ms.us>.

REGULATORY LAW

A regulation is a rule or order having legal force usually issued by an administrative agency. *Black's Law Dictionary* 1064 (8th ed. 2005).

Federal – Code of Federal Regulations

The Code of Federal Regulations (CFR) is the codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the Federal Government relating to federal legislation, such as the No Child Left Behind Act and the Individuals with Disabilities Education Act of 2004. *GPO Access* at <http://www.gpoaccess.gov/cfr/index.html>. Title 34 of the CFR contains regulations relating to education. The CFR can be researched at this website.

State – Mississippi Board of Education Policy

Properly adopted rules and regulations of state agencies are accorded the force and effect of law. MS AG Op., Eskridge (September 5, 2003); MS AG Op., Ellis (October 17, 1997). The Mississippi Board of Education establishes and maintains a system-wide plan of performance, policy and directions of public education and adopts and maintains a curriculum and a course of study to be used in the public schools that is designed to prepare the state's children and youth to be productive, informed, creative citizens, workers and leaders. The Board also regulates all matters arising in the practical administration of the school system. *Miss. Code Ann.* Section 37-1-3. The Board regulates issues such as curriculum, teacher standards and certification, student testing, accountability and school accreditation. In 2005, the Board adopted four priorities: high student achievement, high quality professionals, healthy learning environment and effective use of resources.

Local School Board Policy

The school boards of all school districts have the power, authority and duty to prescribe and enforce rules and regulations not inconsistent with law or with the regulations of the State Board of Education for their own government and for the government of the schools, and to transact their business at regular and special meetings called and held in the manner provided by law. *Miss. Code Ann.* Section 37-7-301 (l).

Attorney General Opinions

Pursuant to Section 7-5-25 of the Mississippi Code, the Attorney General is authorized to issue official opinions to designated public officials upon written request only on questions of law relating to their respective offices. An Attorney General's opinion, which is prospective

in nature, can neither validate no invalidate past action of an officer or agency. If all facts are stated to render the opinion, the public official who follows the direction of the opinion will avoid civil or criminal liability unless a court of competent jurisdiction, after a full hearing, shall judicially declare that such opinion is manifestly wrong and without any substantial support. Opinions from the Attorney General can be researched at <http://www.ago.state.ms.us> by a word search, searching a code section or name of the person requesting the opinion with the date the opinion was issued. Attorney General opinions are cited as MS AG Op., name of person requesting the opinion, (date).

PERSONNEL

SCHOOL DISTRICT AUTHORITY

The legislature has placed personnel matters of the school district within the jurisdiction of the local school board and the school district superintendent.

Authority of the School Board

According to Section 37-7-301, the school boards of all school districts have the following specific authority and duties related to personnel:

(l) To prescribe and enforce rules and regulations not inconsistent with law or with the regulations of the State Board of Education for their own government and for the government of the schools, and to transact their business at regular and special meetings called and held in the manner provided by law.

* * *

(p) To select all school district personnel in the manner provided by law, and to provide for such employee fringe benefit programs, including accident reimbursement plans, as may be deemed necessary and appropriate by the board;

* * *

(w) To employ all non-instructional and non-certificated employees and fix the duties and compensation of such personnel deemed necessary pursuant to the recommendation of the superintendent of schools;

* * *

(z) To expend funds for the payment of substitute teachers and to adopt reasonable regulations for the employment and compensation of such substitute teachers;

* * *

The two-tier recommendation process for employment is found in Section 37-97-1 of the MS Code and specifically provides as follows:

On or before April 1 of each year, the principal shall recommend to the superintendent the licensed or non-instructional employees to be employed. If the approval meets with the superintendent, the superintendent recommends the licensed or non-instructional employees to the local school board and, unless good reason to the contrary exists, the board shall elect the employees so recommended. .

Authority of the Superintendent

Pursuant to Section 37-9-14 (2), the superintendent has the powers, authority and duties:

(a) To enter into contracts in the manner provided by law with each assistant superintendent, principal, teacher of the public schools under his supervision, after such assistant superintendent, principal and teachers have been selected and approved in the manner provided by law.

* * *

(l) To visit the schools of his school district in his discretion, and to require the assistant superintendents, principals and teachers thereof to perform their duties as prescribed by law.

* * *

(s) To make assignments to the various schools in the district of all noninstructional and nonlicensed employees and all licensed employees, as provided in Sections 37-9-15 and 37-9-17, and to make reassignments of such employees from time to time; however, a reassignment of a licensed employee may only be to an area in which the employee has a valid license issued by the State Department of Education. Upon request from any employee transferred, such assignment shall be subject to review by the school board.

(t) To employ substitutes for licensed employees, regardless of whether or not such substitute holds the proper license, subject to such reasonable rules and regulations as may be adopted by the State Board of Education.

* * *

(y) To employ and dismiss noninstructional and nonlicensed employees as provided by law.

CONTRACTS

Form of Contract

The superintendent shall enter into a contract with each assistant superintendent, principal, licensed employee and person anticipating graduation from an approved teacher education program or the issuance of a proper license before October 15 or February 15, as the case may be, who is elected and approved for employment by the school board. Such contracts shall be in such form as shall be prescribed by the State Board of Education. *Miss. Code Ann.* Section 37-9-23. If any superintendent, other than those elected, principal, licensed employee or person recommended for a licensed position who has been elected and approved shall not execute and return the contract within ten (10) days after same has been tendered to him for execution, then at the option of the school board, the election of the licensed employee and the contract tendered to him shall be void and of no effect. *Miss. Code Ann.* Section 37-9-23. The Board-approved contract form can be located on the website for the Mississippi Department of Education at <http://www.mde.k12.ms.us/public/GBA.htm>.

Contracts for licensed employees with non-instructional extra duties

All extra duties, i.e., coaching duties, together with all compensation may be included in the original contract for teaching duties at the discretion of the school board. MS AG Op., Bingham (December 16, 1985); MS AG Op., Hilburn (June 29, 1995). Similarly, at the discretion of the school board, coaching duties with compensation may be included in a contract separate from a contract for teaching duties. MS AG Op., Kopf (August 2, 2005).

SALARIES

Amount of Salaries to be in Compliance with Minimum Education Program Law - Currently the Mississippi Adequate Education Program (MAEP)

In employing and contracting with appointed superintendents, principals and certificated employees, the school board shall in all cases determine whether the amount of the salary to be paid such superintendent, principals and certificated employees is in compliance with the provisions of the adequate education program. School districts are not prohibited from increasing the salaries of appointed superintendents, principals and certificated employees above the amounts fixed by statute, provided that the amount of such increase is paid from funds available to such district other than adequate program funds. *Miss. Code Ann. Section 37-9-33.*

Factors Considered in Fixing Salaries of Superintendents, Principals or Licensed Employees

The amount of the salary to be paid any superintendent, principal or licensed employee shall be fixed by the school board, provided that the requirements of Chapter 19 of this title, Section 37-19-7 are met as to superintendents, principals and licensed employees paid in whole or in part from minimum education program funds (currently M.A.E.P.). In employing such superintendents, principals and licensed employees and in fixing their salaries, the school boards shall take into consideration the character, professional training, experience, executive ability and teaching capacity of the licensed employee, superintendent or principal *Miss. Code Ann. Section 37-9-37.*

Teacher's Salary

A teacher's salary is based upon years of experience and the type of license held by the teacher. Sections 37-9-33, 37-9-37 and 37-19-7 (which sets for the minimum scale of teachers' salaries) of the Mississippi Code address teachers' salaries.

Awarding of years of experience

Section 37-151-5 (m) defines year of teaching experience as nine (9) months of actual teaching in the public or private schools; however, no more than one (1) year of teaching experience shall be given for all services in one (1) calendar or school year. Section 37-151-5 (m) does not require that the nine (9) months of actually teaching take place during one full school year. Nor does this section prohibit teachers contracting in the middle of a school year from adding a partial year of teaching to another year of teaching to total nine (9) months of actual teaching to constitute a year of teaching experience. MS AG Op., Chaney (April 18, 2003). Teachers may add a partial year of teaching to another partial year of teaching in non-consecutive and different school years to total nine (9) months of actual teaching to meet the requirements for a year of teaching experience. Furthermore, Section 37-151-5 (m) does not prohibit teachers from combining partial years taught in different districts to meet the requirement for a year of teaching experience. If the school board determines that there has been at least nine (9) months of actual teaching, there appears to be no statutory authority to deny the year of teaching experience and the district would be required to award the year of teaching experience. MS AG Op., Shepherd (December 16, 2005).

Administrator's Salary

The Legislature has not established a salary scale for administrators. Does a school board have the authority to enter into a contract with a supervisor for equal or less money than the employees that he or she supervises? If a school board follows Section 37-9-33, 37-9-37 and 37-19-7 of the Mississippi Code, a school board may set the salary for any

superintendent, principal or licensed/certificated employee at the amount the board deems appropriate. MS AG Op., Mayfield (July 19, 2002).

CRIMINAL BACKGROUNDS CHECKS

Criminal Records Background Checks for employees

State law requires school districts to obtain criminal background checks for any new hires applying for employment as a licensed or nonlicensed employee at a school. Specifically, Section 37-9-17 provides, in pertinent part, as follows:

* * *

(2) Superintendents/directors of schools under the purview of the State Board of Education, the superintendent of the local school district and any private firm under contract with the local public school district to provide substitute teachers to teach during the absence of a regularly employed schoolteacher shall require, through the appropriate governmental authority, that current criminal records background checks and current child abuse registry checks are obtained, and that such criminal record information and registry checks are on file for any new hires applying for employment as a licensed or nonlicensed employee at a school and not previously employed in such school under the purview of the State Board of Education or at such local school district.

(3) If such fingerprinting or criminal record checks disclose a felony conviction, guilty plea or plea of nolo contendere to a felony of possession or sale of drugs, murder, manslaughter, armed robbery, rape, sexual battery, sex offense listed in Section 45-33-23 (g), child abuse, arson, grand larceny, burglary, gratification of lust or aggravated assault which has not been reversed on appeal or for which a pardon has not been granted, the new hire shall not be eligible to be employed at such school. Any employment contract for a new hire executed by the superintendent of the local school district or any employment of a new hire by a superintendent/director of a new school under the purview of the State Board of Education or by a private firm shall be voidable if the new hire receives a disqualifying criminal record check. However, the State Board of Education or the school board may, in its discretion, allow any applicant aggrieved by the employment decision under this section to appear before the respective board, or before a hearing officer designated for such purpose, to show mitigating circumstances which may exist and allow the new hire to be employed at the school. The State Board of Education or local school board may grant waivers for such mitigating circumstances, which shall include, but not be limited to: (a) age at which the crime was committed; (b) circumstances surrounding the crime; (c) length of time since the conviction and criminal history since the conviction; (d) work history; (e) current employment and character references; (f) other evidence demonstrating the ability of the person to perform the employment responsibilities competently and that the person does not pose a threat to the health or safety of the children at the school.

No local school district, local school district employee, member of the State Board of Education or employee of a school under the purview of the State Board of Education shall be held liable in any employment discrimination suit in which an allegation of discrimination is made regarding an employment decision authorized under Section 37-9-17.

Criminal Background Checks for Non-employees Working on Campus

Does a school district have sufficient discretionary authority to require fingerprint and background checks of a person employed and paid by another entity but working with students on campus? What action can a school district take against a non-employee, working with students on campus, who has a felony conviction in another state for possession of an illegal weapon, an action that is not proscribed by Section 37-9-27?

Non-employees of districts are not mentioned in Section 37-9-17. Section 37-7-301 (1) of the Mississippi Code grants school boards of all school districts the authority to “prescribe and enforce rules and regulations not inconsistent with law or with the regulations of the State Board of Education for their own government and for the government of the schools” Accordingly, a school board could adopt a policy that addresses non-employees, as long as the policy is consistent with all laws and State Board of Education regulations. Further, a school district may, in the exercise of its authority to provide a safe and secure environment for its students, prohibit or otherwise restrict a convicted felon from working with students on campus. MS AG Op., Tutor (March 20, 2001).

RELEASE FROM CONTRACT AND ABANDONMENT OF EMPLOYMENT

In order to be released from a contract, an appointed superintendent, principal or licensed employee shall make a request in writing to the school board, stating clearly the reasons for the request. If the board releases the individual, then the contract is null and void on the date stated in the board order. Miss. Code Ann. Section 37-9-55. If the individual arbitrarily or willfully breaches the contract without being released, the contract is null and void. Additionally, upon the recommendation of the majority of the members of the school board, the school board may request the State Board of Education to suspend the individual’s license for one (1) school year. *Miss. Code Ann.* Section 37-9-57. The provisions of Sections 37-9-55 and 37-9-57 of the Mississippi Code are specifically provided as follows:

Release from contract

Any appointed superintendent, principal or licensed employee in any public school who is under contract to teach or perform other duties and who desires to be released from such contract shall make application in writing to the school board of the school district for release therefrom, in which application the reasons for such release shall be clearly stated. If the board acts favorably upon such application for release, such superintendent, principal or licensed employee shall be released from his contract, and said contract shall be null and void on the date specified in the school board’s order. *Miss. Code Ann.* Section 37-9-55.

Effect of Abandonment of Employment

If any appointed superintendent, principal or licensed employee in any public school of this state shall arbitrarily or willfully breach his or her contract without being released therefrom as provided in Section 37-9-55, the contract of such superintendent, principal or licensed employee shall be null and void. In addition thereto the license of such superintendent, principal or licensed employee may be suspended by the State Board of Education for a period of one (1) school year as provided in Section 37-3-2 (8) upon written recommendation of the majority of the members of the school board of the school district involved. *Miss. Code Ann.* Section 37-9-57.

EDUCATION EMPLOYMENT PROCEDURES LAW OF 2001

(Sections 37-9-101 through 37-9-113 of the Mississippi Code)

Purpose of the Education Employment Procedures Law

The Legislature established the Education Employment Procedures Law of 2001 to provide accountability in the teaching profession; a mechanism for the nonrenewal of licensed education employees in a timely, cost-efficient and fair manner; to provide public school employees with notice of the reasons for not offering an employee a renewal of his contract; to provide an opportunity for the employee to present matters in extenuation or exculpation; to provide the employee with an opportunity for a hearing to enable the board to determine whether the recommendation of nonemployment is a proper employment decision and not contrary to law and to require nonrenewal decisions to be based upon valid educational

reasons or noncompliance with school district personnel policies. It is the intent of the Legislature not to establish a system of tenure. *Miss. Code Ann.* Section 37-9-101.

Employees covered under the Education Employment Procedures Law –

(Section 37-9-103 of the Mississippi)

“Employee” is defined as follows:

(a) Any teacher, principal, superintendent or other professional personnel employed by the local school district for a continuous period of two (2) years with that district and required to have a valid license issued by the State Department of Education as a prerequisite of employment; or

(b) Any teacher, principal superintendent or other professional personnel who has completed a continuous period of two (2) years of employment in a Mississippi public school district and one (1) full year of employment with the school district of current employment, and who is required to have a valid license by the State Department of Education as a prerequisite of employment.

For purposes of Sections 37-9-101 through 37-9-113, the term “days” means calendar days.

Written notice of determination not to offer superintendent a renewal contract

(Section 37-9-104 of the Mississippi Code)

If the board of trustees makes a preliminary determination not to offer the school district superintendent a renewal contract for a successive year, written notice of the preliminary nonreemployment determination must be given to the superintendent before February 1.

Written notice of decision not to offer employee renewal contract; deadline for notification

(Section 37-9-105 of the Mississippi Code)

In the event that a recommendation is made by the school district not to offer an employee a renewal contract for a successive year, written notice of the proposed nonreemployment stating the reasons for the proposed nonreemployment shall be given no later than the following:

- (a) If the employee is a principal, the superintendent, without further board action, shall give notice of nonreemployment on or before March 1; or
- (b) If the employee is a teacher, administrator or other professional educator covered under Sections 37-9-101 through 37-9-113, the superintendent, without further board action, shall give notice of nonreemployment on or before April 15, or within ten (10) days after the date that the Governor approves the appropriation bill(s) comprising the state’s education budget for funding K-12, whichever date is later.

Rights of employee receiving notice of nonrenewal generally; request for hearing; finality of decision

(Section 37-9-109 of the Mississippi Code)

An employee who has received notice under Section 37-9-105, upon written request from the employee received by the district within ten (10) days of receipt of the notice by the employee, shall be entitled to:

- (a) Written notice of the specific reasons for nonreemployment, together with a summary of the factual basis therefor, a list of witnesses and a copy of documentary evidence substantiating the reasons intended to be presented at the hearing, which notice shall be given at least fourteen (14) days prior to any hearing; if the district fails to provide this information to the employee, then the recommendation for nonreemployment shall be null and void, and the board shall order the execution of a contract with the employee for an additional period of one (1) year;
- (b) An opportunity for a hearing at which to present matters relevant to the reasons given for the proposed nonreemployment, including any reasons alleged by the employee to be reason for nonreemployment;
- (c) Receive a fair and impartial hearing before the board or hearing officer;
- (d) Be represented by legal counsel, at his own expense.

Any employee requesting a hearing shall provide the district, not less than five (5) days before the scheduled date for the hearing, a response to the specific reasons for nonreemployment, a list of witnesses and a copy of documentary evidence in support of the response intended to be presented at the hearing. If the employee fails to provide this information, then the recommendation of nonreemployment shall be final without the necessity of a hearing.

If the employee does not request a hearing, the recommendation regarding the nonreemployment of the employee shall be final.

Hearing

(Section 37-9-111 of the Mississippi Code)

- 1) The school board, or its designee, upon request for a hearing from an employee under the terms of Sections 37-9-101 through 37-9-113, shall set the time, place and date of such hearing and notify the employee in writing of same. The date shall be set not sooner than five (5) days nor later than thirty (30) days from the date of the request, unless otherwise agreed. The hearing may be held before the board or before a hearing officer appointed for such purpose by the board, either from among its own membership, from the staff of the school district or some other qualified and impartial person, but in no event shall the hearing officer be the staff member responsible for the initial recommendation of nonreemployment. No hearing officer may have an interest in the outcome of a hearing, nor may a hearing officer be related to a board member, any administrator making the recommendations of nonreemployment or the employee. Once a hearing officer is appointed, no ex parte communications may be made regarding any substantive provisions of the hearing.
- 2) The hearing must be held in executive session unless the employee elects to have a public hearing. If an employee makes the election, however, the board or the hearing officer, as the case may be, may order any part of the hearing to be held in executive session, if, in the opinion of the board or the hearing officer, the testimony to be elicited deals with matters involving the reputation or character of another person. Notwithstanding the election by an employee for a public hearing, any testimony by minor witnesses must be held in executive session and considered confidential personnel records and confidential student records, subject to an expectation of reasonable privacy and confidentiality. Public disclosure of these records may be by court order only.

- 3) The district shall present evidence, either in written or oral form, at the hearing in support of its recommendation for nonreemployment. The employee shall be afforded an opportunity to present matters at the hearing relevant to the reasons given for the proposed nonreemployment determination and to the reasons the employee alleges to be the reasons for nonreemployment and to be represented by counsel at such a hearing. Such hearing shall be conducted in such a manner as to afford the parties fair and reasonable opportunity to present witnesses and other evidence pertinent to the issues and to cross-examine witnesses presented at the hearing. The board or the hearing officer may require any portion of the evidence to be submitted in the form of depositions or affidavits, and in case affidavits are received, an opportunity to present counter-affidavits shall be provided.
- 4) The board shall cause to be made stenographic notes of the proceedings. In the event of a judicial appeal of the board's decision, the entire expense of the transcript and notes shall be assessed as court costs.
- 5) The board shall review the matters presented before it, or, if the hearing is conducted by a hearing officer, the report of the hearing officer, if any, the record of the proceedings and, based solely thereon, conclude whether the proposed nonreemployment is a proper employment decision, is based upon a valid educational reason or noncompliance with school district personnel policies and is based solely upon the evidence presented at the hearing, and shall notify the employee in writing of its final decision and reasons therefor. Such notification shall be within thirty (30) days of the conclusion of the hearing if the hearing is conducted by a hearing officer and within ten (10) days of the conclusion of the hearing if the hearing is initially conducted by the board. If the matter is heard before a hearing officer, the board shall also grant the employee the opportunity to appear before the board to present a statement in his own behalf, either in person or by his attorney, prior to a final decision by the board.
- 6) In conducting a hearing, the board or hearing officer shall not be bound by common law or by statutory rules of evidence or by technical or formal rules of procedure except as provided in Sections 37-9-101 through 37-9-113, but may conduct such hearing in such manner as best to ascertain the rights of the parties; however, hearsay evidence, if admitted, shall not be the sole basis for the determination of facts by the board or hearing officer.
- 7) In the event the decision of the school board is in favor of the employee, the board shall have the authority to order the execution of a contract with the employee for an additional period of one (1) year.
- 8) For purpose of conducting hearings under Sections 37-9-101 through 37-9-113, the board or hearing officer shall have the authority to issue subpoenas for witnesses and to compel their attendance and the giving of evidence. Any expense connected therewith shall be borne by the party requesting the subpoenas, which shall include an appearance fee for each witness so subpoenaed not inconsistent with state laws governing payments to witnesses. In the event it is necessary to enforce or to quash a subpoena issued to compel the attendance of a witness, application shall be made with the chancery court of the county where the school board is located.

Judicial review

(Section 37-9-113 of the Mississippi Code)

- (1) Any employee aggrieved by a final decision of the school board is entitled to judicial review thereof, as hereinafter provided.
- (2) An appeal may be taken by such employee to the chancery court of the judicial district in which the school district is located, by filling a petition with the clerk of that court and executing and filing bond payable to the school board with sufficient sureties, in the

penalty of not less than two hundred dollars (\$200.00), conditioned upon the payment of all of the costs of appeal, within twenty (20) days of the receipt of the final decision of the board.

- (3) The scope of review of the chancery court in such cases shall be limited to a review of the record made before the school board or hearing officer to determine if the action of the school board is unlawful for the reason that it was:
 - a. Not supported by any substantial evidence;
 - b. Arbitrary or capricious; or
 - c. In violation of some statutory or constitutional right of the employee.
- (4) No relief shall be granted based upon a court's findings of harmless error by the board in complying with the procedural requirements of Sections 37-9-101 through 37-9-113. However, in the event that there is a finding of prejudicial error in the proceedings, the cause shall be remanded for a rehearing consistent with the findings of the court.
- (5) Any party aggrieved by action of the chancery court may appeal to the Supreme Court in the manner provided by law.

Decision of the Hearing Officer

Section 37-9-111(5) does not require the hearing officer to reach a conclusion as to whether nonreemployment is the proper employment decision. *Gordon v. Lafayette County School District*, No. 2004-CC-02391, Court of Appeals of the State of Mississippi, 923 So.2d 260, 262 (Miss. App. 2005). In this case, the Hearing Officer explicitly stated that the report was "not offered as an opinion as to whether the decision to non-renew the teacher was a proper employment decision," but offered as a summary of the testimony. *Id.*

Burden of Proof

Once the Superintendent has given a demonstrable reason for nonreemployment [sic] (before the hearing), the burden at the hearing is upon the employee to prove affirmatively and conclusively that the reasons relied upon by the School Board have no basis in fact. *Gordon*, 923 So.2d at 263 (quoting *Buck v. Lowndes County Sch. Dist.*, 761 So.2d 144, 147 (Miss. 2000)).

Demotion Requires Notice of Non-Renewal

A school board may decide to move teachers into comparable positions in the year-end review of what school needs may be, without such moves being considered non-renewals. Those reassignments may at times result in different titles. There may be slight differentials for reasons such as requiring more before or after school-year work. Whether the reassignment of an employee is a contract renewal or a demotion requiring notice of non-renewal must be determined by reviewing the following factors: whether the new position has less pay, less responsibility, requires less skill or otherwise is a diminishing of position. *Board of Education for the Holmes County Schools v. Fisher*, 874 So.2d 1019 (Miss. App. 2004).

A reassignment of an employee from a position for which she does not meet licensure requirements established by the Commission to a position for which she does meet licensure requirements would not be a demotion requiring non-renewal notice. MS AG Op., Kuykendall (July 6, 2004).

TERMINATION

Termination of a Licensed Employee

Section 37-9-59 of the Mississippi Code provides, in part, as follows:

For incompetence, neglect of duty, immoral conduct, intemperance, brutal treatment of a pupil or other good cause the superintendent of schools may dismiss or suspend any licensed employee in any school district. Before being so dismissed or suspended any licensed employee shall be notified of the charges against him and he shall be advised that he is entitled to a public hearing upon said charges. In the event the continued presence of said employee on school premises poses a potential threat or danger to the health, safety or general welfare of the students, or, in the discretion of the superintendent, may interfere with or cause a disruption of normal school operations, the superintendent may immediately release said employee of all duties pending a hearing if one is requested by the employee. In the event a licensed employee is arrested, indicted or otherwise charged with a felony by a recognized law enforcement official, the continued presence of the licensed employee on school premises shall be deemed to constitute a disruption of normal school operations. The school board, upon a request for a hearing by the person so suspended or removed shall set a date, time and place for such hearing which shall be not sooner than five (5) days nor later than thirty (30) days from the date of the request. The procedure for such hearing shall be as prescribed for hearings before the board or hearing officer in Section 37-9-111. From the decision made at said hearing, any licensed employee shall be allowed an appeal to the chancery court in the same manner as appeals are authorized in Section 37-9-113. Any party aggrieved by action of the chancery court may appeal to the Mississippi Supreme Court as provided by law. In the event the licensed employee is immediately relieved of duties pending a hearing, as provided in this section, said employee shall be entitled to compensation for a period up to and including the date that the initial hearing is set by the school board, in the event that there is a request for such a hearing by the employee. In the event that an employee does not request a hearing within five (5) calendar days of the date of the notice of discharge or suspension, it shall constitute a waiver of all rights by said employee and such discharge or suspension shall be effective on the date set out in the notice to the employee.

Public Hearing

Unlike the Education Employment Procedures Law of 2001 hearing, the hearing pursuant to Section 37-9-59 is to be public. However, the school board or hearing officer has discretion to order any part of the hearing to be in executive session pursuant to Section 37-9-111 (2). MS AG Op., Storey (May 17, 2002).

Burden of Proof and Reason for Discharge

In the public hearing required pursuant to Section 37-9-59, the superintendent has the burden of proving by a preponderance of the evidence that there are adequate grounds for dismissal. *Amite County School District v. Floyd*, ___ So.2d ___, 2005 WL 3046728 (Miss. App.), quoting *Harris v. Canton Separate Pub. Sch. Bd. of Educ.*, 655 So.2d 898, 902 (Miss. 1995). It is settled law that where the record supports one valid reason to discharge a licensed school district employee, the board's decision will not be disturbed. *Amite County School District v. Floyd*, ___ So.2d ___, 2005 WL 3046728 (Miss. App.), quoting *Spradlin v. Bd. of Trustees*, 515 So.2d 898, 899 (Miss. 1987).

Termination of an Appointed Superintendent

Section 37-9-59 of the Mississippi Code sets forth a procedure for the dismissal or suspension of "licensed employees" and provides that "for incompetence, neglect of duty, immoral conduct, intemperance, brutal treatment of a pupil or other good cause the superintendent of schools may dismiss or suspend any licensed employee in any school

district.” Considering Section 37-9-59 of the Mississippi Code and taking into consideration the totality of the circumstances, including the general right of an employer to remove an employee for good cause, the Attorney General has held that it was the manifest purpose of the Legislature that the school district board of trustees have the right and power, as well as the duty, to proceed with removal of an employee who may have been found to have been guilty of one or more of the derelictions enumerated in Section 37-9-59, although such employee may have been employed and be classified as a school district superintendent. MS AG Op., Sanders (November 4, 2005).

Termination of a Non-Licensed Employee – Employment At-Will Doctrine

Some school districts enter into “At Will” Contracts with non-licensed employees. In 2005, the Mississippi Court of Appeals decided two cases regarding school district at-will employees. Summaries of these cases are provided below.

In *Griffin v. Kemper County School District*, 909 So.2d 1139 (Miss. App. 2005), a school food service director brought a wrongful termination action against a school district. The employee agreed that Section 37-9-59 did not apply to his dismissal, as he does not fit the definition of a “licensed employee.” The other avenue for one employed in the education field to pursue a wrongful termination action is the employment-at-will doctrine. Under this doctrine, employment may be terminated without cause with two narrowly tailored exceptions. The first exception to this doctrine, known as the illegal act exception, states that an employee may recover civilly for wrongful termination when he/she refuses to participate in an illegal act or reports an illegal act, and this forms the basis for the employee’s termination. The second exception to the employment-at-will doctrine recognized by the Mississippi Supreme Court is the employee handbook exception. This exception states that when an employer publishes a manual setting forth the procedures which will be followed in the event of an employee’s infraction of the rules, and there is nothing in the employment contract to the contrary, the employer will be required to follow its own manual in disciplining or discharging employees for infractions or misconduct specifically covered by the manual. The Court of Appeals stated that the Kemper County School District Manual did not guarantee hearing rights to at-will employees and held the district to its word that such rights would not be granted.

In *Davis v. Biloxi Public School District*, ___ So.2d ___, 2005 WL 3111996 (Miss App.), Davis, a teacher’s aide, was terminated. Davis received a hearing before the school board, where the board upheld the termination. The employee claims the hearing was unfair because it was closed to the public, lasted for only fifteen minutes and his termination was not upheld by a unanimous vote. As a teacher’s aide, Davis is a non-certified employee and not required to have a license issued by the State Department of Education as a prerequisite of employment. The Court of Appeals found the holding in *Harrison County School Bd. v. Morreale*, 538 So.2d 1196 (Miss. 1989) to be dispositive of the *Davis* case. The Mississippi Supreme Court found that Morreale’s employment did not fall within the protections of the Mississippi Education Employment Procedures Law because she was a teacher’s aide and not required by law to have a teacher’s certificate as a prerequisite to her employment. The court concluded that Morreale was not entitled to a hearing because she had no valid claim of entitlement to continued employment as a teacher’s aide, and her termination deprived her of no property interest that would invoke the due process provisions of the United States Constitution. The Court of Appeals found the holding of *Morreale* to be instructive to the disposition of the present case. Davis was not a licensed teacher, he had no contract for his employment, and he enjoyed no statutory protections. He was an at-will employee, and the school district had the discretion to terminate him for any reason.

LEAVE

According to Section 37-7-307 (6) of the Mississippi Code, the school board may adopt rules and regulations which will reasonably aid to implement the policy of sick and personal leave, including, but not limited to, rules and regulations having the following general effect:

- (a) Requiring the absent employee to furnish the certificate of a physician or dentist or other medical practitioner as to the illness of the absent licensed employee, where the absences is for four (4) or more consecutive school days, or for two (2) consecutive school days immediately preceding or following a nonschool day;
- (b) Providing penalties, by way of full deduction from salary, or entry on the work record of the employee, or other appropriate penalties, for any materially false statement by the employee as to the cause of absence;
- (c) Forfeiture of accumulated or future sick leave, if the absence of the employee is caused by optional dental or medical treatment or surgery which could, without medical risk, have been provided, furnished or performed at a time when school was not in session;
- (d) Enlarging, increasing or providing greater sick or personal leave allowances than the minimum standards established by this section in the discretion of the school board of each school district.

Section 37-7-307 (8) provides that the school board may further adopt rules and regulations which will reasonably implement such leave policies for all other nonlicensed and hourly paid school employees as the board deems appropriate.

Personal/Vacation Leave

Section 37-7-307 (3) establishes requirements regarding personal leave as follows:

Beginning with the school year 1983-1984, each licensed employee at the beginning of each school year shall be credited with a minimum personal leave allowance, with pay, of two (2) days for absences caused by personal reasons during that school year. Such personal leave shall not be taken on the first day of the school term, the last day of the school term, on a day previous to a holiday or a day after a holiday, unless on such days an immediate family member of the employee is being deployed for military service. Personal leave may be used for professional purposes, including absences caused by attendance of such licensed employee at a seminar, class, training program, professional association or other functions designed for educators. No deduction from the pay of such licensed employee may be made because of absence of such licensed employee caused by personal reasons until after all personal leave allowance credited to such licensed employee has been used. However, the superintendent of a school district, in his discretion, may allow a licensed employee personal leave in addition to any minimum personal leave allowance, under the condition that there shall be deducted from the salary of such licensed employee the actual amount of any compensation paid to any person as a substitute, necessitated because of the absence of the licensed employee. Any unused portion of the total personal leave allowance up to five (5) days shall be carried over to the next school year and credited to such licensed employee if the licensed employee remains employed in the same school district.

A school board policy that grants a "bonus" day of personal leave for perfect attendance for both licensed and non-licensed employees is permissible under Section 37-7-307 and does not violate Section 96 of the Mississippi Constitution of 1890 as long as the extra leave does not cause the total amount of leave granted to the employees to exceed the limitations of Section 37-7-307 (9). MS AG Op. Jacks (December 27, 2005).

Sick Leave

Section 37-7-307 (2) requires the school board policy of a school district to include the following minimum provisions for sick and emergency leave with pay:

- (a) Each licensed employee and teacher assistant, at the beginning of each school year, shall be credited with a minimum sick leave allowance, with pay, of seven (7) days for absences caused by illness or physical disability of the employee during the school year.
- (b) Any unused portion of the total sick leave allowance shall be carried over to the next school year and credited to such licensed employee and teacher assistant if the licensed employee or teacher assistant remains employed in the same school district. In the event any public school licensed employee or teacher assistant transfers from one public school district in Mississippi to another, any unused portion of the total sick leave allowance credited to such licensed employee or teacher assistant shall be credited to such licensed employee or teacher assistant in the computation of unused leave for retirement purposes under Section 25-11-109. Accumulation of sick leave allowed under this section shall be unlimited.
- (c) No deduction from the pay of such licensed employee or teacher assistant may be made because of the absence of such licensed employee or teacher assistant caused by illness or physical disability of the licensed employee or teacher assistant until after all sick leave allowance credited to such licensed employee or teacher assistant has been used.
- (d) For the first ten (10) days of absence of a licensed employee because of illness or physical disability, in any school year, in excess of the sick leave allowance credited to such licensed employee, there may be deducted from the pay of such licensed employee the established substitute amount of licensed employee compensation paid in that local school district, necessitated because of the absence of the licensed employee as a result of illness or physical disability. Thereafter, the regular pay of such absent licensed employee may be suspended and withheld in its entirety for any period of absence because of illness or physical disability during that school year.

Conversion of Vacation/Personal Leave to Sick Leave

Unused vacation or personal leave accumulated by licensed employees in excess of the maximum five (5) days which may be carried over from one (1) year to the next may be converted to sick leave. The annual conversion of unused vacation or personal leave to sick days for licensed or unlicensed employees shall not exceed the allowable number of personal days as provided for state employees in Section 25-3-93. The annual total number of converted unused vacation and/or personal days added to the annual unused sick days for any employee shall not exceed the combined allowable number of days per year provided in Sections 25-3-93 (personal leave for state employees) and 25-3-95 (major medical leave for state employees). *Miss. Code Ann.* Section 37-7-307 (9).

Pursuant to the 2005 amendment to Section 37-7-307 (9), the local school board policies that provide for vacation, personal and sick leave for employees shall not exceed the provisions for leave as provided in Section 25-3-93 (personal leave for state employees) and 25-3-95 (major medical leave for state employees). The statute does not require that the school districts comply with the break down of personal leave and major medical leave for state employees as provided in Sections 25-3-93 and 25-3-95 but does restrict the accrual of vacation/personal leave and sick leave for school employees from exceeding the combination of personal leave and sick leave provided for state employees. It is clear the legislature intended the accrual of leave for school employees to be limited to the combination of leave as set out in Sections 25-3-93 and 25-3-95. MS AG Op., Chaney (August 12, 2005).

Donated Leave

Any school district employee may donate a portion of his or her unused accumulated personal leave or sick leave to another employee of the same or another school district who is suffering from a catastrophic injury or illness or who has a member of his or her immediate family suffering from a catastrophic injury or illness. *Miss. Code Ann.* 37-7-307 (10)(b). Section 37-7-307 (10)(b) establishes the procedures required for donating leave. Section 37-7-307 (10)(a)(i) defines “catastrophic injury or illness” as follows:

A life-threatening injury or illness of an employee or a member of an employee’s immediate family that totally incapacitates the employee from work, as verified by a licensed physician, and forces the employee to exhaust all leave time earned by that employee, resulting in the loss of compensation from the local school district for the employee. Conditions that are short-term in nature, including, but not limited to, common illnesses such as influenza and the measles, and common injuries, are not catastrophic. Chronic illnesses or injuries, such as cancer or major surgery, that result in intermittent absences from work and that are long-term in nature and require long recuperation periods may be considered catastrophic.

The trustees of a school district must make a “determination on a case-by-case basis as to whether a particular employee who is pregnant has a condition which meets the definition of ‘catastrophic injury or illness.’” MS AG Op., Rath (October 29, 1999). The board of trustees of a local school district must make a determination on a case-by-case basis as to whether an employee’s particular illness is a condition which meets the statutory definition of “catastrophic injury or illness.” Whether a pregnancy is a “catastrophic injury or illness” is a matter for local determination. MS AG Op., Cox (July 22, 2005).

CONFLICT OF INTEREST AND NEPOTISM

Any discussion of ethics in Mississippi public education begins and ends with Article 4, Section 109 of the Constitution of 1890 and Mississippi’s Ethics in Government Act (*Miss. Code Ann.* Section 25-4-1, *et seq.*). Most ethical issues involve a conflict of interest, or the appearance thereof, thus requiring inquiry into *Miss. Code Ann.* Section 25-4-105 and our state’s anti-nepotism laws (*Miss. Code Ann.* Sections 25-1-53 and 37-9-21). Arthur Johnston, Ethics in Mississippi Public Education, Address on behalf of SERVE (November 21, 2002).

Conflict of Interest Laws

Section 109 of the Mississippi Constitution provides as follows:

No public officer or member of the legislature shall be interested, directly or indirectly, in any contract with the state, or any district, county, city or town thereof, authorized by any law passed or order made by any board of which he may be or may have been a member, during the term for which he shall have been chosen, or within one year after the expiration of such term.

Section 25-4-105 of the Mississippi Code of 1972 provides in part, as follows:

- (1) No public servant shall use his official position to obtain pecuniary benefit for himself other than that compensation provided for by law, or to obtain pecuniary benefit for any relative or any business with which he is associated.
- (2) No public servant shall be interested, directly or indirectly, during the term for which he shall have been chosen, or within one (1) year after the expiration of such term, in any contract with the state, or any district, county, city or town thereof, authorized by any law passed or order made by any board of which he may be or may have been a member.

Any questions related to conflicts of interest should be directed to the Mississippi Ethics Commission at (601) 359-1285. An Ethics Commission Opinion issued in September 2005 that speaks to relatives of school officials being hired by a school district can be located at the following link:

[http://www.ethics.state.ms.us/ethics/ethics.nsf/OpinionsByDocId/88DC2D784D904F3D8625707B005A4FB1/\\$file/05087.pdf](http://www.ethics.state.ms.us/ethics/ethics.nsf/OpinionsByDocId/88DC2D784D904F3D8625707B005A4FB1/$file/05087.pdf)

Nepotism Statutes

The legislature has adopted a general nepotism statute and a nepotism statute specific to public schools.

General Nepotism Statute

Section 25-1-53 of the Mississippi Code, the general nepotism statute, provides as follows:

It shall be unlawful for any person elected, appointed or selected in any manner whatsoever to any state, county, district or municipal office, or for any board of trustees of any state institution, to appoint or employ, as an officer, clerk, stenographer, deputy or assistant who is to be paid out of the public funds, any person related by blood or marriage within the third degree, computed by the rule of the civil law, to the person or any member of the board of trustees having the authority to make such appointment or contract such employment as employer. This section shall not apply to any employee who shall have been in said department or institution prior to the time his or her kinsman, within the third degree, became the head of said department or institution or member of said board of trustees; and this section shall not apply to any person seeking appointment as an election worker who has served as an election worker in the election immediately preceding the commencement of a term of office as an election commissioner by his kinsman within the third degree. The provision herein contained shall not apply in the instance of the employment of physicians, nurses or medical technicians by governing boards of charity hospitals or other public hospitals.

Public School Nepotism Statute

Section 37-9-21 of the Mississippi Code addresses nepotism in the hiring of superintendents, principals or licensed employees and provides as follows:

It shall be illegal for any superintendent, principal or other licensed employee to be elected by the school board if such superintendent, principal or licensed employee is related within the third degree by blood or marriage according to the common law to a majority of the members of the school board. No member of the school board shall vote for any person as a superintendent, superintendent, principal or licensed employee who is related to him within the third degree by blood or marriage or who is dependent upon him in a financial way. Any contract entered into in violation of the provisions of this section shall be null and void.

LICENSURE

Commission on Teacher Administrator Education, Certification and Licensure

The Commission on Teacher and Administrator Education, Certification and Licensure and Development ("Licensure Commission") was created under the Mississippi Education Reform Act of 1982, and is charged with the responsibility of making recommendations to the State Board of Education regarding standards for the preparation, licensure and

continuing professional development of those who teach or perform tasks of an educational nature in the public schools of the State of Mississippi. *Miss. Code Ann.* Section 37-3-2 (5).

In compliance with Section 37-3-2 of the Mississippi Code, the Licensure Commission and the State Board of Education have approved guidelines for licensure. These guidelines are policies that are adopted by the Certification Commission and recommended for approval to the State Board of Education. Mississippi licensure guidelines describe the steps an educator needs to take to be licensed for traditional, alternate route, administrator or special licenses. Grounds for denial, suspension and revocation of a license can be located on page 3 of the licensure guidelines at http://www.mde.k12.ms.us/ed_licensure/licensure_guidelines.htm. Refer to the home page of the *Office of Educator Licensure* for more information regarding the Licensure Commission and Educator Licensure at http://www.mde.k12.ms.us/ed_licensure/index.html.

ACCREDITATION

Commission on School Accreditation

The State Board of Education, acting through the Commission on School Accreditation ("Accreditation Commission"), establishes and implements a permanent performance-based accreditation system, and all public elementary and secondary schools are accredited under this system. It is the purpose of the Accreditation Commission to continually review and enforce the standards on accreditation and to make recommendations to the State Board of Education. The Accountability Standards require planning periods for teachers (Process Standard 30), the limitation of course preparations (Process Standard 31) and student/teacher ratios (Process Standard 34). These Accountability Standards can be located on the web page for the Office of Accreditation at <http://www.mde.k12.ms.us/accred/accred.html>.

ADMINISTRATION OF MEDICATIONS

In 2003, the Mississippi Legislature enacted the following statute to provide for the self-administration of asthma medication at school:

Self-administration of asthma medication at school by public and nonpublic students.

(Section 41-79-31 of the Mississippi Code.)

- (1) The school board of each local public school district and the governing body of each private and parochial school or school district shall permit the self-administration of medications by a student if the student's parent or guardian:
 - a. Provides written authorization for self-administration to the school; and
 - b. Provides a written statement from the student's health care practitioner that the student has asthma and has been instructed in self-administration of asthma medications. The statement shall also contain the following information:
 - i. The name and purpose of the medications;
 - ii. The prescribed dosage;
 - iii. The time or times the medications are to be regularly administered and under what additional special circumstances the medications are to be administered; and
 - iv. The length of time for which the medications are prescribed.
- (2) The statements required in subsection (1) of this section shall be kept on file in the office of the school nurse or school administrator.

- (3) The school district or the governing body of each private and parochial school or school district shall inform the parent or guardian of the student that the school and its employees and agents shall incur no liability as a result of any injury sustained by the student from the self-administration of asthma medications. The parent or guardian of the student shall sign a statement acknowledging that the school shall incur no liability and the parent or guardian shall indemnify and hold harmless the school and its employees against any claims relating to the self-administration of asthma medications.
- (4) The permission for self-administration of medications shall be effective for the school year in which it is granted and shall be renewed each following school year upon fulfilling the requirements of subsections (1) through (3) of this section.
- (5) Upon fulfilling the requirements of this section, a student with asthma may possess and use asthma medications when at school, at a school-sponsored activity, under the supervision of school personnel or before and after normal school activities while on school properties including school-sponsored child care or after-school programs.

In December 2003, the Mississippi Board of Nursing approved the Assisted Self-Administration Curriculum to address the increase in the number of students with complex health issues enrolled in school. According to the Board of Nursing policy, the goal in administering medicines to students at school is to promote optimal wellness in order to enhance their ability to learn. Additionally, not taking prescribed medicine at the right time; taking the wrong dose of medicine or having a reaction to medicine are all things that can lead to difficulty for a student to learn. The Board of Nursing policy provides that if the school superintendent or principal designates school personnel to assist students in the self administration of medications in the school nurse's absence, the school nurse assigned to each school is required to teach those unlicensed school personnel regarding school-specific policies, guidelines, and expectations. These areas will include record keeping, storage of medications, communication, student identification, over-the-counter medications, controlled substances, student administration of medications, dealing with off-campus trips and emergency procedures. This Board of Nursing policy can be located on the web page of the Office of Healthy Schools at <http://www.mde.k12.ms.us/Healthyschools/index.html>.

ATTENDANCE AND ADMISSION

Attendance laws require parents to enroll their child in a state-qualified school or education program, while admission laws require local school authorities to assure the proper admission of students to public schools. WILLIAM D. VALENTE & CHRISTINA M. ALENTE, LAW IN THE SCHOOLS 32 (2001).

Compulsory School Attendance

The Mississippi Compulsory School Attendance Law provides definitions for terms, including definitions for "excused absences" and "unexcused absences" as well as penalties for violations regarding the compulsory attendance law. Section 37-13-91 of the Mississippi Code provides as follows:

- (1) This section shall be referred to as the "Mississippi Compulsory School Attendance Law."
- (2) The following terms as used in this section are defined as follows:
 - a. "Parent" means the father or mother to whom a child has been born, or the father or mother by whom a child has been legally adopted.
 - b. "Guardian" means a guardian of the person of a child, other than a parent, who is legally appointed by a court of competent jurisdiction.
 - c. "Custodian" means any person having the present care or custody of a child, other than a parent or guardian of the child.
 - d. "School day" means not less than five (5) and not more than eight (8) hours of actual teaching in which both teachers and pupils are in regular attendance for scheduled schoolwork.

- e. "School" means any public school in this state or any nonpublic school in this state which is in session each school year for at least one hundred eighty (180) school days, except that the "nonpublic" school term shall be the number of days that each school shall require for promotion from grade to grade.
 - f. "Compulsory-school-age child" means a child who has attained or will attain the age of six (6) years on or before September 1 of the calendar year and who has not attained the age of seventeen (17) years on or before September 1 of the calendar year; and shall include any child who has attained or will attain the age of five (5) years on or before September 1 and has enrolled in a full-day public school kindergarten program. Provided, however, that the parent or guardian of any child enrolled in a full-day public school kindergarten program shall be allowed to disenroll the child from the program on a one-time basis, and such child shall not be deemed a compulsory-school-age child until the child attains the age of six (6) years.
 - g. "School attendance officer" means a person employed by the State Department of Education pursuant to Section 37-13-89.
 - h. "Appropriate school official" means the superintendent of the school district, or his designee, or, in the case of a nonpublic school, the principal or the headmaster.
 - i. "Nonpublic school" means an institution for the teaching of children, consisting of a physical plant, whether owned or leased, including a home, instructional staff members and students, and which is in session each school year. This definition shall include, but not be limited to, private, church, parochial and home instruction programs.
- (3) A parent, guardian or custodian of a compulsory-school-age child in this state shall cause the child to enroll in and attend a public school or legitimate nonpublic school for the period of time that the child is of compulsory school age, except under the following circumstances:
- a. When a compulsory-school-age child is physically, mentally or emotionally incapable of attending school as determined by the appropriate school official based upon sufficient medical documentation.
 - b. When a compulsory-school-age child is enrolled in and pursuing a course of special education, remedial education or education for handicapped or physically or mentally disadvantaged children.
 - c. When a compulsory-school-age child is being educated in a legitimate home instruction program. The parent, guardian or custodian of a compulsory-school-age child described in this subsection, or the parent, guardian or custodian of a compulsory-school-age child attending any nonpublic school, or the appropriate school official for any or all children attending a nonpublic school shall complete a "certificate of enrollment" in order to facilitate the administration of this section. The form of the certificate of enrollment shall be prepared by the Office of Compulsory School Attendance Enforcement of the State Department of Education and shall be designed to obtain the following information only:
 - i. The name, address, telephone number and date of birth of the compulsory-school-age child;
 - ii. The name, address and telephone number of the parent, guardian or custodian of the compulsory-school-age child;
 - iii. A simple description of the type of education the compulsory-school-age child is receiving and, if the child is enrolled in a nonpublic school, the name and address of the school; and
 - iv. The signature of the parent, guardian or custodian of the compulsory-school-age child or, for any or all compulsory-school-age child or children attending a nonpublic school, the signature of the appropriate school official and the date signed.

The certificate of enrollment shall be returned to the school attendance officer where the child resides on or before September 15 of each year. Any parent, guardian or custodian

found by the school attendance officer to be in noncompliance with this section shall comply, after written notice of the noncompliance by the school attendance officer, with this subsection within ten (10) days after the notice or be in violation of this section. However, in the event the child has been enrolled in a public school within fifteen (15) calendar days after the first day of the school year as required in subsection (6), the parent or custodian may, at a later date, enroll the child in a legitimate nonpublic school or legitimate home instruction program and send the certificate of enrollment to the school attendance officer and be in compliance with this subsection. For the purposes of this subsection, a legitimate nonpublic school or legitimate home instruction program shall be those not operated or instituted for the purpose of avoiding or circumventing the compulsory attendance law.

(4) An "unlawful absence" is an absence during a school day by a compulsory-school-age child, which absence is not due to a valid excuse for temporary nonattendance. Days missed from school due to disciplinary suspension shall not be considered an "excused" absence under this section. This subsection shall not apply to children enrolled in a nonpublic school.

Each of the following shall constitute a valid excuse for temporary nonattendance of a compulsory-school-age child enrolled in a public school, provided satisfactory evidence of the excuse is provided to the superintendent of the school district, or his designee:

- (a) An absence is excused when the absence results from the compulsory-school-age child's attendance at an authorized school activity with the prior approval of the superintendent of the school district, or his designee. These activities may include field trips, athletic contests, student conventions, musical festivals and any similar activity.
- (b) An absence is excused when the absence results from illness or injury which prevents the compulsory-school-age child from being physically able to attend school.
- (c) An absence is excused when isolation of a compulsory-school-age child is ordered by the county health officer, by the State Board of Health or appropriate school official.
- (d) An absence is excused when it results from the death or serious illness of a member of the immediate family of a compulsory-school-age child. The immediate family members of a compulsory-school-age child shall include children, spouse, grandparents, parents, brothers and sisters, including stepbrothers and stepsisters.
- (e) An absence is excused when it results from a medical or dental appointment of a compulsory-school-age child where an approval of the superintendent of the school district, or his designee, is gained before the absence, except in the case of emergency.
- (f) An absence is excused when it results from the attendance of a compulsory-school-age child at the proceedings of a court or an administrative tribunal if the child is a party to the action or under subpoena as a witness.
- (g) An absence may be excused if the religion to which the compulsory-school-age child or the child's parents adheres, requires or suggests the observance of a religious event. The approval of the absence is within the discretion of the superintendent of the school district, or his designee, but approval should be granted unless the religion's observance is of such duration as to interfere with the education of the child.
- (h) An absence may be excused when it is demonstrated to the satisfaction of the superintendent of the school district, or his designee, that the purpose of the absence is to take advantage of a valid educational opportunity such as travel, including vacations or other family travel. Approval of the absence must be gained from the superintendent of the school district, or his designee, before the absence, but the approval shall not be unreasonably withheld.

- (i) An absence may be excused when it is demonstrated to the satisfaction of the superintendent of the school district, or his designee, that conditions are sufficient to warrant the compulsory-school-age child's nonattendance. However, no absences shall be excused by the school district superintendent, or his designee, when any student suspensions or expulsions circumvent the intent and spirit of the compulsory attendance law.
- (5) Any parent, guardian or custodian of a compulsory-school-age child subject to this section who refuses or willfully fails to perform any of the duties imposed upon him or her under this section or who intentionally falsifies any information required to be contained in a certificate of enrollment, shall be guilty of contributing to the neglect of a child and, upon conviction, shall be punished in accordance with Section 97-5-39. Upon prosecution of a parent, guardian or custodian of a compulsory-school-age child for violation of this section, the presentation of evidence by the prosecutor that shows that the child has not been enrolled in school within eighteen (18) calendar days after the first day of the school year of the public school which the child is eligible to attend, or that the child has accumulated twelve (12) unlawful absences during the school year at the public school in which the child has been enrolled, shall establish a prima facie case that the child's parent, guardian or custodian is responsible for the absences and has refused or willfully failed to perform the duties imposed upon him or her under this section. However, no proceedings under this section shall be brought against a parent, guardian or custodian of a compulsory-school-age child unless the school attendance officer has contacted promptly the home of the child and has provided written notice to the parent, guardian or custodian of the requirement for the child's enrollment or attendance.
- (6) If a compulsory-school-age child has not been enrolled in a school within fifteen (15) calendar days after the first day of the school year of the school which the child is eligible to attend or the child has accumulated five (5) unlawful absences during the school year of the public school in which the child is enrolled, the school district superintendent shall report, within two (2) school days or within five (5) calendar days, whichever is less, the absences to the school attendance officer. The State Department of Education shall prescribe a uniform method for schools to utilize in reporting the unlawful absences to the school attendance officer. The superintendent, or his designee, also shall report any student suspensions or student expulsions to the school attendance officer when they occur.
- (7) When a school attendance officer has made all attempts to secure enrollment and/or attendance of a compulsory-school-age child and is unable to effect the enrollment and/or attendance, the attendance officer shall file a petition with the youth court under Section 43-21-451 or shall file a petition in a court of competent jurisdiction as it pertains to parent or child. Sheriffs, deputy sheriffs and municipal law enforcement officers shall be fully authorized to investigate all cases of nonattendance and unlawful absences by compulsory-school-age children, and shall be authorized to file a petition with the youth court under Section 43-21-451 or file a petition or information in the court of competent jurisdiction as it pertains to parent or child for violation of this section. The youth court shall expedite a hearing to make an appropriate adjudication and a disposition to ensure compliance with the Compulsory School Attendance Law, and may order the child to enroll or re-enroll in school. The superintendent of the school district to which the child is ordered may assign, in his discretion, the child to the alternative school program of the school established pursuant to Section 37-13-92.
- (8) The State Board of Education shall adopt rules and regulations for the purpose of reprimanding any school superintendents who fail to timely report unexcused absences under the provisions of this section.
- (9) Notwithstanding any provisions or implication herein to the contrary is not the intention of this section to impair the primary right and the obligation of the parent or parents, or person or persons *in loco parentis* to a child, to choose the proper education and

training for such child, and nothing in this section shall ever be construed to grant, by implication or otherwise, to the State of Mississippi, any of its officers, agencies or subdivisions any right or authority to control, manage, supervise or make any suggestion as to the control, management or supervision of any private or parochial school or institution for the education or training of children, of any kind whatsoever that is not a public school according to the laws of this state; and this section shall never be construed so as to grant, by implication or otherwise, any right or authority to any state agency or other entity to control, manage, supervise, provide for or affect the operation, management, program, curriculum, admissions policy or discipline of any such school or home instruction program.

Failure of student whose absences are by statute lawful

In 1998, the Attorney General issued an opinion that to impose an automatic failure upon a student whose absences are by statute lawful and thus by law must be excused is not contemplated by the Compulsory School Attendance Law. MS AG Op., Carter (January 9, 1998).

Failure of student due to absences resulting from suspension

An absences policy designed to deter truancy which operates to fail a student when the absences are the result of a disciplinary suspension is contrary to public policy as enunciated in the Compulsory School Attendance statutes. In *Board of Trustees of the Pascagoula Municipal Separate School District v. T.H., a Minor*, 681 So.2d 110 (Miss. 1996), the Mississippi Supreme Court held that an absences policy designed to deter truancy which operates to fail a student when the absences are the result of a disciplinary suspension is contrary to public policy as enunciated in the Compulsory School Attendance statutes. The absences policy at issue was that seven days unexcused absences resulted in the automatic 65/F for the semester, and the policy was applied against a student who was suspended out of school for ten days. MS AG Op., Carter (January 9, 1998).

While the behavior leading to suspension is unexcused in a moral sense, the Legislature by enacting the Mississippi Compulsory School Attendance Law makes this distinction between absences due to truancy and days missed due to punishment, a suspension. When children attend the alternate program, they are not absent from school. It is only when these children do not attend the alternate program provided for them that the absence is unexcused. In *Board of Trustees of the Pascagoula Municipal Separate School District v. T.H.*, the Board of Trustees provided for an alternate program, but refused to allow T.H. to attend. The Legislature has mandated that the absences [as a result of suspension] be excused as it relates to the Compulsory Attendance Law. The Legislature has made public policy crystal clear that a suspended or expelled student should stay in school. The Court held that the Board of Trustees may not use its absences policy to fail the student. Such a result runs contrary to the purpose and intent of the Mississippi Compulsory School Attendance Law. *Board of Trustees of the Pascagoula Municipal Separate School District v. T.H., a Minor*, 681 So.2d 110, 116-117 (Miss. 1996).

Failure of a truant, but passing student

The Court in *Board of Trustees of the Pascagoula Municipal Separate School District v. T.H., a Minor*, 681 So.2d 110 (Miss. 1996) was not presented with nor did it decide the legality of absences policies as applied to merely truant students that is students with unlawful absences. However, such a policy, if it acts to fail a truant but passing student, would be disciplinary and punitive in nature, and the imposition would be subject to procedural due process in accord with *Warren County Board of Education v. Wilkinson*, 500 So.2d 455 (Miss. 1986). MS AG Op., Carter (January 9, 1998).

For further information about school attendance enforcement go to http://www.mde.k12.ms.us/compulsory_school/school_attendance.html.

RESIDENCY

Minor Child to Attend School in District of Residence

No minor child may enroll in or attend any school district of his residence, unless such child be lawfully transferred from the school district of his residence, unless such child be lawfully transferred from the school district of his residence to a school in another school district in accord with the statutes of this state now in effect or which may be hereafter enacted. *Miss. Code Ann.* Section 37-15-29. One exception to residency is that no child shall be required to be transported in excess of thirty (30) miles on a school bus from his or her home to school, or in excess of thirty (30) miles from school to his or her home, if there is another school in an adjacent school district located on a shorter school bus transportation route by the nearest traveled road. Those children residing in such geographical situations may, at the discretion of their parents or legal guardians, enroll and attend the nearer school, regardless of the residence of the child. *Miss. Code Ann.* Section 37-15-29(3). Another exception to residency is that a student may transfer from one school district to another school district based upon the mutual agreement of the school districts. See *Miss. Code Ann.* Section 37-15-31.

Definition of Residence

MS AG Op., Deavours (March 29, 1982) states that there is no statutory definition of “residence” for use under Section 37-15-29, that this term is generally defined as “a factual place of abode” or “living in a particular locality” and that in the case of a minor, Mississippi case law holds that the residence of a child is that of his parents and remains so during minority. MS AG Op., Ellis (October 17, 1997). In 1990, the Mississippi Board of Education adopted a definition of “residence” for school attendance purposes along with a Residency Verification Policy to be followed by all school districts. A copy of this policy can be located at <http://www.mde.k12.ms.us/public/JBCA.htm>. The requirements relative to school district verification of student residency are contained in the policy as a suggested way to collect the required information. Residency for school attendance purposes is generally a factual determination to be made by the school district. MS AG Op., Ellis (October 17, 1997).

Investigation of a Student’s Residency

In order to be in compliance with *Miss. Code Ann.* Section 37-15-29 and State Board regulations enforced through accreditation, a district must respond to complaints that adequately identify students alleged to be attending the district illegally. MS AG Op., Hurt (October 19, 1998) states that upon proper notice and opportunity for the parents to provide further verification, a school district should drop from enrollment any student who is a nonresident and who is not legally transferred. MS AG Op., Ellis (October 17, 1997). In MS AG Op., Wallace (December 2, 1996), the Attorney General’s office stated that excepting legal transfers permitted under Section 37-15-29, a child should not be allowed to attend school in a district other than the district in which the student resides, and the educational needs and welfare of the student should be considered in making the decision as to when to terminate such a student’s enrollment. MS AG Op., Ellis (October 17, 1997).

Attendance of Children of Instructional Employees or Certified Employees

Those children whose parent(s) or legal guardian(s) are instructional personnel or certificated employees of a school district may at such employee’s discretion enroll and attend the school or schools of their parent’s or legal guardian’s employment regardless of the residence of the child. *Miss. Code Ann.* Section 37-15-29 (2).

Attendance of Children of Noninstructional and Nonlicensed Employees

Pursuant to Section 37-15-31 (2)(b), the school board of any school district, in its discretion, may adopt a uniform policy to allow the enrollment and attendance of the dependent child of

noninstructional and nonlicensed employees, who are residents of Mississippi but are not residents of their district. Such policy shall be based upon the employment needs of the district, implemented according to job classification groups and renewed each school year. See MS AG Op., Smith (July 30, 2004).

Residence of Separated or Divorced Parents

In *Allen v. Allen*, 243 Miss. 23, 136 So.2d 627 (1962), the court held that when the parents are separated, the child takes the residence of the parent with whom it lives. But see *Lantham v. Lantham*, 223 Miss. 263, 78 So.2d 147 (1955), which hold that the residence of a child of divorced parents is that of the parent to whom the custody has been awarded. See MS AG Op., Ellis (October 17, 1997).

ASSIGNMENT OF STUDENTS

Assignment of a Pupil to a Class where the Presence of a Pupil would have an Adverse Effect on a Class

After a pupil has been assigned to a particular school, the principal, or anyone else vested with the authority of assigning pupils to classes, shall not place such pupil in a class where his presence there, because of age differential, mental development, achievement level, or personal habits, would serve to adversely affect, hinder, or retard the academic development of the other pupils in the class. *Miss. Code Ann.* Section 37-11-1.

Separation of Students According to the Sex of the Students

In addition to all other power and authority which may now be vested in any board of trustees of any school district by the Constitution or statutes, or both, of the State of Mississippi, any such board of trustees is hereby vested with the authority to provide by assignment or reassignment, or other appropriate means, for the separation of students according to sex, separately by classrooms or schools, when such board, in its discretion, determines such separation will promote or preserve the public peace, order or tranquility of the school district, or the health, morals or education of the students. *Miss. Code Ann.* Section 37-11-3.

Factors to be Considered in Making the Assignment of a Child to a School

In making assignments of children to schools or attendance centers, the school board shall take into consideration the educational needs and welfare of the child involved, the welfare and best interest of all the pupils attending the school or schools involved, the availability of school facilities, sanitary conditions and facilities at the school or schools involved, health and moral factors at the school or schools, and in the community involved, and all other factors which the school board may consider pertinent, relevant or material in their effect to the welfare and best interest of the school district and the particular school or schools involved. All such assignments shall be on an individual basis as to the particular child involved and, in making such assignment, the school board shall not be limited or circumscribed by the boundaries of any attendance areas which may have been established by such board. *Miss. Code Ann.* Section 37-15-15.

Review or Reconsideration by School Board of Assignment of Child

If the parent, guardian or other person having custody of any child shall feel aggrieved by the assignment of such child to a school or attendance center by the school board, then such parent, guardian or other person may at any time within thirty (30) days after such assignment, make application in writing to the school board for a review or reconsideration of such assignment. Upon receiving any such application, the school board shall set a time and place for the hearing thereof which time shall be not more than fifteen (15) days after

the regular meeting of said board next succeeding the date of the filing of said application. At the time and place so fixed, the person filing such application shall have the right to appear and present evidence in support of said application. After hearing said evidence, the school board shall determine whether said application is well taken and supported by the evidence and shall enter an order either affirming its previous action or modifying or changing same as said school board shall find proper. *Miss. Code Ann.* Section 37-15-17.

Judicial Review of assignment of child

If any parent, guardian or other person having custody of any child affected by the assignment of such child to a school or attendance center by the school board shall feel aggrieved at the order of the school board provided for in Section 37-15-17, such person may, at any time within thirty (30) days from the date of such order, appeal therefrom by filing a petition for appeal in the circuit court of the county in which the school district involved is located. Upon the filing of such petition for an appeal, process shall be issued for and served upon the president of the school board of the school district involved. Upon being served with process, it shall be the duty of the school board to transmit promptly to the court a certified copy of the entire record of the proceedings are shown by the file of the school board. From the judgment of the circuit court, an appeal may be taken to the Supreme Court in the same manner as other appeals are taken from other judgments of such court. *Miss. Code Ann.* Section 37-15-21.

Testing of transfer students and assignment of students

All students seeking to transfer from any school, public or private, within or outside of the boundaries of the State of Mississippi, to a public school within the state may be required to take a test to determine the grade and class to which the pupil shall be assigned at the time of pupil transfer. *Miss. Code Ann.* Section 37-15-33.

The administrative head of each public school shall administer the test or tests to such pupil or pupils as shall apply for transfer to such public school. Such test or tests shall be administered within thirty days after filing of each such application for transfer. Notice of the giving of such test shall be given the applicant not less than five days prior to the date of the administration of such test. *Miss. Code Ann.* Section 37-15-33.

No transfer of a pupil shall be effected until the test has been given and the pupil is assigned according to the grade and class for which the test shows he is best suited. No pupil shall be assigned to a grade and class more than three (3) grades above or below the grade or class that the pupil would have been assigned to had the pupil remained in the school from which the transfer is being made. Pending the administration of the test herein provided for and its grading and an assignment based thereon the superintendent of the school district or the attendance center principal to which the pupil seeks admission may assign the pupil temporarily to a grade and class comparable to that in which the pupil would have been had the pupil continued in the school from which the transfer was being made. *Miss. Code Ann.* Section 37-15-13.

If any student is transferred or reassigned within the school district by order of the board of trustees of that school district as designated by law of the State of Mississippi and not at his own request, the requirement of that pupil's taking the standardized test shall be waived. Likewise, if a pupil shall transfer from one school district to another school district in the manner provided and required by the laws of the State of Mississippi, the requirement of such pupil taking the standardized test shall be waived. *Miss. Code Ann.* Section 37-15-13.

SCHOOL DISCIPLINE

The discipline of students with behavior problems continues to be a major challenge to most schools. The gallop polls continually reveals that the public reports overwhelmingly the "lack of discipline" as their greatest concern in public schools. "Problems with discipline" is the

number one reason that administrators fail to rehire teachers and the number one reason teachers report for having left teaching as well as the main source of career-related stress for teachers.

Traditionally, our approach to discipline has been punitive and reactive in nature; it is only natural that when students are insubordinate and non-compliant or disrupt the learning of others, a basic reaction is to use any action that will decrease or remove the problem. However, such approaches address the behavior but not its causes; while the situation may be “managed”, it is not resolved. We may have removed the problem, but the climate of the school remains the same or increases in hostility. In addition, research has shown that reactive or negative approaches to discipline issues are the least effective with students with severe problem behaviors and can actually increase problem behaviors, adversely affecting the safe environment of our schools and resulting in a decrease in academic achievement. How then can educators successfully address and deal with behaviors that include bullying, drug abuse, dropouts, truancy, disrespect and insubordination and other problems that interfere with instruction and academic achievement?

Discipline Continuum

When we think of a discipline continuum, typically, we envision a timeline that begins with increased verbal reprimands and ascends through levels of infractions and hierarchies of negative responses that finally end with expulsion. As a rule we respond to increased discipline challenges with an increase in our use of punishment-based policies and strategies. After all, *discipline* in schools has been driven by attention to specific children with problem behaviors including procedures that focus on control. These procedures continue to be an essential component to school policy. Yes, it is still critical that we have in place sound laws and policies to maintain a safe and orderly school environment. You see evidence of that throughout this document in which we define the parameters for using school laws and policies to address and respond (after the fact) to problem behavior. *Section 37-11-55* is referenced in this document as Mississippi’s statute that requires every district to develop and distribute a code of student conduct and discipline that has been adopted by the school board. It is through the codes of student conduct and discipline handbooks that we detail the graduated sequence of sanctions that are designed to “teach” students that they have violated a school rule, and that their choice of behavior will not be tolerated.

Effective Discipline Continuum

Effective school discipline, however, is more than simply establishing rules for problem behavior and then enforcing those rules by reacting to students who violate them. Perhaps a more useful definition might be “the steps or actions, teachers, administrators, parents, and students follow to enhance student academic and social behavior success”. School discipline should be both proactive (positive and preventive) and reactive (responsive). Discipline should focus on preventing misconduct rather than punishing it. The effectiveness of schools that exclusively use punitive strategies and interventions to maintain a safe school environment is questionable. Positive methods are far more effective and permanent than any method based on negative consequences that merely suppress behavior, not change it. Research tells us that in terms of implementing effective discipline practices, *“an ounce of prevention is worth a pound of cure.”*

School-Wide Systems of Positive Interventions and Behavioral Supports

Positive Interventions and Behavioral Supports (PBIS) is a multiple, team-based approach with emphasis on school-wide systems of support that include proactive techniques for defining, teaching, and supporting appropriate student behaviors. PBS is not a practice or another curriculum. It is an approach to preventing problem behavior and since every school is unique, it is designed to meet the individual school’s specific needs. All students can benefit from the use of consistent positive behavior interventions and supports.

Proactive school-wide discipline systems create environments in which learning and teaching are valued, aggressive and unsafe behavior are discouraged and respect responsibility, cooperation and other highly valued character traits are taught and encouraged.

Components of Comprehensive School Wide System of Positive Interventions and Behavioral Supports.

School-Wide Positive Supports System

Schools that implement school-wide systems of positive behavior support focus on taking a team-based system approach and teaching appropriate behavior to all students in the school. Schools that have been successful in building school-wide systems develop procedures based on the following critical assumptions following:

1. Behavioral Expectations are Defined.

A small number of clearly defined behavioral expectations are defined. These often are simple, positively framed, rules, such as: Be Respectful, Be Responsible, and Be Safe; or Respect Yourself, Respect Others, and Respect Property.

2. Behavioral Expectations are Taught.

The behavioral expectations are taught to all students in the building, and are taught in real contexts. The goals of the teaching are to take broad expectations (like Be Respectful), and provide specific behavioral examples (In class, being respectful means raising your hand when you want to speak or get help. During lunch or in the hall, being respectful means using a person's name when you talk to him or her). "Teaching" appropriate behavior involves much more than simply telling students what behaviors they should avoid. Behavioral expectations are taught using the same teaching formats applied to other curricula. The general rule is presented, the rationale for the rule is discussed, positive examples ("right way") are described and rehearsed, and negative examples ("wrong way") are described and modeled. Students are given an opportunity to practice the "right way" until they demonstrate fluent performance.

3. Appropriate Behaviors are Acknowledged.

Once appropriate behaviors have been defined and taught, they need to be acknowledged on a regular basis. Some schools do this through formal systems (tickets, rewards), others do it through social events. Schools that are successful in creating a competent culture typically establish a pattern in which adult interactions with students are "positive" four times as often as they are "negative". To achieve this standard, some strategy is needed to build and maintain positive adult initiations to students (both in class and outside of class).

4. Behavioral Errors are Corrected Proactively.

When students violate behavioral expectations, clear procedures are needed for providing information to them that their behavior was unacceptable, and preventing that unacceptable behavior from resulting in inadvertent rewards. Students, teachers, and administrators all should be able to predict what will occur when behavioral errors are identified.

5. Program Evaluations and Adaptations are Made by a Team.

School-wide systems of behavior support involve on-going modification and adaptation. Successful schools establish a simple, efficient strategy for continually assessing if they are being successful, and a decision-making process that allows adaptation to behavioral challenges. At the school-wide level, general measures of the school climate include behavior incident reports, attendance rates, tardies, detention and suspension rates, etc. When problem behaviors become more intense and frequent, functional assessment-based methods may need to be considered.

6. Administrative Support and Involvement are Active.

School-wide behavior support involves the active and on-going support and involvement of key administrators.

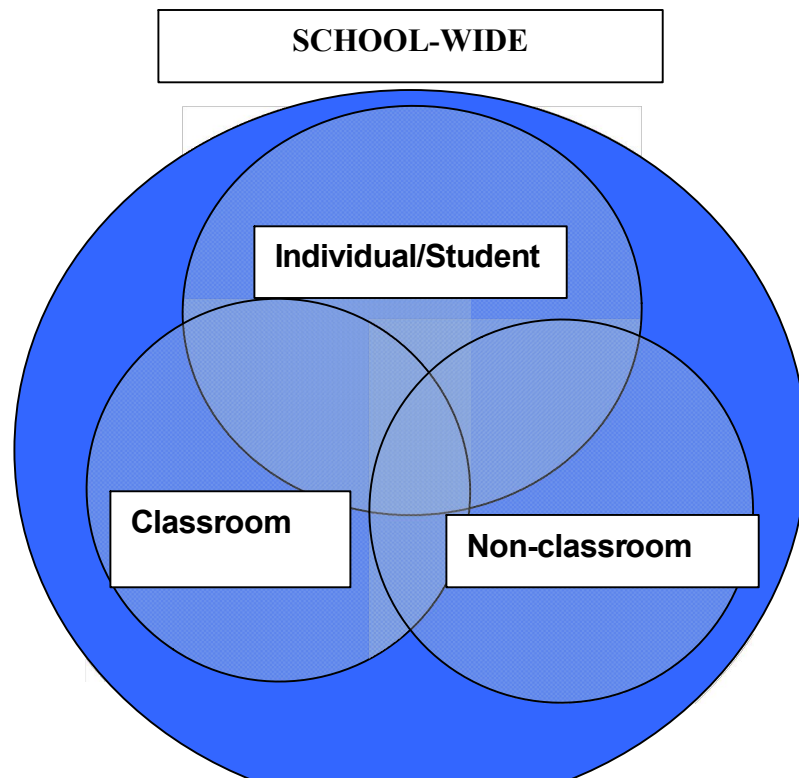
7. Individual Student Support Systems are Integrated with School-wide Discipline Systems.

School-wide behavior support is a process for establishing a positive culture in a school. The procedures do not, however, replace the need to also build and maintain a comprehensive set of procedures for supporting the smaller number of students who require more intense and durable behavioral support.

School Wide Behavioral Expectations

Rather than using prescribed programs or a patchwork of individual behavior management plans, schools have found a most effective approach for implementing school wide discipline systems that addresses behavior in and throughout the school for all students in the school in all areas of the school in all settings in the school. These include:

- Cafeteria
- Hallways
- Playground
- Buses
- Bathrooms
- Before & after school
- Specials



Comprehensive Three Level Approach

Three-Tiered Model of Intervention

An effective system requires a continuum of supports comprised of three very different levels of intervention. This three-stage model focuses on prevention, early intervention, and intensive services to address the behavioral or academic problems of students.

Primary prevention strategies are put in place school-wide to reduce the development and occurrences of new problem behavior by teaching and encouraging expected pro-social behavior among all students, across all school settings and by all staff members.

Rather than assuming that all students enter school with the knowledge and skills necessary to meet expectations for behavioral decorum, educators must directly teach and acknowledge those behavioral expectations that lead to social success in classrooms and all other school settings. When these strategies are implemented accurately and school-wide, about 80 percent of students contribute to a positive and safe school environment and rarely experience an office discipline referral for a major rule violation. Primary or Universal prevention techniques include:

- School-wide discipline plans
- District-wide bully prevention programs,
- Effective curricular materials,
- Creation of effective classroom rules and routines (Effective Classroom Management), and
- Social skills training curricula.

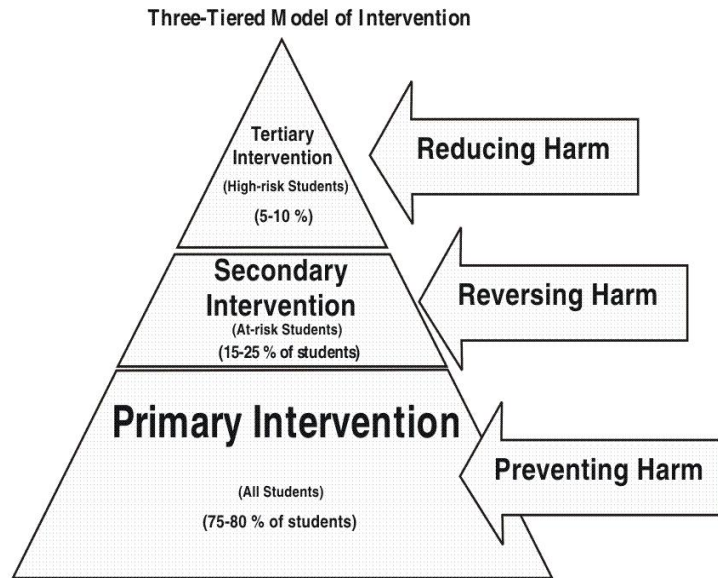
Secondary prevention targets students who are considered at-risk for problem behavior and/or academic skill deficits who are not responding to primary level prevention efforts. Strategies are implemented to reduce repeated episodes of established problem behavior through the use of more intensive interventions, especially for the relatively small proportion of students (about 15 percent) for whom primary prevention strategies are not sufficient to support their behavioral success. The purpose of the secondary level is to reduce current cases of problem behavior and academic failure by using specialized group interventions that provide more support. Common secondary prevention practices include:

- Behavioral contracts,
- Conflict resolution training,
- Precorrection strategies,
- Self-management strategies, and
- Remedial academic programs.

Tertiary prevention is the most individualized and intense level. Interventions are developed specifically to address the behavior support needs of the smallest proportion of students (about 5 percent) who display chronic academic and/or behavioral difficulties. These behaviors impede learning, are dangerous or disruptive behavior, and/or result in social or educational exclusion. Even though this group is only 1-7% of a school's

population, they account for 40% to 50% of behavioral disruptions. Tertiary preventive measures involve

- Conducting a functional behavioral assessment (FBA) and
- Creating a behavior support plan for the individual student.
- Alternative Placement.



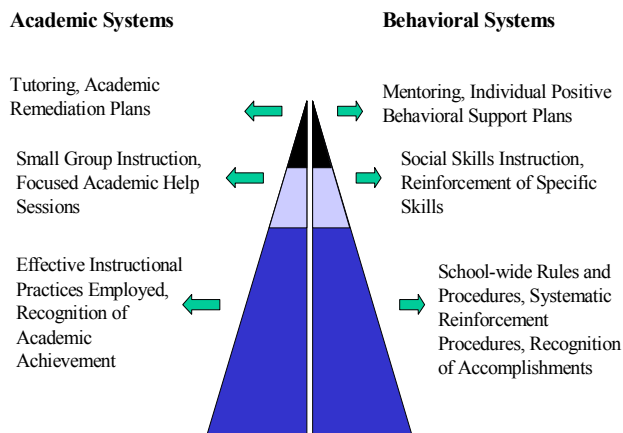
School Wide Positive Support Systems for All Children

Recognizing the need for school-wide behavior support systems is one of the most important advances in student discipline procedures in recent years. As schools have begun to shift from a reactive approach to discipline to preventive way of thinking, they develop a proactive approach for creating and maintaining a safe and effective learning environment that also enhances the capacity of the school to educate all children.

Successful programs implement policies and procedures that support both *academic success and social/behavioral success* are complimentary and considered necessary to ensure positive student success.

Schools that implement SW-PBS are making the shift from a reactive and aversive approach of managing problem behavior to one that is preventive and positive. According to Horner and Sugai (2004), every child entering school needs behavior support. Therefore, schools must use empirically validated procedures and systems that have demonstrated effectiveness, efficiency, and relevance. SW-PBS is an approach that allows schools to facilitate academic and behavioral success for all students.

Creating School-Wide Systems for All Students



The Three-Tier Model of Instruction in Mississippi

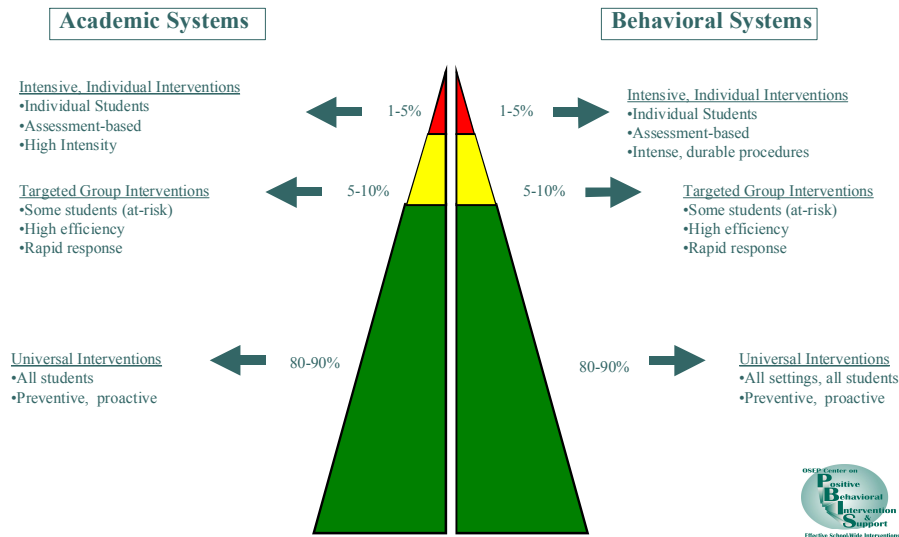
On January 21, 2004, the Mississippi Board of Education adopted the Three-Tier Model of Instruction, a copy of which is attached as Appendix A. The Three-Tier Model of Instruction is a systematic approach for providing student interventions. The model identifies struggling students before they fall behind and provides them with support throughout the educational process of schooling. The model has three levels or “tiers” of instruction. Tier I is effective classroom instruction. Tier II is supplemental instruction, and Tier III is instruction for intensive intervention.

All students are served by effective classroom instruction. Approximately 20-30% of students are served by supplemental instruction, and ideally only 5-10% of students are served by intensive intervention instruction. Students requiring more than the core classroom instruction move, by the classroom teacher’s recommendation, into Tier II. If interventions are successful at Tier II, the interventions are continued. A student moves into Tier III when more intensive interventions are required. Such students are referred to the Teacher Support Team (TST) to begin Tier III intervention.

The TST will prescribe intensive interventions for any student for whom the Tier II interventions have been unsuccessful. Additionally, any student who has failed one grade in Grades 1-3, two grades in Grades 4-12, or a student who failed either of the preceding grades and has been suspended or expelled for more than twenty days in the current school year will automatically be referred to the Tier III process. Mississippi Student Information Systems (MSIS) will populate the screen entry information with the students meeting any of these three criteria using month 9 data.

An intervention is any action that differs from the current instruction in the student’s regular academic program. Interventions are not simply preferential seating, parental contact, or classroom observations. Retention, suspension and/or doing more of the same classroom assignments are not instructional interventions. The TST will develop and begin implementation of the intervention within two weeks of referral to the TST. Within eight weeks of implementation, the student’s teacher and the TST must conduct a documented review. The final review is due at the end of sixteen weeks of implementation of the intervention. If the final review indicates that the interventions have been unsuccessful, the student is referred to the Local Survey Committee (LSC).

Integrate Academic and Behavioral Systems for Student Success



- a. **Primary Support 80%** - school-wide or universal supports for all students
Example – conflict resolution and/or character education curriculum offered to all students, after school programs
- b. **Secondary Support 15%** - specific setting supports within schools
Example – social skill instruction combined with direct intervention on problem behavior in the cafeteria, the playground, the boy's basketball team or a group of fifth grade girls.
- c. **Tertiary Support 5%** - supports for individual student with chronic behavior difficulties
Example – a student exhibits problematic, attention-seeking classroom behaviors due to frustration. The positive supports action team introduces a self-manager card, and the student is taught a simple routine for requesting teacher assistance. After this strategy is implemented and a crisis intervention plan is developed, the action team meets consistently to review the student's progress.

Effective Classroom Management

School-wide classroom behavior management programs have been effective in decreasing suspension, expulsion, and dropout, reducing teacher burnout, and improving student on-task behavior and academic achievement. Effective classroom management programs require commitment and perseverance; however, student misbehavior may escalate with the introduction of a new system, as students "test the limits." Yet most teachers and schools find that the additional time needed to prevent or de-escalate classroom disruption is more than made up by the savings in time of lower office referrals and overall improvements in school climate.

The school-wide discipline system is the basis for classroom management, providing the guidelines and expectations for all students anywhere in the school, including the classroom. Without the school wide system in place, classroom management will be less effective. Classroom management should be supported and enhanced by the school-wide system. It is easier to prevent behavior from occurring, than to deal with it after it has happened. Effective classroom managers are more skilled at *preventing* disruptions from occurring. How do we prevent inappropriate behaviors in our classrooms?

- Clear expectations – State what is expected of the student
- Teach behaviors – Teach and model the behaviors desired.

- Teach rules and routines, do not make the assumption that students understand the rules; remind and redirect as needed.

Student achievement has nothing to do with programs and class or school size.

It's the teacher – what the teacher knows and what the teacher does in the classroom -- that results in student learning. When teacher instruction is effective, you will see improved student achievement. In fact, the most effective teachers produce as much as six times the learning gains as the least effective teachers.

The number one problem in the classroom is not discipline; it is the lack of procedures and routines.

A vast majority of the behavior problems in the classroom are caused by the failure of students to follow procedures and rules. Many times, the behavior problems result from the lack of procedures that govern how the classroom is organized. If there are no procedures outlining how things are to be done in the classroom, chaos will exist.

Discipline has to do with how students behave. Management has to do with procedures and these procedures govern how students go about doing their work in the classroom.

The ineffective teacher who does not know how to manage a classroom will resort to discipline tactics to achieve control and compliance.

Classroom management is different because it has nothing to do with control and compliance. Classroom management has to do with organizing and structuring the classroom with procedures. Procedures teach responsibility.

The vast majority of the behavior problems in the classroom are caused by the failure of students to follow procedures and routines, which in turn are caused by teachers who do not have procedures and routines.

Effective teachers **MANAGE** their classrooms with procedures and routines. Ineffective teachers **DISCIPLINE** their classrooms with threats and punishments.

Learning only takes place when the students are on task and doing their work, producing the lesson outcomes the teacher expects.

PROCEDURE: What the teacher wants done.
 ROUTINE: What the students do automatically.

Students readily accept a uniform set of classroom procedures because it simplifies their task in succeeding in school. Efficient and workable procedures allow many activities to take place with a minimum of confusion and wasted time. Procedures help a teacher to structure and organize a classroom for maximum engaged learning time.

The importance of a good start to the school year is well documented, and the role of a solid class management approach is a key to that good start. Beginning the year with a class management plan IN PLACE communicates clear expectations and helps beginning staff to be more consistent in enforcing their behavior standards and that leads to less student misconduct and stronger teacher self-esteem.

To eliminate or reduce the number of discipline problems, it is necessary to have an organized management plan at all levels.

At the School Level

- Engage school- and community-wide commitment to establishing and maintaining appropriate student behavior in school and at school-sponsored events.
- Establish and communicate high expectations for student behavior.
- With input from students, develop clear behavioral rules and procedures and make these known to all stakeholders in the school, including parents and community.
- Work on getting to know students as individuals; take an interest in their plans and activities.
- Work to improve communication with and involvement of parents and community members in instruction and extracurricular activities.

For the principal:

- Increase your visibility and informal involvement in the everyday life of the school; increase personal interactions with students.
- Encourage teachers to handle all classroom discipline problems that they reasonably can; support their decisions.
- Enhance teachers' skills as classroom managers and disciplinarians by arranging for appropriate staff development activities.

At the Classroom Level

- Hold and communicate high behavioral expectations.
- Establish clear rules and procedures and instruct students in how to follow them.
- Make clear to students the consequences of misbehavior.
- Rules need to be written, posted, and enforceable.
- Teach the students the rules and routines. Explain expectations.
- Teachers who routinely refer misbehavior to "the office" can also create the impression that the teacher can't handle problems. Try to solve your own problems but ask for specialists or principal's help.
- Consistency in enforcement is critical.
- Enforce classroom rules promptly, consistently, and equitably from the very first day of school.
- Work to instill a sense of self-discipline in students; devote time to teaching self-monitoring skills.
- Maintain an efficient instructional pace and make smooth transitions between activities.
- Monitor classroom activities and give students feedback and reinforcement regarding their behavior.
- Create opportunities for students (particularly those with behavioral problems) to experience success in their learning and social behavior.
- Identify those students who seem to lack a sense of personal efficacy and work to help them achieve an internal locus of control.
- Make use of cooperative learning groups, as appropriate.
- Make use of humor, when suitable, to stimulate student interest or reduce classroom tensions.
- Remove distracting materials (athletic equipment, art materials, etc.) from view when instruction is in progress.

When Discipline Problems Arise

- Intervene quickly; do not allow behavior that violates school or classroom rules to go unchecked.
- As appropriate, develop reinforcement schedules and use these with misbehaving students.
- Instruct students with behavior problems in self-control skills; teach them how to observe their own behavior, talk themselves through appropriate behavior patterns, and reinforce themselves for succeeding.

- Teach misbehaving students general pro-social skills--self-awareness, cooperation, and helping.
- Place misbehaving students in peer tutoring arrangements; have them serve either as tutors or tutees, as appropriate.
- Make use of punishments that are reasonable for the infraction committed; provide support to help students improve their behavior.
- Make use of counseling services for students with behavior problems; counseling should seek the cause of the misconduct and assist students in developing needed skills to behave appropriately.
- Make use of in-school suspension programs, which include guidance, support, planning for change, and skill building.
- Collaborate with misbehaving students on developing and signing contingency contracts to help stimulate behavioral change; follow through on terms of contracts.
- Make use of home-based reinforcement to increase the effectiveness of school-based agreements and directives.
- In schools that are troubled with severe discipline problems and negative climates, a broad based organizational development approach may be needed to bring about meaningful change; community involvement and support is critical to the success of such efforts.

Ineffective Discipline Practices

- Avoid the use of vague or unenforceable rules.
- Do not ignore student behavior that violates school or classroom rules; it will not go away.
- Avoid ambiguous or inconsistent treatment of misbehavior.

***The most important factor that must be established the first day and first week of school is **Consistency**. ***

Consistency means that the classroom is organized and predictable. There are no surprises and both the teacher and the students know how the class is organized and run. The students know what to do. **They know the procedures.** Source: **Harry Wong**

Dr. Mac's "THE 10 DEMANDMENTS OF BEHAVIOR MANAGEMENT"

1. Always treat youngsters with respect and preserve their dignity.
2. Always do what is in the students' best interests.
3. Seek solutions, not blame.
4. Model tolerant, patient, dignified, and respectful behavior.
5. Use the least intrusive intervention possible.
6. Connect with your students and build strong personal bonds with them.
7. Instill hope for success (otherwise there is no reason for kids to behave in your class).
8. NEVER do anything disrespectful, illegal, immoral, ineffective, bad for health/safety, or you wouldn't want done to you.
9. NEVER give up on a student. Be perturbed with the actions of a student, but keep believing in his/her ability to change for the better.
10. CATCH KIDS BEING GOOD . . . A LOT!!

DISCIPLINE AUTHORITY

The Mississippi Legislature has empowered the school districts with statutory authority to provide a safe environment in which children can learn and to have flexibility to respond swiftly to interference with that mission.

Authority of the School Board

The school board is the ultimate authority in matters of school discipline. MS AG Op., Benvenuti (April 4, 1997). The Mississippi Legislature has provided the governing bodies of

local schools with substantial authority to regulate the activities of students and punish students for violation of school policies. *Clinton Mun. Separate School Dist. v. Byrd*, 477 So.2d 237, 239 (Miss. 1985). The Mississippi Supreme Court has consistently stated that school disciplinary matters are best resolved in the local community and within the school system. If the parents believe a disciplinary rule mandating expulsion . . . is too harsh, their remedy is to persuade the school board to change it. *Clinton Municipal Separate School District v. Boyd*, 477 So.2d 237, 241 (Miss. 1985), quoting *Mitchell v. Board of Trustees of Oxford, Municipal Separate School District*, 625 F.2d 660 (5th Cir. 1980).

Pursuant to Section 37-7-301 of the Mississippi Code, the school board has the following specific powers, authority and duties related to discipline:

* * *

(e) To suspend or to expel a pupil or to change the placement of a pupil to the school district's alternative school or home-bound program for misconduct in the school or on school property, as defined in Section 37-11-29, on the road to and from school, or at any school-related activity or event, or for conduct occurring on property other than school property or other than at a school-related activity or event when such conduct by a pupil, in the determination of the school superintendent or principal, renders that pupil's presence in the classroom a disruption to the educational environment of the school or a detriment to the best interest and welfare of the pupils and teacher of such class as a whole, and to delegate such authority to the appropriate officials of the school district.

* * *

(g) To support, within reasonable limits, the superintendent, principal and teachers where necessary for the proper discipline of the school;

* * *

(l) To prescribe and enforce rules and regulations not inconsistent with law or with the regulations of the State Board of Education for their own government and for the government of the schools, and to transact their business at regular and special meetings called and held in the manner provided by law.

* * *

Authority of the Superintendent

Pursuant to Section 37-9-14 (2) of the Mississippi Code, the superintendent has the following specific powers, authority and duties related to discipline:

* * *

(r) To delegate student disciplinary matters to appropriate school personnel.

* * *

(w) To notify, in writing, the parent, guardian or custodian, the youth court and local law enforcement of any expulsion of a student for criminal activity as defined in Section 37-11-92.

Authority of the Educator

The Code of Student Conduct shall include policies and procedures recognizing the teacher as the authority in classroom matters, and supporting that teacher in any decision in compliance with the written discipline code of conduct. *Miss. Code Ann.* Section 37-11-55(d).

General Duties of Superintendents, Principals and Teachers

It shall be the duty of each superintendent, principal and teacher in the public schools of this state to enforce in the schools the courses of study prescribed by law or by the state board of education, to comply with the law in distribution and use of free textbooks, and to observe and enforce the statutes, rules and regulations prescribed for the operation of schools. Such superintendents, principals and teachers shall hold the pupils to strict account for disorderly conduct at school, on the way to and from school, on the playgrounds, and during recess. *Miss. Code Ann.* 37-9-69.

SUSPENSION OF PUPILS

The superintendent of schools and the principal of a school shall have the power to suspend a pupil for good cause or for any reason for which such pupil might be suspended, dismissed or expelled by the school board. However, such action of the superintendent or principal shall be subject to review by and the approval or disapproval of the school board. If the parent, guardian or other person having custody of any child shall feel aggrieved by the suspension or dismissal of that child, then such superintendent or principal shall advise the parent or guardian of the child of this right to a hearing and the proper form shall be provided for requesting such a hearing. *Miss. Code Ann.* Section 37-9-71.

Length of Suspension

The number of days a student may be suspended for an infraction of school rules is a matter of judgment to be exercised by the school board upon enactment of the rule. See MS AG Op., M^eBeath (December 20, 1982).

“Make-Up” Work During a School Suspension

A rule in the Student Handbook that clearly states that the punishment during a suspension is no credit for the days suspended is enforceable. The no-credit provision for “make-up work” missed during a suspension is intended to deter general student disciplinary problems. Giving a student a zero for each day missed during a suspension is the student’s punishment. The punishment for an infraction of a school’s disciplinary policy can be lowering of a semester grade. In *Board of Trustees of the Pascagoula Municipal Separate School District v. T.H., a Minor*, 681 So.2d 110, 117-118 (Miss. 1996).

Suspension or Expulsion of Student Damaging School Property; Liability of Parent or Custodian

If any pupil shall willfully destroy, cut, deface, damage, or injure any school building, equipment or other school property he shall be liable to suspension or expulsion and his parents or person or persons *in loco parentis* shall be liable for all damages. *Miss. Code Ann.* Section 37-11-19.

Expulsion of habitually disruptive students aged 13 years or older upon third occurrence of disruptive behavior within school year

Section 37-11-18.1 of the Mississippi Code defines habitually disruptive behavior and allows for the expulsion of a student who is thirteen (13) years of age or older, provided a behavior modification plan had been developed. After the second act of disruptive behavior by a student younger than thirteen (13) years of age, a psychological evaluation shall be performed.

Section 37-11-18.1 of the Mississippi Code specifically provides as follows:

For the purposes of this section:

The term "disruptive behavior" means conduct of a student that is so unruly, disruptive or abusive that it seriously interferes with a school teacher's or school administrator's ability to communicate with the students in a classroom, with a student's ability to learn, or with the operation of a school or school-related activity, and which is not covered by other laws related to violence or possession of weapons or controlled substances on school property, school vehicles or at school-related activities. Such behaviors include, but are not limited to: foul, profane, obscene, threatening, defiant or abusive language or action toward teachers or other school employees; defiance, ridicule or verbal attack of a teacher; and willful, deliberate and overt acts of disobedience of the directions of a teacher; and

The term "habitually disruptive" refers to such actions of a student which cause disruption in a classroom, on school property or vehicles or at a school-related activity on more than two (2) occasions during a school year, and to disruptive behavior that was initiated, willful and overt on the part of the student and which required the attention of school personnel to deal with the disruption. However, no student shall be considered to be habitually disruptive before the development of a behavior modification plan for the student in accordance with the code of student conduct and discipline plans of the school district.

Any student who is thirteen (13) years of age or older for whom a behavior modification plan is developed by the school principal, reporting teacher and student's parent and which student does not comply with the plan shall be deemed habitually disruptive and subject to automatic expulsion on the occurrence of the third act of disruptive behavior during a school year. After the second act of disruptive behavior during a school year by a student who is younger than thirteen (13) years of age, a psychological evaluation shall be performed upon the child.

For discussion of the implementation of Section 37-11-18.1, refer to MS AG Op., Thompson (June 25, 2001).

Discipline of students for off-campus violent conduct

MS AG Op., Barnett (June 13, 1997).

What authority, if any, exists for a school district to discipline a student for violence or distribution of controlled substances that occurs away from school or school-related activities? If authority exists, what discipline may be imposed?

There is no authority under present law to suspend or expel a student for dangerous or violent acts or the sale of controlled substances for non-school related conduct. School officials may assign the student to an alternative program, in school suspension or alternative site instruction as long as such action does not constitute a suspension or expulsion.

If discipline is imposed, what process is due?

The limited nature of the discipline (reassignment as opposed to suspension or expulsion) is relevant to the process afforded the student. The school district need not adjudicate guilt or innocence. The school need only present evidence of the direct and negative effect upon the learning environment and/or constitutes a threat to the safety of the student and others. The pupil is then allowed to counter that evidence.

SCHOOL DISTRICT DISCIPLINE PLANS

The district's discipline plan must be disseminated to all students and parents and parents must sign a statement of receipt. Annually, the school board shall have the discipline plan and code of conduct legally audited. Parents may be legally compelled to attend disciplinary conferences related to their financial responsibility for their child's destructive acts against school property or persons. The district may allow parents to attend class with the student

as an alternative to suspension. Section 37-11-53 of the Mississippi Code specifically provides as follows:

A copy of the school district's discipline plan shall be distributed to each student enrolled in the district, and the parents, guardian or custodian of such student shall sign a statement verifying that they have been given notice of the discipline policies of their respective school district. The school board shall have its official discipline plan and code of student conduct legally audited on an annual basis to insure that its policies and procedures are currently in compliance with applicable statutes, case law and state and federal constitutional provisions. As part of the first legal audit occurring after July 1, 2001, the provisions of this section, Section 37-11-55 and Section 6 of Senate Bill No. 2239, 2001 Regular Session, shall be fully incorporated into the school district's discipline plan and code of student conduct.

All discipline plans of school districts shall include, but not be limited to, the following:

A parent, guardian or custodian of a compulsory-school-age child enrolled in a public school district shall be responsible financially for his or her minor child's destructive acts against school property or persons;

A parent, guardian or custodian of a compulsory-school-age child enrolled in a public school district may be requested to appear at school by the school attendance officer or an appropriate school official for a conference regarding acts of the child specified in paragraph (a) of this subsection, or for any other discipline conference regarding the acts of the child;

Any parent, guardian or custodian of a compulsory-school-age child enrolled in a school district who refuses or willfully fails to attend such discipline conference specified in paragraph (b) of this section may be summoned by proper notification by the superintendent of schools or the school attendance officer and be required to attend such discipline conference; and

A parent, guardian or custodian of a compulsory-school-age child enrolled in a public school district shall be responsible for any criminal fines brought against such student for unlawful activity * * * occurring on school grounds or buses.

Any parent, guardian or custodian of a compulsory-school-age child who (a) fails to attend a discipline conference to which such parent, guardian or custodian has been summoned under the provisions of this section, or (b) refuses or willfully fails to perform any other duties imposed upon him or her under the provisions of this section, shall be guilty of a misdemeanor and, upon conviction, shall be fined not to exceed Two Hundred Fifty Dollars (\$250.00).

Any public school district shall be entitled to recover damages in an amount not to exceed Twenty Thousand Dollars (\$20,000.00), plus necessary court costs, from the parents of any minor under the age of eighteen (18) years and over the age of six (6) years, who maliciously and willfully damages or destroys property belonging to such school district. However, this section shall not apply to parents whose parental control of such child has been removed by court order or decree. The action authorized in this section shall be in addition to all other actions which the school district is entitled to maintain and nothing in this section shall preclude recovery in a greater amount from the minor or from a person, including the parents, for damages to which such minor or other person would otherwise be liable.

A school district's discipline plan may provide that as an alternative to suspension, a student may remain in school by having the parent, guardian or custodian, with the consent of the student's teacher or teachers, attend class with the student for a period of time specifically agreed upon by the reporting teacher and school principal. If the parent, guardian or custodian does not agree to attend class with the student or fails to attend class with the

student, the student shall be suspended in accordance with the code of student conduct and discipline policies of the school district.

Code of Student Conduct

The Code of Conduct should provide a systematic process of behavioral correction in which inappropriate behaviors are consistently followed by consequences. At the beginning of each year, a code of conduct that has been developed in consultation with school personnel, students and parents, shall be made available to all teachers, students and parents. It recognizes the teacher as the classroom authority that provides the right to remove disruptive students. The code of conduct mandates procedures for developing behavior modification plans by the principal, teacher, and parents and also mandates policies regarding gang-related activities.

Section 37-11-55 of the Mississippi Code specifically provides as follows:

The local school board shall adopt and make available to all teachers, school personnel, students and parents or guardians, at the beginning of each school year, a code of student conduct developed in consultation with teachers, school personnel, students and parents or guardians. The code shall be based on the rules governing student conduct and discipline adopted by the school board and shall be made available at the school level in the student handbook or similar publication. The code shall include, but not be limited to:

Specific grounds for disciplinary action under the school district's discipline plan;

Procedures to be followed for acts requiring discipline, including suspensions and expulsions, which comply with due process requirements;

An explanation of the responsibilities and rights of students with regard to attendance, respect for persons and property, knowledge and observation of rules of conduct, free speech and student publications, assembly, privacy and participation in school programs and activities;

Policies and procedures recognizing the teacher as the authority in classroom matters, and supporting that teacher in any decision in compliance with the written discipline code of conduct; such recognition shall include the right of the teacher to remove from the classroom any student who, in the professional judgment of the teacher, is disrupting the learning environment, to the office of the principal or assistant principal. The principal or assistant principal shall determine the proper placement for the student, who may not be returned to the classroom until a conference of some kind has been held with the parent, guardian or custodian during which the disrupting behavior is discussed and agreements are reached that no further disruption will be tolerated. If the principal does not approve of the determination of the teacher to remove the student from the classroom, the student may not be removed from the classroom, and the principal, upon request from the teacher, must provide justification for his disapproval;

Policies and procedures for dealing with a student who causes a disruption in the classroom, on school property or vehicles, or at school-related activities;

Procedures for the development of behavior modification plans by the school principal, reporting teacher and student's parent for a student who causes a disruption in the classroom, on school property or vehicles, or at school-related activities for a second time during the school year; and

Policies and procedures specifically concerning gang-related activities in the school, on school property or vehicles, or at school-related activities.

Substantive Due Process

Substantive due process is the doctrine that the Due Process Clauses of the 5th and 14th Amendments of the U.S. Constitution which requires legislation to be fair and reasonable in content and to further a legitimate governmental objective. *Black's Law Dictionary* 424 (8th ed. 2005). A student's interest in obtaining an education has been given substantive due process protections. A school board policy satisfies substantive due process if it furthers a substantial legitimate interest of the school districts, i.e., protection of school property. *Clinton v. Byrd*, 477 So.2d 237 (Miss. 1985).

Drafting School Board Policy from Statutory Language

A school board could make slight modifications from the language of a "intimidate" statute prohibiting intimidation, threatening or coercion of students for the purpose of interfering with attendance of classes to draft a policy prohibiting bullying-type behavior. Section 37-11-20 of the Mississippi Code provides as follows:

It shall be unlawful for any person to intimidate, threaten or coerce, or attempt to intimidate, threaten or coerce, whether by illegal force, threats of force or by the distribution of intimidating, threatening or coercive material, any person enrolled in any school for the purpose of interfering with the right of that person to attend school classes or of causing him not to attend such classes.

Upon conviction of violation of any provision of this section, such individual shall be guilty of a misdemeanor and shall be subject to a fine not to exceed five hundred dollars (\$500.00), imprisonment in jail for a period not to exceed six (6) months, or both. Any person under the age of seventeen (17) years who violates any provision of this section shall be treated as delinquent within the jurisdiction of the youth court.

Monitoring Student Behavior Utilizing Audio/Visual Equipment

Any local school district may use audio/visual-monitoring equipment in classrooms, hallways, buildings, grounds and buses for the purpose of monitoring school disciplinary problems. *Miss. Code Ann.* Section 37-3-83 (6).

Disciplinary Action for a Student's Failure to Wear a School Uniform

It is the opinion of the Attorney General's office that if the mandatory school uniform rule furthers a substantial, legitimate interest of the school district, as determined by the school board, then it is within the discretion of a school board with proper notice to prescribe the discipline to be administered in violation of the rule or regulation. Assuming that the child is financially able to purchase the required uniform, a school district may administer, subject to procedural due process, appropriate disciplinary measures for refusal to comply with the school rule. If such discipline entails suspension or expulsion, the district must abide by the dictates of the alternative school statute, *Miss. Code Ann.* Section 37-13-92, which would prohibit imposition of a long-term out-of-school suspension or expulsion for violation of a school uniform policy. MS AG Op., Smith (June 11, 1999).

ALTERNATIVE SCHOOL REQUIREMENTS

School boards of all districts shall establish, maintain and operate an alternative school for any compulsory-school-age student who has been suspended for more than ten (10) days or expelled from school, except for any student expelled for possession of a weapon or other felonious conduct. Beginning with 2004, districts were allowed to operate an alternative school program or behavior modification programs as defined by the State Board of Education.

Behavior Modification Defined

The minimum requirements of a behavior modification program as defined by the State Board of Education must include: policies, procedures and research-based strategies that teach students the skills needed to make positive decisions concerning behavior and learning. The program will contain procedures and research-based strategies that:

- Include a (proactive) prevention component for all students;
- Include interventions designed to deal with common disciplinary problems;
- Provide an intensive intervention program for low-incidence behavior problems;
- Provide professional development for all team members;
- Provide a safe and disciplined environment where teaching and learning can take place; and
- Permit implementation of the School Safety Plan.

Alternative Education Law

Section 37-13-92 of the Mississippi Code provides as follows:

Beginning with the school year 2004-2005, the school boards of all school districts shall establish, maintain and operate, in connection with the regular programs of the school district, an alternative school program or behavior modification program as defined by the State Board of Education for, but not limited to, the following categories of compulsory-school-age students:

Any compulsory-school-age child who has been suspended for more than ten (10) days or expelled from school, except for any student expelled for possession of a weapon or other felonious conduct;

Any compulsory-school-age child referred to such alternative school based upon a documented need for placement in the alternative school program by the parent, legal guardian or custodian of such child due to disciplinary problems;

Any compulsory-school-age child referred to such alternative school program by the dispositive order of a chancellor or youth court judge, with the consent of the superintendent of the child's school district; and

(d) Any compulsory-school-age child whose presence in the classroom, in the determination of the school superintendent or principal, is a disruption to the educational environment of the school or a detriment to the best interest and welfare of the students and teacher of such class as a whole.

The principal or program administrator of any such alternative school program shall require verification from the appropriate guidance counselor of any such child referred to the alternative school program regarding the suitability of such child for attendance at the alternative school program. Before a student may be removed to an alternative school education program, the superintendent of the student's school district must determine that the written and distributed disciplinary policy of the local district is being followed. The policy shall include standards for:

- The removal of a student to an alternative education program that will include a process of educational review to develop the student's individual instruction plan and the evaluation at regular intervals of the student's educational progress; the process shall include classroom teachers and/or other appropriate professional personnel, as defined in the district policy, to ensure a continuing educational program for the removed student;
- The duration of alternative placement; and

- The notification of parents or guardians, and their appropriate inclusion in the removal and evaluation process, as defined in the district policy. Nothing in this paragraph should be defined in a manner to circumvent the principal's or the superintendent's authority to remove a student to alternative education.

The local school board or the superintendent shall provide for the continuing education of a student who has been removed to an alternative school program.

A school district, in its discretion, may provide a program of general educational development (GED) preparatory instruction in the alternative school program. However, any GED preparation program offered in an alternative school program must be administered in compliance with the rules and regulations established for such programs under Sections 37-35-1 through 37-35-11 and by the State Board for Community and Junior Colleges. The school district may administer the General Educational Development (GED) Testing Program under the policies and guidelines of the GED Testing Service of the American Council on Education in the alternative school program or may authorize the test to be administered through the community/junior college district in which the alternative school is situated.

Any such alternative school program operated under the authority of this section shall meet all appropriate accreditation requirements of the State Department of Education.

The alternative school program may be held within such school district or may be operated by two (2) or more adjacent school districts, pursuant to a contract approved by the State Board of Education. When two (2) or more school districts contract to operate an alternative school program, the school board of a district designated to be the lead district shall serve as the governing board of the alternative school program. Transportation for students attending the alternative school program shall be the responsibility of the local school district. The expense of establishing, maintaining and operating such alternative school program may be paid from funds contributed or otherwise made available to the school district for such purpose or from local district maintenance funds.

The State Board of Education shall promulgate minimum guidelines for alternative school programs. The guidelines shall require, at a minimum, the formulation of an individual instruction plan for each student referred to the alternative school program and, upon a determination that it is in a student's best interest for that student to receive general educational development (GED) preparatory instruction, that the local school board assign the student to a GED preparatory program established under subsection (4) of this section. The minimum guidelines for alternative school programs shall also require the following components:

- Clear guidelines and procedures for placement of students into alternative education programs which at a minimum shall prescribe due process procedures for disciplinary and general educational development (GED) placement;
- Clear and consistent goals for students and parents;
- Curricula addressing cultural and learning style differences;
- Direct supervision of all activities on a closed campus;
- Full-day attendance with a rigorous workload and minimal time off;
- Selection of program from options provided by the local school district, Division of Youth Services or the youth court, including transfer to a community-based alternative school;
- Continual monitoring and evaluation and formalized passage from one step or program to another;
- A motivated and culturally diverse staff;
- Counseling for parents and students;
- Administrative and community support for the program; and
- Clear procedures for annual alternative school program review and evaluation.

On request of a school district, the State Department of Education shall provide the district informational material on developing an alternative school program that takes into consideration size, wealth and existing facilities in determining a program best suited to a district.

Any compulsory-school-age child who becomes involved in any criminal or violent behavior shall be removed from such alternative school program and, if probable cause exists, a case shall be referred to the youth court.

The State Board of Education, in its discretion, may exempt not more than four (4) school district alternative school programs in the state from any compulsory standard of accreditation for a period of three (3) years. During this period, the State Department of Education shall conduct a study of all alternative school programs in the state, and on or before January 1, 2000, shall develop and promulgate accreditation standards for all alternative school programs, including any recommendations for necessary legislation relating to such alternative school programs.

Total Removal of a Student from School

It is the opinion of the Office of the Attorney General that since the enactment of the alternative school statute, the discretion of a school district to establish categories or classes of offenses for which the penalty is total removal from school has been circumscribed; a school district may not establish categories of acts below the level of felonies or weapons possession for which the penalty is expulsion from the school setting altogether. However, in MS AG Op. Howell (June 7, 1996), an important caveat was included: If the school district determines in its investigation of a student that the acts of the student are such as to pose a threat to the safety of himself or others or disrupt the educational process at the alternative school, then at the discretion of the school board, taking under consideration recommendations made by the administrator of the alternative school and the appropriate guidance counselor, the student may be removed from the school setting altogether. See MS AG Op., Thompson (July 24, 1998).

Attendance at an Alternative School recorded in the student's permanent record

Section 37-15-1 of the Mississippi Code requires that information concerning a student's record of attendance, among other items, be maintained in a student's permanent record and cumulative folder. Therefore, any disciplinary actions affecting attendance, such as expulsions and suspensions, should be included in the student's permanent record and cumulative folder. Accordingly, attendance at an alternative school should be duly noted. Also, in determining what information should be included, you should also consider that the State Board of Education has the authority to require that information, in addition to those items enumerated in Section 37-15-1, be included in the cumulative folder. See *Miss. Code Ann.* Section 37-15-10 & MS AG Op., Bordis (February 9, 2001).

EXPULSION OF A STUDENT POSSESSING CONTROLLED SUBSTANCE OR WEAPON OR COMMITTING VIOLENT ACT ON SCHOOL PROPERTY

Any student in any school who possesses any controlled substance in violation of the Uniform Controlled Substance Law, a knife, handgun, or other firearm or any other instrument considered to be dangerous and capable of causing bodily harm or who commits a violent act on educational property as defined in Section 97-37-17, shall be subject to automatic expulsion for a calendar year by the superintendent or principal of the school in which the student is enrolled; provided, however, that the superintendent of the school shall be authorized to modify the period of time for such expulsion on a case by cases basis. Such expulsion shall take effect immediately subject to the constitutional rights of due process, which shall include the student's right to appeal to the local school board. *Miss. Code Ann.* Section 37-11-18.

Educational Property as defined by Section 97-37-17

“Educational property” shall mean any public or private school building or bus, public or private school campus, grounds, recreational area, athletic field, or other property owned, used or operated by any local school board, school, college or university board of trustees, or directors for the administration of any public or private educational institution or during a school related activity; provided however, that the term “educational property” shall not include any sixteenth section school land or lieu land on which is not located a school building, school campus, recreational area or athletic field.

Discretion in Modification of the Period for Expulsion

MS AG Op., Westbrook (June 13, 2003).

The superintendent has express authority to exercise his or her discretion to recommend to the school board a modified period of time for expulsion based on the circumstances of a particular case. Because the school board remains the governing authority, the superintendent may not override a school board’s final decision and unilaterally modify the period of time of an expulsion after it has been imposed. The phrase “subject to the constitutional rights of due process” contemplates that a school board retained the discretion to impose a lesser punishment if the evidence warranted. See MS AG Op., Benvenuti (March 4, 1997).

Procedural Due Process

Due Process is the conduct of legal proceedings according to established rules and principles for the protection and enforcement of private rights, including notice and the right to a fair hearing before a tribunal with the power to decide the case. *Black’s Law Dictionary* 424 (8th ed. 2005). A student’s interest in obtaining an education has been given procedural due process protections. *Clinton v. Byrd*, 477 So.2d 237 (Miss. 1985). The due process required for an expulsion/suspension greater than ten days, suspension for less than ten days and assignment to an alternative school is provided below.

Expulsion and longer suspensions

Warren County Board of Education v. Wilkinson, 500 So.2d 455 (Miss. 1986).

Due Process Hearing

- To be informed of the charges
- Present witnesses
- Cross examine witnesses
- Represented by counsel

Suspension (less than 10 days)

Goss v. Lopez, 419 U.S. 565, 95 S. Ct. 729 (1975).

- Advise student of charges
- Present information
- Provide an opportunity to respond.

Assignment to an alternative school

MS AG Op., Barnett (June 13, 1997).

- The school need not adjudicate the guilt or innocence of pupil for the alleged conduct.

- The school needs only to present evidence of immediate and direct negative effect upon the governance of the school created if the pupil is not reassigned to an alternative school.
- The pupil must be allowed the opportunity to counter that evidence and present evidence of his own.

Enrollment of Children Expelled or with a Pending Expulsion Hearing

When any child applies for admission or enrollment in any public school in the state, the parent, guardian or child, in the absence of an accompanying parent or guardian, shall indicate on the school registration form if the enrolling child has been expelled from any public or private school or is currently a party to an expulsion proceeding. If it is determined from the child's cumulative record or application for admission or enrollment that the child has been expelled, the school district may deny the student admission and enrollment until the superintendent of the school, or his designee, has reviewed the child's cumulative record and determined the child has participated in successful rehabilitative efforts including, but not limited to, progress in an alternative school or similar program. If the child is a party to an expulsion proceeding, the child may be admitted to a public school pending final disposition of the expulsion proceeding. If the expulsion proceeding results in the expulsion of the child, the public school may revoke such admission to school. If the child was expelled or is a party to an expulsion proceeding for an act involving violence, weapons, alcohol, illegal drugs or other activity that may result in expulsion, the school district shall not be required to grant admission nor enrollment to the child before one (1) calendar year after the date of expulsion. *Miss. Code Ann. Section 37-15-9 (3).*

Readmission of Expelled Students

MS AG Op., Fleming (July 15, 2005).

Under what circumstances may a school district deny readmission to an expelled student who has served the terms of his or her expulsion?

The Office of the Attorney General has previously opined that the term "expulsion" implies that the student must re-apply for admission into school. MS AG Op., Price (September 22, 1994). Pursuant to the language of Section 37-15-9 (3), a school district may deny admission or re-admission to a child who has previously been expelled if the child has not participated in successful rehabilitation effort, even if the term of that child's expulsion has expired.

Pursuant to Section 37-13-92 of the Mississippi Code, the school boards of all school districts are to provide an alternative school program or behavior modification program for certain students. Subsection (1)(a) requires such a program be available to any compulsory school-age child who has been suspended or expelled from school, except for students expelled for possession of a weapon or other felonious conduct. MS AG Op., Chaney (April 24, 1998); MS AG Op., Thompson (June 21, 2001). School districts are without discretion to establish categories or classes of offenses for which the penalty is total removal from the school setting. Thus, unless a child has been suspended or expelled from school for possession of a weapon or other felonious conduct, the student must be assigned to the alternative school for that school district. Even though not mandated, school districts have the discretion to allow such a child to attend the alternative school. MS AG Op., Price. The Attorney General has also previously opined that if the acts of a student, although not rising to the level of a felony, are such that the student poses a threat to the safety of himself or others or will disrupt the educational process at the alternative school, the school district is not required to admit the student into the alternative school. MS Ag Op., Howell (June 7, 1996); MS AG OP., Thompson (July 24, 1998); MS AG Op., Thompson (June 25, 2001). Finally, pursuant to Section 37-13-92 (9), any student who becomes involved in any criminal or violent behavior shall be removed from the alternative school program and the matter should be referred to the appropriate youth court.

In the event that a school district denies readmission to an expelled student, may that student appeal the decision to the State Board of Education or any other entity? If so, what are the procedures for such an appeal?

There is no statutory provision for an appeal of such an action to the State Board of Education. Any appeal of the decision of a school district to deny re-admission to a child based upon a prior expulsion would be to a court of competent jurisdiction.

If the school district refuses to educate an expelled student who has served the terms of his or her expulsion, how can that student receive the “adequate education” guaranteed to him or her under the Mississippi Constitution?

Whether the removal of a student from the school setting permanently is a violation of any Constitutional rights guaranteed to that child is a matter for a court of appropriate jurisdiction to determine. However, as dictated by the U.S. Supreme Court, prior to any suspension or expulsion, a student is entitled to a certain level of due process. *Goss v. Lopez*, 419 U.S. 565, 95 S.Ct. 729 (1975). The Mississippi Supreme Court has considered such matters and has recognized that students facing suspension or expulsion have a property interest that qualified for protection under the Due Process Clause. *Warren County Bd. of Educ. v. Wilkinson*, 500 So.2d 455 (Miss. 1986). But the Court has also held that a claim of violation of due process may only be sustained where the aggrieved party shows “substantial prejudice.” *Board of Education of Covington Co. v. G.W.*, 767 So.2d 187 (Miss. 2000); *Jones v. Board of Trustees*, 524 So.2d 968 (Miss. 1988). The Fifth Circuit Court of Appeals has recognized that education is not a fundamental right, and the proper test in determining whether a student’s due process rights have been violated by a disciplinary action removing them from the school setting is whether such action was rationally related to legitimate governmental interests. *Hill v. Rankin County, Mississippi School District*, 843 F.Supp. 1112 (5th Circuit 1993).

SEARCH AND SEIZURE

Suspicion-Based Searches

The influx of drugs, weapons, and other contraband into schools and the concurrent escalation of school violence have intensified school searches. The U.S. Supreme Court set boundaries for student searches in *New Jersey v. T.L.O.*, 1985 case. WILLIAM D. VALENTE & CHRISTINA M. ALENTE, *LAW IN THE SCHOOLS* 240 (2001).

Search of a Purse Based Upon Reasonable Suspicion

In *New Jersey v. T.L.O.*, 469 U.S. 325 (1985), the U.S. Supreme Court affirmed that students have some expectation of privacy at school that is protected by the Fourth Amendment. The Fourth Amendment of the U.S. Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable case, supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized.

The Fourth Amendment’s prohibition on unreasonable searches and seizures applies to searches conducted by school officials. *T.L.O.*, 469 U.S. at 333. The facts of the *T.L.O.* case are as follows:

A teacher observed students smoking in bathroom violating school rules. One student denied smoking to the principal, who then opened the student’s purse and found cigarettes and rolling papers commonly associated with the use of marijuana. A further

search of the purse uncovered “grass”, a pipe, plastic bags, index cards showing money owed to the student, and two letters admitting drug sales.

The U.S. Supreme Court found that the search of the student’s purse did not violate the Fourth Amendment. The court struck a balance between the schoolchild’s legitimate expectations of privacy and the school’s equally legitimate need to maintain an environment in which learning can take place. Requiring a teacher to obtain a warrant before searching a child suspected of an infraction of school rules (or of the criminal law) would unduly interfere with the maintenance of the swift and informal disciplinary procedures need in the schools. The court held that school officials need not obtain a warrant before searching a student who is under their authority. *T.L.O.*, 105 S.Ct. at 340. Ordinarily, a search – even one that may permissibly be carried out without a warrant – must be based upon “probable cause” to believe that a violation of the law has occurred. The fundamental command of the Fourth Amendment is that searches and seizures be reasonable, and although “both the concept of probable cause and the requirements of a warrant bear on the reasonableness of a search, . . . in certain limited circumstances neither is required.” *Id.* The U.S. Supreme Court has, in a number of cases, recognized the legality of searches based on suspicions that, although “reasonable,” do not rise to the level of probable cause. *Id.* at 341.

The court adopted the following requirements for a “reasonable” constitutional search:

- School authorities must have a reasonable individualized suspicion that the searched student violated a law or school rule;
- The scope and extent of the search must be limited to what is reasonable to serve the search purpose of preventing a suspected infraction of law or school rules; and
- The search must not be excessively intrusive in light of the student’s age and sex and the gravity of the suspected infraction.

Id. at 341-342. Students may be searched by school officials upon “reasonable suspicion.” “Reasonable suspicion” is defined as more than a hunch and does not rise to the level of probable cause required of law enforcement before a search can be conducted. The requirement of reasonable suspicion is not an absolute certainty. *Id.* at 345-346. The reasonable suspicion standard allows educators to investigate suspicious activity in a timely manner and permits legal searches that may be prohibited to law enforcement. *Id.* at 340-341. In *T.L.O.*, the original search for cigarettes in a purse was reasonable. The discovery of rolling papers created a reasonable suspicion that the student was carrying “grass” and a greater search could be conducted. *Id.* at 345-47.

Search of a Locker Based upon Reasonable Suspicion

In the Interest of S.C. v. State, 583 So.2d 188 (Miss. 1991), the Mississippi Supreme Court addressed the search of a student’s locker based on reasonable suspicion. The facts of that case are summarized as follows:

S.C. offered to sell two handguns to another student. The student reported this to an assistant principal who wanted to know if the guns were on campus. The student asked S.C. and S.C. confirmed the guns were on campus. The assistant principal went to the locker of S.C. but found it securely locked. S.C. opened the locker. The assistant principal found a black bag, unzipped it and removed the two guns.

The Mississippi Supreme Court found that students have an expectation of privacy in a locker based on a high school reality as found in *T.L.O.* Students, at a minimum, must bring to school not only the supplies needed for their studies, but also keys, money, and the necessities of personal hygiene and grooming. In addition, students may carry on their persons or in purses or wallets such nondisruptive yet highly personal items such as photographs, letters and diaries. Finally, students may have perfectly legitimate reasons to

carry with them articles of property needed in connection with extracurricular or recreational activities. In short, schoolchildren may find it necessary to carry with them a variety of legitimate, noncontraband items, and there is no reason to conclude that they have necessarily waived all rights to privacy in such items merely by bringing them onto school grounds. *In the Interest of S.C.*, 583 So.2d at 191. The student's expectation of privacy in a school locker is considerably less than in his own home or even, perhaps, his automobile. *Id.* at 192.

The school officials had reasonable grounds to search S.C.'s locker without a warrant. Information that a student may have a gun at school reasonably suggests school officials should search out the truth of the matter. High school students change classes every hour and ordinarily have access to their lockers between classes. These circumstances suggest an exigency that does not require a warrant. Students have more reliability than criminal informants absent information a student may be untrustworthy. School officials could consider the student's report sufficient evidence to take action. *Id.*

Search of an Automobile Based upon Reasonable Suspicion

In *Covington County v. G.W.*, 767 So.2d 187 (Miss. 2000), the Mississippi Supreme Court found there was reasonable suspicion to suspect that a student had been in the parking lot drinking before class. A student reported that G.W. was drinking beer in the school parking lot and other students corroborated that information. The principal knew of no reason or motive that would cause the students to lie about G.W.'s actions. Additionally, the School Security Officer found empty beer cans in the back of G.W.'s truck. *Id.* at 193.

While there may be a greater expectation of privacy in an automobile driving down the street than in a school locker, the court could hardly say such a higher expectation of privacy should be had in a car on school property as opposed to a school locker. *Id.* In this case, there was reasonable suspicion to believe that G.W. had been in the parking lot drinking before class. A student reported the incident, and several other students confirmed the report. Empty beer cans were found in the back of G.W.'s truck. A reasonable school official under these circumstances would and should have regarded this information sufficient to take action. The search was justified and was reasonably related to the student's assertion that G.W. had been in the parking lot drinking. *Id.* at 194.

A Drug Test Based upon Reasonable Suspicion

The U.S. Supreme Court has held that state-compelled collection and testing of urine is a search. The legal test enunciated in *T.L.O.* would apply to the drug testing of a student where there is reasonable suspicion that the student has violated the law or a school rule associated with the use of drugs and alcohol.

Summary for Suspicion-Based Searches

Comply with the following Legal Test:

Reasonable at inception

- Recent credible information
- Articulable facts
- Connect student to violation
- Violation of law or school rules
- Search will uncover evidence

Reasonable in scope

- Not too intrusive
- Geared to age and sex of student
- Geared to nature of violation

Document the following:

- Rule or law violated
- Where and what is to be searched
- Did the student deny owning the object
- Did the student abandon the object
- Will the search involve more than one student
- What steps taken before requesting an individual search

For the procedure for implementation, factors for justifying a search and other relevant circumstantial factors, refer to the *Youth Violence and School Safety Initiative* attached as Appendix B.

Random, Suspicionless Searches***Random, Suspicionless Drug Testing Program***

The U.S. Supreme Court has held that state-compelled collection and testing of urine constitutes a search subject to the demands of the Fourth Amendment. In landmark cases, the U.S. Supreme Court upheld two school districts' random, drug testing policies as not violating the Fourth Amendment. In 1995, the court upheld a random drug testing policy of athletes. In 2002, the court stated that random, drug testing of students who participated in competitive extracurricular activities met constitutional requirements. Mississippi school districts have adopted random, drug testing policies. Students in those districts have used the drug testing policy as an excuse for not using drugs. The two U.S. Supreme Court cases are summarized below.

As applied to student athletes

In *Vernonia School Dist. v. Acton*, 115 S.Ct. 2386 (1995), the U.S. Supreme Court upheld a school policy that authorized random urinalysis drug testing of students who participated in the school district's school athletics programs. The policy required students wishing to play sports to sign a form consenting to the testing and obtaining written consent from their parents. Athletes were tested at the beginning of the season for their sport. In addition, once each week of the season, the name of the athletes were placed in a "pool" from which a student, with the supervision of two adults, blindly drew the names of ten percent (10%) of the athletes for random testing. *Id.* at 2389.

In the Vernonia school district, disciplinary actions had reached epidemic proportions, drug use had increased sharply and athletes had become the leaders of the drug culture. School officials considered a drug-testing program and held a parent "input night" to discuss the proposed policy. The school board adopted the policy to prevent student athletes from using drugs, to protect their health and safety, and to provide drug users with assistance programs. *Id.*

The court considered the scope of the legitimate expectation of privacy. Students within the school environment have a lesser expectation of privacy than members of the population generally. Legitimate privacy expectations are even less with regard to student athletes where there is an element of communal undress inherent in athletic participation. Additionally, athletes voluntarily subject themselves to a degree of regulation even higher than that imposed on students generally. Students who voluntarily participate in school athletics have reason to expect intrusions upon normal rights and privileges, including privacy. *Id.* at 2943.

The court then considered the degree of intrusion of the search. Under the District's policy, male students produce samples at a urinal along a wall. They remain fully clothed and are observed from behind, if at all. Female students produce samples in an enclosed stall, with a female monitor standing outside listening only for sounds of tampering. Under such

conditions, the privacy interests compromised by the process of obtaining the urine sample are only negligible. *Id.* at 2393.

Taking into account the decreased expectation of privacy, the relative unobtrusiveness of the search and the severity of the need met by the search, the U.S. Supreme Court concluded Vernonia's Policy to be reasonable and hence constitutional. *Id.* at 2396.

As applied to students who participate in competitive extra-curricular activities

In *Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls*, 536 U.S. 822, 122 S.Ct. 2559, 153 L.Ed.2d 735 (2002), the Student Activities Drug Testing Policy implemented by the Board of Education of Independent School District No. 92 of Pottawatomie County (School District) required all students who participate in competitive extracurricular activities (such as the Academic Team, Future Farmers of America, Future Homemakers of America, band, choir, cheerleading and athletics) to submit to drug testing. Because this policy reasonably serves the School District's important interest in detecting and preventing drug use among its students, the U.S. Supreme Court held that it is constitutional. 536 U.S. at 825.

According to the U.S. Supreme Court, students who participate in competitive extracurricular activities voluntarily subject themselves to many of the same intrusions on their privacy as do athletes. Some of these clubs and activities require occasional off-campus travel and communal undress. All of them have their own rules and requirements for participating students that do not apply to the student body as a whole. This regulation of extracurricular activities further diminishes the expectation of privacy among school children. 536 U.S. at 831-832.

Under the policy, a faculty monitor waits outside the closed restroom stall for the student to produce a sample and must "listen for the normal sounds of urination in order to guard against tampered specimens and to insure an accurate chain of custody." The monitor then pours the sample into two bottles that are sealed and placed in a mailing pouch along with a consent form signed by the student. The test results are not turned over to any law enforcement authority. Nor do the test results lead to the imposition of discipline or have any academic consequences. Rather, the only consequence of a failed drug test is to limit the student's privilege of participating in extracurricular activities. Given the minimally intrusive nature of the sample collection and the limited uses to which the test results are put, the U.S. Supreme Court concluded that the invasion of students' privacy is not significant. 536 U.S. at 832-834.

The court reviewed the School District's policy for "reasonableness," which is the touchstone of the constitutionality of a governmental search. 536 U.S. at 828. Given the nationwide epidemic of drug use, and the evidence of increased drug use in the School District, it was entirely reasonable for the School District to enact this particular drug testing policy. The U.S. Supreme Court held that the School District's policy is a reasonable means of furthering the School District's important interest in preventing and deterring drug use among its schoolchildren. *Id.* at 834-836.

For guidelines on implementation of random drug testing policies, refer to the *Youth Violence and School Safety Initiative*, Appendix B. Sample Drug Testing Policies and Legal Guidelines can be located at on the website for the Office of Safe and Orderly Schools at www.mde.k12.ms.us/lead/osos/Threat.htm. Publications from the Office of National Drug Control Policy on drug-testing programs can be located at www.whitehousedrugpolicy.gov/publications/student_drug_testing/index.html.

Standard

- Demonstrate a severe need for the search (e.g., evidence of severe drug use or the presence of weapons)

- Keep the search as basic and unobtrusive as possible.
- Clarify in the code of conduct that lockers, desks, etc. remain school property.

Lockers

Schools should have a policy that lockers remain district property and are subject to search. Courts generally approve random search of lockers when the school has a good faith belief of drug or weapon problem because the expectation of privacy is low and the school interest is great. Refer to the *Youth Violence and School Safety Initiative* attached as Appendix B.

Automobiles

Schools should have a written policy that automobiles parked on campus are subject to search. A school district can require all students who bring a vehicle onto school premises to register the vehicle. The registration should state that vehicles will be routinely checked/searched and should be signed by a parent/guardian. See *Covington County v. G.W.*, 767 So.2d 187, 193 (Miss. 2000). Refer to the *Youth Violence and School Safety Initiative* attached as Appendix B.

Scent Detection Canine Program

The U.S. Court of Appeals for the Fifth Circuit has stated that a drug dog sniff of the person constitutes a search. School officials may invite law enforcement drug dogs on campus. Dogs may sniff cars, lockers and bags, etc., when students are asked to leave the classroom or area. Dogs may NOT sniff students. Refer to the *Youth Violence and School Safety Initiative* attached as Appendix B.

Delegation

Educators may delegate their special authority to maintain campus safety, order and discipline to law enforcement. A School Resource Officer is a fully certified police officer employed by a municipal/county agency or commissioned by the school district and assigned full time to school duties.

Examples of Delegation

- The School Resource Officer can be present as at witness when the educator searches.
- The School Resource Officer can search at the educator's request.
- Educators can search after receiving information from law enforcement if acting to maintain campus safety, order and discipline and they maintain control of the search.

Collaboration between Educators and Law Enforcement when Reasonable Suspicion Standard Applied

- School officials initiate the search, or police involvement is minimal.
- The School Resource Officer searches a student in furtherance of the school's education-related goals, and pursuant to authority granted by the educator.
- Educators request law enforcement assistance but control and lead the investigation.

IMMUNITY FROM CIVIL LIABILITY

The Mississippi Legislature has provided immunity of school personnel from liability for carrying out action in enforcing rules regarding control, discipline, suspension and expulsion of students. Section 37-11-57 of the Mississippi Code provides as follows:

Except in the case of excessive force or cruel and unusual punishment, a teacher, assistant teacher, principal, or an assistant principal acting within the course and scope of his employment shall not be liable for any action carried out in conformity with state or federal law or rules or regulations of the State Board of Education or the local school board regarding the control, discipline, suspension and expulsion of students. The local school board shall provide any necessary legal defense to a teacher, assistant teacher, principal, or assistant principal acting within the course and scope of his employment in any action which may be filed against such school personnel. A school district shall be entitled to reimbursement for legal fees and expenses from its employee if a court finds that the act of the employee was outside the course and scope of his employment, or that the employee was acting with criminal intent. Any action by the school district against its employee and any action by the employee against the school district for necessary legal fees and expenses shall be tried to the court in the same suit brought against the school employee.

Corporal punishment administered in a reasonable manner, or any reasonable action to maintain control and discipline of students taken by a teacher, assistant teacher, principal or assistant principal acting within the scope of his employment or function and in accordance with any state or federal laws or rules or regulations of the State Board of Education or the local school board does not constitute negligence or child abuse. No teacher, assistant teacher, principal or assistant principal so acting shall be held liable in a suit for civil damages alleged to have been suffered by a student as a result of the administration of corporal punishment, or the taking of action to maintain control and discipline of a student, unless the court determines that the teacher, assistant teacher, principal or assistant principal acted in bad faith or with malicious purpose or in a manner exhibiting a wanton and willful disregard of human rights or safety. For the purposes of this subsection, "corporal punishment" means the reasonable use of physical force or physical contact by a teacher, assistant teacher, principal or assistant principal, as may be necessary to maintain discipline, to enforce a school rule, for self-protection or for the protection of other students from disruptive students.

Under the Mississippi Tort Claims Act, employees of a governmental entity are not liable for claims while acting within the course and scope of their employment. Section 11-46-9 provides, in pertinent part, as follows:

(1) A governmental entity and its employees acting within the course and scope of their employment or duties shall not be liable for any claim:

* * *

(x) Arising out the administration of corporal punishment or the taking of any action to maintain control and discipline of students, as defined in Section 37-11-57, by a teacher, assistant teacher, principal or assistant principal of a public school district in the state unless the teacher, assistant teacher, principal or assistant principal acted in bad faith or with malicious purpose or in a manner exhibiting a wanton and willful disregard of human rights or safety.

* * *

An assistant teacher who attempted to control an autistic student by grabbing and holding his arms in an effort to prevent the student from causing harm to himself and others did not act with reckless disregard and therefore, was immune from civil liability. *J.P. v. Jackson Public School District*, 910 So.2d 575 (Miss. 2005).

BOMB THREATS

The Mississippi Department of Education has a crisis response plan template that is available to all school districts that incorporates Bomb Threat Protocols. The training manual, which includes the protocol, is in the School Safety Manual located on the MDE web page at www.mde.k12.ms.us.

Since 1999, the Office of Safe and Orderly Schools has provided training for all school districts upon request that includes a BOMB THREAT PROTOCOL. Since 1998, there have been no reports of actual bombs found on educational property.

School District Response

The protocol is based upon the Federal Bureau of Alcohol, Tobacco and Firearms Protocol. This protocol includes the following upon receipt of a bomb threat:

- Complete the Bomb Threat checklist that documents the information from the caller.
 - Determine the threat level (low, medium, high) based on the verbiage used by the caller.
 - Low grade. Example – There is a bomb in the school. Then the caller hangs up without further information. Response protocol – Do not evacuate but search while students remain in class. Alternative – Evacuate and search.
 - Medium grade. Example – There is a bomb set to go off in the Middle School at 2:00. (More specific and more precise information) Protocol – Evacuate and use trained staff to conduct a visual search of the building. Resume classes.
 - High-level threat (Device located or extremely specific information in the threat). Example --- “There is a pipe bomb located under the gym set to go off in 3 minutes. I am not kidding.” Another example is that a device is actually found. Response protocol – Evacuate and notify local law enforcement.

Gear the response to the threat level. Be aware that the goal of the threat is to interrupt class time.

Law Enforcement Response

It shall be unlawful for any person to report to another by any means, including telephone, mail, e-mail, mobile phone, fax or any means of communication, that a bomb or other explosive or chemical, biological or other weapons of mass destruction has been, or is to be, placed or secreted in any public or private place, knowing that such report is false. Any person who shall be convicted of a violation of this section shall be fined not more than \$10,000 or shall be committed to the custody of the Dept. of Corrections for not more than 10 years or both. *Miss Code Ann.* Section 97-37-21.

For any bomb threat

- Secure the school.
- Assist the administrator in bomb search and other activities.
- Conduct logical criminal investigation to identify subject.
- Obtain a subpoena from the local telephone company and appropriate cell phone provider for records. Fax the subpoena to the service provider.
- Review pin register (call return identification).

The majority of bomb threats are cleared by Mississippi law enforcement by identifying the caller and taking appropriate action. In Mississippi schools, students make the overwhelming majority of all bomb threats on personal cell phones. It is the recommendation of the Office of Safe and Orderly Schools that students not be allowed to possess cell phones on educational property during school hours.

The average bomb threat costs the community over \$20,000, including costs for law enforcement, emergency responders, and loss of instruction time.

For any school emergency, call the school safety help line twenty-four hours a day, seven days a week at (601) 942-2445 or page at (601) 929-2895.

CONFIDENTIALITY AND SHARING OF INFORMATION

FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT

The Family Educational Rights and Privacy Act of 1974 (FERPA) is a Federal law that protects a parent's privacy interest in his or her child's "education records." In particular, FERPA affords parents the right to inspect and review their children's education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. The term "education records" is broadly defined as:

Those records, files, documents, and other materials which (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

20 U.S.C. Section 1232g (a)(4). See also 34 CFR Section 99.3 "Education records." When a student reaches the age of eighteen or attends a postsecondary institution at any age, all rights afforded by FERPA transfer from the parents to the students. Further information regarding FERPA can be located at the website for the U.S. Department of Education at <http://www.ed.gov/policy/gen/guid/fpco/index.html>.

HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996

The Attorney General's office cannot, pursuant to Section 7-5-25 of the Mississippi Code, interpret federal law, in an official Attorney General's opinion. However, by way of information, the following general guidance regarding the Health Insurance Portability Act of 1996 (HIPAA) found in MS AG Op., Slay (October 31, 2003) is provided:

To improve the efficiency and effectiveness of the health care system, HIPAA requires the implementation of national standards for electronic health care transactions as well as privacy and security standards to protect personal health information. The privacy requirements included in the Act impact all components of the health care industry in the effort to protect the privacy of personal health information. HIPAA and its accompanying regulations apply only to covered entities: health care providers who transmit any health information in electronic form in connection with a covered transaction; health care plans, and health care clearinghouses. Health care is defined as care, services or supplies furnished to an individual and related to the health of an individual. A covered entity may not use or disclose protected health information except as permitted or required by the regulations. A covered entity must give notice to those whose personal health information it holds, uses, or discloses about its privacy practices, the covered entity's legal duties to protect personal health information, and the rights of persons whose personal health information the covered entity holds, uses or discloses. Covered entities may use and disclose health information for treatment, payment, and healthcare operations. Personal health information may also be used or disclosed upon written authorization from the person. In all instances of permitted use and disclosure, the information used or disclosed must be used only for health-related purposes and only the minimum amount of information necessary may be disclosed. The provisions of HIPAA apply only to the covered entities listed above. If you have any questions concerning the application of HIPAA, please contact Mr. Bob Dent, Privacy Officer, Division of Medicaid, 601-359-6050.

ACCESS OF THE MISSISSIPPI DEPARTMENT OF EDUCATION AND ITS AGENTS TO INDIVIDUAL STUDENT RECORDS

Under the "Privacy Act," U.S. Department of Education statutes, state statutes, and the school board policy of privacy and privileged communication of special students in "Special

Education,” may the Superintendent allow individuals—even though they are contractors with the State Department of Education or the State Superintendent of Education—unbridled access to the “Special Education Students” school records which contain personal mental, medical and health information, and identify to the individual student as to the test scores placing the student in special education?

The Mississippi Department of Education (MDE) indisputably has access to these records. See Sections 37-15-1, et seq., of the MS Code; Section 37-15-3 (pupils’ records shall be available to school officials); Section 37-15-10 (state board of education shall administer Sections 37-15-1, et seq., and shall issue such additional standards and regulations as might be necessary in carrying out this duty). The contractors stand in place of the MDE and hold the same authority to review students’ records as the MDE. As authorized agents of the MDE, the contractors not only hold the same statutory authority with regard to review of records, but are also bound by the same statutory constraints which bind the MDE concerning confidentiality and privileged information. It is the opinion of the Attorney General that a school district must allow contractors of the MDE, as authorized agents of the MDE, access to school records which contain personal mental, medical and health information, and which are identified to the individual student as to the test scores placing the student in special education. A school district retains the authority to insure the security of pupil records by requiring, prior to access, submission by the contractor of a signed confidentiality statement. MS AG Op., Hood (June 2, 2004).

ARREST OF TEACHERS

Before an arrest warrant shall be issued against any teacher who is a licensed public school employee as defined in Section 37-9-1, for a criminal act, whether misdemeanor or felony, which is alleged to have occurred while the teacher was in the performance of official duties, a probable cause hearing shall be held before a circuit court judge. The purpose of the hearing shall be to determine if adequate probable cause exists for the issuance of a warrant. All parties testifying in these proceedings shall do so under oath. The accused shall have the right to enter an appearance at the hearing, represented by legal counsel at his own expense, to hear the accusations and evidence against him; he may present evidence or testify in his own behalf. *Miss. Code Ann.* Section 99-3-28.

Pursuant to Section 99-3-28 of the Mississippi Code, nothing in this section shall prohibit the issuance of an arrest warrant by a circuit court judge upon presentation of probable cause, without the holding of a probable cause hearing, if adequate evidence is presented to satisfy the court that there is a significant risk that the accused will flee the court’s jurisdiction or that the accused poses a threat to the safety or well being of the public.

REPORTING

Mandatory Reporting of Suspicion of a Neglected or Abused Child

Any . . . nurse, psychologist, social worker, child care giver, minister, law enforcement officer, public or private school employee or any other person having reasonable cause to suspect that a child is a neglected child or an abused child, shall cause an oral report to be made immediately by telephone or otherwise and followed as soon thereafter as possible by a report in writing to the Department of Human Services. *Miss. Code Ann.* Section 43-21-353. The phone numbers for the Department of Human Services, Child/Adult Abuse & Neglect Hotline are (601) 359-4991 and (800) 222-8000.

Reporting Suspected Cases of School Violence and Other Traumatic Situations on the Connections Hotline

Pursuant to state statute, Section 37-3-93 of the Mississippi Code, the Department of Education, or its designee, shall operate a toll-free incoming wide area telephone service for the purpose of receiving reports of suspected cases of school violence and other traumatic

situations impacting students and faculty the public schools. Cases of school violence or other traumatic situations can be reported to the Connections Hotline at 1-888-827-4637.

Mandatory Reporting of Crimes Committed on School Property or at School-Related Activities

(Section 37-11-29 of the Mississippi Code)

Superintendent to report expulsion for criminal activity to the parent, youth court and law enforcement.

Pursuant to Section 37-9-14 (2)(w) of the Mississippi Code, the superintendent has the power, authority and duty to notify, in writing, the parent, guardian or custodian, the youth court and local law enforcement of any expulsion of a student for criminal activity.

Facts reported to the Superintendent

Any principal, teacher or other school employee who has knowledge of any unlawful activity occurring on educational property or during a school-related activity shall report such activity to the superintendent or his designee who shall notify the appropriate law enforcement officials as required by this section. *Miss. Code Ann.* Section 37-11-29 (1).

Law Enforcement to report arrests of students to schools

Law enforcement is to report arrests to schools within one (1) week of the arrest. *Miss. Code Ann.* Section 37-11-29 (2).

Superintendent reports to Law Enforcement

(Sections 37-11-29 (3) - (6) of the Mississippi Code)

(3) The Superintendent or his designee reports to the appropriate law enforcement agency a reasonable belief that a criminal act has occurred on educational property or during a school-related activity for any offenses in Paragraph (6) set out below. The superintendent/designee shall immediately report the act to the appropriate local law enforcement agency. The form approved by the Mississippi Board of Education to report crimes on school property or at a school-related activity is attached as Appendix C. Any superintendent who fails to report shall be subject to the penalties provided in 37-11-35 (misdemeanor). Section 37-11-35 specifically provides that as follows:

If any person charged with Section 37-11-29 (2) or (3) to make the reports therein provided for shall willfully fail, refuse or neglect to file any such report, he shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than One Thousand Dollars (\$1,000.00) or be imprisoned not exceeding six (6) months, or both.

(4) Law Enforcement shall immediately dispatch an officer to the educational institution and with probable cause the officer is authorized to make an arrest if necessary.

Any person reporting in good faith shall be immune from any civil liability.

“Unlawful activity” is defined as:

- Possession or use of deadly weapon
- Possession, sale, or use of any controlled substance
- Aggravated assault
- Simple assault
- Rape
- Sexual battery

- Murder
- Kidnapping
- Fondling, touching or handling a child for lustful purposes

The Office of the Attorney General advises the superintendent to report all acts believed to be a crime (not just the crimes listed in Paragraph (6) above) to local law enforcement, as law enforcement is the appropriate entity to make a factual determination as to what specific crime has been committed. MS AG Op., Preston (April 11, 2003). The following opinions of the Attorney General respond to questions related to Section 37-11-29:

MS AG Op., Anderton, (November 21, 1997). All crimes, not just the ones enumerated in subsection 37-11-29 (6), should be reported to the school system by law enforcement regardless of whether such crime was committed on or off school property.

MS AG Op., Preston (April 11, 2003).

- 1) Can a school board or district establish and/or operate under policies that effectively alter the requirements to report crimes committed on school property? A school board has the authority to establish policies and procedures; however, these policies and procedures may not be in conflict with the requirements of Section 37-11-29 (which requires the reporting of crimes on school property).
- 2) What circumstances, if any, exist which justify the non-report of unlawful activity or an alleged unlawful activity of 37-11-29 (6)? Section 37-11-29 requires any school employee who has knowledge of one of the crimes set for in Paragraph (6) to report to the superintendent or his designee. The superintendent/designee shall immediately notify law enforcement authorities. It is not within the authority of administrators to refrain from reporting these crimes and only handle the matters administratively.
- 3) Is an arrest a necessary prerequisite to a Juvenile Incident Report being released to local law enforcement agency? An arrest is not a prerequisite to making an immediate report to local law enforcement.
- 4) Is a report made by a school administration to a school police officer employed by that district sufficient to comply with Sections 37-9-14 and 37-11-29? The reporting of unlawful activity to a district-employed law enforcement officer does not meet the reporting criteria for these statutes.
- 5) Does the expanded meaning for crimes to be reported by law enforcement to schools as opined in the 1997 AG Opinion to Anderton (all crimes not just the ones listed in 37-11-29 (6)) apply equally to schools? The Superintendent is required to report any unlawful act that he reasonably believes occurred on educational property or during a school-related activity. This requirement remains regardless of whether reasonable belief is established from the superintendent's knowledge or from information relayed to the superintendent by a principal, teacher other school employee or a concerned citizen. Furthermore, although this Section states that a superintendent is only required to report any act involving an offense set for in subsection (6), this office would advise a superintendent to report all acts believed to be a crime to local law enforcement, as law enforcement is the appropriate entity to make a factual determination as to what specific crime has been committed.

Mandatory Reporting of Sexual Involvement of a School Employee with a Student

If any person eighteen (18) years or older who is employed by any public or private school district in this state is accused of fondling or having any type of sexual involvement with any child under the age of eighteen (18) years who is enrolled in such school, the principal of such school and the superintendent of such school district shall timely notify the district attorney with jurisdiction where the school is located of such accusation, provided that such

accusation is reported to the principal and to the school superintendent and that there is a reasonable basis to believe that such accusation is true. *Miss. Code Ann.* Section 97-5-24.

Mandatory Reporting to the Department of Education by the Circuit Court of Convictions Committed by Licensed Employees

Each Circuit Clerk has the statutory duty to report to the Mississippi Department of Education, Office of Educator Licensure, the felony or sex offense conviction of any certified/licensed personnel employed by a public or private elementary or secondary school according to requirements outlined in Mississippi law. *Miss. Code Ann.* Section 37-3-51.

Mandatory Reporting to the Department of Education by Superintendents

Section 37-3-2 (15) of the Mississippi Code authorizes the Commission on Teacher and Administrator Education, Licensure and Development, to promulgate procedures for reporting infractions delineated under Section 37-3-2 of the Mississippi Code. The Commission has provided a procedure for reporting violations of Sections 37-3-2 (11), (12) and (13) of the Mississippi Code that provides the grounds for denial, suspension and revocation of an educator license, violators of Section 37-9-57 (abandonment of employment) and Section 37-16-4 (enforcement and penalty for test violations). Each superintendent of a public school must report to the Mississippi Department of Education infractions committed under these sections of the Mississippi Code according to the following procedures:

- Submit an initial report on all certified/licensed employees no later than October 1 of each school year.
- After the initial report, submit reports on employees as knowledge of offenses occurs. Such reports shall be submitted within ten (10) days of notification of the offense.

FREQUENTLY ASKED QUESTIONS

1. May a student who has been expelled by the board attend activities at other schools in the district during his expulsion?

Pursuant to Sections 37-7-301(e), 37-9-71 and 37-11-18 of the Mississippi Code, it is within the discretion of the school board to establish the terms and conditions of an expulsion or suspension; however, unless the school board expressly provides otherwise in its order, such a student is expelled or suspended from the school district and thus prohibited from engaging in or attending curricular or extracurricular activities at any school under the jurisdiction of the school board during the period of his or her suspension or expulsion. MS AG Op., Davies (September 12, 1997).

2. To what extent is it legal for a school employee, whether certified or uncertified, to participate in any effort to promote a school bond issue?

School employees may participate in political activities including the promotion of a school bond issue, as long as their participation in such activities is limited to the hours when they are not involved in their work-related duties. MS AG Op., Cole (March 21, 1994).

3. Does a school district have the authority to retain a student in kindergarten for an additional year if the district deems that placement of the student in the first grade would not be the most appropriate educational placement?

A school district does have the inherent power to make rules and regulations regarding the placement of its students in the appropriate grade. This authority includes making appropriate placements of a child into a particular grade by way of either assignment,

promotion or retention of a student. MS AG Op., Johnson (December 3, 2002) as modified by MS AG Op., Storey (July 18, 2003).

4. May a school board grant a “bonus” day for both certified and non-certified employees as an award for no absences for the previous school year?

A school board policy that grants a “bonus” day of personal leave for perfect attendance for both licensed and non-licensed employees is permissible under Section 37-7-307 and would not violate Section 96 of the Mississippi Constitution of 1890 as long as the extra leave does not cause the total amount of leave granted to the employees to exceed the limitations of Section 37-7-307 (9). MS AG Op., Jacks (December 27, 2005).

5. Does the School Board have the authority to pay the teacher the difference owed for prior year’s service when the salary was inadvertently calculated for several years without giving proper credit for one year’s prior service?

The Attorney General’s office has previously opined that Section 96 of the Mississippi Constitution of 1890 strictly forbids payment of retroactive salary increases to any public employee unless such payment is clearly shown to be back pay previously due but unpaid because of administrative error. MS AG Op., Ball (August 14, 2000); MS AG Op., Genin (February 7, 1990) and MS AG Op., Cofer (September 28, 1982). A recent opinion from the Attorney General’s office based upon similar facts found no authority to allow the district to award retroactive pay for work that had already been performed and for which an agreed upon compensation had already been provided. See, MS AG Op., Chaney (April 18, 2003). The district and the employee agreed upon an amount for salary and the employee was paid that salary and is not due any back pay under these circumstances. The district may adjust the teacher’s level of experience prospectively, but the Office of the Attorney General finds no authority that would allow the district to award retroactive pay for work that has already been performed and for which an agreed upon compensation has already been provided. MS AG Op., Wright (August 15, 2003).

6. Under what conditions may a student be transferred from one school district to another?

Section 37-15-31(1) does not specify the conditions under which a transfer may occur. The transfer of students between school districts is a purely discretionary function of the school boards. "If either district is operating under a Federal Court Order or Consent Decree that contains a Singleton Provision, then the affected district(s) must conduct an analysis of the cumulative segregative effect on both the sending and receiving school before reaching a determination as to whether or not the transfer may be effected under such Order." MS AG Op., Jones (July 22, 2005).

7. Is there any authority for a school district to pay part-time hourly employees for holidays if they do not work?

A school district may implement a leave policy which pays part-time hourly employees for leave taken in recognition of a federal holiday if the holidays granted under the policy do not exceed those permitted by the State and if the policy is applied consistently to all part-time employees. MS AG Op., Chaney (February 2, 2006).

8. Can band instructors purchase band uniforms and accessories from monies received under Section 37-61-33 (3)(a)(iii)?

Classroom supply funds are to be spent for classroom supplies, instructional materials and equipment, including computers and computer software. Band uniforms and accessories meet the definition of “equipment” for the expenditure of classroom supply funds. Section 37-61-33 (3)(a)(iii) of the Mississippi Code and the policy of the Mississippi Board of Education provide several caveats. Teachers are to be allowed to expend funds as they deem appropriate. Classroom supply funds shall supplement, not replace, other local and

state funds available for the same purposes. Teachers desiring to pool their funds must develop a written spending plan that is approved by the principal and supports the overall goals of the school. The school district should purchase items that meet the basic needs of teachers or students, such as student desks and teacher desks and chairs, with other appropriate funds. As long as the school board complies with these requirements, band instructors may purchase band uniforms and accessories from classroom supply funds.

9. Which employees are covered under the Education Employment Procedures Law?

For answers to this question and other questions regarding the Education Employment Procedures Law, refer to Education Employment Procedures Law Handbook published by the Mississippi School Boards Association located at <http://www.msbaonline.org>.

10. Who has the authority to suspend or to expel students from schools? Are there procedures that must be followed?

For answer to this question, refer to the School Board Primer published by the Mississippi School Boards Association located at <http://www.msbaonline.org>.

For other Frequently Asked Questions refer to Technicalities, a monthly publication of the Office of the State Auditor, Department of Technical Assistance located at <http://www.osa.state.ms.us/techasst/schools.htm>.