

**HOT TOPICS
PERSONNEL ISSUES**

January 23, 2019

**School Districts Are Only As Good As
Their People**

- School Boards must hire good superintendents
- Superintendents must find and recommend good principals
- Principals must find and recommend good teachers, counselors, custodians, etc.

Accountability Is Important

- School boards must hold superintendents accountable
- Superintendents must hold principals and central office staff accountable
- Principals must hold teachers and other school employees accountable

Accountability Is Important

- If the school board is not willing to hold the superintendent accountable, then the school board cannot blame the superintendent for the district's performance—the school board must take responsibility for poor performance of the district

Accountability Is Important

- If the superintendent is not willing to hold principals and central office staff accountable, then the superintendent must take full blame for poor performance of the district

Accountability Is Important

- If the principal is not willing to hold teachers and other school employees accountable, then the principal must take full responsibility for poor performance of the school

Why Is Accountability So Important?

- To make sure our students are receiving a quality education
- To make sure that we “weed out” those employees who consistently under-perform
- To make sure we keep our good employees
- To give our schools an opportunity to participate in incentive pay programs implemented by the state

MISSISSIPPI PUBLIC SCHOOL ACCOUNTABILITY STANDARDS 2018

Process Standards Administration and Personnel

1. The local school board and the superintendent of schools shall exercise due diligence in performing the respective duties of each office in accordance with applicable law. The local school board's responsibilities shall pertain to matters of setting policy and shall not interfere in the day-to-day operations of the school district that include, but are not limited to, such duties as those relating to personnel and management decisions. Failure to comply shall result in the immediate downgrade of the district's accreditation status to Probation or Withdrawn as indicated in Accreditation Policy 2.5.

Process Standards Administration and Personnel

- 1.1 The school board assigns all executive duties and administrative duties to the superintendent, who is properly licensed and chosen in the manner prescribed by law.

Process Standards Administration and Personnel

- 1.2 School board policies that comply with state and federal statutes, rules, and regulations serve as the basis of operation for the district, and current copies (print or electronic) of school board policies are published and available for public review.

Process Standards Administration and Personnel

- 1.3 School board members complete required basic and continuing education programs in order to effectively perform their duties in the manner prescribed by law.

Board Interference in Personnel Issues

- State Accountability Process Standard 1.1
 - Personnel matters are duties assigned to the superintendent
 - Board is involved when the superintendent is making a recommendation for hire
 - Board is involved when superintendent non-renews/dismisses/suspends a licensed employee **AND** employee asks for a hearing

Board Interference in Personnel Issues

- State Accountability Process Standard 1.1
 - Board is involved when superintendent reassigns an employee **AND** the employee asks the Board to review the reassignment

Board Interference in Personnel Issues

- Board does not tell Superintendent who to hire
- Board does not tell Superintendent who to dismiss/suspend/non-renew
- If a Board member becomes involved in a personnel matter other than when permitted by law, the employee may claim a violation of his/her due process

Board Interference in Personnel Issues

- One Board member's bad conduct may "taint" the rest of the Board
- Board members may be held individually liable for violating the employee's due process rights
- Boards must self-govern and make sure no Board member subjects Board members and the District to liability

Personnel Maxims

1. No employee will agree he/she is not doing a good job. Everyone believes they are doing a great job.
2. If you tell someone they are not meeting your expectations, they will think you are trying to get rid of them.

Personnel Maxims

3. Your average to below average performing employee takes up more of your time than your high performers. You spend little time on your top performing employees.
4. If you do not address the non-performing employee, you are doing a disservice to your students and to your performing employees.

Personnel Maxims

5. If you do not address the non-performing employee, your performing employees will become dissatisfied and will eventually quit going the extra mile or will leave.
6. If you raise expectations, your good employees will respond. Your weak employees will complain.

Personnel Maxims

7. When placing an employee on a plan of improvement, you should identify the deficit areas and put the responsibility on the employee for developing a plan to address those deficits.
8. When the employee says he/she does not agree with your assessment of deficit areas, you should respond that it is the employee's responsibility to prove you wrong.

Personnel Maxims

9. If an employee is not willing to address deficit areas pointed out by you, inform the employee that he/she may not make it to the end of the year.
10. Many employees will complain of harassment or bullying if you require them to meet your expectation.

Education Employment Procedures Law of 2001

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§37-9-101

- To provide accountability
- To provide mechanism for nonrenewal
- To provide employee opportunity for a hearing
- To require nonrenewal decisions to be based upon valid educational reasons or noncompliance with school district personnel policies

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§37-9-103

- Employee includes any teacher, principal, superintendent or other professional personnel, required to have a license issued by the SDE
 - employed by local school district for a continuous period of two years with that district, or
 - who has completed a continuous period of two years of employment in a Mississippi public school district and one full year with the district of current employment.

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§37-9-103

- Designated Licensed School Business Administrator now included under the EEPL per State Board of Education Policy 6901, eff. July 1, 2012.
- District may designate only one individual to hold this position.
- Must hold the School Business Administrator license issued by the MDE.
- If School Business Administrator does not meet licensure requirements, must complete training requirements to come under the EEPL.

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§37-9-103

- Districts may have a School Business Administrator or Officer who is not licensed and District will still meet accreditation requirements.
- The employee will not be a licensed employee under the EEPL

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§37-9-103

- Use of the word “Days” in statute
– means calendar days

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§37-9-103

- The EEPL does not apply to any category of employee after the Governor declares a state of emergency under § 37-17-6(11).
- The EEPL is not applicable in any school district for the full period of time the conditions in § 37-17-6(11) exist.

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§37-9-104

- Board makes a preliminary determination not to offer a superintendent a renewal contract
- Written notice before February 1
- Time line does not apply if recommendation from interim conservator(§37-17-6(14)(a)) or financial advisor(§37-9-18)

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§37-9-105

- Recommendation of nonrenewal by school district
- Written notice stating the reasons for proposed nonreemployment given by superintendent without further board action:
 - principal-on or before March 1
 - teacher, administrator or other professional educator-on or before April 15 or within 10 calendar days after the Governor approves the appropriation bill(s) comprising the state’s education budget for funding K-12, whichever date is later.

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§37-9-105

- Interim conservator or school board acting on recommendation of district financial advisor not required to comply with time limitations

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§37-9-109

- Upon written request within 10 days of receipt of notice, employee entitled to:
 - written notice of the *specific* reasons, summary of the factual basis, a list of witnesses and a copy of documentary evidence substantiating reasons to be presented at hearing
 - notice at least 14 days before hearing
 - failure to provide results in recommendation being null and void-1 year contract issued

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§37-9-109

- Opportunity for a hearing before the board or a hearing officer (superintendent is not entitled to a non-renewal hearing)
- Be represented by legal counsel
- No less than 5 days before the hearing, the employee shall provide the district a response to the specific reasons for nonreemployment, a list of witnesses and a copy of documentary evidence in support of the response

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§37-9-109

- If employee fails to provide information, recommendation is final without a hearing
- If employee does not request a hearing, the recommendation regarding nonreemployment is final (note: there has been no board decision at this point)

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§37-9-111

- School board or its designee can set date of hearing
- Not sooner than 5 days nor later than 30 days from the date of the request
- Before board or hearing officer
- HO cannot be person who made initial recommendation

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§37-9-111

- HO cannot have interest in outcome of hearing, cannot be related to board member, administrator making recommendation or employee
- No ex parte communication regarding substantive provisions of the hearing
- Hearing is held in executive session, unless employee elects to have a public hearing

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§37-9-111

- Board or HO may order any part of hearing to be held in executive session if testimony deals with matters involving reputation or character of another person
- If hearing is public, testimony by minors must be held in executive session and must be considered confidential public records and confidential student records, subject to an expectation of reasonable privacy and confidentiality

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§37-9-111

- Public disclosure of minor's testimony by court order only
- District presents evidence in support of its recommendation
- Employee given opportunity to present matters at the hearing relevant to the reasons given for nonreemployment
- Stenographic notes made of the proceedings

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§37-9-111

- The board shall review the matters presented before it, or if conducted by a hearing officer, the hearing officer's report and the record of the proceedings
- Board must determine if the employment decision was based upon a valid educational reason or noncompliance with school district personnel policies and was based solely upon evidence presented at hearing

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§37-9-111

- Employee notified within 30 days of conclusion of hearing conducted by hearing officer
 - employee has right to present a statement to board prior to final decision by the board
- Employee notified within 10 days of conclusion of hearing conducted by board

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§37-9-111

- Hearsay is allowed but cannot be sole basis for determination of facts by board or hearing officer
- Board or hearing officer can issue subpoenas to compel the attendance of witnesses
- This section does not apply to superintendents who have been non-renewed or terminated pursuant to § 37-9-59

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§37-9-113

- Appeal is to chancery court
- Must file a bond payable to school board with sufficient sureties, in the penalty of not less than \$200.00, conditioned upon the payment of all of the costs of appeal, within 20 days of receipt of the board's final decision

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§37-9-113

- Scope of review is limited to the record of the hearing to determine if the action of the school board is unlawful for the reason that it was:
 - not supported by any substantial evidence;
 - arbitrary or capricious; or
 - in violation of some statutory or constitutional right of the employee

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§37-9-113

- No relief shall be granted based upon a court's finding of harmless error by the board in complying with the procedural requirements of the EEPL.
- In the event of a finding of prejudicial error, the case shall be remanded for a rehearing consistent with the findings of the court.

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Suspensions and Dismissals of Licensed Employees

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§37-9-59

- Incompetence, neglect of duty, immoral conduct, intemperance, brutal treatment of a pupil or other good cause
- Superintendent has authority to suspend or dismiss (does not require board action at the initial stage)
- Before being dismissed or suspended, employee shall be notified of charges

§37-9-59(cont'd)

- Employee is entitled to a public hearing (superintendent who has been terminated does not have the right to request a hearing)
- If continued presence of employee poses a potential threat or danger to the health, safety or general welfare of students, superintendent may immediately release employee of duties pending a hearing
- If in superintendent's discretion, continued presence may interfere with or cause a disruption of normal school operations, may immediately release employee of duties

§37-9-59(cont'd)

- If employee is arrested, indicted or otherwise charged with a felony, continued presence deemed to constitute a disruption
- Employee must ask for a hearing within 5 calendar days of the notice of dismissal or suspension
- School board shall set date, time and place for hearing

§37-9-59(cont'd)

- Procedure for hearing is same as for nonrenewals(§37-9-111)
- Appeal is to chancery court(§37-9-113)
- If employee is immediately released of duties, the employee shall receive salary up to and including the date the initial hearing is set

Mississippi Educator Code of Ethics and Standards of Conduct

James A. Keith
Adams and Reese LLP

Educators

- Obligated to adhere to a set of principles which defines professional conduct
- Code of Ethics sets forth these standards of conduct
- Adopted as State Policy by State Board of Education
- Code of Ethics is part of every licensed employees' contract
- Required of all non-licensed employees by local mandate

Standard 1: Professional Conduct

- Encouraging and supporting colleagues in developing and maintaining high standards
- Respecting fellow educators and participating in the development of a professional teaching environment
- Maintaining a professional relationship with parents of students and establishing appropriate communication regarding their children

Standard 1: Professional Conduct

- **Unethical conduct:**
 - Harassment of colleagues, students
 - Inappropriate language, conduct
 - Conduct that impairs employee's ability to be an effective employee of the school district
 - Conduct that does not promote the mission of the school district to demonstrate to the public that the public school is the best option for educating children

Standard 2: Trustworthiness

- Demonstrating honesty, integrity, diplomacy, tact, fairness
- Unethical conduct includes failure to be honest and forthright in every aspect of duties and responsibilities as an employee of the district

Standard 3: Unlawful Acts

- Abide by all federal, state and local laws and school board policies

Standard 4: Educator/Student Relationships

- Maintaining a professional relationship with all students, both in and outside the classroom
- Unethical conduct
 - Inappropriate written, verbal, electronic communication with students
 - Friendships that are not indicative of a professional educator/student relationship
 - Social networking/texting with students

Standard 5: Educator Collegial Relationships

- Maintaining professional relationships with colleagues, both in and outside the classroom
- Example of unethical conduct is making false statements about a colleague or the school system

Standard 6: Alcohol, Drug and Tobacco Use or Possession

- Refrain from use of alcohol and/or tobacco during course of school duties
- Never use illegal or unauthorized drugs

Standard 7: Public Funds and Property

- Never misappropriate, divert, or use public funds, personnel, property or equipment for personal gain or advantage
- Examples of unethical conduct include failing to account for funds collected from students, parents or school-related functions
- Co-mingling school funds with personal funds

Standard 8: Remunerative Conduct

- An educator should maintain integrity with students, colleagues, parents or businesses when accepting gifts, gratuities, favors and additional compensation
- Educators cannot accept or offer gratuities, gifts, or favors that impair professional judgment or obtain special advantage

Standard 9: Maintenance of Confidentiality

- An educator shall comply with state and federal laws and local school board policies relating to confidentiality of student and personnel records, standardized test material and other information covered by confidentiality agreements.

Standard 10: Breach of Contract or Abandonment of Employment

- An educator shall fulfill all the terms and obligations in the contract with the local school board for the duration of the contract