

IN THE SUPREME COURT OF MISSISSIPPI

CASE NO. 2010-CC-01992

GARRY J. ALEXANDER

APPELLANT

VS.

**JAMES REEVES, CONSERVATOR OF THE
HAZLEHURST SCHOOL DISTRICT ACTING
IN PLACE OF THE BOARD OF TRUSTEES
OF THE HAZLEHURST SCHOOL DISTRICT**

APPELLEE

APPEAL FROM THE CHANCERY COURT OF COPIAH COUNTY, MISSISSIPPI

ORAL ARGUMENT NOT REQUESTED

BRIEF OF APPELLEE


**James A. Keith
Mississippi Bar No. [REDACTED]
John S. Hooks
Mississippi Bar No. [REDACTED]
ADAMS AND REESE LLP
1018 Highland Colony Parkway, Suite 800
Ridgeland, MS 39157
Telephone: (601) 353-3234
Facsimile: (601) 355-9708**

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualifications or recusal.

1. Mr. Garry J. Alexander – Plaintiff/Appellant
2. James Reeves, Conservator of the Hazlehurst School District – Defendant/Appellee
3. Stanley Blackmon – Former Conservator of the Hazlehurst School District
4. Mr. James T. McCafferty, Jr. – Counsel for Garry J. Alexander
5. Hazlehurst City School District
6. Mr. James A. Keith – Counsel for Appellee
7. Mr. John S. Hooks – Counsel for Appellee
8. Mr. Nathaniel A. Armistad – Hearing Counsel for Appellee
9. Honorable Edward E. Patten, Jr. – Chancellor, 15th Chancery Court District

THIS the 31st day of August 2011.



John S. Hooks
Attorney for Appellee

STATEMENT REGARDING ORAL ARGUMENT

The issues in this case are straightforward; therefore, oral argument is not necessary.

However, the District is pleased to appear for oral argument.

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PARTIES	i
STATEMENT REGARDING ORAL ARGUMENT	ii
TABLE OF CONTENTS.....	iii
TABLE OF CASES, STATUTES AND OTHER AUTHORITIES.....	iv
STATEMENT OF THE ISSUES.....	1
STANDARD OF REVIEW	1
STATEMENT OF THE CASE.....	1
I. Nature of the Case, Course of Proceedings, and Disposition in the Court Below.....	1
II. Statement of Facts.....	3
SUMMARY OF THE ARGUMENT	5
ARGUMENT	5
I. Conservator Reeves was vested with the authority to make the final decision regarding Alexander's employment.	5
II. Conservator Reeves' decision was supported by substantial evidence and was not arbitrary or capricious.....	7
A. Failure to adequately supervise classroom	8
B. Failure to timely and adequately report an incident involving students to administration.....	11
III. Alexander's constitutional and statutory rights were not violated.....	12
CONCLUSION.....	16
CERTIFICATE OF SERVICE	18
APPENDIX.....	19

TABLE OF AUTHORITIES

A. Cases

<i>Burks v. Amite County Sch. Dist.</i> , 708 So.2d 1366 (Miss. 1998).....	8
<i>Bynum v. Mississippi Department of Education</i> , 906 So.2d 81 (Miss. Ct. App. 2004)	7, 8
<i>Byrd v. Greene County Sch. Dist.</i> , 633 So.2d 1018 (Miss. 1994).....	1, 7
<i>Cantrell v. Vickers</i> , 495 F. Supp. 195 (N.D. Miss. 1980).....	14
<i>Dampier v. Lawrence County School District</i> , 344 So.2d 130 (Miss. 1977).....	6, 13, 14
<i>Delta CMI v. Speck</i> , 586 So.2d 768 (Miss. 1991).....	8
<i>Fails v. Jefferson County Public School Board</i> , 2011 Miss. App. LEXIS 287 (Miss. Ct. App. May 24, 2011)	5, 6
<i>Gordon v. Lafayette County School District</i> , 923 So.2d 260 (Miss. Ct. App. 2006)	1
<i>Harris v. Canton Sep. Pub. Sch. Bd. of Educ.</i> , 655 So.2d 898 (Miss. 1995).....	7
<i>Noxubee County Bd. of Educ. v. Givens</i> , 481 So.2d 816 (Miss. 1985).....	10
<i>Spradlin v. Board of Trustees of Pascagoula School District</i> , 515 So.2d 893 (Miss. 1987).....	13
<i>Withrow v. Larkin</i> , 421 U.S. 35 (1975).....	13, 14

B. Statutes and Other Authorities

Miss. Code Ann. § 37-9-59.....	7, 13
Miss. Code Ann. § 37-9-111	13, 15
Miss. Code Ann. § 37-9-113.....	1, 7

Miss. Code Ann. § 37-17-6, *et seq.*.....2, 5, 6, 15, 16

Attorney General's Opinion, No. 2000-0209, Thompson, April 12, 2000.....6

STATEMENT OF THE ISSUES

- I. Conservator Reeves was vested with the authority to make the final decision regarding Alexander's employment.
- II. Conservator Reeves' decision was supported by substantial evidence and was not arbitrary or capricious.
- III. Alexander's constitutional and statutory rights were not violated.

STANDARD OF REVIEW

Alexander's appeal to this Court is subject to the same standard of review applied by the chancery court. *Gordon v. Lafayette County School District*, 923 So.2d 260, 262 (Miss. Ct. App. 2006). The court has a duty of deference to the District and must only determine "whether the decision of the Board [conservator] was supported by substantial evidence, [or] was arbitrary or capricious, or beyond the power of the board [conservator] to make, or violated some statutory or constitutional right of the complaining party." Miss. Code. Ann § 37-9-113; *Byrd v. Greene County Sch. Dist.*, 633 So.2d 1018, 1022 (Miss. 1994).

STATEMENT OF THE CASE

I. Nature of the case, course of proceedings, and disposition in the court below

This case arises from the termination proceedings of Garry Alexander by the Hazlehurst City School District. In February 2009, Principal Ken Acton recommended the termination of Garry Alexander. Then-Conservator Stanley Blackmon decided to initiate termination proceedings with respect to Garry Alexander. Alexander was notified of his termination on February 17, 2009. He requested and was granted a hearing. The hearing lasted three days, first beginning in April 2009 and ending in December 2009. The hearing officer's report was submitted to all parties on December 24, 2009. On January 7, 2010, Alexander requested an opportunity to make a final statement before Conservator James Reeves, Blackmon's successor. The District's counsel agreed to Alexander's request on January 18, 2010; however, Conservator

Reeves had already issued his final decision upholding Alexander's termination on January 12, 2010. Conservator Reeves noted in his findings that he reviewed the hearing transcripts and the hearing officer's report and, based on his review, found there was substantial evidence to support Stanley Blackmon's initial decision to terminate Alexander.

Alexander initiated his appeal to the Chancery Court of Copiah County on January 25, 2010, arguing: 1) the conservator did not have authority to make the final decision terminating Alexander; 2) the decision violated his constitutional and statutory rights; 3) the decision resulted from the District's own violations of law and policy; and 4) was arbitrary and capricious and not supported by substantial evidence. RE 1, 15.¹

On September 29, 2010, the chancery court issued its opinion and order upholding Alexander's termination. RE 1. In upholding Alexander's termination, the chancery court found: "Conservators Blackmon and Reeves were fully vested with statutory authority as provided in Mississippi Code Annotated § 37-17-6 (14)(a) (Rev. 2007) to make employment decisions and acted within the course and scope of their decision-making authority when they made the decisions to terminate [Alexander] from his employment, which was fair and unbiased as required by law." RE 1, 24. Additionally, the chancery court decided Alexander was not prejudiced by his inability to make a final statement to Conservator Reeves, "because it would not have added to or taken away from the substantive testimony." RE 1, 27. Alexander's allegation that his performance was a result of the District's own violations is without merit, and Conservator Reeve's decision to terminate Alexander was fully supported by the evidence in the record. RE 1, 29-30.

Alexander appeals from the chancery court's September 29, 2010, order.

¹ Citations to the Record are designated "R.____." Citations to the Record Excerpts are designated "RE____." Citations to the hearing transcript are designated "Tr.____."

II. Statement of Facts

Garry Alexander was hired as a physical education and health teacher for the Hazlehurst School District on June 25, 2005. On July 1, 2008, the Mississippi State Department of Education (“MDE”) declared a state of emergency in the District and appointed Stanley Blackmon as District conservator.

Upon Blackmon’s arrival in the District he received written and verbal complaints from several administrators and supervisors regarding Alexander’s lack of supervision and classroom management skills. Tr. Vol. 3, pp. 8-10. For example, Principal Ken Acton observed that students in Alexander’s class were out of their seats, roaming around the classroom, and outside in the hallway. Acton did not observe instruction taking place in Alexander’s class. Tr. Vol. 1, pp. 43, 85. Alexander rarely submitted lesson plans to Acton, and the lesson plans were inadequate when submitted. Tr. Vol. 1, pp. 10-12.

Assistant Principal Brendsha Roby observed Alexander’s class on January 14 and January 16, 2009, and witnessed students off-task with no work assigned to them. RE 2, pp. 17-18. Roby made suggestions to Alexander to help improve his classroom management skills as well as increase student engagement. Alexander, however, failed to implement Roby’s suggestions. Alexander’s teaching was disorganized and had no clear objectives. *Id.*

On February 11, 2009, MDE evaluator Debbie Childers wrote Acton a letter expressing her concern about the safety of students in Alexander’s class. Childers’ class was located across the hall from Alexander’s class, and on numerous occasions she had to ask him to control his students. Childers would also have to retrieve Alexander’s students who were wandering the hallway and escort them back to Alexander’s class. RE 2, p. 21.

Finally, on February 12, 2009, an incident occurred on the playground where a group of fourth-grade boys held down a girl and touched her inappropriately while under Alexander’s

supervision. All of the children involved in the incident were interviewed individually by Principal Acton, and several students stated that Alexander was aware of the incident and told the boys to “stop,” but did nothing more. RE 2, p. 4. Alexander also failed to report the incident to District administrators. The matter would not have occurred had Alexander properly supervised his class. *Id.*

By letter dated February 17, 2009, Conservator Stanley Blackmon notified Alexander of his termination for neglect of duty (failure to adequately supervise his classroom and failure to timely and adequately report an incident involving students to the administrator). Blackmon’s letter also told Alexander of his right to a hearing:

Under the above statutes, and before your termination becomes effective, you are entitled to a public hearing on the charges made against you. You must request a hearing by delivering a letter to my attention at this office within five calendar days from this date. If I do not receive a written request from you for a hearing within five days, you will be terminated effective immediately. Until then, you are hereby released immediately from all your duties.

If you request a hearing under this procedure, a hearing will be set no sooner than five days and not later than thirty days from the date of your request. The procedure for your hearing shall be as prescribed in Miss. Code. Ann. Section 37-9-111. You are entitled to legal representation at this hearing, at your expense.

Appellant’s Record Excerpt, pg. 4.

Alexander filed a Notice of Appeal contesting Blackmon’s decision to terminate his employment. A hearing was held on April 22, 2009, June 26, 2009, and December 2, 2009. Before the beginning of Alexander’s hearing, James Reeves replaced Blackmon as conservator of the District.

Eleven witnesses testified during the three-day hearing. The District introduced evidence at the hearing supporting its decision to terminate Alexander’s employment for neglect of duty. The hearing officer’s report was submitted to all parties on December 24, 2009.

On January 7, 2010, Alexander requested an opportunity to appear before Conservator Reeves for a final statement. The District's counsel agreed to Alexander's request on January 18, 2010; however, Conservator Reeves had already issued his final decision upholding Alexander's termination on January 12, 2010. Conservator Reeves noted in his findings that he reviewed the hearing transcripts and the hearing officer's report and, based on his review, found there was substantial evidence to support Blackmon's initial decision to terminate Alexander.

Alexander appealed to the Chancery Court of Covich County. In a twenty-five page opinion, the chancery court upheld Alexander's termination on September 29, 2010. Alexander now appeals to this Court.

SUMMARY OF THE ARGUMENT

Former Conservator Blackmon had the authority to make the initial decision to terminate Alexander's employment, and Conservator Reeves had the authority to render the final decision to dismiss Alexander. Alexander's constitutional and statutory rights were not violated by his inability to make a final statement to Conservator Reeves or by Conservator Reeves' making the final employment decision.

Additionally, substantial evidence supported Conservator Reeves' finding that Alexander neglected his duties as a health and physical education teacher. The decision was not arbitrary or capricious.

ARGUMENT

I. Conservator Reeves was vested with the authority to make the final decision regarding Alexander's employment.

Alexander contends there is no proof of Conservator Reeves' conservatorship appointment in the record; therefore, Reeves had no authority to terminate Alexander. The conservator's authority is statutory and there was no burden on the District to establish

Conservator Reeves' authority during the termination hearing.² Miss. Code Ann. § 37-17-6(14)(a); *Fails v. Jefferson County Public School Board*, 2011 Miss. App. LEXIS 287 (Miss. Ct. App. May 24, 2011) (the court relied on the statute as the ultimate authority on the conservator's rights and responsibilities). Further, as the chancery court found, the assertion that Conservator Reeves was not lawfully appointed was never made at the termination hearing, and was, therefore, waived. RE 1, 22; *Dampier v. Lawrence County School District*, 344 So.2d 130, 131 (Miss. 1977) ("failure to make such objection at the trial waives the point"). "Further, the Conservator's authority is clearly outlined in Mississippi Code Section 37-17-6 (Rev. 2007), and since there is nothing of record to cast doubt on [the] Conservator's lawful appointment or decision making authority, [Alexander's] objection is found to be without merit." RE 1, 23.

Alexander alternatively argues that even if Conservator Reeves were lawfully appointed, he still did not have legal authority to make the final decision terminating Alexander's employment. Miss. Code Annotated § 37-17-6(11)(c) (Rev. 2007) provides that a conservator is to administer the management and operation of the school system "including . . . the *employment, termination, nonrenewal and reassignment of all licensed and nonlicensed personnel . . .*" Miss. Code Ann. § 37-17-6(14) (Rev. 2007) (emphasis added). Further, the "State Board of Education, acting through the interim conservator shall have all powers which were held by the previously existing school board." Miss. Code Ann. § 37-17-6(15) (Rev. 2007). RE 1, 18. A conservator's decision, like that of a school board, is final. Miss Code Ann. § 37-17-6; *see also*, Op. Atty. Gen. No. 2000-0209, Thompson, April 12, 2000.

After the District was placed in conservatorship by the MDE, the appointed conservator, Stanley Blackmon, was the only person empowered to initiate Alexander's termination and

² Although not necessary for purposes of responding to Alexander's brief, attached for purposes of completion are the Mississippi Department of Education Board Minutes from March 20, 2009, appointing James Reeves as Conservator of the Hazlehurst School District.

afford him the right to a hearing. Likewise, James Reeves, Blackmon's replacement, was the only person with the authority to render a final decision on Alexander's dismissal. RE 1, 19 ("The conservator's authority supersedes that of the superintendent and the school board and is the only entity that can make employment decisions in the District.").

This issue is without merit.

II. Conservator Reeves' decision was supported by substantial evidence and was not arbitrary or capricious.

Alexander argues Conservator Reeves' decision to uphold his termination was not supported by substantial evidence and was arbitrary and capricious. Alexander offers examples of other District employees who were reprimanded but not terminated. He also alleges financial and instructional deficiencies in the District caused his substandard performance.

Mississippi Code Ann. § 37-9-59 (Rev. 2007) governs dismissal of school employees.

Employees can be terminated:

For incompetence, neglect of duty, immoral conduct, intemperance, brutal treatment of a pupil or other good cause 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 on said charges.

RE 1, 29. "Good cause' is any ground put forward 'in good faith and which is not arbitrary, irrational, unreasonable, or irrelevant' to the building up and maintaining of an efficient school system." *Byrd v. Greene County School District*, 633 So.2d 1018, 1023 (Miss. 1994); RE 1, 29.

The cause for dismissal must be supported by substantial evidence. Miss. Code Ann. § 37-9-113(3) (Rev. 2007); RE 1, 29. Substantial evidence is defined as evidence affording a substantial basis of fact from which the fact in issue can be reasonably inferred. *Harris v. Canton Sep. Pub. Sch. Bd. of Educ.*, 655 So.2d 898, 902 (Miss. 1995). While substantial evidence is "something more than a 'mere scintilla' of evidence," it is less than the evidence required to meet the preponderance of the evidence standard. *Bynum v. Mississippi Department*

of Education, 906 So.2d 81, 90 (Miss. Ct. App. 2004) (quoting *Delta CMI v. Speck*, 586 So.2d 768, 773 (Miss. 1991)).

Burks v. Amite County Sch. Dist., 708 So.2d 1366, 1370 (Miss. 1998), defines “arbitrary” as a decision or act “not done according to reason or judgment, but depending on the will alone” and defines “capricious” as an act “done without reason, in a whimsical manner, implying either a lack of understanding of or a disregard for the surrounding facts and settled controlling principles.”

Conservator Reeves’ reason for terminating Alexander was neglect of duty for: a) failure to supervise his classroom, and b) failure to report an incident involving students to the administrator. R. 6-7. As shown below, these reasons were supported by substantial evidence and were not arbitrary or capricious.

A. Failure to adequately supervise classroom

There were several instances throughout Alexander’s employment in which he neglected his duties. Alexander never submitted lesson plans to Principal Ken Acton and Assistant Principal Brendsha Roby even though they discussed with him the importance of submitting lesson plans. Tr. Vol. 1, pp. 41-42. Teacher-mentor Eileen Milner observed loud and disruptive students hanging out of the doorway of Alexander’s classroom while Alexander was sitting at his desk reading a newspaper. When Milner inquired as to why he was not teaching, Alexander stated “kids don’t want to learn so I’m not going to try.” Tr. Vol. 1, p. 109; RE 2, p. 20. Milner gave the students an assignment before she left the class. RE 2, p. 20. Within five minutes, Milner observed the students roaming the halls and disturbing other classrooms. Alexander had even given students passes for the computer lab, which was already occupied. *Id.*

Patsy Livingston was assigned by the MDE to evaluate District employees. Livingston testified Alexander had been identified as a person of “high concern.” Tr. Vol. 1, p. 188. During

observations of Alexander's class, Livingston observed students gathered in groups being loud and disruptive while Alexander was reclined in his seat with his feet propped up, doing nothing. When Livingston asked Alexander what he was going to teach he stated, "I give up." Livingston modeled a class for Alexander. But after Livingston left, the class became unruly. Livingston never observed teaching taking place in Alexander's class. RE 2, p. 22-28; *see also*, Tr. Vol. 1, pp. 137-144, 165-167, 186-192.

Teachers would often complain that students in Alexander's class ran throughout the hallway during class time while Alexander said and did nothing. Livingston was called to Alexander's class on numerous occasions to get his students under control. Livingston observed Alexander with his head on his desk and his arms stretched out. When Livingston confronted Alexander about his head being on his desk during class time, he gave no explanation. RE 2, pp. 22-28.

Observations further showed Alexander did not effectively communicate with his students. He had no grasp of the students' knowledge of health and physical education. Livingston, as well as other District personnel, had numerous conversations with Alexander regarding the improvement needed in the areas of classroom management and organization; Alexander, however, made no progress in these areas. *Id.*

Additionally, Assistant Principal Brendsha Roby observed students in Alexander's class were off-task and had no work assigned to them. RE 2, p. 17; *see also*, Tr. Vol. 1, pp. 206-209, 259; Tr. Vol. 3, p. 58. Roby observed students standing around Alexander's desk copying answers to tests. Alexander never looked up or instructed the students to be seated. Roby also noticed that when Alexander gave the class an assignment, he never instructed the class how to complete the assignment. *Id.* Students would gather in groups to talk, some even yelling at one other. *Id.* During one observation, Roby suggested to Alexander that he actually teach the class.

After fifty minutes of class time had elapsed, however, Alexander began reading preprinted notes to the students. Students were disinterested and did not respond to the few questions he posed. It was apparent that Alexander's "teaching" was disorganized and had no clear objectives—largely based on Alexander's failure to prepare lesson plans for his classes. RE 2, p. 18.

MDE evaluator Debbie Childers was extremely concerned about the safety of students in Mr. Alexander's class. Childers' class was across the hall from Alexander's class, and on numerous occasions she had to go into Alexander's class and ask that he control his students. Childers observed students jumping over desks, running up and down the hallway and yelling into other teachers' classroom windows. Childers was forced to retrieve the students and escort them back into Alexander's class. When Childers advised Alexander to control his class, he would say, "[t]hey won't sit down." RE 2, p. 21.

Alexander argues his improper behavior was the direct result of the District and administrative ineptitude. Alexander relies on *Noxubee County Bd. Of Educ. v. Givens*, 481 So.2d 816 (Miss. 1985), to support his contention that "where alleged improper performance by a teacher is the fault of the district, a teacher can not be said to have neglected his duty." In *Noxubee County*, the teacher was confused about where to teach. Although her contract required her to teach at one district, she was transferred to another district. The administration had also told the teacher that it "had not gotten anything worked out" for her to do.

Here, Alexander was never confused about where he was supposed to teach. Alexander was never told there was nothing for him to do as a teacher. Alexander understood his job was to teach health and physical education. He also understood he was to submit lesson plans and teach according to the state curriculum for health. Tr. Vol. 1, pp. 10-12.

The District is not at fault for Alexander's failure to submit lesson plans, his inability to control his classroom, his lack of effort in teaching, and his decision to "give up" and lay his

head down on his desk during class time. RE 2, pp. 22-28. Further, Alexander failed to address some of the obvious deficiencies in his classroom. There was no excuse for students yelling and jumping over desks while he sat at his desk reading a newspaper.

As the chancellor found:

Despite this allegation, the Court finds that [Alexander] was employed with the District since 2005, and given that fact it is reasonable for the Conservator to have expected that [Alexander] knew what his basic instruction and classroom supervision duties entailed and that incumbent upon him was the obligation to adequately perform them. Therefore, the court finds [Alexander's] contention that his performance was attributable to the situation in the District to be without merit

RE 1, 29. Upon the chancellor's review of the record, "substantial evidence was presented, that is neither arbitrary nor capricious, to support [the] Conservator's finding that [Alexander] neglected his duty to properly supervise the classroom. The record clearly established a lack of adequate classroom supervision by [Alexander], which this court finds substantial." RE 1, 36.

B. Failure to timely and adequately report an incident involving students to administration

Alexander was also dismissed from the District for his failure to report an incident that occurred on the playground where a group of fourth grade boys held down a girl and touched her inappropriately while under Alexander's supervision. All the children involved in the incident were individually interviewed by Principal Acton. Tr. Vol. 1, p. 219. Several students reported that Alexander was notified the incident was happening, momentarily made the boys stop, but did not continue supervision. According to a statement from one student, "[c]oach saw it and yelled and told them to stop. They did not stop. He said stop and leave her alone. They stopped for a little while and then kept doing it." Several other students reported that Alexander said "stop," yet did not insure the incident did indeed stop. Alexander did not take any disciplinary action against the students. RE 2, pp. 4, 7-16.

Principal Acton met with Alexander after the incident to discuss the inadequate supervision Alexander displayed and his failure to report the incident to appropriate District personnel. Even before the incident, Acton met with Alexander to discuss the inadequate supervision of Alexander's class. Alexander was given a letter explaining Acton's expectations of him regarding classroom supervision. RE 2, p.28.

Alexander asserts that Coach Joe Mack should have been assisting him in supervising the students when the incident occurred. Even if Mack were supposed to be helping supervise the students, Alexander still had the responsibility to supervise the students and intervene when necessary. It was Alexander's duty to ensure that the incident stopped and to report the incident to the Administration so that appropriate disciplinary action could be taken. Alexander neglected his duty in both regards.

Conservator Reeves' decision to terminate Alexander was based on substantial evidence and was not arbitrary or capricious. Alexander neglected his duties as a teacher during a time when the District was in need of effective instruction. This additional cause for termination is "significant in that it evidences the cumulative effect of the preceding concerns regarding [Alexander's] failure to supervise the classroom." RE 1, 36. The chancery court correctly found "the District presented substantial evidence of [Alexander's] failure to report an incident, which resulted in physical harm to a student." *Id.*

III. Alexander's constitutional and statutory rights were not violated.

Finally, Alexander asserts that the dismissal procedure was not fair and unbiased as required by law because both Blackmon and Reeves were self-described contract employees of the Mississippi Department of Education.

In considering due process claims by employees appealing terminations, there is a "presumption of honesty and integrity" in board members serving as adjudicators in conducting

hearings and rendering decisions on employee dismissals. *Spradlin v. Board of Trustees of Pascagoula School District*, 515 So.2d 893, 897 (Miss.1987); *Dampier v. Lawrence County School District*, 344 So.2d 130, 132 (Miss. 1977) (citing *Withrow v. Larkin*, 421 U.S. 35, 95 (1975)). To rebut this presumption, the dismissed employee must show that the board members, or the conservator, had a personal or financial stake in the decision, or that there was some personal animosity toward the employee. *Spradlin*, 515 So.2d at 898; *Dampier*, 344 So.2d at 132.

In *Spradlin*, Michael Spradlin, assistant superintendent with the Pascagoula School District, was terminated by the school board for acting contrary to school board policy by processing purchase orders for a single-source purchase of encyclopedias. Spradlin also participated in deliberately misrepresenting the circumstances of the encyclopedia purchase to the school board. Because the superintendent had recently resigned, the board investigated Spradlin's conduct and terminated him. Spradlin brought suit challenging the board's authority to investigate his conduct, terminate his employment, and also make the final decision after the hearing.

The board investigated the surrounding circumstances of the purchase and notified Spradlin of his right to a hearing. The board complied with the statutory procedures for the hearing set out in Miss. Code Ann. § 37-9-111 (Supp.1986) and Miss. Code Ann. Section 37-9-59 (1972). To further protect Spradlin's rights, the hearing was conducted by a hearing officer. Because there was no superintendent, there was no other option but for the board to investigate and initiate the removal of Spradlin. *Spradlin*, 515 So.2d at 897

The board did not exceed its statutory authority in investigating and initiating Spradlin's termination in the absence of a superintendent. *Id.* See also, *Dampier* 344 So.2d at 132 (a showing that the same board made the initial recommendation for non-renewal and conducted

the hearing was not enough to overcome the presumption of honesty and integrity in policymakers with decision making power); *Withrow v. Larkin*, 421 U.S. 35, 47 (1975) (“the contention that the combination of investigative and adjudicative function necessarily creates an unconstitutional risk of bias in administrative adjudication has a much more difficult burden of persuasion to carry.”).

The Due Process Clause of the Fourteenth Amendment does not guarantee employment decisions will be made or reviewed by a body other than the school board, or in this case, the conservator. Therefore, an employee is not denied due process of law simply by having his or her hearing before the same school board that made the initial recommendation. *Dampier*, 344 So.2d at 132.

Alexander cites *Cantrell v. Vickers*, 495 F. Supp. 195 (N.D. Miss. 1980), for the proposition that a school board cannot make the initial recommendation and final decision to terminate an employee. In *Cantrell*, the board members individually voted to terminate Cantrell and then directed the superintendent to carry out the termination. Cantrell did not have a pre-termination hearing before the board, and the court determined a post-decision hearing would also have been futile because she would not have received an impartial hearing—the *individual* board members had made the decision to fire her. Alexander’s case is distinguishable.

Alexander appears to question the permissibility of the Conservator’s statutory authority to make employment decisions within the District that involve both the initial decision for termination and the final decision following a hearing. The issue, however, is moot here, because Principal Acton made the initial recommendation for termination (RE 1, 37), Conservator Blackmon gave the initial notice of termination (RE 1, 38), and Conservator Reeves made the final decision (R. 6-7).

Blackmon, as conservator, had the authority and responsibility to investigate Alexander's conduct and initiate his termination; Reeves had the authority to render the final decision to terminate Alexander. Miss. Code. Ann § 37-17-6. Alexander presents no evidence that either Blackmon or Reeves could not be fair to Alexander. Alexander was given the opportunity to explain all the instances in which he was found to have neglected his duty during his termination hearing. Alexander provided no testimony himself and did not present testimony to overcome the District's proof of his serious performance deficiencies. "The record demonstrates that [Alexander] was given ample notice of the charges against him and a full opportunity to address each at his review hearing, at which he chose not to testify. Therefore, the allegation that the procedures associated with [Alexander's] review were not conducted fairly or as required by law to the extent that due process was denied is without merit" RE 1, 28.

Reeves appointed a hearing officer to conduct Alexander's hearing. If neither Blackmon nor Reeves were acting as conservator, the board would have utilized the same process by initiating the termination and affording Alexander a hearing. The Board would also have made the final decision on Alexander's dismissal, just as Reeves did.

Alexander's due process rights were not violated by his not being presented with a final opportunity to make a statement before the conservator. Reeves rendered the final decision to terminate Alexander before Alexander appeared before him to present a statement.⁴

As the chancellor found, Alexander has "failed to rebut the presumption of impartiality afforded Conservators in rendering decisions on dismissals, with any evidence of personal or financial stake in the decision which would serve as a basis for their disqualification." RE 1, 24. "Conservators Blackmon and Reeves were fully vested with statutory authority as provided in Mississippi Code Annotated § 37-17-6(14(a) (Rev. 2007) to make employment decisions and acted within the scope of their decision making authority when they made the decision to

terminate [Alexander] from his employment, which was fair and unbiased as required by law.”

Id.

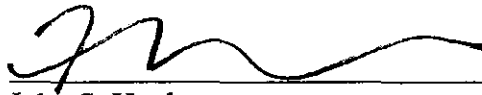
CONCLUSION

Conservator Blackmon had the authority to dismiss Alexander and Conservator Reeves had the authority to render the final decision to terminate him. Conservator Reeves’ decision to terminate Alexander was supported by substantial evidence that Alexander neglected his duty while employed by the Hazlehurst School District. Finally, Alexander’s due process rights were not violated by the initial and final termination decisions made by Conservators Blackmon and Reeves, respectively; and Alexander has failed to rebut the presumption of impartiality afforded the conservators. The decision of Conservator Reeves to dismiss Garry Alexander as a teacher of the Hazlehurst School District should be affirmed.

Respectfully submitted, this the 31st day of August 2011.

**JAMES REEVES, CONSERVATOR OF THE
HAZLEHURST SCHOOL DISTRICT ACTING
IN PLACE OF THE BOARD OF TRUSTEES OF
THE HAZLEHURST CITY SCHOOL DISTRICT**

By:



John S. Hooks

OF COUNSEL:

James A. Keith
Mississippi Bar No. 3546
John S. Hooks
Mississippi Bar No. 99175
ADAMS AND REESE LLP
1018 Highland Colony Parkway, Suite 800
Ridgeland, MS 39157
Telephone: (601) 353-3234
Facsimile: (601) 355-9708

CERTIFICATE OF SERVICE

I certify that I have caused to be hand-delivered the original and three copies of the Brief of Appellant and a condensed disk of the brief for filing to:

Ms. Kathy Gillis, Clerk
Mississippi Supreme Court
450 High Street
Jackson, MS 39201

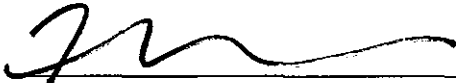
I certify that I have this day mailed by United States Mail, postage prepaid, a true and correct copy of the above Brief of the Appellant to the following:

James T. McCafferty, Esquire
Suite 410 Woodland Hills Building
3000 Old Canton Road
Post Office Box 5902
Jackson, Mississippi 39296

Honorable Edward E. Patten, Jr.
Chancellor, 15th Chancery Court District
Post Office Drawer 707
Hazlehurst, Mississippi 39083

Dorian Turner, Esquire
300 W. Capitol Street, Suite 200
Jackson, MS 39203

This the 31st day of August 2011.



John S. Hooks

APPENDIX

1. Attorney General's Opinion, No. 2000-0209, Thompson, April 12, 2000
2. Exhibit 1: Signed March 20, 2009, Mississippi State Board of Education minutes

2000 Miss. AG LEXIS 183, *

1 of 100 DOCUMENTS

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF MISSISSIPPI

2000-0209

2000 Miss. AG LEXIS 183

April 12, 2000

CORE TERMS: conservator, personnel, school district, superintendents, disapproving, nonrenewal, conservatorship, approving, local school, recommendation, noncertified, termination, assigned, interim, appointed, plenary, approve, elected, state of emergency, legal counsel, assign, reassignment, prescribed, deadline, declares, notice

SYLLABUS:

[*1]

SUBJ: Schools - Districts

RE: *Miss. Code Ann. Section 37-17-6* and Conservatorship

REQUESTBY:

Dr. Richard L. Thompson
State Superintendent of Education
Mississippi Department of Education
Post Office Box 771
Jackson, Mississippi 39205

OPINIONBY:

MIKE MOORE, ATTORNEY GENERAL; Larry E. Clark, Special Assistant Attorney General

OPINION:

Attorney General Mike Moore has received your request for an official opinion and has assigned it to me for research and reply. A copy of your letter of request is attached hereto, but because of its length is not set out herein. In your letter you pose two specific questions:

Please provide an official opinion addressing the following questions regarding the powers granted to a state conservator pursuant to the provisions in *Miss. Code Ann. Section 37-17-6(11)(c)(iii)* and *(14)(a)(i)*:

1. What powers are granted to the state conservators to manage personnel matters in school districts under conservatorship?
2. Do the conservators have the authority to employ legal counsel to assist in personnel

actions?

It is our understanding that the conservatorship of both the Oktibbeha and Tunica County School Districts was initiated under *Miss. Code Ann. Section 37-17-6(11)(a)*. When [*2] the Oktibbeha and Tunica conservators were originally appointed under Section (11)(a), they did not have plenary powers and had to work with and through the local elected officials who remained in place. However, the Legislature passed Senate Bill 2156 in the 1999 Legislative Session amending and increasing the powers of Section (11)(a) conservators. *Miss. Code Ann. Section 37-17-6* now reads in pertinent part as follows:

11)(c) Whenever the Governor declares a state of emergency in a school district in response to a request made under paragraph (a) or (b) of this section, the State Board of Education may take one or more of the following actions:

(iii) Assign an interim conservator who will have those powers and duties prescribed in subsection (14) of this section; [emphasis added]

It is now clear that a conservator assigned to a school district under subsection (11)(a) has the same broad plenary powers of a conservator assigned under the "extreme emergency" provisions of (11)(b) wherein the elected school board is removed. These powers are outlined at subsection (14)(a)(i) as follows:

Whenever the Governor declares a state of emergency in a school district [*3] in response to a request made under subsection (11) of this section, the State Board of Education, in its discretion, may assign an interim conservator to the school district who will be responsible for the administration, management and operation of the school district, including, but not limited to, the following activities:

(i) Approving or disapproving all financial obligations of the district, including, but not limited to, the employment, termination, nonrenewal and reassignment of all certified and noncertified personnel, contractual agreements and purchase orders, and approving or disapproving all claim dockets and the issuance of checks; in approving or disapproving employment contracts of superintendents, assistant superintendents or principals, the interim conservator shall not be required to comply with the time limitations prescribed in Sections 37-9-15 and 37-9-105. [emphasis added]

Thus under the broad statutory power of the conservatorship, the conservator is "responsible for...approving or disapproving...the employment, termination, nonrenewal and reassignment of all certified and noncertified personnel." In addition, he is released from the statutory [*4] notice deadline for the nonrenewal of appointed superintendents, assistant superintendents (February 1) and principals (March 1). He must, however, comply with the April 8 notice deadline for the nonrenewal of teacher contracts. The statute gives the conservator, whether under Section (11)(a) or (11)(b), the ultimate duty and responsibility for both notice of personnel actions and the final personnel decision.

A conservator is ultimately responsible for personnel actions. He has flexibility, however, in the manner in which that responsibility is undertaken. He may, if the district is operating smoothly and the personnel process is not a problem, simply oversee the local district's procedures from the principals' recommendations through the superintendent's recommendations, any due process hearing requested, and the local school board's decision, reserving the right to interject himself at any stage of the process and approve or disapprove

any recommendation or action taken by any officials during this process up to and including disapproving the local school board's final hiring, nonrenewal or termination decision. On the other hand, if circumstances warrant, at the discretion [*5] of the conservator, he may initiate employment actions, request appointment of a hearing officer, and make final personnel decisions. He is, in effect, the district. His decision, like a school board's, is final. Judicial appeal may be taken from the conservator's decision, as from a local school board's decision, to chancery court pursuant to *Miss. Code Ann. Section 37-9-113* or *37-9-59*.

The same authority allows the conservator at his discretion to approve "...all financial obligations of the district including, but not limited to, the employment...of all...noncertified personnel." Therefore, it is within the discretion of the conservator to employ legal counsel and have the fees paid by the local school district.

Legal Topics:

For related research and practice materials, see the following legal topics:

Constitutional Law
Congressional Duties & Powers
Elections
Time, Place & Manner
Education
Law
Administration & Operation
School Districts
Financial Liabilities
Estate, Gift & Trust Law
Conservators & Guardians
Conservators
Duties & Rights

Minutes of Mississippi Board of Education Meeting**March 20, 2009**

The regular meeting of the Mississippi Board of Education was held at 8:30 a.m. on Friday, March 20, 2009, in the 4th Floor Boardroom of the Central High School Building, 359 North West Street, Jackson, Mississippi. Board members present were: Ms. Sondra Parker Caillavet, Mr. Hal Gage, Dr. O. Wayne Gann, Mr. Claude Hartley, Mr. William H. Jones, Mr. Charles McClelland, Ms. Martha Murphy, Ms. Rosetta Richard, and Dr. David Sistrunk.

- I. The meeting was called to order by Mr. Bill Jones, Chair.
- II. Mr. Charles McClelland led the Pledge of Allegiance to the Flag and Ms. Sondra Parker Caillavet gave the invocation.
- III. On a motion by Mr. Hal Gage, seconded by Mr. Claude Hartley, the Board unanimously approved the minutes of the meeting of February 19-20, 2009.
- IV. On a motion by Dr. David Sistrunk, seconded by Mr. Claude Hartley, the Board voted unanimously to approve the agenda as presented.
- V. Mr. Bill Jones gave the following Chair's Report:
 - Reported that he received a Single Audit Management Report from the Office of the State Auditor, Stacey Pickering;
 - Noted that Ms. Rosetta Richard was featured in the Mississippi School Boards Association Update in February;
 - Reported that he received a letter from the Office of the Governor signed by Johnny Franklin, Education Policy Advisor, commending the Board for their commitment to raising the bar for Mississippi students by using national standards for the new curriculum and assessment system;
 - Reminded the Board of the retirement celebration for Dr. David Sistrunk;
 - Noted that the Board received an invitation from the Mississippi Teacher Center to attend the 2009 Mississippi Teacher of the Year Awards Luncheon at noon on April 2, 2009, at the Hilton Jackson Hotel;
 - Reported that the Board received a letter of resignation from Adam Bunch who serves as the Director of the Office of Educational Accountability and thanked Mr. Bunch for his service to the Department;
 - Indicated the Board will set a date at the April meeting for a spring retreat; and

Mississippi Board of Education – Minutes

Page 2

March 20, 2009

- Reminded the Board of its combined meeting with the Mississippi Economic Council on Thursday, April 16, 2009, at the Jackson Convention Complex, and of the Board's tour of the Mississippi Schools for the Blind and the Deaf scheduled for Friday morning, April 17, 2009.

VI. Approval of Action Items

(Items below are numbered to correspond to the items as discussed on Thursday, March 19, 2009.)

03. On a motion by Ms. Sondra Parker Caillavet, seconded by Mr. Claude Hartley, the Board unanimously determined that an extreme emergency situation exists in the Indianola School District which jeopardizes the safety, security, and educational interests of the children enrolled in the schools in the District and that this emergency situation is related to serious concerns regarding financial resources in this district (copy attached).
(Office of Student Performance)
04. On a motion by Mr. Hal Gage, seconded by Ms. Rosetta Richard, the Board unanimously approved the request to the Governor that the Governor declare a state of emergency in the Indianola School District (copy attached).
(Office of Student Performance)
05. On a motion by Ms. Sondra Caillavet, seconded by Ms. Rosetta Richard, the Board unanimously approved the appointment of Dr. John C. Garner, Jr. to serve as the Interim Conservator for the Indianola School District contingent upon a declaration of a state of emergency in the District by the Governor (copy attached).
(Office of Student Performance)
06. On a motion by Ms. Sondra Caillavet, seconded by Ms. Rosetta Richard, the Board unanimously approved a contract for an Interim Conservator for the Indianola School District contingent upon a declaration of a state of emergency in the District by the Governor (copy attached).
(Office of Student Performance)
07. On a motion by Dr. O. Wayne Gann, seconded by Mr. Hal Gage, the Board unanimously approved the \$1.8 million loan from the School District Emergency Assistance Fund to the Indianola School District (copy attached).
(Office of State Superintendent)
08. On a motion by Dr. David Sistrunk, seconded by Mr. Claude Hartley, the Board unanimously determined that an extreme emergency situation exists in the Tate County School District which jeopardizes the safety, security, and educational interests of the children enrolled in the schools in the District and

Mississippi Board of Education – Minutes

Page 3

March 20, 2009

that this emergency situation is related to serious concerns regarding financial resources in this district (copy attached).

(Office of Student Performance)

09. On a motion by Mr. Hal Gage, seconded by Mr. Claude Hartley, the Board unanimously approved the request to the Governor that the Governor declare a state of emergency in the Tate County School District (copy attached).
(Office of Student Performance)
10. On a motion by Mr. Claude Hartley, seconded by Mr. Hal Gage, the Board unanimously approved the appointment of Mr. Robert Andrew Strebeck to serve as Interim Conservator for the Tate County School District contingent upon a declaration of a state of emergency in the District by the Governor (copy attached)
(Office of Student Performance)
11. On a motion by Mr. Claude Hartley, seconded by Mr. Hal Gage, the Board unanimously approved the contract modification for Robert Andrew Strebeck to serve as an Interim Conservator for the Tate County School District contingent upon a declaration of a state of emergency in the District by the Governor. Mr. Strebeck will serve as Interim Conservator for the North Panola School District and as Interim Conservator for the Tate County School District (copy attached).
(Office of Student Performance)
12. On a motion by Mr. Claude Hartley, seconded by Mr. Hal Gage, the Board unanimously approved the appointment of Mr. James L. Reeves, Jr. to serve as the Conservator for the Hazlehurst City School District (copy attached).
(Office of Student Performance)
13. On a motion by Mr. Claude Hartley, seconded by Mr. Hal Gage, the Board unanimously approved the contract for a Conservator for the Hazlehurst City School District (copy attached).
(Office of Student Performance)
14. On a motion by Mr. Claude Hartley, seconded by Mr. Hal Gage, the Board unanimously approved the revisions of the State Accountability Rating System. The revisions cleared the Administrative Procedures Act process with public comments that were presented to the Board (copy attached).
(Office of State Superintendent)
17. On a motion by Dr. O. Wayne Gann, seconded by Ms. Martha Murphy, the Board unanimously approved the methodology to award grant dollars in

Mississippi Board of Education – Minutes

Page 4

March 20, 2009

support of local improvement efforts for Title I of the *No Child Left Behind Act of 2001* (copy attached).

(Office of Student Performance)

18. On a motion by Dr. O. Wayne Gann, seconded by Ms. Martha Murphy, the Board unanimously approved the contract with Southern Regional Education Board (SREB) to coordinate and conduct train-the-trainer sessions on ten training modules for the entry/career level administrators (copy attached).
(Office of Student Performance)
19. On a motion by Ms. Sondra Parker Caillavet, seconded by Dr. O. Wayne Gann, the Board unanimously approved the methodology for awarding Reading First Grant awards to support districts' implementation of Reading First programs and practices (copy attached).
(Office of Instructional Programs and Services)
20. On a motion by Ms. Sondra Parker Caillavet, seconded by Dr. O. Wayne Gann, the Board unanimously approved to distribute Reading First Grant awards to Mississippi Reading First schools in support of districts' implementation of Reading First programs and practices (copy attached).
(Office of Instructional Programs and Services)
21. On a motion by Ms. Sondra Parker Caillavet, seconded by Dr. O. Wayne Gann, the Board unanimously approved to distribute Reading First Grant awards to Mississippi Reading First schools in support of districts' implementation of Reading First programs and practices (copy attached).
(Office of Instructional Programs and Services)
22. On a motion by Ms. Sondra Parker Caillavet, seconded by Dr. O. Wayne Gann, the Board unanimously approved the revision of *The Mississippi Curriculum Frameworks for Vocational-Technical Programs*. The revisions cleared the Administrative Procedures Act process with no public comments (copy attached).
(Office of Instructional Programs and Services)
23. On a motion by Ms. Sondra Parker Caillavet, seconded by Dr. O. Wayne Gann, the Board unanimously approved the contract for technical services and products for the Mississippi Subject Area Testing Program, Second Edition (MSATP2) (copy attached).
(Office of Instructional Programs and Services)

Mississippi Board of Education – Minutes**Page 5****March 20, 2009**

24. On a motion by Ms. Sondra Parker Caillavet, seconded by Dr. O. Wayne Gann, the Board voted unanimously to begin the Administrative Procedures Ace process to revise the State Board Policy 9205 Local Reimbursable Expense Items – Salaries (copy attached).
(Office of Instructional Programs and Services)
- VII. On a motion by Dr. O. Wayne Gann, seconded by Mr. Hal Gage, the Board unanimously approved the following consent items:
- A. Approval to modify current methodology for awarding competitive grants to eligible local school districts for the United States Department of Agriculture Fresh Fruit and Vegetable Program
(Office of Policy and Operations)
- B. Approval to contract with the Mississippi State Department of Health to perform Health Inspections of selected Summer Food Service Program Sites for Program Year 2009
(Office of Policy and Operations)
- C. Approval of the Mississippi School for Mathematics and Science 2009-2010 Student Handbook and Academic Calendar
(Office of Quality Professionals and Special Schools)
- D. Approval of the Mississippi School of the Arts Child Nutrition Procurement Plan
(Office of Quality Professionals and Special Schools)
- E. Approval of the Mississippi Schools for the Blind and the Deaf Child Nutrition Procurement Plan
(Office of Quality Professionals and Special Schools)
- F. Approval of modification of contract with Jamie McKlemurry to provide assistance with the Educable Child Program, training and technical assistance to districts in need of improvement
(Office of Instructional Programs and Services)
- G. Approval to award contract to Bahwan Cybertek, to provide services to integrate MVPS SIS registration system with multiple learning platforms and to write other programs to allow integration with other learning management systems and to provide consulting services and additional programming services as needed
(Office of Instructional Programs and Services)

Mississippi Board of Education -- Minutes

Page 6

March 20, 2009

VIII. State Board of Education

01. Ms. Rosetta Richard reported that she recently attended the NASBE Legislative Conference in Washington, D.C. Ms. Richard met with Mississippi Congressmen and discussed the Stimulus Package and how it would affect education. Ms. Richard also met with a representative from Senator Robert Kennedy's office concerning the Stimulus program.
02. On a motion by Mr. Claude Hartley, seconded by Ms. Sondra Parker Caillavet, the Board unanimously approved that Ms. Rosetta Richard attend the National Childhood Obesity Conference on May 7-8, 2009, in Washington, D.C.

IX. Other Business

The Board discussed topics for discussion and possible sites for a spring Board retreat and will decide on a date and location at the April Board meeting.

- X. On a motion by Mr. Charles McClelland, seconded by Mr. Claude Hartley, the Board voted unanimously to adjourn the meeting at 9:05 a.m.

Approved:



William H. Jones, Chair
Mississippi Board of Education



Hank M. Bounds
Executive Secretary
Mississippi Board of Education