IN THE SUPREME COURT OF MISSISSIPPI

GARRY J. ALEXANDER — **APPELLANT**

V. — **No. 2010-CC-01992**

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

APPEAL FROM THE CHANCERY COURT OF COPIAH COUNTY

REPLY BRIEF OF APPELLANT GARRY J. ALEXANDER

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the honorable chancellor below also have asserted that Alexander waived his right to challenge the Conservators' appointments by failing to present evidence of invalid conservator appointments.

With all due respect to them both, that is incorrect. A timely objection clearly was made at the beginning of the hearing. That objection is detailed in Alexander's opening brief (at 12-14) and will not be rehearsed here. That objection, by its very nature, challenged the authority of the conservator to decide the case. Counsel respectfully suggests that to conclude otherwise is to exalt form over substance.

The issue of Alexander's alleged waiver is a straw man, anyway. Unless a conservator is in place lawfully [*i.e.*, as provided by Miss. Code Ann. § 37-17-6 (11)], the superintendent and school board retain their statutory rights to make employment decisions. *See, Noxubee County Board of Education v. Givens, 481 So. 2d 816, 819 (Miss. 1985).* Consequently, whether a conservator was appointed lawfully is a threshold jurisdictional issue that must be resolved before the conservator can act for the school district. If the conservator was not lawfully appointed, he had no jurisdiction (personal or subject matter) over the case whatever. Subject matter jurisdiction[1] is a question of law that may be raised at any stage of a proceeding. *Niedfeldt v. Grand Oaks Communities, LLC*, 987 So. 2d 1043, 1050, *rehearing denied* (Miss. App. 2008) (subject matter jurisdiction may not be waived and may be asserted at any stage of the proceeding or even collaterally); *McLean v. Kohnle*, 940 So. 2d 975, 978 (Miss. App. 2006) (party may raise issue of subject matter jurisdiction at any time). Consequently, the objection, although made, was not necessary for the raising of the issue on appeal.

1This Court has said that "subject matter jurisdiction . . . is succinctly defined as the authority of a court [in this case, tribunal] to hear and decide a particular kind of case. *Common Cause of Mississippi v. Smith*, 548 So. 2d 412, 414 (Miss. 1989).

any such order to its brief. Further, the minutes appended to Appellee's Brief reflect only the appointment of Reeves and do not address the appointment of Blackmon.[3]

This court has held that when reviewing an administrative agency's order, *"power to make the order*, and not the mere expediency or wisdom of having made it, is the question (emphasis added)." In determining that question, the court considers: "(a) All relevant questions as to constitutional power and right; [and] (b) all pertinent questions as to whether the administrative order is within the scope of the delegated authority under which it purports to have been made; . . . ." *Dixie Greyhound Lines v. Mississippi Public Service Commission*, 190 Miss. 704, 714, 200 So. 579, 580, *error overruled* 190 Miss. 704, 1 So.2d 489 (Miss. 1941).

Because the decision of the conservator lacks a recitation of the requisite jurisdictional facts, this Court cannot determine whether that "constitutional power and right" existed or whether the decision is "within the scope of the delegated authority under which it purports to have been made."

Appellant Alexander has cited ample authority for the proposition that an agency's authority to act must be apparent of record. Appellee has cited absolutely no authority to the contrary. It merely asserts that Alexander is wrong.

There is no competent evidence in the record of any authority on the part of Mr. Blackmon to make the initial decision to terminate Mr. Alexander's contract. Neither is there any competent evidence to prove the authority of Mr. Reeves to make a decision upholding the termination. Neither is there any finding of their respective authorities in Mr. Reeves's decision. Accordingly, under the

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3The District's brief fails to note, as well, that acccording to the Mississippi Department of Education's websites, at least two more conservators have been appointed for the district since Mr. Reeves's tenure. *See* http://board.mde.k12.ms.us/June_2011/Tab_03_SIOR_back-up_contract_for_Hazlehurst_City_Conservator.pdf. http://board.mde.k12.ms.us/September_2011/Tab_10_SIOR_back-up_contract_for_Hazlehurst_City_Conservator.pdf. Copies of those documents are included in the Appendix to this Brief at pages 2-7.

circumstances, the decision was beyond the Conservator's authority to make and is void. This case must be reversed. *Byrd v. Greene County School District*, 633 So. 2d 1018, 1022 (Miss. 1994); *Mississippi Power & Light*, 230 Miss. at 612, 93 So. 2d at 450; *Dulion*, 153 Miss. at 125, 120 So. at 441 (1928).

B. THE CONSERVATOR'S DECISION VIOLATED APPELLANT'S CONSTITUTIONAL AND STATUTORY RIGHTS.

The Decision Was Not Fair and Unbiased as Required by Law

The District, understandably, rejects Mr. Alexander's argument that a conservator could not both recommend termination and terminate. The District cites *Spradlin v. Board of Trustees of Pascagoula School District*, 515 So. 2d 893, 897 (Miss. 1987), and *Dampier v. Lawrence County School District*, 344 So. 2d 130, 132 (Miss. 1977), for the proposition that a Board's integrity is assumed and that a board can investigate and terminate. Certainly that case would appear to say as much. It should be noted, though, that the fact that the Appellant in *Spradlin* had failed to object to the fairness of the proceeding at the hearing, but, in fact, had agreed to the forum, obviously was a factor in that decision. 515 So. at 898. In *Dampier*, too, we have a distinction in that the Board could not have acted to approve employment of the appellant without a recommendation by the principal. Accordingly, more than one entity was involved in the process. 344 So. 2d at 131. In the case before this Court, on the other hand, there was no five member board to which to appeal. There was only a conservator who made up his mind without evening according Mr. Alexander his statutory right to appear prior to a decision.

This Court has plainly said in non-education contexts that, while administrative agencies may perform both investigative and adjudicative functions, those functions cannot be performed by the same person. *Freeman v. Public Employees' Retirement System of Mississippi*, 822 So. 2d 274,

281, *appeal after remand*, 868 So. 2d 327 (Miss. 2002); *Mississippi Real Estate Appraiser Licensing and Certification Bd. v. Schroeder*, 980 so. 2d 275, 289-290, *rehearing denied, certiorari denied*, 979 So. 2d 691 (Miss. Ct. App. 2007). A public official and his successor appear to be legally the same entity under our jurisprudence. *State ex rel. Moore v. Molpus*, 578 So. 2d 624, 641 (Miss. 1991) (judgments and decrees against public official in his official capacity are binding upon his successor). In any event, the conservators herein were both apparently hired by and represented the Mississippi Department of Education and had an identity of interests.

Appellant respectfully suggests that, given the foregoing, he was deprived of his due process rights to a fair and unbiased hearing.

> *Mr. Alexander was never afforded his right to give his closing statement before the trier of fact.*

The District essentially ignored Mr. Alexander's argument that he was denied his statutory right to appear before the conservator to present a statement prior to the decision by the conservator. The legislature accorded a respondent the right to appear before the board only if the case is heard by a hearing officer rather than the board. It is plain that the intent of the legislature was that the respondent have an opportunity to actually appear before and speak to the ultimate decision maker prior to a decision being rendered in his case.

The conservator had no discretion in this regard. This Court has (noted time and again) that, "[w]hen used in a statute, the word "shall" is mandatory . . . ." *In the Interest of D. D. B., a Minor, v. Jackson County Youth Court*, 816 So. 2d 380, 382 (Miss. 2002); *see, also, Mississippi State Highway Comm'n v. Sanders*, 269 So.2d 350, 352 (Miss. 1972).

There is nothing in the record that could be construed as a waiver of that right. To the contrary, the parties specifically discussed on the record Mr. Alexander's intention to appear before

the conservator for a final statement. Vol. III, 71. Even so, the Conservator decided the case without according Mr. Alexander that right.

With all due respect to the chancellor below, such a denial of a fundamental, statutory right cannot be dismissed as "harmless error." The fundamental purpose of the hearing statute, Miss. Code Ann. § 37-9-59, is "to provide notice and a right to be heard." *Ford v. Holly Springs School District*, 665 So. 2d 840, 843 (Miss. 1995) (emphasis added). The gravity of the denial of that right in this case is plain when one considers that the hearing was before a hearing officer and that Mr. Alexander never had the opportunity to appear and make a statement before the sole person who would make the final decision to fire him.

Where a conservator has violated some statutory right of the teacher or failed to act within the clear intent of the statute, the decision must be reversed. *Byrd*, 633 So. 2d at1022; *Mississippi Insurance Commission v. Savery*, 204 So. 2d 278, 283 (Miss. 1967) (where an administrative agency fails to act within clear intent of statute, the court must reverse). Manifestly, the conservator did both in this case.

C. THE DECISION WAS UNSUPPORTED BY SUBSTANTIAL EVIDENCE

The District Failed to Prove Neglect of Duty Under the Circumstances of this Case.

The District has stated in its brief that Alexander was terminated for neglect of duty consisting of (1) failure to supervise his classroom and (2) failure to report an incident involving students to the administration. Appellee District is correct that a lower tribunal's findings of fact need be supported only by substantial evidence. *Byrd*, 633 So. 2d at 1023. While the Court must defer to the findings of the administrative decision maker as to the facts of the case, whether those facts meet the definition of "neglect of duty" within the meaning of Miss. Code Ann. § 37-9-59 is a question of law solely within the province of the Court. *See, e. g.*, *Sones v. Southern Lumber Co.*, 215 Miss. 148, 153-55,

60 So. 2d 582-586 (1952) (while court accepted facts determined by workers' compensation commission as to relationship of worker and business owner, it was court's role to determine whether those facts established an independent contractor relationship within the meaning of the state's legal definition). Such questions of law are always reviewed *de novo*. *Board of Supervisors of Harrison County v. Waste Management, Inc.*, 759 So. 2d 397, 400 (Miss. 2000). Mississippi law offers no definition of neglect of duty. What our law does tell us is that termination of a teacher's employment during the contract year requires proof of serious misconduct on the teacher's part. *See Madison County Board of Education v. Miles*, 252 Miss. 711, 716, 173 So. 2d 425, 427 (1965).

From the opinions of foreign jurisdictions faced with similar questions, we can draw two guiding principles. First, the allegation of neglect of duty is not considered "in a vacuum or against a standard of perfection." *Sanders v. Board of Education of South Sioux City Community School District No. 11*, 200 Neb. 282, 263 N. W. 2d 461, 465 (1978). Rather, we must evaluate a teacher(s performance in the light of the circumstances of the case. *Gubser v. Department of Employment*, 271 Cal. App. 2d 240, 76 Cal. Rptr. 577, 579 (1969). Second, we must measure the respondent's performance "against the standard required of others performing the same duties." *Sanders*, 263 N. W. 2d at 465. If we objectively apply those criteria, we cannot conclude that Mr. Alexander's contract should have been terminated. It should be noted that the District has neither disputed the propriety of the application of these criteria nor suggested alternative criteria. Accordingly, we would urge the Court to adopt them as appropriate for determining when "neglect of duty" has occurred.

The Surrounding Circumstances

The District has listed a number of alleged errors and omissions on Mr. Alexander's part that supposedly demonstrate his failure to supervise his classroom. Appellee's Brief at 8-11. The first

principle established for determining whether a neglect of duty exists justifying termination requires consideration of the surrounding circumstances. *Sanders*, 263 N. W. 2d at 465. Not only did the District fail to consider the surrounding circumstances, it totally ignored them in its brief and in the conservator's opinion. Permit us to recapitulate some of those circumstances:

1. Students were generally wild and uncontrollable throughout the school, even getting off the morning buses fighting, V. IV, 11-12, and fighting, attacking, and cursing teachers. V. IV, 51-52. Teachers frequently lost control of their classrooms. V. IV, 2.
2. There was rampant sexual misconduct among the children. At least two middle school students were discovered to have had sexual intercourse in a restroom, V. II, 252. There were other cases of boys and girls "feeling on" each other. V. I, 256.
3. At one point, the entire 8th grade was expelled pending parent/principal conference. V. IV, 53, 56.
4. "[I]nstruction was just not taking place" generally. V. II, 50
5. Teacher moral was abysmal. V. II, 149.
6. There was a complete leadership void. From August 2008 until Mr. Alexander was dismissed in February 2009, there were six different principals at Hazlehurst Middle School. V. II, 39.
7. By asserting that a conservator had been appointed in the District, the District is admitting that the District was in a state of emergency.
8. The District had failed to provide a safe instructional environment as required by its own Standard 36.2. Ex. 5, p. 15, RE 7.

9. The District failed to provide Mr. Alexander with adequate textbooks (or teachers' editions) for his five different levels of health class in violation of State and district policy. II, 91, 94.

10. The District failed to provide Mr. Alexander with an adequate, air conditioned classroom in violation of District Policy and state policy. Miss. Code Ann. § 37-17-6 (2); District Standard 36.4. For at least some of his time the District required Mr. Alexander to teach on a stage in a gymnasium in which physical education classes were simultaneously being conducted. V. II, 41.

11. Students knew they were not required to pass health in order to be promoted to the next grade level and had no academic incentive to behave or to perform well. V. II, 97.

Under the circumstances, it is plain that Mr. Alexander's performance and attitude did not amount to neglect of duty. The District's own witness said that any errors or omissions on Mr. Alexander's part reflected a lack of skill, not will. V. III, 202-03. Indeed, the fact that he remained in such an environment demonstrates a remarkable commitment to duty. Under the circumstances, Mr. Alexander's behavior did not rise to the level of a firing offense under Miss. Code Ann. § 37-9-59. *See, also, Sanders*, 263 N. W. 2d at 465, *supra.*

The Standard Required of Others

In considering this criterion, we should also remember the prevailing circumstances discussed above. As Mr. Blackmon (reputed to be the conservator prior to Mr. Reeves) testified, education in general was not happening in the District. V. II, 50. Anita Johnson, a district employee, testified that Mr. Alexander's discipline problems were no worse than those of anyone else, and that discipline was bad throughout the school. V. IV, 146. To say that Mr. Alexander was not providing

instruction, then, is to say nothing that couldn't be said about most teachers in the District. The chaotic environment simply was antagonistic to teaching and learning.

Recall that Mr. Alexander was expected to teach five different grade levels of health, including the incorrigible eighth graders, without a teacher's edition textbook and without a planning period. II, 91, 94. He had no air conditioning, entirely inadequate and unsafe classroom situations, Ex. 5, p. 15, RE 7, despite the fact that the school district was required by its own policy and state law to provide such basic amenities. Miss. Code Ann. § 37-17-6 (2); District Standard 36.4 (see Exhibit 5, RE 7). Surely other teachers were not subjected to similar circumstances, yet Mr. Alexander was singled out for firing.

Despite whatever faults Mr. Alexander had, his failings, according to district testimony, were not willful. l V. III, 202-03. Other teachers, though, apparently were willful in their behavior, yet were not terminated. For instance, one teacher sold food for profit to students in her classroom in violation of school policy. V. II, 83.

Even more relevant is this: the day the playground incident that precipitated Alexander's termination occurred, two other persons besides Mr. Alexander were supposed to be on playground duty. Mr. Alexander was the only one who showed up. Those who were absent for no documented reason received no punishment, while Mr. Alexander was fired! V. IV, 65-66. Again, Mr. Alexander was expected to meet a standard others were not required to meet.

State Department of Education evaluator Patsy Livingston testified that Mr. Alexander had been identified as a person of "high concern," known to be having classroom difficulties. Vol. II, 188. She was also the one who testified for the district and without contradiction that any deficiencies on Mr. Alexander's part were failings of skill, not will. V. III, 202-03. Yet, Mr. Alexander was not provided with a mentor to help him acquire the skills needed to succeed in what was plainly an

extraordinarily difficult school environment. Other teachers had such professional guidance. Moreover, state policy is to provide assistance to teachers having difficulties in problem schools. *See*, Miss. Code Ann. § 37-18-7 (1) (which calls for a professional development plan for teachers needing improvement).[4] Plainly, Mr. Alexander was held to higher standards *(i.e.*, expected to improve without a mentor) than other teachers.

Simple failure to perform to the desires of the latest in a series of administrators is not "neglect of duty" under any rational construction of § 37-9-59. The court in *Rapaport v. Civil Service Commission of State of California*, 134 Cal. App. 319, 25 P. 2d 265, 267 (Cal. App. 3 Dist. 1933), said that firing for "neglect of duty" requires evidence of "either wilfulness, intention, design, or inexcusableness . . . ." That statement is consistent with the principles of statutory construction applied by this Court in its past decisions. *E. g.*, *Byrd v. Greene County School District*, 633 So. 2d 1018, 1023 (Miss. 1994); *Miles*, 173 So. 2d at 427 (words in a legal writing are to be construed according to the kind or class in which they are grouped). Under that principle, "neglect of duty" must be understood as something more than the mere inability to deal with extraordinary circumstances (as in this case). Rather, "neglect of duty" must refer to something of an intentional or seriously culpable matter such as "incompetence, . . . , immoral conduct, intemperance," or brutal treatment of a pupil . . . ."

Given the atrocious conditions in the district, Mr. Alexander's actions or inactions cannot fairly be labeled inexcusable or anything else that would support a termination. Clearly, he is not guilty of neglect of duty within the meaning of Miss. Code. Ann. § 37-9-59 as understood in the light of *Rapaport*, *Gubser*, *Sanders*, *Byrd*, and *Miles*.

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4 This statute was inadvertently cited incorrectly as § 37-18-7 (3) in Appellant's opening brief and a copy was not included in the appendix. A copy is included in the Appendix at p. 8.

D. THE DECISION WAS ARBITRARY AND CAPRICIOUS.

An arbitrary decision, this Court has said, is one that is done "without adequately determining principle . . . [and which] impl[ies] either a lack of understanding of or a disregard for the fundamental nature of things." *McGowan v. Mississippi State Oil & Gas Board*, 604 So. 2d 312, 322 (Miss. 1992). Similarly, a capricious decision is one that demonstrates "either a lack of understanding of or a disregard for the surrounding facts and settled controlling principles." *McGowan*, 604 So. 2d at 322.

Conservator Reeves's decision below is the very model of an arbitrary and capricious decision. In firing Mr. Alexander, the conservator either had no "understanding of" or totally "disregard[ed] the fundamental nature of things" in the Hazlehurst School District.

It may well be he had no real understanding of the situation. His administration, after all, was not the administration that made the recommendation to dismiss Mr. Alexander. For whatever reason, though, he plainly disregarded "the fundamental nature" of the surrounding circumstances. It is unnecessary to recite the catalog of atrocious conditions that were the facts of daily life for Mr. Alexander in his work with the District. Yet, Mr. Reeves did not mention the District's problems in his decision. Neither did he mention that the District was supposed to be in a state of emergency declared by the Governor. There is nothing in the record whatsoever to indicate Mr. Reeves considered the surrounding facts, fundamental nature of the circumstances, or controlling principles (*e. g.*, that the right of the Board to make employment decisions may be exercised by a conservator only pursuant to executive order; the right of the respondent to make a final statement). In fact, he did not even describe with any detail the supposed facts underlying his

conclusions concerning the dismissal of Mr. Alexander. Manifestly, his decision falls within the *McGowan* definition of arbitrary and capricious. *McGowan*, 604 So. 2d at 322.[5]

IV. CONCLUSION

Mr. Alexander, according to the District's own evidence, was a willing teacher who simply lacked the extraordinary skills to cope with an extraordinarily difficult set of circumstances. The District essentially has admitted the dire circumstances, for the appointment of a conservator requires a gubernatorial declaration of a state of educational emergency. Yet, instead of providing Mr. Alexander with an improvement plan and a mentor trained in handling educational disasters such as the one in which he had to work, he was fired.

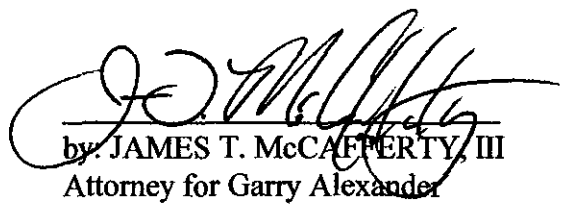
In the hearing that followed, the District failed to meet the basic requirement of proving its conservator's authority to prosecute and execute the termination. The District also failed to provide Mr. Alexander with his statutory right to appear before the decision maker prior to a final decision on his case.

All of the foregoing, individually or collectively, are fatal to the District's case. Accordingly, the decision of the conservator below must be reversed and this case remanded for the reinstatement of Mr. Alexander.

5Alexander does not waive any other arguments made in his opening brief but reasserts the same by reference.

Respectfully submitted, this the 7th day of October, 2011.

GARRY ALEXANDER



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V. PROOF OF SERVICE

I, the undersigned counsel for the Appellant, Garry J. Alexander, certify that I have this day served a copy of the above and foregoing document by U. S. Mail, postage prepaid, upon the following persons:

1. James Reeves, Appellee, by service on his Counsel, John Hooks.

3. Lisa Ross, Esquire, hearing attorney for Appellant.
   514 East Woodrow Wilson Avenue
   Jackson, Mississippi 39283-1264

4. John Hooks, Esquire, for Appellee
   Adams and Reese, LLP
   1018 Highland Colony Parkway, Suite 800
   Ridgeland, MS 39157

5. Honorable Edward E. Patten, Jr.
   Chancellor
   Post Office Drawer 707
   Hazlehurst, Mississippi 39083

Respectfully submitted, this the 7th day of October, 2011.

GARRY J. ALEXANDER
Appellant

by: JAMES T. McCAFFERTY, III
Attorney for
Garry J. Alexander
Appellant

IN THE SUPREME COURT OF MISSISSIPPI

GARRY J. ALEXANDER	**APPELLANT**
V.	**No. 2010-CC-01992**
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VI. APPENDIX

OFFICE OF CONSERVATORSHIP

03. Approval of contract for Conservator for Hazlehurst City School District

- Awarded Vendor: Leslie L. Daniels
  McComb, Mississippi

Scope of Project: The Contractor will serve as the Conservator for the Hazlehurst City School District and will be responsible for the administration, management and operation of the school district. The Contractor agrees to perform the following duties as related to the role of the Conservator:

1. Approve or disapprove 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 approve or disapprove all claim dockets and the issuance of checks in approving or disapproving employment contracts of assistant superintendents or principals, the Conservator shall not be required to comply with the time limitations prescribed in Sections 37-9-15 and 37-9-105;
2. Supervise the day-to-day activities of the district's staff, including reassigning the duties and responsibilities of personnel in a manner which, in the determination of the Conservator, will best suit the needs of the district;
3. Review the district's total financial obligations and operations and make recommendations to the district for cost savings, including, but not limited to, reassigning the duties and responsibilities of staff;
4. Approve or disapprove all athletic, band and other extracurricular activities and any matters related to those activities;
5. Maintain a detailed account of recommendations made to the district and actions taken in response to those recommendations;
6. Report periodically to the State Board of Education on the progress or lack of progress being made in the district to improve the district's impairments during the state of emergency; and
7. Appoint a parent advisory committee, comprised of parents of students in the school district, which may make recommendations to the Conservator concerning the administration, management and operation of the school district.

In addition, specific attention shall be paid to the following tasks as mutually agreed upon between the MDE and the Contractor:

1. Assist the district in the continuing development of the corrective action plan by the Hazlehurst City School District and review all available information and any actions already taken to improve academic achievement. The Contractor will work directly with MDE staff identified by the State Superintendent of Education. This plan will be presented to the State Board of Education for approval. This process should be initiated within the first month of the contract;
2. Implement changes described in the corrective action plan;
3. Evaluate the financial accounting system and make needed changes to correct any problems;

OFFICE OF CONSERVATORSHIP

10. Approval of contract for Conservator for Hazlehurst City School District

- Awarded Vendor: Jimmy L. Hopkins
  Hattiesburg, Mississippi

Scope of Project: The Contractor will serve as the Conservator for the Hazlehurst City School District and will be responsible for the administration, management and operation of the school district. The Contractor agrees to perform the following duties as related to the role of the Conservator:

1. Approve or disapprove 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 approve or disapprove all claim dockets and the issuance of checks in approving or disapproving employment contracts of assistant superintendents or principals, the Conservator shall not be required to comply with the time limitations prescribed in Sections 37-9-15 and 37-9-105;
2. Supervise the day-to-day activities of the district's staff, including reassigning the duties and responsibilities of personnel in a manner which, in the determination of the Conservator, will best suit the needs of the district;
3. Review the district's total financial obligations and operations and make recommendations to the district for cost savings, including, but not limited to, reassigning the duties and responsibilities of staff;
4. Approve or disapprove all athletic, band and other extracurricular activities and any matters related to those activities;
5. Maintain a detailed account of recommendations made to the district and actions taken in response to those recommendations;
6. Report periodically to the State Board of Education on the progress or lack of progress being made in the district to improve the district's impairments during the state of emergency; and
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2. Implement changes described in the corrective action plan;
3. Evaluate the financial accounting system and make needed changes to correct any problems;

4. Communicate with staff on a continuous basis, beginning to try to get them involved in the decision-making process emphasizing the fact that lasting change must come from within the district and cannot be sustained from outside;
5. Make sure the community is aware of what is occurring and work to get them more involved in the schools;
6. Evaluate all components of the system, to include instruction, food services, transportation, custodians, facilities, and make needed changes;
7. Begin to get staff involved in planning (preferably strategic planning);
8. Provide at least a monthly report to the State Board of Education; and
9. At all times, work to involve district staff in embracing the needed changes and develop and prepare staff to assess and recommend other changes that are needed.

Personnel associated with this contract is not a former Department employee or related to any Department employee. The Contractor is a PERS retiree.

Scope of Contract:

- Term of Contract: October 3, 2011 – December 31, 2011
- Total Amount to be Awarded: $65,250

Personnel Services	$55,250
Travel	$10,000
Total	$65,250

- Method of Award: Emergency Procurement
- Funding Source: State funds*

Recommendation: Approval

*The school district will reimburse the state for the cost – MS Code Section 37-17-6(14)(a).

§ 37-18-7. Professional development plan for educators identified as needing improvement; declaration of state of emergency in school district under certain circumstances

(1) As part of the school improvement plan for a School At-Risk, a professional development plan shall be prepared for those school administrators, teachers or other employees who are identified by the evaluation team as needing improvement. The State Department of Education shall assist the School At-Risk in identifying funds necessary to fully implement the school improvement plan.

(2) In the event a school continues to be designated a School At-Risk after three (3) years of implementing a school improvement plan, or in the event that more than fifty percent (50%) of the schools within the school district are designated as Schools At-Risk in any one (1) year, the State Board of Education may request that the Governor declare a state of emergency in that school district. Upon the declaration of the state of emergency by the Governor, the State Board of Education may take all such action for dealing with school districts as is authorized under subsection (11) or (14) of Section 37-17-6, including the appointment of an interim conservator.

HISTORY: SOURCES: Laws, 2000, ch. 533, § 4; Laws, 2000, ch. 610, §§ 4, 7; Laws, 2007, ch. 518, § 3; Laws, 2008, ch. 462, § 4; Laws, 2011, ch. 442, § 15; Laws, 2011, ch. 515, § 4, eff from and after July 2, 2011.