

OFFICE OF STATE SUPERINTENDENT
Summary of State Board of Education Agenda Items
February 20-21, 2014

OFFICE OF STATE SUPERINTENDENT

04.C. Report on consolidation status of Bolivar County

No Action: Discussion Only

Back-up material attached



**Mississippi Department of Education
Bolivar County Administrative Consolidation
January 30, 2014
Agenda**

- | | | |
|-------------|---|---|
| I. | Welcome | Dr. Carey Wright, State Superintendent |
| II. | Introductions | |
| III. | Overview of SB2760 and
Miss Code Ann. 37-7-104.1 | Joel Jones, Special Assistant Attorney General |
| IV. | Action Items | Mike Kent, Deputy Superintendent |

Current Board

- Pre-registration/Choice Sheets
- School level personnel decisions (certified staff) March 1, April 15
- Issue contracts by May 15
- Software conversion (Benoit)
- Maintain integrity of the schools
- Communicate with faculty, staff, and constituents
- Summer School/Credit Recovery

New Boards

- Research Methodology, submit plan (March15), and conduct search for New Superintendent, offer contract by May 15
- Study and adopt district wide pay scale
- Provide consultation on school level employment
- Attend mandatory trainings: MSBA and MDE
- Prepare Budget for 2014/2015

Mississippi Department of Education

- Advise, train, and monitor
- Software Conversion
- Create new documents (contracts and at-will)
- Provide financial templates
- Provide notice of non-renewal for all current central office employees

- V. Swear In – New Board Members**

Mississippi School Boards Association
Consolidating School Districts
Holiday Inn Express ~~ Clinton, Mississippi
February 4, 2014
9:30 A.M. – 3:30 P.M.

AGENDA

- 9:15 A.M. Sign-In and Registration
- 9:30 A.M. Greetings
Mike Kent, MDE Deputy State Superintendent
Dr. Michael Waldrop, MSBA Executive Director
- 9:45 A.M. Legalities of Consolidating under Current State Law
Mike Kent, MDE Deputy State Superintendent
Joel Jones, Attorney, State of Mississippi, Office of the Attorney General
- Financial Planning Responsibilities of the New School Board
Mike Kent, Deputy State Superintendent
Joel Jones, Attorney, State of Mississippi, Office of the Attorney General
- 11:45 A.M. Lunch
- 12:45 P.M. Superintendent Search
Dr. Michael W. Waldrop, MSBA Executive Director
- Legalities
Dr. Michael W. Waldrop, MSBA Executive Director
- 1:15 P.M. Policy Responsibility
Denotris Jackson, MSBA Assistant Executive Director
- 2:00 P.M. Break
- 2:15 P.M. Roles and Responsibilities of the School Board
Dr. Michael W. Waldrop, MSBA Executive Director
- Holding the Superintendent Accountable
Dr. Michael W. Waldrop, MSBA Executive Director
- 3:15 P.M. Adjourn

The fee for this mandatory training – \$1250 per district – covers site rental, presenter fees, materials, lunch, and snacks. Please contact Mamie Lilley (mlilley@msbaonline.org) or 1-888-367-6722) by Monday, February 3, 2014, to confirm the names of your district's participants.

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

January 31, 2014

Dr. Carey M. Wright
State Superintendent of Education
Post Office Box 771
Jackson, MS 39205-0771

Re: Miss Code Ann. Section 37-7-104.1

Dr. Wright:

Attorney General Jim Hood is in receipt of your opinion request as the State Superintendent of Education and has assigned it to me for research and reply. In your letter, you request an official opinion from this office on the following issues:

Questions and Responses

Question 1. Section 37-7-104.1 appears to give the State Board plenary authority in accomplishing the consolidations, up to and including moving on its own motion to administratively effect the consolidation should a school district not voluntarily consolidate. What is the extent of the State Board's authority to direct the actions of the existing local school districts relating to the consolidation?

Response: The State Board has plenary authority to direct the actions of the existing school districts relating to the consolidation, including adopting policy and immediately administratively consolidating on its own motion the districts which do not voluntarily consolidate in order to enable the affected school districts to reasonably consolidate into two (2) school districts by July 1, 2014.

Question 2. Per Section 37-7-104.1, the current school boards are responsible for contracting with teachers and principals for the 2014-15 school year, which will be the first year of existence for the consolidated districts. However, the successor school boards must hire the superintendent and prepare and approve the budget for the respective reorganized districts. Who has the authority to hire district level (central office) and other employees (non-certified employees such as maintenance, bus drivers, etc.) for the reorganized districts, the current school boards and superintendents or the successor boards and the new superintendents?

Response: The successor boards and the new superintendents have the authority to hire district level employees for the successor school districts.

Question 3. Elections for the successor school board trustees were held in November 2013. With everything that must take place for schools to be open as scheduled for the 2014-15 school year, there is a tremendous need for these successor boards to be able to function as quickly as possible. For example, having a new superintendent in place as early as possible is key to success of the district. Section 37-7-104.1(3) expressly provides that the successor boards are to be consulted in the hiring of principals and teachers, so there is authority for the successor boards to perform some functions before the consolidation actually occurs. What authority do the successor boards have to perform any official duties or other acts prior to the actual consolidation?

Response: According to Section 37-7-104.1, the successor school boards have statutory duties that must begin prior to July 1, 2014 in order to effectuate the administrative consolidation of the school districts by July 1, 2014.

Question 4. In order for the successor boards to perform any necessary acts prior to the formation of the successor school districts, such as consulting on the hiring of principals and teachers, should the elected members take an oath of office/be sworn in prior to July 1, 2014?

Response: Yes. The term of office for a new board member begins on the first Monday of January, 2014 pursuant to Section 37-7-207. Elected school board members of the consolidated school districts shall take the oath of office and be sworn in before performing necessary official acts.

Question 5. What authority do the successor boards have prior to consolidation to direct school personnel in setting up meetings and obtaining information?

Response: The successor boards may direct district school personnel in setting up meetings and obtaining information to perform any of its statutory duties which occur prior to July 1, 2014.

Question 6. May the current school districts pay for the statutory school board training for the successor board members, and any other necessary costs or fees prior to consolidation?

Response: Yes. It is the opinion of this office that current school districts may pay for the statutory school board training for the successor board members, and any other necessary costs or fees prior to consolidation.

Question 7. It appears that at least one of the current school boards lost a member at the end of 2013. In this and any other incidences of a vacancy on any of the current school boards, what action, if any, should such boards take to fill a vacancy until consolidation?

Response: The remaining board members shall appoint a person to serve only until June 30, 2014.

Question 8. In the case of licensed employees of the current school districts with multi-year contracts extending past the consolidation date, do the successor school districts have any legal obligation with regard to these contracts?

Response: Based on the fact that the contract is between the employee and an abolished school district, the contract is null and void on June 30, 2014 and the successor school districts have no legal obligation with regard contracts with licensed employees of the current school districts with multi-year contracts extending past the consolidation date.

Background Information

Miss. Code Ann. Section 37-7-104.1 mandates the consolidation of the current six (6) Bolivar County, Mississippi school districts into three (3) designated school districts on or before July 1, 2014. This statute provides that the territory of the former North Bolivar School District and the Mound Bayou Public School District is administratively consolidated to be designated as the North Bolivar Consolidated School District. This statute also provides that the territory of the former West Bolivar School District, the Shaw School District, and the Benoit School District is administratively consolidated to be designated as the West Bolivar Consolidated School District. On September 10, 2012, the U.S. Attorney General did not interpose any objection to the specified changes of Senate Bill 2760, 2012 Legislative Session. The State Board of Education (State Board) is expressly authorized to promulgate rules and regulations to facilitate the administrative consolidation in the county, along with certain other responsibilities. The State Board has promulgated State Board Policy 5151 in accordance with the Administrative Procedures Act to provide for the consolidation of schools.

Applicable Law and Discussion

Issue 1 - Authority of the State Board of Education

You have asked what is the extent of the State Board's authority to direct the actions of the existing local school districts relating to the consolidations. Section 37-7-104.1 of the Mississippi Code provides the following responsibilities and authority of the State Board of Education related to the consolidation of the school districts in Bolivar County:

- The State Board of Education shall provide for the administrative consolidation of all school districts in the county outside the territory of Cleveland School District into North Bolivar Consolidated School District and West Bolivar Consolidated School District on or before July 1, 2014;
- It shall be the responsibility of the State Board of Education with the assistance of the Joint Legislative Committee on Performance Evaluation

and Expenditure Review (PEER) to apportion the territory of the two (2) new school districts into five (5) new board of trustee election districts for each new school district;

- Any school district affected by the required administrative consolidation in such county that does not voluntarily consolidate with the two (2) new school districts ordered by the State Board of Education shall be administratively consolidated by the State Board of Education with the appropriate school district in which such district is located, to be effective on July 1 following the election of the new local school boards;
- The State Board of Education shall promptly move on its own motion to administratively consolidate a school district which does not voluntarily consolidate in order to enable the affected school districts to reasonably accomplish the resulting administrative consolidation into two (2) school Districts by July 1 following the election of the new school boards;
- All affected school districts shall comply with any consolidation order issued by the State Board of Education **on or before July 1** following the election of the new school boards;
- Any proposed order of the State Board of Education directing the transfer of assets, real or personal property of an affected school district in the county, shall be final and conclusive for the purposes of the transfer of property required by such administrative consolidation;
- Any person or school district aggrieved by an order of the successor newly elected board of trustees of a consolidated school district pursuant to the required administrative consolidation may appeal therefrom to the State Board of Education within ten (10) days from the date of the adjournment of the meeting at which such order is entered. Such appeal shall be de novo, and the finding of the State Board of Education upon such question shall be final and conclusive for the purpose of the approval or disapproval of the action by said board of education; and
- The State Board of Education shall promulgate rules and regulations to facilitate the administrative consolidation of the school districts in Bolivar County pursuant to Section 37-7-104.1.

The State Board has plenary authority in the Bolivar County consolidation process to accomplish the resulting administrative consolidation by July 1, 2014. As stated in the statute, the State Board is responsible for providing for the administrative consolidation of the school districts in Bolivar County. Additionally, the State Board of Education shall act on its own motion to administratively consolidate a school district which does not voluntarily consolidate in order to enable the affected school districts to reasonably accomplish the resulting administrative consolidation into two (2) school districts by July

1, 2014. Decisions of the State Board directing the transfer of property shall be final and conclusive. Further, the State Board shall promulgate rules and regulations to facilitate the administration consolidation of schools. Miss. Code Ann. Section 37-7-104.1

According to your letter, the State Board has promulgated State Board Policy 5151 in accordance with the Administrative Procedures Act to provide for the consolidation. A properly adopted policy has the force and effect of law. MS AG Op., *Ellis* (October 17, 1997); MS AG Op., *Eskridge* (September 5, 2003). State Board Policy 5151 provides that the school boards, superintendents, administrative and instructional staff of the school districts required to be consolidated shall work cooperatively with the Department of Education and the Transition Team to facilitate the transition to the new consolidated districts that include procedures and timelines to accomplish the administrative consolidation by July 1, 2014. If a school district is not complying with the timelines and procedures established by the Transition Team pursuant to State Board Policy 5151 in order to accomplish the administrative consolidation by July 1, 2014, the State Board shall act immediately on its own motion to administratively consolidate the school district which does not voluntarily consolidate in order to reasonably accomplish the consolidation by July 1, 2014. All affected school districts shall comply with any consolidation order issued by the State Board on or before July 1, 2014.

An administrative consolidation is the consolidation of the central offices, including a reduction in central office personnel. An administrative consolidation does not require the closing of any school or school facility, unless such facility is an unneeded administrative office located within a school district.

Issue 2 - Authority to hire district level (central office) and other employees (non-certified employees such as maintenance, bus drivers, etc.) for the reorganized districts

You have asked whether the current school boards and superintendents or the successor boards and the new superintendents have the authority to hire district level (central office) and other employees (non-certified employees such as maintenance, bus drivers, etc.) for the reorganized districts. Section 37-7-104.1 (3) provides the following responsibility and authority of the former school boards working in consultation with the successor boards:

Each former school board shall be responsible for establishing the contracts for teachers and principals for the next school year following the required administrative consolidation with the consultation of the newly elected successor school boards.

This statute provides for the hiring of teachers and principals for the 2014-2015 school year by the former school boards in consultation with the successor school boards. In other words, the current boards hire school level staff. School level staff are those

employees who work in the schools, such as teachers, principals and other instructional staff. Hiring of central office staff for the 2014-2015 is not specifically addressed in Section 37-7-104.1. The statute does provide that: (1) the North Bolivar Consolidated School District and West Bolivar Consolidated School District shall not have more than one (1) assistant superintendent, the successor school board for the North Bolivar Consolidated shall appoint the Superintendent for said district, and the successor school board for the West Bolivar Consolidated School District shall appoint the Superintendent for said district. The superintendents are hired in the manner provided in Section 37-9-25.

The successor boards have the authority to hire the superintendents (district level staff) and the current boards hire the teachers and principals (school level staff). The only specific authority granted to current boards is the hiring of employees at the school level. According to Section 37-7-104.1, the administrative consolidation does not involve the closing of schools unless such facility is an unneeded administrative office located within a school district which has been abolished pursuant to 37-7-104 which would indicate no major reduction in force or increase in staff at the school level.

According to Section 37-7-104.1, the central office for North Bolivar Consolidated School District (consisting of the territory of the former North Bolivar School District and the Mound Bayou Public School District) shall be located in Mound Bayou, MS. There will be one central office in North Bolivar Consolidated School District instead of the two central offices in the previously existing districts. The central office for West Bolivar Consolidated (consisting of the territory of the former West Bolivar School District, Shaw School District and Benoit School District) shall be located in Rosedale, MS. Based on Section 37-7-104.1, there will be one central office in West Bolivar Consolidated School district instead of the three central offices in the previously existing districts. According to the clear language of the statute, there will be a significant reduction in staff at the central office level.

Although the statute does not specifically state that all district level staff will be hired by the successor board, the statute does clearly separate the duties of the current boards as staffing the school level personnel (teachers and principals) and the successor board hiring district level employees (superintendent). Based on the administrative consolidation of the school districts, the major changes in staff will be at the district level. Only one school board would be able to determine what staff needs to be employed in the central office consolidated district. Otherwise, the multiple current school boards would hire central office staff for the one consolidated district. Therefore, it is the opinion of this office that the successor boards have the authority to hire central office staff.

Issue 3 - Authority of the Successor School Boards prior to the Consolidation

You have asked what authority the successor school boards have to perform any official duties or other acts prior to the actual consolidation. Section 37-7-104.1 provides the

following responsibilities and authorities of the new school boards related to the consolidation of the school districts in Bolivar County:

- The new Board of Trustees for the North Bolivar Consolidated School District shall appoint the Superintendent of Schools for said school district, and the new Board of Trustees for the West Bolivar Consolidated School District shall appoint the Superintendent of Schools for said school district.
- It shall be the responsibility of the successor boards of trustees to prepare and approve the budget of the respective new reorganized districts, and the successor boards of trustees may use staff from the former school districts to prepare the budget.

The successor school boards have the statutory authority to hire the two superintendents for the two new consolidated school districts, prepare and approve the budget of the respective new reorganized districts and use the staff from the former school districts to prepare the budget.

State law requires the budget be completed on or before August 15th of each year and requires a public hearing to be conducted prior to the adoption of the budget. Section 37-61-9 of the Mississippi Code specifically provides, in relevant part, as follows:

- (1) On or before the fifteenth day of August of each year, the local school board of each school district, with the assistance of the superintendent of schools, shall prepare and file with the levying authority for the school district as defined in Section 37-57-1, at least two (2) copies of a budget of estimated expenditures for the support, maintenance and operation of the public schools of the school district for the fiscal year commencing on July 1 of such year. . . .
- (2) In addition, on or before the fifteenth day of August of each year, the local school board of each school district, with the assistance of the superintendent of schools, shall prepare and file with the State Department of Education such budgetary information as the State Board of Education may require. . . .
- (3) Prior to the adoption of a budget pursuant to this section, the school board of each school district shall hold at last one (1) public hearing to provide the general public with an opportunity to comment on the taxing and spending plan incorporated in the proposed budget. The public hearing shall be held at least one (1) week prior to the adoption of the budget with advance notice. . . .

Based on Section 37-61-9, the successor boards must begin preparing the budget for the 2014-2015 school year prior to July 1, 2014. The successor boards must employ a superintendent prior to July 1, 2014, the date the current boards are abolished and the

new districts are established. The successor boards must determine what district level staff will not be renewed so that non-renewal notices will be given, as applicable, to district office personnel pursuant to Education Employment Procedures Law of 2001, Section 37-9-101, et seq. According to Section 37-7-104.1, the successor school boards have statutory duties that must begin prior to July 1, 2014 in order to effectuate the administrative consolidation of the school districts by July 1, 2014.

Issue 4 - Swearing in Successor Boards

You have asked should the elected members take an oath of office (be sworn in) in order for the successor boards to perform any necessary acts prior to the formation of the successor school districts. Section 268 of the Mississippi Constitution provides that all officers elected or appointed to any office in this State, except judges and members of the Legislature, shall, before entering upon the discharge of duties thereof, take and subscribe the following oath: I, _____, do solemnly swear (or affirm) that I will faithfully support the Constitution of the United States and the Constitution of the State of Mississippi, and obey the laws thereof; that I am not disqualified from holding the office of _____; that I will faithfully discharge the duties of the office upon which I am about to enter. So help me God."

Pursuant to Section 97-11-41 of the Mississippi Code, if any person elected to any office shall undertake to exercise the same or discharge the duties thereof without first having taken the oath of office or given bond as required by law, he shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not more than five hundred dollars, or imprisoned in the county jail not longer than one year, or both. We are not aware of any prohibition to prevent the successor school board being sworn in prior to the effective date of the consolidation. Pursuant to Section 37-7-207, the term of office for a new board member begins the first Monday of January 2014. The elected school board members of the consolidated school districts shall take the oath of office and be sworn in before performing necessary official acts prior to the formation of the successor school districts on July 1, 2014.

Issue 5 - Authority of Successor Boards prior to Consolidation in Directing School Personnel

You have asked about the authority of the successor school boards prior to consolidation to direct school personnel in setting up meetings and obtaining information. Section 37-7-104.1 specifically provides that the successor boards of trustees may use staff from the former school districts to prepare the budget. The successor boards have authority to direct school personnel to set up meetings and obtain information as it relates to preparing the school budget for the 2014-2015 school year. It is the opinion of this office that the successor boards may direct school district personnel of the current school districts in setting up meetings and obtaining information to perform any of its statutory duties which occur prior to July 1, 2014.

Issue 6 - Payment to Successor School Boards for Training and other Fees and

Costs Prior to Consolidation

You have asked whether the current school districts may pay for the statutory school board training for the successor board members, and any other necessary costs or fees prior to consolidation. Section 37-7-306 provides that every school board member shall be required to complete a basic course of training and education for local school boards conducted by the Mississippi School Boards Association, in order for board members to carry out their duties more effectively and be exposed to new ideas involving school restructuring. If a school board member fails to complete this training within six (6) months of his selection, the board member shall no longer be qualified to serve and shall be removed from office.

According to Section 37-9-14 (7), to the extent allowed by board policy, all claims which are found to be legal and proper may be paid and then ratified by the school board at the next regularly scheduled board meeting, as paid by the superintendent of schools. It is the opinion of this office that current school districts may and should pay for the statutory school board training for the successor board members, and any other necessary costs or fees prior to consolidation.

Issue 7 - Filling School Board Vacancies Prior to Consolidation

You state that it appears that at least one of the current school boards lost a member at the end of 2013. You then ask about any action such boards should take to fill a vacancy until consolidation in this and any other incidences of a vacancy on any of the current school boards. All current school districts in Bolivar County are consolidated school districts. According to Section 37-7-207 (2), all vacancies which may occur during a term of office shall be filled by appointment of the consolidated line school district trustees, but the person so appointed shall serve only until the next general election following such appointment, at which time a person shall be elected for the remainder of the unexpired term at the same time and in the same manner as the trustee is elected for the full term then expiring. Based on this statute and the pending consolidation, the remaining board members shall appoint a person to serve only until June 30, 2014.

Issue 8 - Legal Obligations of Successor School Districts for Multi-year Contracts extending Past the Consolidation Date

You have asked if the successor school districts have any legal obligation with regard to contracts with licensed employees of the current school districts with multi-year contracts extending past the consolidation date. Section 37-9-25 of the Mississippi Code provides that a school board shall have the power and authority, in its discretion, to employ the superintendent, unless such superintendent is elected, for not exceeding four (4) scholastic years and the principals or licensed employees for not exceeding three (3) scholastic years. In such case, contracts shall be entered into with such superintendents, principals and licensed employees for the number of years for which they have been employed. *Miss. Code Ann.* Section 37-9-25. According to Section 37-

Dr. Carey M. Wright
January 31, 2014
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9-23, the contracts are in the form prescribed by the State Board of Education. The contract form approved by the State Board of Education (State Board Policy 2600) provides: "This agreement is made and entered into as of the dates indicated below, by and between (employee) and the _____ School District (employer), with the employee having been duly elected and approved for employment by the school board of the employer.

The contract is between the employee and the specifically named school board. On July 1, 2014, North Bolivar School District, Mound Bayou School District, West Bolivar School District, Shaw School District and Benoit School District shall be abolished. *Miss. Code Ann.* Section 37-7-104.1(3). Based on the fact that the contract is between the employee and an abolished school district, the contract is null and void on July 1, 2014 and the successor school districts have no legal obligation with regard to contracts with licensed employees of the current school districts with multi-year contracts extending past the consolidation date.

Please let this office know if we can be of further assistance.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By:


Kathy S. Boteler
Special Assistant Attorney General



MISSISSIPPI DEPARTMENT OF EDUCATION

Carey M. Wright, Ed.D.
State Superintendent of Education

January 28, 2014

Honorable Jim Hood
Attorney General
State of Mississippi
550 High Street, Suite 1200
Jackson, Mississippi 39201

Hand-Delivery

Re: Miss. Code Ann. Section 37-7-104.1

Dear Attorney General Hood:

We recently requested an official Attorney General opinion regarding the consolidation of school districts in Bolivar County as required by Section 37-7-104.1 of the Mississippi Code. We are requesting another opinion to address additional issues concerning the Bolivar County consolidation.

According to the statute, North Bolivar School District and Mound Bayou School District will be administratively consolidated into one district with one central office and West Bolivar School District, Shaw School District and Benoit School District will be administratively consolidated into one school district with one central office. Based on the statutory mandate, there will be a reduction in force of the staff at the central office which includes licensed employees and non-licensed employees.

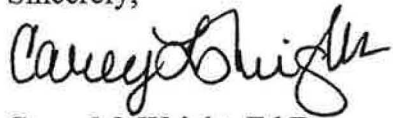
The Department of Education is requesting an official opinion on the following issues:

1. What entity should provide the notice of nonrenewal for central office staff pursuant to the Education Employment Procedures Law of 2001, Section 37-9-101, et seq.?
2. If that entity fails to act in order to meet the deadlines for notices of non-renewal under, does the State Board of Education have authority to give the notices of non-renewal?
3. Will licensed employees at the central office in the current school districts be entitled to a non-renewal hearing pursuant to the Education Employment Procedures Law of 2001? If so, before what body will the hearings be conducted?

4. Would board members that serve both a current board and a successor board receive compensation from both boards or during the interim period should they receive the same maximum amount for serving one board; and
5. Does a successor board have the authority to hire an attorney prior to July 1, 2014?

This is a time-sensitive matter, so I would appreciate it if your office could provide an expedited opinion.

Sincerely,

A handwritten signature in black ink, appearing to read "Carey M. Wright". The signature is fluid and cursive, with the first name "Carey" being more prominent.

Carey M. Wright, Ed.D.
State Superintendent of Education
State of Mississippi

Enclosure