

OFFICE OF CHIEF ACADEMIC OFFICER
Summary of State Board of Education Agenda Items
Consent Agenda
April 16, 2020

MISSISSIPPI SCHOOL OF THE ARTS

- A. Approval of Certified Personnel Due Process Policy for the Mississippi School of the Arts

Executive Summary

This policy outlines due process procedures for certified educators at the Mississippi School of the Arts (MSA), including grounds for dismissal, notification of employees, and hearing procedures for such matters.

Recommendation: Approval

Back-up material attached

Licensed Personnel Suspension/Dismissal Due Process

The Executive Director/Superintendent may dismiss or suspend any licensed employee for incompetence, neglect of duty, immoral conduct, intemperance, brutal treatment of a pupil or other good cause. Before being dismissed or suspended, any licensed employee shall be notified of the charges against him/her and advised that he/she is entitled to a public hearing upon said charges. Notification of charges and hearing procedures shall follow the procedure as prescribed by law.

Provided; however, that the Executive Director/Superintendent whose employment has been terminated under this section shall not have the right to request a hearing before the State Board of Education. Provided, however, that a licensed employee in a conservator school district whose employment has been terminated under this section for good cause as determined by a conservator appointed by the State Board of Education shall not have a right to request a hearing. The conservator has the right to immediately terminate a licensed employee under this section.

In the event the continued presence of said employee on school premises poses a potential threat or danger to the health, safety or general welfare of the students, or, in the discretion of the Executive Director/Superintendent, may interfere with or cause a disruption of normal school operations, the Executive Director/Superintendent may immediately release said employee of all duties pending a hearing if one is requested by the employee.

In the event a licensed employee is arrested, indicted or otherwise charged with a felony by a recognized law enforcement official, the continued presence of the licensed employee on school premises shall be deemed to constitute a disruption of normal school operations.

The State Board of Education or hearing officer or designee, upon a request for a hearing by the person so suspended or removed shall set a date, time and place of such hearing and notify the employee in writing of the same. The hearing date shall be not sooner than five (5) days nor later than thirty (30) days from the date of the request unless otherwise agreed. The procedure for such hearing before the State Board of Education or hearing officer are prescribed in accordance with Section 37-9-111 and included in this policy. From the decision made at said hearing, any licensed employee shall be allowed an appeal to the chancery court in the same manner as appeals are authorized in Section 37-9-113 which is also included in this policy. Any party aggrieved by action of the chancery court may appeal to the Mississippi Supreme Court as provided by law. In the event that a licensed employee is immediately relieved of duties pending a hearing, as provided in this section, said employee shall be entitled to compensation for a period up to and including the date that the initial hearing is set by the State Board of Education, in the event that there is a request for such a hearing by the employee. In the event that an employee does not request a hearing within five (5) calendar days of the date of the notice of discharge or suspension, it shall constitute a waiver of all rights by said employee and such discharge or suspension shall be effective on the date set out in the notice to the employee.

The State Board of Education is hereby prohibited from denying employment or reemployment to any person as a superintendent, principal or licensed employee, as defined in Section 37-19-1, or as a noninstructional personnel, as defined in Section 37-9-1, for the single reason that any eligible child of such person does not attend MSA in which such superintendent, principal, licensed employee or noninstructional personnel is employed.

The provisions of this section shall be fully applicable to any administrator or employee of the Mississippi School of the Arts (MSA).

Hearing, Notice, Procedures, and Evidence

The State Board of Education, or its designee, upon request for a hearing under Section 37-9-59 or Sections 37-9-101 through Section 37-9-113 shall set the time, place and date of such hearing and notify the employee in writing of same. The date shall be set not sooner than five (5) days nor later than thirty (30) days from the date of the request, unless otherwise agreed. The hearing may be held before the State Board of Education or before a hearing officer appointed for such purpose by the State Board of Education, either from among its own membership, from the staff of the MSA or some other qualified and impartial person, but in no event shall the hearing officer be the staff member responsible for the initial recommendation of nonreemployment. No hearing officer may have an interest in the outcome of a hearing, nor may a hearing officer be related to a State Board of Education member, any administrator making the recommendations of nonreemployment or the employee. Once a hearing officer is appointed, no ex parte communications may be made regarding any substantive provisions of the hearing.

The hearing must be held in executive session unless the employee elects to have a public hearing. If an employee makes this election, however, the State Board of Education or the hearing officer, as the case may be, may order any part of the hearing to be held in executive session, if, in the opinion of the State Board of Education or the hearing officer, the testimony to be elicited deals with matters involving the reputation or character of another person. Notwithstanding the election by an employee for a public hearing, any testimony by minor witnesses must be held in executive session and considered confidential personnel records and confidential student records, subject to an expectation of reasonable privacy and confidentiality. Public disclosure of these records may be by court order only.

MSA shall present evidence, either in written or oral form, at the hearing in support of its recommendation for nonreemployment.

The employee shall be afforded an opportunity to present matters at the hearing relevant to the reasons given for the proposed nonreemployment determination and to the reasons the employee alleges to be the reasons for nonreemployment and to be represented by counsel at such a hearing. Such hearing shall be conducted in such a manner as to afford the parties a fair and reasonable opportunity to present witnesses and other evidence pertinent to the issues and to cross-examine witnesses presented at the hearing. The State Board of Education or the hearing officer may require any portion of the evidence to be submitted in the form of depositions or affidavits, and in case affidavits are received, an opportunity to present counter-affidavits shall be provided.

The State Board of Education shall cause to be made stenographic notes of the proceedings. In the event of a judicial appeal of the State Board of Education's decision, the entire expense of the transcript and notes shall be assessed as court costs.

The State Board of Education shall review the matters presented before it, or, if the hearing is conducted by a hearing officer, the report of the hearing officer, if any, the record of the proceedings and, based solely thereon, conclude whether the proposed nonreemployment is a proper employment decision, is based upon a valid educational reason or noncompliance with MSA personnel policies and is based solely upon the evidence presented at the hearing, and shall

notify the employee in writing of its final decision and reasons therefor. Such notification shall be within thirty (30) days of the conclusion of the hearing if the hearing is conducted by a hearing officer and within ten (10) days of the conclusion of the hearing if the hearing is initially conducted by the State Board of Education. If the matter is heard before a hearing officer, the State Board of Education shall also grant the employee the opportunity to appear before the Board to present a statement in his own behalf, either in person or by his attorney, prior to a final decision by the Board.

In conducting a hearing, the State Board of Education or hearing officer shall not be bound by common law or by statutory rules of evidence or by technical or formal rules of procedure except as provided in Sections 37-9-101 through 37-9-113 , but may conduct such hearing in such manner as best to ascertain the rights of the parties; however, hearsay evidence, if admitted, shall not be the sole basis for the determination of facts by the State Board of Education or hearing officer.

In the event the decision of the State Board of Education is in favor of the employee, the State Board of Education shall have the authority to order the execution of a contract with the employee for an additional period of one (1) year.

For purposes of conducting hearings under Sections 37-9-101 through 37-9-113 , the State Board of Education or hearing officer shall have the authority to issue subpoenas for witnesses and to compel their attendance and the giving of evidence. Any expense connected therewith shall be borne by the party requesting the subpoenas, which shall include an appearance fee for each witness so subpoenaed not inconsistent with state laws governing payments to witnesses. In the event it is necessary to enforce or to quash a subpoena issued to compel the attendance of a witness, application shall be made with the chancery court of the county where the State Board of Education is located.

This section shall not be applicable to a superintendent whose employment has been terminated by the Board under Section 37-9-59 , or whose employment contract has not been renewed by the State Board of Education.

Appeal Rights

Any employee aggrieved by a final decision of the State Board of Education is entitled to judicial review thereof, as hereinafter provided.

An appeal may be taken by such employee to the chancery court of the judicial district in which the State Board of Education is located, by filing a petition with the clerk of that court and executing and filing bond payable to the State Board of Education with sufficient sureties, in the penalty of not less than Two Hundred Dollars (\$200.00), conditioned upon the payment of all of the costs of appeal, within twenty (20) days of the receipt of the final decision of the State Board of Education.

The scope of review of the chancery court in such cases shall be limited to a review of the record made before the State Board of Education or hearing officer to determine if the action of the State Board of Education is unlawful for the reason that it was:

- (a) Not supported by any substantial evidence;
- (b) Arbitrary or capricious; or

(c) In violation of some statutory or constitutional right of the employee.

No relief shall be granted based upon a court's finding of harmless error by the State Board of Education in complying with the procedural requirements of [Sections 37-9-101](#) through [37-9-113](#). However, in the event that there is a finding of prejudicial error in the proceedings, the cause shall be remanded for a rehearing consistent with the findings of the court.

Any party aggrieved by action of the chancery court may appeal to the Supreme Court in the manner provided by law.

References: Miss. Code Ann. § 37-9-59
Miss. Code Ann. § 37-9-111
Miss. Code Ann. § 37-9-113

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