

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

C - Todd Ivey
Charlene Pierce

OPINIONS
DIVISION

April 17, 2009

Dr. Hank M. Bounds
State Superintendent of Education
Mississippi Department of Education
Post Office Box 771
Jackson, Mississippi 39205

04-20-09A11:27 0708

Re: National Board Certification Annual Salary Supplement for School Employees

Dear Dr. Bounds:

Attorney General Jim Hood has received your request for an official opinion and has assigned it to me for research and response.

Issues Presented

1. Whether local school districts must pay any portion of the national board certification salary supplement if the state does not provide the local school districts with sufficient funding to pay one hundred percent (100%) of the Six Thousand Dollar (\$6,000.00) annual salary supplement plus fringe benefits for school employees who meet the requirements of Section 37-19-7 of the Mississippi Code?
2. If local school districts choose to pay any portion of the national board annual salary supplement that is not funded by the state, would that payment become a part of the individual local supplement that may not be reduced from the amount paid in the previous school year to an individual teacher performing the same duties without the withholding of Mississippi Adequate Education Program funds?

Response

1. No. Pursuant to Section 37-19-7(2)(c) of the Mississippi Code, all salary supplements plus fringe benefits for school employees who meet the national board certification requirements under Section 37-19-7(2)(a) shall be paid

directly by the State Department of Education.

2. No. If a school district chooses to pay any portion of the salary supplement for national board certification, such would not be considered a local supplement under 37-19-7(1) and thus could be reduced or eliminated by the District in the following year.

Applicable Law and Discussion

Miss. Code Ann. 37-19-7(2)(a) provides that licensed teachers, licensed nurses, licensed school counselors and licensed speech-language pathologists and audiologists who meet the requirements of that subsection shall receive an annual salary supplement in the amount of Six Thousand (\$6,000.00), plus fringe benefits in addition to any other compensation to which the employee may be entitled.

Subsection (2)(c) of Section 37-19-7 provides:

All salary supplements, fringe benefits and process reimbursement authorized under this subsection shall be paid directly by the State Department of Education to the local school district and shall be in addition to its minimum education program allotments and not a part thereof in accordance with regulations promulgated by the State Board of Education, **and subject to appropriation by the Legislature.** Local school districts shall not reduce the local supplement paid to any employee receiving such salary supplement, and the employee shall receive any local supplement to which employees with similar training and experience otherwise are entitled.

(Emphasis added.)

In addition, Section 37-19-7(1) provides that "...no school district shall receive any funds under this section for any school year during which the local supplement paid to any individual teacher shall have been reduced to a sum less than that paid to that individual teacher for performing the same duties from local supplement during the immediately preceding school year."

Further, local school boards are authorized, pursuant to Section 37-7-301(mm):

To expend federal No Child Left Behind Act funds, or any other available funds that are expressly designated and authorized for that use, to pay ... salary incentives and salary supplements to employees of local school districts; except that incentives shall not be considered part of the local supplement as defined in Section 37-151-5(o), nor shall incentives be considered part of the local supplement paid to an individual teacher for the purposes of Section 37-19-7(1). Mississippi Adequate Education Program funds or any other state funds may not be used for salary incentives or salary

funds or any other state funds may not be used for salary incentives or salary supplements as provided in this paragraph (mm).

Conclusion

In response to your first question, Section 37-19-7(2)(c) clearly provides that all salary supplements plus fringe benefits for school employees who meet the national board certification requirements under Section 37-19-7(2)(a) shall be paid directly by the State Department of Education.

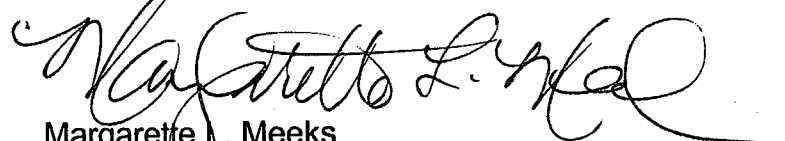
Regarding your second question, while local school districts are not required to pay any portion of the salary supplement for national board certification that is not funded by the state, we are of the opinion that local school districts may do so subject to availability of funds expressly designated and authorized for that purpose in accordance with state law. If a school district chooses to pay any portion of the salary supplement for national board certification, in accordance with Miss. Code Ann. Section 37-7-301, such would not be considered a local supplement that could not be reduced in a following year under 37-19-7.

Please feel free to contact our office if we may be of further assistance.

Very truly yours,

JIM HOOD, ATTORNEY GENERAL

By:



Margarett L. Meeks
Special Assistant Attorney General