

District: Tupelo Public School District
Section: B - School Board Operations
Policy Code: BBE - School Board Attorney

SCHOOL BOARD ATTORNEY

The Board is authorized and ~~may~~ **shall** annually appoint legal counsel to represent the District as necessary for the proper and legal conduct of the affairs of the District. **The appointment will commence on the first day of April of each year. The Board shall issue a Memorandum of Understanding (MOU) that includes but is not limited to a listing of all services to be provided and the manner and amount of compensation.**

The Board may compensate its attorney by paying a retainer, an hourly rate or a combination of both methods. If a retainer is utilized, the services provided under the retainer shall be specified. The Board may choose to pay an hourly amount for all legal work performed without utilization of a retainer. The MOU shall be spread upon the minutes of the Board at the time of adoption. If the Board determines the services of said attorney are no longer needed, the Board may terminate the MOU or seek resignation of the attorney.

The President of the Board, the superintendent, or designee of the superintendent, may consult legal counsel for information to be considered in making decisions affecting the District or as a result of potential litigation or other related legal matters. To assist in the control of legal expenditures, requests for legal advice from counsel by other employees of the District should be referred to the President of the Board, superintendent or designee of the superintendent.

The attorney for the Board will attend regular and special meeting of the Board when requested to do so, and will be available for consultation at such time as legal services may be needed. The attorney for the Board will review the agenda of each meeting and be prepared to provide legal advice regarding the action to be taken by the Board.

~~The Board, in its sole discretion, may defend officers and employees of the district who are charged with misdemeanors as a result of actions taken while acting in the capacity of an officer or employee of the district, within the course and scope of duties thereof, and while using sound discretion, even if decisions made within the officer or employee's discretion ultimately are shown to be incorrect**. The purpose of this policy is to reassure school officers and employees that actions taken while carrying out school duties and according to school policy will be defended, subject to the limitations hereof.~~

~~Any officer or employee of the district who has been arrested, arraigned, indicted or officially served with charges resulting or arising from actions taken while acting in the capacity of school employment may request legal defense by providing such request in writing to the superintendent.~~

The superintendent shall make a limited inquiry into the facts and circumstances underlying the charges to make a determination of:

1. Whether the actions upon which the charges are based were taken by the officer or employee while acting in a capacity as an officer or employee of the district;
2. Whether the actions were within the course and scope of the officer or employee's duties; and
3. Whether the actions were taken within the sound discretion of the officer or employee, whether or not such actions ultimately are shown to be correct or incorrect*.

Based upon the limited inquiry, the superintendent shall make a recommendation to the Board as soon as is reasonably possible as to whether the district should provide a legal defense to the officer or employee. In the event that the superintendent or a Trustee of the district has been charged, the inquiry will be conducted by a member of the Board. The limited inquiry is an administrative procedure and does not place the superintendent nor the Board in the position of deciding guilt or innocence as a judge or jury. The inquiry merely provides a basis of information for the Board in the exercise of its discretionary powers to defend or not defend.

The district will not provide a defense to an officer or employee against whom the district, its Trustees or superintendent have preferred criminal charges or which involve destruction, theft, misappropriation, or mishandling of school assets or funds. The district will not provide a legal defense to any officer or employee who is charged with a crime if the same acts are also a willing and knowing violation of district policy.

The superintendent shall recommend, the Board shall decide, the extent of the legal defense. The responsibility for legal expenses may be limited to a certain dollar amount or through a certain stage in the litigation (such as adjudication in municipal court, a jury trial in county court, etc.), in which case the officer or employee should be informed of the limitation in writing. Any appeals to the Mississippi Supreme Court, the Mississippi Court of Appeals, or United States Circuit Court of Appeals must be approved separately.

The officer or employee shall choose and hire the attorney, and the district does not accept responsibility of selecting and employing an attorney for these purposes. However, the Board reserves the right to reject an attorney selected by the officer or employee that the Board finds objectionable for any reason. The Board shall retain the right to approve the rate for legal services and the reasonability of expenses.

Nothing in this policy shall create any right or entitlement to defense nor to indemnity for fines, costs or damages.

** Felony charges may be defended also, if the Board determines the charges are likely to be untrue, that a substantial justification or defense exists, and/or that such defense would not be prejudicial to the district.

LEGAL REF: Section 25-1-47 of the Mississippi Code of 1972
Attorney General Opinion to Barry, February 24, 1994, AG Opinion No. 93-0969

Last Review Date: _____

Review History: 12/2018