

By: Representative Blackmon

To: Education

HOUSE BILL NO. 968

1 AN ACT TO AMEND SECTION 37-9-101, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT ALL SCHOOL BOARD DECISIONS OF NONREEMPLOYMENT OF
3 LICENSED SCHOOL EMPLOYEES SHALL BE BASED ON GOOD CAUSE AND TO
4 PROVIDE PROCEDURAL AND SUBSTANTIVE DUE PROCESS OF LAW IN SUCH
5 NONREEMPLOYMENT; TO AMEND SECTION 37-9-111, MISSISSIPPI CODE OF
6 1972, TO REQUIRE SCHOOL BOARDS TO PROVIDE A COPY OF THE TRANSCRIPT
7 OF A NONREEMPLOYMENT PROCEEDING AT NO COST TO EMPLOYEES AND TO
8 PROVIDE THAT HEARSAY EVIDENCE SHALL NOT BE ADMISSIBLE AT SUCH
9 HEARINGS, EXCEPT AS ALLOWED IN CIVIL PROCEEDINGS; TO AMEND SECTION
10 37-9-113, MISSISSIPPI CODE OF 1972, TO PRESCRIBE THE SCOPE OF
11 REVIEW OF THE CHANCERY COURT IN ANY APPEAL OF NONREEMPLOYMENT
12 DECISIONS; AND FOR RELATED PURPOSES.

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

14 SECTION 1. Section 37-9-101, Mississippi Code of 1972, is
15 amended as follows:

16 37-9-101. Sections 37-9-101 through 37-9-113 shall be known
17 as and cited as the "School Employment Procedures Law of 1977."

18 It is the intent of the Legislature to provide procedural and
19 substantive due process of law in the nonreemployment of public
20 school employees. All decisions of nonreemployment of public
21 school employees shall be based upon good cause.

22 SECTION 2. Section 37-9-111, Mississippi Code of 1972, is
23 amended as follows:

24 37-9-111. (1) The school board, upon request for a hearing
25 from an employee under the terms of Sections 37-9-101 through
26 37-9-113, shall set the time, place and date of such hearing and
27 notify the employee in writing of same. The date shall be set not
28 sooner than five (5) days nor later than thirty (30) days from the
29 date of the request, unless otherwise agreed. The hearing may be
30 held before the board or before a hearing officer appointed for
31 such purpose by the board, either from among its own membership,

32 from the staff of the school district or some other qualified and
33 impartial person, but in no event shall the hearing officer be the
34 staff member responsible for the initial decision of
35 nonreemployment.

36 (2) The employee shall be afforded an opportunity to present
37 matters at the hearing relevant to the reasons given for the
38 nonreemployment determination and to the reasons the employee
39 alleges to be the reasons for nonreemployment and to be
40 represented by counsel at such a hearing. Such hearing shall be
41 conducted in such a manner as to afford the employee a fair and
42 reasonable opportunity to present witnesses and other evidence
43 pertinent to the issues in his behalf and to cross-examine
44 witnesses against the employee. The board or the hearing officer
45 may require any portion of the evidence to be submitted in the
46 form of depositions or affidavits, and in case affidavits are
47 received, an opportunity to present counter-affidavits shall be
48 provided.

49 (3) The board shall cause to be made stenographic notes of
50 the proceedings. In the event of a judicial appeal of the board's
51 decision, such notes shall be transcribed and the board, upon
52 request, shall provide the employee a copy of the transcript at no
53 cost to the employee.

54 (4) The board shall review the matters presented before it,
55 or, if the hearing is conducted by a hearing officer, the record
56 of the proceedings and, based solely thereon, conclude whether the
57 nonreemployment determination is a proper employment decision, and
58 shall notify the employee in writing of its final decision and
59 reasons therefor. Such notification shall be within thirty (30)
60 days of the conclusion of the hearing if the hearing is conducted
61 by a hearing officer and within ten (10) days of the conclusion of
62 the hearing if the hearing is initially conducted by the board. If
63 the matter is heard before a hearing officer, the board shall also
64 grant the employee the opportunity to appear before the board to
65 present a statement in his own behalf, either in person or by his
66 attorney, prior to a final decision by the board.

67 (5) In conducting a hearing, the board or hearing officer
68 shall not be bound by common law or by statutory rules of evidence

69 or by technical or formal rules of procedure except as provided in
70 Sections 37-9-101 through 37-9-113, but may conduct such hearing
71 in such manner as best to ascertain the rights of the
72 parties; * * * however, hearsay evidence shall not be admissible
73 except as allowed under the Mississippi Rules of Civil Procedure.

74 (6) In the event the decision of the school board is in
75 favor of the employee, the board shall have the authority to order
76 the execution of a contract with the employee for an additional
77 period of one (1) year.

78 (7) For purposes of conducting hearings under Sections
79 37-9-101 through 37-9-113, the board or hearing officer shall have
80 the authority to issue subpoenas for witnesses and to compel their
81 attendance and the giving of evidence. Any expense connected
82 therewith shall be borne by the party requesting the subpoenas,
83 which shall include an appearance fee for each witness so
84 subpoenaed not inconsistent with state laws governing payments to
85 witnesses. In the event it is necessary to enforce or to quash a
86 subpoena issued to compel the attendance of a witness, application
87 shall be made with the chancery court of the county where the
88 school board is located.

89 SECTION 3. Section 37-9-113, Mississippi Code of 1972, is
90 amended as follows:

91 37-9-113. (1) Any employee aggrieved by a final decision of
92 the school board is entitled to judicial review thereof, as
93 hereinafter provided.

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

102 (3) The scope of review of the chancery court in such cases
103 shall be limited to a review of the record made before the school
104 board or hearing officer to determine if the action of the school
105 board is unlawful for the reason that it was:

106 (a) Against the overwhelming weight of the evidence;

107 (b) Arbitrary or capricious; or

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

110 (4) No relief shall be granted based upon a court's finding
111 of harmless error by the board in complying with the procedural or
112 substantive requirements of Sections 37-9-101 through 37-9-113.

113 However, in the event that there is a finding of prejudicial error
114 in the proceedings, the cause shall be remanded for a rehearing
115 consistent with the findings of the court.

116 (5) Any party aggrieved by action of the chancery court may
117 appeal to the Supreme Court in the manner provided by law.

118 SECTION 4. This act shall take effect and be in force from
119 and after July 1, 1999.