

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

April 26, 2019

Carlos D. Palmer, Esq.
Greenwood Municipal Separate School District
Post Office Box 272
Greenwood, Mississippi 38935

Re: School Board Meeting Requirement

Dear Mr. Palmer:

Attorney General Jim Hood is in receipt of your opinion request and has assigned it to me for research and reply. In your letter, you ask about the proper application of Section 37-6-13(2)(a) of the Mississippi Code Annotated.

Questions Presented

1. Does a School Board have any discretion to consider any other factors or reasons for absences, other than those "caused by required military duty," as justifications or "excused absences" as to not count toward those absences tabulated for the purposes of said statute?
2. If there are any factors or reasons for absences that may be considered by the School Board, other than those "caused by required military duty," as justifications or "excused absences," what would be examples of such factors or reasons?
3. Does the school board have discretion to waive the mandates of Section 37-6-13(2)(a) in their entirety?

Response

1. No. Section 37-6-13(2)(a) does not authorize any additional exception, other than absence due to required military duty, to the mandatory reimbursement requirement for a member missing twenty percent (20%) or more of the meetings of the school board in a calendar year.
2. Our response to your first question renders your second question moot.

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3. No. Any regulation that waives the requirement of Section 37-6-13(2)(a) to repay a portion of salary would be inconsistent with law and impermissible.

Legal Research and Analysis

Section 37-6-13 provides, in pertinent part:

(2)(a) If a member of a school board misses twenty percent (20%) or more of the meetings of the school board during a calendar year, **except for absences caused by required military duty**, the member must reimburse the school district that portion of the total salary paid to the member that year which is proportionate to the number of meetings missed by the member in relation to the total number of school board meetings held during that year. For purposes of this subsection, consideration may be given only to meetings of which public notice is required.

(Emphasis added). This code section makes only one specific exception from the above stated provision requiring repayment of salary by a school board member. It is the opinion of this office that the doctrine of *inclusio unius est exclusio alterius* (the inclusion of one is the exclusion of another) would be applicable in that a listing of specific exceptions to a statutory provision necessarily excludes all other possible exceptions. Therefore, in response to your first question, it is the opinion of this office that if the Legislature had intended to exclude an absence other than one due to required military service, it would have specifically listed such exclusion in Section 37-6-13(2)(a).

Our response to your first question renders your second question moot.

In response to your third question, pursuant to Section 37-6-13(2)(a), a school board member **must** repay a portion of the member's salary if the member misses twenty percent (20%) or more of the meetings of the school board in a calendar year. Based upon the plain reading of the statute, the requirement to repay the proportionate share of a member's salary equal to the percentage of the meetings missed that total twenty percent (20%) or more of the meeting set in a calendar year is mandatory. Section 37-7-301(i) authorizes a school board to prescribe and enforce rules and regulations. Such rules and regulations, however, may not be "inconsistent with law". Any regulation that waives the requirement of Section 37-6-13(2)(a) to repay a portion of salary would be inconsistent with law and impermissible.

If this office may be of any further assistance to you, please let us know.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By:



Avery Mounger Lee
Special Assistant Attorney General