



*Lynn Fitch*  
**ATTORNEY GENERAL**  
OPINIONS AND POLICY

February 24, 2022

Dorian E. Turner, Esq.  
Board Attorney, Claiborne County School District  
1880 Lakeland Drive, Suite D  
Jackson, Mississippi 39216

Re: School District Employee Bereavement Leave

Dear Ms. Turner:

The Office of the Attorney General has received your request for an official opinion.

### **Background**

According to your request, the Board of Education of the Claiborne County School District (“the District”) wishes to adopt a policy that would grant three days of bereavement leave to employees in the event of the death of any of the following family members: parent, sibling, spouse, child, grandchild, grandparent, mother-in-law, or father-in-law. The three-day bereavement leave would be granted for each occurrence of the death of a family member and would be in addition to personal leave and sick leave granted to District employees. In light of Mississippi Code Annotated Section 37-7-307(3)(b)(iv), which provides for three “bereavement days” that can be taken on days otherwise unavailable for leave during the school year, you present several questions about the District’s ability to craft a bereavement policy.

### **Questions Presented**

1. May the District’s school board adopt a policy providing its employees with three paid bereavement days, per occurrence, for the death of certain family members, with such leave not being applied against the employee’s accrued sick, vacation, or personal leave?
2. If the answer to the first question is yes, may the family members for whose death bereavement leave may be taken include family members not contained in the definition of “immediate family member” in Section 37-7-307(3)(b)(iv), e.g., mother-in-law and father-in-law, and exclude family members included in Section 37-7-307(b)(3)(iv), e.g., stepparent, stepchild, stepbrother and stepsister?

3. If the answer to the first question is no, what is the maximum number of combined personal and sick leave days that the school board can grant its employees without exceeding Sections 25-3-93 and 25-3-95?
4. Finally, what are the three bereavement days referred to in Section 37-7-307(3)(b)(iv), and how are these to be applied and/or granted to school employees?

### **Brief Response**

1. No. The District's school board may not create a new category of bereavement leave. The statute as amended in 2019 does not create a specific type of leave for bereavement but instead provides an exception to the rule disallowing personal leave on specific days during the school year.
2. Because the answer to Question 1 is no, we need not address Question 2.
3. The maximum number of allowable personal leave days and sick days is calculated based upon an individual's years of continuous service as specified in Sections 25-3-93 and 25-3-95.
4. The three bereavement days referred to in Section 37-7-307(3)(b)(iv) are not additional days of leave or a new category of leave. Instead, they are exceptions to the statutorily imposed restrictions on the three types of days of the school term on which personal leave may not be taken.

### **Applicable Law and Discussion**

Mississippi Code Annotated Section 37-7-307 sets forth the personal leave policy for licensed school employees, and states, in pertinent part, the following:

(3)(a) Beginning with the school year 1983-1984, each licensed employee at the beginning of each school year shall be credited with a minimum personal leave allowance, with pay, of two (2) days for absences caused by personal reasons during that school year. . . . Except as otherwise provided in paragraph (b) of this subsection, such personal leave shall not be taken on the first day of the school term, the last day of the school term, on a day previous to a holiday or a day after a holiday.

Subsection (3)(b) provides an exception to the restriction of subsection (a), and lists four instances where personal leave may be taken on the first or last day of the school term and/or on a day previous to or right after a holiday:

(i) Personal leave may be taken on the first day of the school term, the last day of the school term, on a day previous to a holiday or a day after a holiday if, on the applicable day, an immediate family member of the employee is being deployed for military service.

(ii) Personal leave may be taken on a day previous to a holiday or a day after a holiday if an employee of a school district has either a minimum of ten (10) years' experience as an employee of that school district or a minimum of thirty (30) days of unused accumulated leave that has been earned while employed in that school district.

(iii) Personal leave may be taken on the first day of the school term, the last day of the school term, on a day previous to a holiday or a day after a holiday if, on the applicable day, the employee has been summoned to appear for jury duty or as a witness in court.

(iv) Personal leave may be taken on the first day of the school term, the last day of the school term, on a day previous to a holiday or a day after a holiday if, on the applicable day, an immediate family member of the employee dies or funeral services are held. Any day of the three (3) bereavement days may be used at the discretion of the teacher, and are not required to be taken in consecutive succession.

Miss. Code Ann. § 37-7-307(3)(b). For purposes of that specific subsection, immediate family member is defined as "spouse, parent, stepparent, child or stepchild, grandparent or sibling, including a stepbrother or stepsister." *Id.* In-laws are not included in the family member designation.

The only mention of bereavement days is in the above-quoted section. There is nothing else in the statutes regarding bereavement leave. As evidenced by the plain language of the statute, the legislature did not create a new category of leave but added another exception to the restriction on taking personal leave on the first day of the school term, the last day of the school term, or the day immediately before or after a school holiday. While Section 37-7-307(6)(d) does authorize school boards to enlarge, increase, or provide "greater sick or personal leave allowances than the minimum standards established by this section," this office previously has opined that the statute "does not grant any authority to local school districts to create any additional types of leave." MS AG Op., *Ready* at \*2 (Mar. 26, 2004). Therefore, in response to your first question, the District's school board may not adopt a policy providing three paid days of bereavement leave for each occurrence of the death of an employee's family member with such leave not being applied against existing sick or personal leave. Because we have answered this question in the negative, we need not address your second question, although on the face of the statute, it is plain that in-laws are not considered family members for purposes of this section.

Your third question asks about the maximum number of combined sick and personal days a school board may grant its employees without exceeding that allowed by Sections 25-3-93 and 25-3-95. As an initial matter, Section 37-7-307(3)(a) establishes two days as the minimum number of days credited to licensed school employees for personal leave during the school year. Section 37-7-307(2)(a) establishes that each licensed employee and teacher's assistant be credited with a minimum of seven days of sick leave for physical disability or illness. Local school boards are also given the authority:

to adopt rules and regulations which will reasonably aid to implement the policy of sick and personal leave, including, but not limited to, rules and regulations . . . [e]nlarging, increasing or providing greater sick or personal leave allowances than

the minimum standards established by this section in the discretion of the school board of each school district.

Miss. Code Ann. § 37-7-307(6)(a), (d).

Section 37-7-307(9) provides, in part:

...Unused vacation or personal leave accumulated by licensed employees in excess of the maximum five (5) days which may be carried over from one year to the next may be converted to sick leave. The annual conversion of unused vacation or personal leave to sick days for licensed or unlicensed employees shall not exceed the allowable number of personal leave days as provided in Section 25-3-93. The annual total number of converted unused vacation and/or personal days added to the annual unused sick days for any employee shall not exceed the combined allowable number of days per year provided in Sections 25-3-93 and 25-3-95. **Local school board policies that provide for vacation, personal and sick leave for employees shall not exceed the provisions for leave as provided in Sections 25-3-93 and 25-3-95....**

(Emphasis added.)

Section 25-3-93(1) and 25-3-95 provide accrual rates for personal leave and major medical leave based upon an employee's years of continuous service. Because the maximum number of personal and sick leave days a district could grant varies depending upon an employee's years of continuous service, we are unable to pronounce a blanket maximum number of days applicable to all districts. For further guidance on this question, we suggest that you contact the State Auditor's Technical Assistance Division or the Mississippi Department of Education.

In response to your fourth question, the three bereavement days referred to in Section 37-7-307(3)(b)(iv) are not additional days of leave or a new category of leave. Instead, they are exceptions to the statutorily imposed restrictions on the three types of days of the school term on which personal leave may not be taken.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: */s/ Misty Monroe*

Misty Monroe  
Special Assistant Attorney General