



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

March 5, 2025

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

Re: Donated Leave

Dear Ms. Turner:

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

### **Questions Presented**

1. May the Jackson Public School District Board of Trustees ("School Board") adopt a policy requiring that in order to receive donated leave, an employee must have been employed by the Jackson Public School District ("District") on a full-time basis, for at least twelve months, and must have worked at least 1,250 hours during the twelve months immediately preceding his or her leave of absence?
2. May the School Board adopt a policy requiring that the maximum amount of donated leave that an employee may receive in a calendar year is sixty days?
3. May the School Board adopt a policy requiring that the maximum amount of paid leave that an employee may use in a calendar year is ninety days (inclusive of the employee's own accrued leave and donated leave)?
4. May the School Board adopt a policy requiring that recipient employees, as defined in Mississippi Code Annotated Section 37-7-307(10)(a)(i), shall not receive donated leave on a retroactive basis?
5. May the School Board adopt a policy requiring that any leave days beyond the maximum allowed under the District's policy be considered an extended leave of absence, without pay, subject to the District's policy and superintendent approval?
6. May the School Board adopt a policy requiring that an employee may not donate leave after tendering or receiving a notice of separation, for any reason, or after separation from employment?

### **Brief Response**

1. No. The School Board may not adopt a policy more restrictive than what is permitted by statute. The only statutory limitations on who may receive donated leave are that the recipient employee must work in the same district as the donor employee and must be suffering from a catastrophic injury or illness or have an immediate family member suffering from a catastrophic injury or illness. A school board policy requiring that in order to receive donated leave, the employee must have been employed by the District, on a full-time basis, for at least twelve months, and must have worked at least 1,250 hours during the twelve months immediately preceding his or her leave of absence would prohibit what is otherwise allowed by statute and thus would be preempted by state law.

2. The School Board may not adopt a policy requiring the maximum amount of donated leave received in a calendar year be limited to sixty days. Because the statute allows the recipient employee to receive donated leave upon the determination that the illness meets the statutory catastrophic criteria and does not provide a maximum number of days that the recipient employee may receive, it is the opinion of this office that the School Board cannot limit the maximum amount of donated leave that an employee may receive.

3. No. See response 2.

4. The School Board may adopt a policy that prohibits recipient employees from receiving donated leave on a retroactive basis as long so the policy comports with Section 96 of the Mississippi Constitution and Section 37-7-307(10).

5. The School Board may not impose a maximum number of days of donated leave that an employee can use for catastrophic illness or injury.

6. A policy prohibiting an employee from donating leave after tendering or receiving a notice of separation would contradict the statute that allows *any* school district employee to donate leave, and is, thus, preempted by state law. If, however, an individual is no longer employed by the district or has separated from employment, he or she would no longer be considered a school district employee and could not donate his or her leave under Section 37-7-307(10).

### **Applicable Law and Discussion**

As an initial matter, opinions of this office are issued on prospective questions of state law pursuant to Section 7-5-25. We cannot opine on any federal law or regulation. Whether the Fair Labor Standards Act or any other federal law or regulation applies to your questions is outside the scope of this opinion. We also cannot opine on, approve, or interpret local school board policies. To the extent that a state statute and a local school board policy conflict, the state statute would prevail. “[T]he relevant inquiry [is] whether the state statute prohibit[s] the local ordinance, or whether the local ordinance [is] an additional regulation not inconsistent with state law.” *Delphi Oil, Inc. v. Forrest Cnty Bd. of Sup'rs*, 114 So. 3d 719, 72 (Miss. 2013) (internal citation omitted). A local

ordinance, here a local school board policy, that is “merely supplementary” to the state statute is not preempted by state law. *Id.*

Notably, many of your questions appear to be based on Section 25-3-95(8), which provides a similar procedure for donated leave for state employees—as opposed to school district employees—but with noticeable differences. Specifically, Section 25-3-95(8)(f) provides a maximum period of time an employee may use donated leave without resuming work; Section 25-3-95(8)(j) provides that an employee cannot donate leave after tendering a notice of separation or after termination; and Section 25-3-95(8)(l) provides that an employee is only eligible to receive donated leave if he or she has been employed for at least a total of twelve months and for at least 1,250 hours during the previous twelve month period. There are no corresponding subsections in Section 37-7-307 for school district employees. We understand you are asking whether a school board may adopt policies that would, in effect, apply these additional provisions of Section 25-3-95(8), pertaining to state employees, to school districts.

Section 37-7-307(10)(b) provides as follows:

Any school district employee may donate a portion of his or her unused accumulated personal leave or sick leave to another employee of the same school district who is suffering from a catastrophic injury or illness or who has a member of his or her immediate family suffering from a catastrophic injury or illness, in accordance with the following:

(i) The employee donating the leave (the “donor employee”) shall designate the employee who is to receive the leave (the “recipient employee”) and the amount of unused accumulated personal leave and sick leave that is to be donated, and shall notify the school district superintendent or his designee of his or her designation.

(ii) The maximum amount of unused accumulated personal leave that an employee may donate to any other employee may not exceed a number of days that would leave the donor employee with fewer than seven (7) days of personal leave remaining, and the maximum amount of unused accumulated sick leave that an employee may donate to any other employee may not exceed fifty percent (50%) of the unused accumulated sick leave of the donor employee.

(iii) An employee must have exhausted all of his or her available leave before he or she will be eligible to receive any leave donated by another employee. Eligibility for donated leave shall be based upon review and approval by the donor employee's supervisor.

(iv) Before an employee may receive donated leave, he or she must provide the school district superintendent or his designee with a physician's statement that states that the illness meets the catastrophic criteria established under this section, the beginning date of the catastrophic injury

or illness, a description of the injury or illness, and a prognosis for recovery and the anticipated date that the recipient employee will be able to return to work.

(v) Before an employee may receive donated leave, the superintendent of education of the school district shall appoint a review committee to approve or disapprove the said donations of leave, including the determination that the illness is catastrophic within the meaning of this section.

(vi) If the total amount of leave that is donated to any employee is not used by the recipient employee, the whole days of donated leave shall be returned to the donor employees on a pro rata basis, based on the ratio of the number of days of leave donated by each donor employee to the total number of days of leave donated by all donor employees.

(vii) Donated leave shall not be used in lieu of disability retirement.

With respect to your first question, according to the plain language of the statute, the only statutory limitations on who may receive donated leave are that the employee must work in the same district as the donor employee and must be suffering from a catastrophic injury or illness or have an immediate family member suffering from a catastrophic injury or illness. There is no statutory minimum amount of time the recipient employee must work for the district to qualify. To restrict this to only those full-time employees who have worked for the district for at least twelve months and for at least 1,250 hours during the twelve months immediately preceding his or her leave of absence would prohibit what the statute allows, namely by restricting who may donate leave beyond what is otherwise allowed by state law, and is, thus, preempted by state law.

Your second question asks whether the School Board can limit the maximum amount of donated leave that an employee may receive in a calendar year to sixty days. Section 37-7-307(10)(b)(ii) provides a maximum amount of personal leave that an employee may *donate*; however, there is no corresponding statutory maximum amount of personal leave that the recipient employee may *receive*. Because the statute allows for the recipient employee to receive donated leave upon the determination that the illness meets the statutory catastrophic criteria and does not provide a maximum number of days that the recipient employee may receive, it is the opinion of this office that a school board policy limiting the maximum amount of donated leave an employee may receive is not merely supplementary but, rather, contradicts what is allowed by state law. *See also* Miss. Code Ann. § 37-7-301.1 (“The school board of a school district may adopt any orders, resolutions or ordinances with respect to school district affairs, property and finances which are not inconsistent with the Mississippi Constitution of 1890, the Mississippi Code of 1972, or any other statute or law of the State of Mississippi.”). Accordingly, the School Board cannot limit the maximum amount of donated leave that an employee may receive. For the same reasons and in response to your third question, the School Board may not limit the maximum amount of combined paid accrued leave and donated leave that an employee may use in a calendar year to ninety days. Notably, the illness or injury must continue to meet the statutory catastrophic criteria for the recipient employee to continue to use donated leave.

Your fourth question asks whether the School Board may adopt a policy prohibiting recipient employees from receiving donated leave on a retroactive basis. We understand your question to reference a potential situation where an employee has returned to work after an extended absence for which he or she had insufficient leave and receiving donated leave after the fact to apply to the preceding period of absence. Section 96 of the Mississippi Constitution provides:

The Legislature shall never grant extra compensation, fee, or allowance, to any public officer, agent, servant, or contractor, after service rendered or contract made, nor authorize payment, or part payment, of any claim under any contract not authorized by law; but appropriations may be made for expenditures in repelling invasion, preventing or suppressing insurrections.

Accordingly, the School Board may adopt a policy that prohibits recipient employees from receiving donated leave on a retroactive basis so long as the policy comports with Section 96 of the Mississippi Constitution and Section 37-7-307(10). As a practical matter, we understand that there may be a period of time between the onset of a catastrophic illness or injuries and when all of the administrative steps, such as submission of a physician's statement and approval of the donations of leave, are completed. Thus, while the School Board cannot grant retroactive compensation, a recipient employee may not be required to have all of the administrative steps completed and paperwork approved prior to the catastrophic injury or illness in order to receive donated leave. We suggest that you contact the Technical Assistance Division of the Office of the State Auditor or Public Employees' Retirement System of Mississippi for specific questions with respect to this issue.

Your fifth question asks whether the School Board may adopt a policy requiring that any leave days beyond the maximum allowed under the District's policy be considered an extended leave of absence, without pay, subject to the district's policy and superintendent approval. To the extent that your question is specific to donated leave for catastrophic illness or injury, for the same reasons as questions 2 and 3, *supra*, the School Board cannot impose a maximum number of days of donated leave that an employee may use. With respect to leave unrelated to a catastrophic injury or illness, the school board may adopt a policy that provides for a leave of absence without pay after a maximum allowable number of leave days a policy as long as such policy accords with Sections 37-7-307(2) and 37-7-307(6) and any other state or federal laws or regulations that may apply.

Your sixth question asks whether the School Board may adopt a policy that an employee may not donate leave after tendering or receiving a notice of separation, for any reason, or after separation from employment. Section 37-7-307(10)(b) provides that “[a]ny school district employee may donate a portion of his or her unused accumulated personal leave or sick leave . . . .” (emphasis added). Thus, a policy prohibiting an employee from donating leave after tendering or receiving a notice of separation would contradict the statute and is, thus, preempted by state law. If, however, an individual is no longer employed by the district or has separated from employment, he or she would no longer be considered a school district employee and could not donate his or her leave under Section 37-7-307(10).

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/ Beebe Garrard*

Beebe Garrard  
Special Assistant Attorney General

OFFICIAL OPINION