

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT  
OF HINDS COUNTY, MISSISSIPPI

JACKSON PUBLIC SCHOOL DISTRICT BOARD OF  
TRUSTEES AND DR. FREDDRICK MURRAY, IN HIS  
OFFICIAL CAPACITY AS SUPERINTENDENT,  
ON BEHALF OF JACKSON PUBLIC SCHOOL DISTRICT

PETITIONERS

VS.

CIVIL NO: 251-17-569

MISSISSIPPI DEPARTMENT OF EDUCATION  
MISSISSIPPI STATE BOARD OF EDUCATION; AND  
MISSISSIPPI COMMISSION ON ACCREDITATION

RESPONDENTS

**ORDER AND OPINION**

The Jackson Public School District Board of Trustees and Dr. Freddrick Murray, in his official capacity as superintendent, have presented before this Court their Motion for Temporary Restraining Order and Preliminary Injunction. Having carefully considered the motion, and being otherwise fully advised in the premises, this Court hereby denies this motion.

The procedure for determining whether an emergency situation exists in a public school district is clearly articulated in the statutory language of Mississippi Code Annotated § 37-17-6(12)(a) and (b). The language of the statute states:

“If the recommendations for corrective action are not taken by the local school district or if the deficiencies are not removed by the end of the probationary period, the Commission on School Accreditation shall conduct a hearing to allow the affected school district to present evidence or other reasons why its accreditation should not be withdrawn. Additionally, if the local school district violates accreditation standards that have been determined by the policies and procedures of the State Board of Education to be a basis for withdrawal of school district's accreditation without a probationary period, the Commission on School Accreditation shall conduct a hearing to allow the affected school district to present evidence or other reasons why its accreditation should not be withdrawn. After its consideration of the results of the hearing, the Commission on School Accreditation shall be authorized, with the approval of the State Board of Education, to withdraw the accreditation of a public school district, and issue a request to the Governor that a state of emergency be declared in that district.

If the State Board of Education and the Commission on School Accreditation determine that an extreme emergency situation exists in a school district that jeopardizes the safety, security or education interests of the children enrolled in the schools in that district and

that emergency situation is believed to be related to a serious violation or violations of accreditation standards or state or federal law... the State Board of Education may request the Governor to declare a state of emergency in that school district.”

Miss. Code. Ann. § 37-17-6(a)-(b)

In their motion for injunctive relief, the Petitioners acknowledge that, on September 13, 2017, the Commission on Accreditation (the “Commission”) conducted a hearing and voted to declare an emergency situation in Jackson Public School District. The Commission then forwarded this recommendation to the State Board of Education, which met on September 14, 2017, and also voted to declare a state of emergency in the school district. Since that date, the recommendation has been sent to Governor Phil Bryant to exercise his constitutional executive authority and declare a state of emergency in the school district.

The Petitioners take issue with the fact that the Commission on Accreditation and the State Board of Education did not comply with the Accreditation Audit Procedures, a set of rules and regulations approved by both entities, which allotted the superintendent of a school district thirty (30) days to respond to any deficiency contained in the audit report. The Petitioners state that they had only eight (8) school days to respond to the audit report, which was generated on August 31, 2017. When the Commission holds a meeting to decide whether a school district is in a state of emergency, these same audit procedures allow forty (40) minutes for the Office of Accreditation to present its findings and forty (40) minutes for the school district to refute any of these findings. The Petitioners also argue that the school district should have been granted additional time to refute the findings, but were denied this additional time.

The Accreditation Audit Procedures are approved by the Commission and State Board of Education and act as a tool by which to guide the agencies in their determinations of emergency situations in school districts; however, these regulatory procedures adopted by the Commission

and the State Board of Education are not statutory law, thus subject to exceptions in certain necessary situations. See *Herring Gas Co. v. Mississippi Employment Sec. Comm'n*, 944 So. 2d 943, 947 (Miss. Ct. App. 2006)(holding that administrative agencies are not bound by their non-statutory procedures and may make exceptions in proper circumstances). The most authoritative rules and regulations of an administrative agency are those promulgated by statutory provisions, such as the procedures imposed by Miss. Code. Ann. § 37-17-6(a)-(b). *Mississippi Pub. Serv. Comm'n v. Mississippi Power & Light Co.*, 593 So. 2d 997, 1000 (Miss. 1991). This Court is of the opinion that the Commission and State Board of Education adequately complied with these statutory procedures before making their recommendations to the Governor. Moreover, a state agency is allowed to “modify or otherwise adjust its rules and policies in the light of its experience and changing circumstances.” *Watkins v. Mississippi Bd. of Bar Admissions*, 659 So. 2d 561, 568 (Miss. 1995) (citing *Orleans Audubon Soc. v. Lee*, 742 F.2d 901, 907 (5th Cir. 1984); See also *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42, 103 S. Ct. 2856, 77 L. Ed. 2d 443 (1983)). So long as the Commission and State Board of Education complies with the procedures prescribed by statute, these entities may modify or adjust their own rules as they see fit in necessary circumstances, such as a potentially “extreme emergency situation” in the Jackson Public School system.

Secondly, in order to grant or deny a temporary restraining order, the Court must determine: “(1) whether there exists a substantial likelihood that the plaintiff will prevail on the merits; (2) whether the injunction is necessary to prevent irreparable harm; (3) whether the threatened harm to the applicant outweighs the harm the injunction might do to the respondents; and (4) whether entry of the injunction is consistent with the public interest.” *Lauderdale v. DeSoto Cty. ex rel. Bd. of Supervisors*, 196 So. 3d 1091, 1099 (Miss. Ct. App. 2016) (citing to

*Sec'y of State v. Gunn*, 75 So.3d 1015, 1020 (Miss. 2011). A temporary restraining order may be issued where 'immediate and irreparable injury, loss, or damage will result to the applicant' before such time as a hearing on the matter can be held." See *A-1 Pallet Co. v. City of Jackson*, 40 So.3d 563, 567 (Miss.2010) (quoting M.R.C.P. 65(b)(1)). Also, a temporary restraining order may be issued where a party's "right to relief on the merits remains uncertain" or pending the final determination of a matter. *Sec'y of State v. Gunn*, 75 So.3d 1015, 1020-1021 (Miss. 2011). In the case before this Court, there has been no final judgment or determination by which to appeal. The statutory language of Miss. Code. Ann. § 37-17-6 provides no appeal to a school district when a state of emergency has been recommended to the Governor by the Commission and State Board of Education. Even if the recommendation could be considered a final determination or judgment from State Board of Education, all appeals from this agency would not be appropriate in this Court, but rather, in Chancery Court, according to Mississippi law. Miss. Code. Ann. § 37-151-61 ("Any school board of any school district which may be aggrieved by any final rule, regulation or order of the State Board of Education adopted under the provisions of this chapter shall have the right to appeal therefrom to the chancery court."). In this circumstance, however, Mississippi law directs the Commission and State Board of Education to decide upon the merits of the case at hand – the condition of the school district and the necessity to declare an emergency situation – and make its recommendation to the Governor, who will then make his final determination to declare a state of emergency in the school district. Miss. Code. Ann. § 37-17-6(a)-(b). Upon conducting its hearing, the Commission on Accreditation addressed the issues brought forth in the 2017 audit of the Jackson Public School District and allowed the District to refute these issues. At its conclusion, the Commission voted to declare an "extreme emergency situation," and then forwarded this recommendation to the

State Board of Education. The State Board of Education accepted this recommendation and then forwarded the recommendation to the Governor; all of these proceedings being align with statutory requirements. The merits of the case are not uncertain. Both the Commission and the State Board of Education found that an extreme emergency situation existed. These agencies did not create a rule, regulation, or order which warrants an appropriate appeal, but instead, decided to recommend that the Governor declare a state of emergency in the Jackson Public School District. Therefore, the Petitioners have already failed to satisfy the first prong of a temporary restraining order, because they did not succeed on the merits of their case with the chief fact-finders of these matters. This Court cannot now enjoin the State Board of Education from any further proceedings, when all proceedings at the administrative level are complete and any final actions and determinations now rest with the Governor of Mississippi.

At this point, by requesting an injunction of “any further proceedings or decisions in this matter,” the Petitioners are also asking this Court to usurp the executive authority of the Governor to declare an emergency situation, as granted to him by state law and the Mississippi Constitution. This Court is well aware of basic principles of the separation of powers that exists within the government of this state. Article V of the Mississippi Constitution grants to the Governor specific duties and authorities, which are distinct to that branch of government. The core of this executive authority is to faithfully execute the laws of this state. MS Const. Art. 5, § 123; Miss. Code. Ann. § 7-1-5 (West). The role of the judiciary is to see that the executive branch does not overstep its boundaries in its decision-making process, not to step into the shoes of the executive branch and intercept decisions that it is statutorily entitled to make. *Limbirt v. Mississippi Univ. for Women Alumnae Ass'n, Inc.*, 998 So. 2d 993, 1000 (Miss. 2008). Once the Commission and the State Board of Education forwarded its recommendation to declare an

extreme emergency situation in the Jackson Public School District, the ultimate decision, as legislated by Miss. Code. Ann. § 37-17-6, was placed in the hands of the executive branch. This Court would be remiss to now take this decision out of the Governor's hands, who has not overstepped his executive authority and has not been made a party to this action, simply because the Petitioners were unhappy with the amount of time the Commission and the State Board of Education took to declare a state of emergency in the Jackson Public School District. To do so, in the Court's opinion, would be to take an unauthorized step beyond the boundary that separates the judicial and executive branches.

For these reasons, Motion for Temporary Restraining Order and Preliminary Injunction is hereby DENIED.

**SO ORDERED**, this the <sup>5<sup>th</sup></sup>~~2<sup>nd</sup>~~ day of October, 2017.

  
JUDGE WILLIAM GOWAN