IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

DAVID CABALLERO, JUDITH CABALLERO, DORSEY CARSON, SUSAN CARSON, LASHRON COOLEY, KEYONDA CRAFT, ANITA DEROUEN, AMELIE HAHN, ANNA INGEBRETSEN HALL, WES HARP, TARASA BRIERLY-HARP, CONSTANCE LLOYD, ROBBY LUCKETT, RUKIA LUMUMBA, CHAKA BENJAMIN, JOY PARIKH, KERI PEREZ, TREY PEREZ, EARLINE RAWLS, KIM ROBINSON, LARRY STAMPS, ALBERT SYKES, LAKENDRA TRAVIS, STEVE TUTTLE, JULIA WEEMS, KRISTIAN WOODRUFF, CHARLES H. WILSON, IIII, and their minor SCHOOL CHILDREN, all students of the Jackson Public School District.	)	
Plaintiffs,	)	
v.	)	
CAREY WRIGHT, MISSISSIPPI STATE SUPERINTENDENT OF EDUCATION; ROSEMARY AULTMAN, CHAIR OF THE STATE BOARD OF EDUCATION; AND HEATHER WESTERFIELD, CHAIR OF THE STATE COMMISSION ON SCHOOL ACCREDITATION.	)	**CAUSE NO. 3:17-cv-752-LG-RHW**
Defendants.	)	

JPS PARENTS AND SCHOOLCHILDREN'S COMBINED MOTION AND MEMORANDUM IN SUPPORT OF DECLARATORY JUDGMENT AND PRELIMINARY INJUNCTION

COME NOW Plaintiffs David Caballero, Judith Caballero, Dorsey Carson, Susan Carson, Lashron Cooley, Keyonda Craft, Anita DeRouen, Amelie Hahn, Anna Ingebretsen Hall, Wes Harp, Tarasa Briefly-Harp, Constance Lloyd, Robby Luckett, Rukia Lumumba, Chaka Benjamin, Joy Parikh, Keri Perez, Trey Perez, Earline Rawls, Kim Robinson, Larry Stamps, Albert Sykes,

Lakendra Travis, Steve Tuttle, Julia Weems, Kristian Woodruff, and Charles H. Wilson, III (collectively, "JPS Parents"), and their minor school children ("JPS Schoolchildren") who are students of the Jackson Public School District, and, pursuant to Rule 57 and Rule 65 of the Federal Rules of Civil Procedure, submit this their Combined Motion and Memorandum in Support of Declaratory Judgment and Preliminary Injunction against Defendants Carey Wright, Mississippi State Superintendent of Education; Rosemary Aultman, Chair of the State Board of Education; and Heather Westerfield, Chair of the State Commission on School Accreditation (collectively referred to as "Defendants"), asking this Court to:

(1) declare that the Defendants' policies, procedures, and determination that an "extreme emergency situation … that jeopardizes the safety, security or education ***interests of the children …***" exists, without providing Plaintiffs with notice and an opportunity to be heard, violated the Mississippi Open Meetings Act, MISS. CODE ANN. § 25-41-1, *et seq.*, and violated Plaintiffs JPS Schoolchildren and JPS Parents' due process rights to such notice and an opportunity to be heard, as required by the Due Process Clause of Fourteenth Amendment; and

(2) enjoin any further action taken based upon the Defendants' violative policies, procedures, and hearings without first affording Plaintiffs notice and an opportunity to be heard, including enjoining a state takeover of the Jackson Public School District and their public schools unless and until such due process is provided.

I. INTRODUCTION

The above-styled matter is an action for declaratory, injunctive, and equitable relief under Rule 57 and Rule 65 of the Federal Rules of Civil Procedure under the Amended Complaint (Doc. 12, Case No. 3:17-cv-752-LG-RHW), for Defendants' violations of the procedural due process,

substantive due process, and equal protection clauses of Fourteenth Amendment to the U.S. Constitution, for deprivation of civil rights, and for actionable violations under 42 U.S.C. § 1983 and § 1988, and 28 U.S.C.S. § 1343.

Plaintiffs Jackson Public School District ("JPS" or "District") Schoolchildren's and JPS Parents' Constitutionally-recognized property and liberty interests in public education are directly and meaningfully impacted by Defendants Carey Wright ("Wright"), Rosemary Aultman ("Aultman"), and Heather Westerfield's ("Westerfield") (collectively, the "Defendants") accreditation and conservatorship proceedings, including the policies and procedures adopted and/or used in such proceedings.

II. FACTUAL BACKGROUND

The facts of this case are more fully set out in the JPS Schoolchildren's and JPS Parents' Amended Complaint currently pending before this court (Doc. 12), but are briefly summarized herein.

The Defendants are all policy and procedure makers for the Mississippi Department of Education ("MDE"), the Mississippi Board of Education ("Board"), and the Commission on Accreditation (the "Commission"). More specifically, Defendants are all officers and/or directors of MDE with authority to set policies and procedures, either formally or informally, including policies and procedures for hearings on whether an "extreme emergency situation … that jeopardizes the safety, security or education ***interests of the children …***" exists justifying a state takeover.

Administrative policies and procedures are established by these Defendants, individually and collectively, including but not limited to the Accreditation Audit Procedures ("Administrative

Procedures"), attached hereto as Exhibit 1.[1] These Administrative Procedures were approved by the Commission on October 14, 2014, and approved by the Board on October 17, 2014.

The Preamble to the Administrative Procedures states:

> "DURING THIS PROCESS, THE MDE SHALL REMAIN STEADFAST IN ITS COMMITMENT TO PROTECT THE WELFARE *OF STUDENTS* IN THE EVENT THAT A DETERMINATION MUST BE MADE THAT AN EXTREME EMERGENCY IS FOUND TO EXIST, OR THAT A DISTRICT'S ACCREDITATION STATUS IS DOWNGRADED OR WITHDRAWN."

Exh. 1, at p. 1 (italics added; small caps font in original).

According to the Administrative Procedures adopted and used by the Defendants, the "audit team uses four methods of data collection: **interviews, document analysis, surveys, and observation**." *Id.* (emphasis in original). The required interviews are only with "school district personnel, …" *Id.* The procedures for conducting MDE audits do not require that any students or parents be interviewed or surveyed. *See id.* Quite the contrary, the Administrative Procedures *expressly* states that interviews with parents are not required:

> **"While auditors are open to interviews with parents, representatives of businesses, and the community, these interviews are not an established component of the audit procedure."**

Id. at p. 2 (bold added). Thus, MDE audit procedures do not provide any requirement or meaningful opportunity for the JPS Schoolchildren or JPS Parents to be interviewed, or otherwise be heard.

When finalized, those MDE audit results (both preliminary and final) are not then provided to school children or parents, but only to "the superintendent, school board chair, and any other district staff, including principals, to review preliminary audit findings." *Id.* at p. 3.

---

[1] The policies and procedures, including the Administrative Procedures, were adopted and/or used by Defendants in conjunction with MISS. CODE ANN. § 37-17-6(12)(b), which provides: "If the State Board of Education and the Commission on Accreditation determine that an extreme emergency situation exists in a school district that jeopardizes the safety, security or education interest *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(12)(b) (emphasis added).

The Administrative Procedures then set forth the procedures for compiling a Final Report. Like the MDE audit report, that Final Report is not then provided to school children or parents, but only "to the district." *Id.* at p. 3. "If the report is hand-delivered, it will be provided to both the superintendent and the school board chair" *Id.* "It will be mailed to all board members …" *Id.* "The superintendent is given 30 school days … to respond in writing to any deficiency cited."[2]

It is beyond any reasonable dispute that the policies and procedures adopted by the Defendants do not provide school children and parents any opportunity to be heard either at the audit level, or at the accreditation hearing level, or at the Board hearing level. Rather, the Administrative Procedures only require interviews with "school district personnel" and provide the school district with notice and an opportunity to be heard, but not children or parents.

III. PROCEDURAL HISTORY

Defendants have not included, sought, or seemingly even desired any participation of Plaintiffs, or any other JPS schoolchildren or parents, in its proceedings, investigations, audits, findings, corrective actions, or hearings which have resulted in an imminent state takeover, including but not limited to the recent accreditation and takeover hearings held by Defendants.

a. The August 2016 Limited On-Site Audit Conducted Without Participation by Plaintiffs, or other Schoolchildren or Parents.

By way of background, and as it relates specifically to JPS, and in April 2016, MDE conducted a limited on-site audit of the District. Defendants' policies and procedures were used when MDE auditors conducted preliminary and Final Reports to audit the District, and when those

[2] Setting aside the fact that the children and parents are not provided copies of the audit report or Final Report, or any opportunity to respond, in this particular case, it is undisputed that the superintendent for the Jackson Public School District was not even provided 30 school days to respond, as required by the Administrative Procedures, but was instead provided just eight (8) school days to respond.

MDE auditors recommended that the Commission "determine that an extreme emergency exists in the district." *Id.* at p. 3.

None of the JPS Schoolchildren or JPS Parents were interviewed for the on-site audit, or otherwise asked to participate. Upon information and belief, few if any other JPS parents and JPS students were involved in any meaningful way; nor do MDE policies or procedures provide for such. Thereafter, in August 2016, MDE issued a report identifying a number of issues related to student safety, among others.

Defendants' policies and procedures did not and not provide for or require notice or delivery of copies of any audit to JPS Schoolchildren and JPS Parents. Plaintiffs were not interviewed in response to the on-site audit, requested to respond, or otherwise given an opportunity to be heard. Upon information and belief, few if any other JPS parents or JPS's roughly 27,000 students were interviewed; nor do Defendants' policies or procedures provide for such.

b. <u>The Corrective Action Plan Approved by MDE Without Participation by Plaintiffs, or other Schoolchildren or Parents.</u>

Defendants' policies and procedures do not provide for any involvement by JPS Schoolchildren or JPS Parents in creating, implementing, approving, or commenting on any corrective action plan. Rather, in response to the audit, JPS created a detailed Corrective Action Plan ("the Plan"). The Plan was implemented on December 15, 2016, after being approved by MDE. The District addressed most of the issues identified by MDE and set a timeline for completion of its stated goals. Of particular note was the purchase of 44 school buses, which improved on-time delivery of students to 95%. Most of those timelines required completion of each corrective action within one calendar year, or less.

c. The August 31, 2017 Audit Conducted Without Participation by Plaintiffs, or other Schoolchildren or Parents.

More than seventeen (17) months have elapsed since MDE issued its first audit report on student safety issues. MDE then took nearly a year to complete its on-site audit, and required an additional thirty days to complete its report. Never during that period has MDE suggested that students in the District were in such grave danger that emergency action was required. JPS Schoolchildren and JPS Parents were not made aware of MDE's intentions to take over the District.

While the JPS District was working to take the actions described in the Corrective Action Plan, MDE conducted a second audit which began in September of 2016 and was completed on July 31, 2017. The audit report was provided to the District on August 31, 2017, a month after it was completed by MDE auditors. It is more than 600 pages long.

JPS Schoolchildren and JPS Parents were not notified of the second audit, were not provided copies of the second audit, and were not contacted to be informed of how they could obtain a copy. The JPS Schoolchildren and JPS Parents were still not made aware of MDE's intentions to take over the District.

The Administrative Procedures established, approved and utilized by the Defendants did not and do not provide any procedures, any hearing, or any other opportunity for the JPS Schoolchildren or JPS Parents to have any meaningful input in responding to the second audit.

d. Defendants Did Not Solicit a Response from Plaintiffs, or other Schoolchildren or Parents.

Because the audit was contemporaneous with the Corrective Action Plan already prepared and executed by the District, a number of the audit's "findings" describe conditions existing before corrective action was undertaken. The JPS District has made noticeable advancements in the areas of safety, security, transportation, instruction, recordkeeping, facilities, and teacher recruitment

since the Corrective Action Plan was implemented. ***Though these issues all affect Plaintiffs' Constitutionally-recognized rights, Defendants did not provide Plaintiffs with any opportunity to be heard on these issues.***

- The District was reorganized into four Pre-K-12 district areas and hired 14 new principals for the 2017-18 school year. The District also consolidated Poindexter Elementary with Barr Elementary, repurposed Rowan Middle School into a full-time location for Re-engaging in Education for All to Progress (R.E.A.P.), and created a compliance department to monitor the execution of corrective actions.

- The District made significant progress correcting the citations that were cited by the limited audit from April 2016. The District received 1,541 citations and to date 1,487 have been corrected, and 1,402 have been certified by MDE as late of June 26, 2017. Corrective Action installations and replacements include: 833 Fire Extinguishers, 28 Water Coolers, 6 Lavatories, 5 Water Closets, 7 Urinals, 250 Ground Fault Circuit Interrupters, 400 Exit Lights, and 400 Battery Operated Emergency Light Fixtures.

- The District reviewed 100% of its school board policies.

- The District reviewed and verified all 2015-2017 graduate records and is presently following the instructions and procedures for record maintenance as prescribed by MDE's Manual of Directions for records.

- From the 2016 audit, the District has completed 1,402 MDE-certified corrections to the 1,541 citations in the report.

- From the 2017 audit, the District has *already completed* 412 corrections to the 706 citations in the report.

- The District purchased 44 new buses with GPS to monitor on-time arrival for the 2017-18 school year. Bus arrival time is over 95 percent, according to data collected from GPS technology.

- The District completed its quarterly inspection in July 2017 and all noted vehicles are ready for inspection from MDE.

- The District has secured 12 schools' boiler and pressure vessel certifications and now awaiting MDE's approval and verifications.

- The District has secured a professional architectural firm to assess 22 school facilities in addition to MDE's findings. The District is also proceeding with assessments of an additional 15 school facilities.

- The District has a Board approved Instructional Management System.

- Teacher mentors have been hired to support new teachers.

- The District has repaired all metal detectors and placed metal detectors in all middle and high schools in the District.

A few examples of the inaccurate information upon which the MDE based its 2017 audit report are:

- Students identified in the report as "failing to meet graduation requirements" did not participate in graduation exercises as reported by MDE.

- Callaway High School graduated 200 eligible students instead of the 224 that was reported by MDE in the school year 2016-17.

- MDE incorrectly reported the graduation of ineligible students at all seven (7) high schools.

To be concise, the audit does not accurately reflect the current state of the JPS District. ***The Defendants did not provide Plaintiffs with any opportunity to be heard on these issues.*** JPS Schoolchildren and JPS Parents were still not made aware of MDE's intentions to take over the District.

e. <u>The September 13, 2017 Commission Hearing Called and Held by Chair Defendant Heather Westerfield, Without Any Participation by Plaintiffs, or other Schoolchildren or Parents.</u>

Instead, in her haste to institute MDE conservatorship proceedings against the District, which has much more than just a *de minimis* impact to the JPS Schoolchildren and JPS Parents, on September 13, 2017, the Commission, under the direction of Defendant Westerfield, Chair, conducted a hearing (the "Commission Hearing") to declare an "extreme emergency situation…that jeopardizes the safety, security or education ***interests of the children …***" exists in

Jackson Public School District.[3] Plaintiffs were not provided notice of the Commission Hearing by Defendants or MDE; nor were other JPS parents and schoolchildren. None of the Plaintiffs were even allowed to attend the Commission Hearing.

Defendants' policies and procedures were used when the Commission held its hearing on whether an "extreme emergency situation…that jeopardizes the safety, security or education ***interests of the children …***" exists justifying a state takeover of Plaintiffs' public schools and their school district. The Commission Hearing was purportedly to address the deficiencies revealed by the audit report delivered to JPS on August 31, 2017, less than two weeks prior.

Despite the Administrative Procedures stated purpose in its Preamble that "[d]uring this process, the MDE shall remain steadfast in its commitment to protect the welfare ***of students*** …," Defendants did not ask to hear from the Plaintiffs or any other children or parents, nor have they given the Plaintiffs any real opportunity to be heard on the Plaintiffs' public education interests and other Constitutionally-protected rights. Plaintiffs were not given an opportunity to present evidence or express their opinions or beliefs on behalf of their children.

The Commission Hearing was held at the MDE Building on West Street in downtown Jackson, at the site of the former Central High School Building. The MDE Building has a large auditorium on the 2nd floor that seats an estimated 250 people, plus has additional standing room capacity. Plaintiffs and many other JPS parents and supporters desired to personally attend the Commission Hearing, and have an opportunity to be heard. Despite the Defendants' knowledge of this, instead of holding the Commission Hearing in the auditorium, which was crowded with many of the Plaintiffs, as well as other JPS parents, the Commission Hearing was held in a much smaller

[3] MISS. CODE ANN. § 37-17-6(12)(a) addresses the procedure for withdrawal of accreditation by the Commission on School Accreditation. In this case, the Commission on School Accreditation did not withdraw the accreditation of the Jackson Public School District—at least for now.

70-person conference room on the 4th floor where Plaintiffs and other JPS parents and schoolchildren could not attend.

No seats were reserved for JPS parents or children, including Plaintiffs. None of the Plaintiffs were allowed inside the Commission Hearing. Upon information and belief, other than JPS parents who were acting in their official capacities as MDE or JPS employees, few if any JPS parents or children were even allowed in the room for the Commission Hearing. Plaintiffs had no opportunity to be heard at the Commission Hearing. Plaintiffs and other JPS parents and supporters were provided only the opportunity to watch the Commission Hearing by video—two floors down from where the Commission Hearing was being conducted. Among the JPS District's primary arguments was that the audit does not accurately reflect the condition of the JPS District today. ***The Defendants did not provide Plaintiffs with any opportunity to be heard on this issue.***

After the Commission heard two separate 40-minute presentations—first from the MDE auditor, and then from the JPS District Superintendent, followed by a brief question and answer session (none of which involved Plaintiffs or other JPS parents or schoolchildren), the Commission announced that it would return after a lunch break.

Upon their return, the Commission went directly into executive session, and then segregated themselves to another room that was even smaller than the 70-person capacity Commission Hearing room. Upon information and belief, Defendant Westerfield and the other Commissioners took the MDE audit with them for their deliberations in a separate room, <u>but left behind the binders containing the JPS audit response</u>.

Before going into executive session, the Commission failed to vote upon or state the specific exception to the Mississippi Open Meetings Act, MISS. CODE ANN. § 25-41-1 *et seq.*, that it found applicable, as required by Mississippi law. No known applicable exception exists. Such

action was not only unconstitutional, but it was also illegal under statutory law. The Commission's deliberations for the next nearly two hours were all conducted in secrecy. Once the Commission went into executive session, the video feed of the Commission Hearing was blocked. Plaintiffs were then not allowed to watch the nearly two hours of Commission Hearing deliberations that were held behind closed doors. Plaintiffs have no way of knowing whether ***any*** of their concerns affecting their property and liberty interests were even discussed, or otherwise considered.

Immediately after coming out of executive session at the September 13, 2017 Commission Hearing, and without any public deliberations, debate or discussion, Defendant Westerfield and other Commissioners voted to declare an "extreme emergency situation" in the JPS District and recommend a state takeover to the Board of Education. After the Commission voted to declare an "extreme emergency situation…that jeopardizes the safety, security or education ***interests of the children …***" exists, Defendant Westerfield then forwarded the Commission's recommendation to Board.

f. <u>The September 14, 2017 Board Hearing Called and Held by Chair Defendant Rosemary Aultman, Without Any Participation by Plaintiffs, or other Schoolchildren or Parents.</u>

The very next day, on September 14, 2017, the Board, under the direction of Defendant Aultman, Chair, met to determine whether to declare a state of emergency in the school district (the "Board Hearing"). Plaintiffs and many other JPS parents and supporters desired to personally attend the Board Hearing, and have an opportunity to be heard. Despite the Defendants' knowledge of this, instead of holding the Board Hearing in the auditorium, which was crowded with many of the Plaintiffs, as well as other JPS parents, the Board Hearing was held in a much smaller 70-person conference room on the 4th floor, which was the same small location as the Commission Hearing.

No seats were reserved for JPS parents or children, including Plaintiffs. None of the Plaintiffs were allowed inside the Board Hearing. Upon information and belief, other than JPS parents who were acting in their official capacities as MDE or JPS employees, few if any JPS parents or children were even allowed in the room for the Board Hearing. Plaintiffs had no opportunity to be heard at the Board Hearing. Plaintiffs and other JPS parents and supporters were once again provided only the opportunity to watch the Board Hearing by video—two floors down from where the Board Hearing was being conducted. ***The Defendants did not provide Plaintiffs with any opportunity to be heard on this issue.***

After the Board heard essentially the same two 40-minute presentations—first a highly adversarial presentation from the MDE auditor, and then from the JPS District Superintendent, followed by a brief question and answer session (none of which involved Plaintiffs or other JPS parents or schoolchildren), the Board announced that it would return after a lunch break.

Upon their return, the Board went directly into executive session, without a vote to do so, and without stating the specific exception to the Mississippi Open Meetings Act, MISS. CODE ANN. § 25-41-1 *et seq.*, that it found applicable, as required by Mississippi law. No known applicable exception exists. Such action was illegal and unconstitutional. The Board's deliberations for the next two hours were all conducted in secrecy. Once the Board went into executive session, the video feed of the Board Hearing was blocked, just as it had been blocked at the Commission Hearing. Plaintiffs were then not allowed to watch the next two hours of Board Hearing deliberations that were held behind closed doors. Plaintiffs have no way of knowing whether ***any*** of their concerns affecting their property and liberty interests were even discussed, or otherwise considered.

Immediately after coming out of executive session at the September 14, 2017 Board Hearing, and without public deliberations, debate or discussion, Defendant Aultman announced that, behind closed doors, the Board had voted to declare an "extreme emergency situation…that jeopardizes the safety, security or education ***interests of the children …***" in the JPS District and recommend a state takeover to the Governor. No public vote was taken—ever, at all. Since that date, the recommendation has been sent to Governor Phil Bryant to determine whether to declare a state of emergency in the school district.

IV. ARGUMENT

A. UNDER THE DUE PROCESS CLAUSE OF THE U.S. CONSTITUTION, PUBLIC SCHOOL STUDENTS AND THEIR PARENTS HAVE A RECOGNIZED PROTECTABLE PROPERTY AND LIBERTY INTEREST REQUIRING DUE PROCESS OF LAW.

Primary and secondary students have a recognized property and liberty interest in their right to a public education under the Due Process Clause of the Fourteenth Amendment. *See Goss v. Lopez,* 419 U.S. 565, 576 (1975); *see also Swindle v. Livingston Parish Sch. Bd.*, 2008 U.S. Dist. LEXIS 100039 ("Although there is no constitutional right to a public education, once a state creates a public school system and requires attendance at those schools, a protectable property interest arises").[4]

Thus, "the State is constrained to recognize a student's legitimate entitlement to a public education as a property interest which is protected by the Due Process Clause and which may not be taken away for misconduct without adherence to the minimum procedures required by that Clause." *Id.* Students' right to due process is triggered whenever the deprivation is not *de minimis*. *Id.* at 576.

[4] Mississippi has created a public school system, which requires that children attend school. Therefore, plaintiffs and their children have a protectable property interest in these schoolchildren receiving an education. *See Scott v. Livingston Parish School Board, et al.*, 548 F.Supp. 2d 265, 267 (M.D. La. 208).

In determining the appropriate degree of due process, the Supreme Court has stated three distinct factors must be considered:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *See, e.g., Goldberg v. Kelly, supra*, at 263-271.
>
> *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S. Ct. 893, 903, 47 L. Ed. 2d 18, 33, 1976 U.S. LEXIS 141, *31-32, 41 Cal. Comp. Cases 920 (U.S. 1976).

B. UNDER THE DUE PROCESS CLAUSE OF THE MISSISSIPPI CONSTITUTION, PUBLIC SCHOOL STUDENTS AND THEIR PARENTS HAVE A FUNDAMENTAL RIGHT TO EDUCATION REQUIRING DUE PROCESS OF LAW.

Moreover, the JPS Schoolchildren and JPS Parents note that while this action has been brought under the federal Due Process Clause, this clause provides Plaintiffs the heightened protections afforded by the Mississippi Due Process Clause set out at Article 3, Section 14 of the Mississippi Constitution, and is construed similarly. In this connection, the Mississippi Supreme Court has stated:

> While state courts may construe their constitutions in such a way as to offer broader protections than those found in the federal constitution, we must "begin with the presumption that similar sections of the United States Constitution and Mississippi Constitution ought to be construed similarly." *McCrory v. State***,** 342 So. 2d 897, 900 (Miss. 1977). Article 3, Section 14, of the Mississippi Constitution, which provides that "[n]o person shall be deprived of life, liberty, or property except by due process of law," is essentially identical to the Due Process Clause of the Fourteenth Amendment to the United States Constitution."

Blakeney v. McRee, 2016 Miss. LEXIS 87, *17 (Miss. Feb. 25, 2016)

The right to a minimally adequate, free public education has been declared to be a ***fundamental*** right of all students by the Mississippi Supreme Court. *Clinton Mun. Separate Sch. Dist. v. Byrd*, 477 So.2d 237, 240 (Miss. 1985); *see also Hill ex rel. Hill v. Rankin County, Miss. Sch. Dist.*, 834 F. Supp. 1112, 1117 (S.D. Miss. 1993) (stating MISS. CODE ANN. § 37-1-2 provides

the children of Mississippi the right to a free public education). The Mississippi Supreme Court stressed the fundamental nature of the right and entitlement to procedural protection:

> "**A student's interest in obtaining an education has been given substantive and procedural due process protection**." *See, e.g., Plyler v. Doe*, 457 U.S. 202, 217, 102 S. Ct. 2382, 2395, 72 L. Ed. 2d 786 (1982); *Bolling v. Sharpe*, 347 U.S. 497, 500, 74 S. Ct. 693, 98 L. Ed.884 (1954); *Pierce v. Society of Sisters*, 268 U.S. 510, 535, 45 S. Ct. 571, 69 L. Ed.1070 (1925); *Meyer v. Nebraska*, 262 U.S. 390, 400, 43 S. Ct. 625, 67 L. Ed.1042 (1923); 46 Miss.L.J., at 1043.

This protected interest, however, is largely a state created interest, for the provision of free public education has been accepted as a responsibility of this state (as well as the other 49 states). The Mississippi legislature has declared a part of the public policy of this state the provision of "quality education for all school age children in the state," MISS. CODE ANN. § 37-1-2(f) (Supp.1984), out of recognition of the effect of education "upon the social, cultural and economic enhancement of the people of Mississippi." MISS. CODE ANN. § 37-1-2 (Supp. 1984).

"Thus, while the federally-recognized due process rights under the United States Constitution arise out of a property interest in education, **the right to a minimally adequate public education created and entailed by the laws of Mississippi is one we can only label fundamental**." As such, this right, to the extent our law vests it in the young citizens of this state, enjoys **the full substantive and procedural protections of the due process clause of the Constitution of the State of Mississippi**, whatever construction may be given the Constitution of the United States. *Clinton Municipal Separate School Dist. v. Byrd*, 477 So. 2d 237, 240 (Miss. 1985) (Emphasis supplied).

C. THE PLAINTIFF SCHOOLCHILDREN AND PARENTS HAVE STANDING

The Article III requirement of standing has three elements: (1) "injury in fact," which is "a harm suffered by the plaintiff that is concrete and actual or imminent, not conjectural or hypothetical"; (2) "causation," a "fairly traceable connection between the plaintiff's injury and the

complained-of conduct of the defendant"; and (3) "redressability," a "likelihood that the requested relief will redress the alleged injury." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 103, 118 S. Ct. 1003, 140 L. Ed. 2d 210 (1998) (internal citations and quotations omitted).

In addition to these constitutional requirements, a plaintiff must meet prudential standing requirements set forth by the judiciary. *National Federation of Federal Employees v. Cheney*, 280 U.S. App. D.C. 94, 883 F.2d 1038, 1043 (D.C. Cir. 1989), *cert. denied*, 496 U.S. 936, 110 L. Ed. 2d 662, 110 S. Ct. 3214 (1990). Prudential considerations require that the interests sought to be protected are "arguably within the zone of interests to be protected or regulated by the statute … in question." *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 474-75, 102 S. Ct. 752, 70 L. Ed. 2d 700 (1982) (quoting *Association of Data Processing Service Organizations v. Camp*, 397 U.S. 150, 153, 25 L. Ed. 2d 184, 90 S. Ct. 827 (1970)). The U.S. Supreme Court has explained the zone of interests test in terms of whether "the plaintiff's interests are so marginally related to or inconsistent with the purposes implicit in the [relevant] statute that it cannot reasonably be assumed that Congress intended to permit the suit." *Clarke v. Securities Industry Association*, 479 U.S. 388, 399, 93 L. Ed. 2d 757, 107 S. Ct. 750 (1987).

"When a litigant is vested with a procedural right, that litigant has standing if there is some possibility that the requested relief will prompt the injury-causing party to reconsider the decision that allegedly harmed the litigant." *Massachusetts v. EPA*, 549 U.S. 497, 518, 127 S. Ct. 1438, 167 L. Ed. 2d 248 (2007). "[T]he presence of one party with standing is sufficient to satisfy Article III's case-or-controversy requirement." *Rumsfeld v. Forum for Acad. & Institutional Rights, Inc.*, 547 U.S. 47, 52 n.2, 126 S. Ct. 1297, 164 L. Ed. 2d 156 (2006).

Though the party asserting jurisdiction always carries the burden of demonstrating constitutional standing, *FW/PBS, Inc. v. Dallas*, 493 U.S. 215, 231, 110 S. Ct. 596, 107 L. Ed. 2d 603 (1990), when standing is challenged, the court "must presume that the general allegations in the complaint encompass the specific facts necessary to support those allegations." *Steel Co.*, 523 U.S. at 104 (citing *Lujan v. National Wildlife Fed'n*, 497 U.S. 871, 889, 110 S. Ct. 3177, 111 L. Ed. 2d 695 (1990)). "It is inappropriate for the court to focus on the merits of the case when considering the issue of standing." *Hanson v. Veterans Admin.*, 800 F.2d 1381, 1385 (5th Cir. 1986).

1. Plaintiffs Have Sufficiently Demonstrated Injury in Fact

First, Plaintiffs have demonstrated a non-hypothetical injury in fact to themselves and their minor children. "Parents of children attending public schools are vitally interested in every phase of the school system, including its finances and plan of assignment." *Griffin v. School Bd. of Prince Edward County*, 377 U.S. 218, 84 S. Ct. 1226, 12 L. Ed. 2d 256 (1964). Plaintiffs face considerable uncertainty as to the future of their school district, its accreditation, funding and staffing. As noted in the Complaint, an MDE emergency takeover of the JPS school district threatens both state and local funds, removes local control of the school district from parents, and forces Plaintiffs to transfer to alternate school districts, with accompanying financial hardship and prudential hurdles, without any notice or comment by Plaintiffs or other similarly-situated parents and children. In the name of helping JPS, Defendants are threatening to virtually disband it, all without any input or notice to students or parents, whose property taxes fund JPS. Not only are Plaintiffs at risk of the foregoing, but due to Defendants' violation of Mississippi's Open Meetings Act, MISS. CODE ANN. § 25-41-1 *et seq.*, they were denied even the opportunity to observe the decision-making process.

This injury is not speculative or hypothetical—rather, the violation of Plaintiffs' rights to due process and their right to observe the political process have already been violated. Furthermore, as alleged in the Complaint and discussed in greater detail *infra*, Defendants' conduct in granting JPS insufficient time to respond and denying Plaintiffs the opportunity to either participate in or observe the policy-making process has robbed them of their right to local control over their minor children's education.

Lastly, the injury in fact suffered by Plaintiffs is particularized. Plaintiffs are those parents who attended the Defendants' MDE-JPS hearings specifically because they wanted to participate in and observe the policy-making process which affects them and their minor children. They were denied these rights despite their best efforts to exercise and maintain their local control over JPS.

2. Plaintiffs Have Sufficiently Demonstrated Causation

"The causation element does not require a party to establish proximate causation, but only requires that the injury be 'fairly traceable' to the defendant." *Bennett v. Spear*, 520 U.S. 154, 168-69, 117 S. Ct. 1154, 137 L. Ed. 2d 281 (1997); *see also League of United Latin Am. Citizens, Dist. 19 v. City of Boerne*, 659 F.3d 421, 431 (5th Cir. 2011). This burden is "relatively modest at this stage of the litigation." *Bennett*, 520 U.S. at 170-71.

Here, there are no third parties or intervening causes between Defendants' and MDE's actions and Plaintiffs' injuries—Defendants' failure to provide constitutionally-required notice and opportunity to be heard and statutorily-guaranteed right to observe public meetings not only is the proximate cause of Plaintiffs' injuries, it *is* the injury.

3. Plaintiffs Have Sufficiently Demonstrated Redressability

Finally, Plaintiffs' injuries may be redressed by this Court. As noted *supra*, the injury which Plaintiffs have suffered and for which they seek redress is the violation of their

constitutionally and statutorily-protected right to notice, an opportunity to be heard, and an opportunity to observe and participate in the political process which affects them and their children. Plaintiffs have not requested that this Court compel a particular result or prohibit MDE's attempted takeover of JPS (after Plaintiffs are provided with due process), nor is such a request necessary to establish redressability. "A plaintiff satisfies the redressability requirement when he shows that a favorable decision will relieve a discrete injury to himself. He need not show that a favorable decision will relieve his every injury." *K.P. v. LeBlanc*, 627 F.3d 115, 123-24 (5th Cir. 2010) (quoting *Larson v. Valente*, 456 U.S. 228, 243 n.15, 102 S. Ct. 1673, 72 L. Ed. 2d 33 (1982)).

Plaintiffs' requested relief—a declaratory judgment, preliminary injunction, and an assurance that Plaintiffs will receive the full benefits of due process and Mississippi's Open Meetings Act before a final and non-appealable decision is made—will "relieve a discrete injury," namely the denial of their due process and their right to observe and participate in the political process.

4. Plaintiffs Have Prudential Standing

Lastly, Plaintiffs have prudential standing, as they are within the category of people intended to be protected by the statutes in question. First, regarding the Open Meetings Act, MISS. CODE ANN. § 25-41-1 states as follows:

> It being essential to the fundamental philosophy of the American constitutional form of representative government and to the maintenance of a democratic society that public business be performed in an open and public manner, and that citizens be advised of and be aware of the performance of public officials and the deliberations and decisions that go into the making of public policy, it is hereby declared to be the policy of the State of Mississippi that the formation and determination of public policy is public business and shall be conducted at open meetings except as otherwise provided herein.

MISS. CODE ANN. § 25-41-1 (Rev. 2010). "[T]he deliberative stages of the decision-making process that lead to 'formation and determination of public policy' are required to be open to the

public." *Bd. of Trustees of State Institutions of Higher Learning v. Mississippi Publishers Corp.*, 478 So. 2d 269, 278 (Miss. 1985). "The philosophy of the Open Meetings Act is that all deliberations, decisions and business of all governmental boards and commissions, unless specifically excluded by statute, shall be open to the public." *Hinds Cty. Bd. of Supervisors v. Common Cause of Mississippi*, 551 So. 2d 107, 110 (Miss. 1989). Plaintiffs, concerned parents attending an administrative hearing about the quality of their children's school district, are clearly within the zone of interest of those intended to be protected by the statute.

Similarly, the statutory scheme under which Defendants have acted to wrest away local control of JPS is also designed to protect Plaintiffs and their children. MISS. CODE ANN. § 37-17-6 provides, in relevant part:

> (b) 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 educational 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, or when a school district meets the State Board of Education's definition of a failing school district for two (2) consecutive full school years, or if more than fifty percent (50%) of the schools within the school district are designated as Schools At-Risk in any one (1) year, the State Board of Education may request the Governor to declare a state of emergency in that school district. For purposes of this paragraph, the declarations of a state of emergency shall not be limited to those instances when a school district's impairments are related to a lack of financial resources, but also shall include **serious failure to meet minimum academic standards, as evidenced by a continued pattern of poor student performance**.

MISS. CODE ANN. § 37-17-6(12)(b) (emphasis added). As noted *supra*, "[p]arents of children attending public schools are vitally interested in every phase of the school system, including its finances and plan of assignment." *Griffin v. School Bd. of Prince Edward County*, 377 U.S. 218, 84 S. Ct. 1226, 12 L. Ed. 2d 256 (1964). Plaintiffs, as parents of children enrolled at JPS, are clearly within the zone of interest of a statute designed to protect "the safety, security or

educational interests of the children enrolled in [JPS].” Accordingly, Plaintiffs have prudential standing to pursue their claims.

The purpose of a temporary restraining order is to “preserv[e] the status quo and prevent[] irreparable harm just so long as is necessary to hold a hearing, and no longer.” *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers*, 415 U.S. 423, 439, 94 S. Ct. 1113, 39 L. Ed. 2d 435 (1974). Any temporary restraining order, therefore, is a temporary measure to protect rights until a hearing can be held.

D. PLAINTIFFS ARE ENTITLED TO A DECLARATORY JUDGMENT AND A PRELIMINARY INJUNCTION

Plaintiffs respectfully move this Court to grant its Emergency Motion for a Declaratory Judgment under Rule 57 and declare that Defendants’ policies, procedures, hearings, and determination that an “extreme emergency situation” exists, without providing Plaintiffs with notice and an opportunity to be heard, violated the Mississippi Open Meetings Act and Plaintiffs JPS Schoolchildren and JPS Parents’ rights to notice and an opportunity to be heard, as required by the Due Process Clause.

Plaintiffs further request, pursuant to Rule 65, that this Court to grant its Motion for a Preliminary Injunction and enjoin any further action taken based upon the Defendants’ violative policies, procedures, and hearings without first affording Plaintiffs notice and an opportunity to be heard, including enjoining a state takeover of the Jackson Public School District and their public schools unless and until such due process is provided.

1. This Court should declare that Defendants' policies, procedures, hearings, and actions were violative of the Mississippi Open Meetings Act, and declare that Plaintiffs' rights under the Due Process Clause have been violated.

Federal Rule of Civil Procedure 57 and 28 U.S.C. § 2201 govern actions seeking declaratory relief. On the matter of this Court's authority to declare the rights and other legal relations, 28 U.S.C. § 2201 reads, in pertinent part:

> (a) In a case of actual controversy within its jurisdiction . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

"A declaratory judgment is appropriate when it will 'terminate the controversy' giving rise on undisputed or relatively undisputed facts, it operates frequently as a summary proceeding, justifying docketing the case for early hearing as on a motion ..." Fed. R. Civ. P. 57 cmt. "[T]he fact that another remedy would be equally effective affords no ground for declining declaratory relief." ed. R. Civ. P. 57 cmt.

In the instant matter, the Court's determination of whether Defendants violated the Mississippi Open Meetings Act and Plaintiffs' Due Process rights would clarify the legal issues in this case.

Pursuant to the Mississippi Open Meetings Act, MISS. CODE ANN. § 25-41-1, *et seq.*, official meetings of public bodies are required to be public and open. The Legislative intent of the Mississippi Open Meetings Act is set forth in MISS. CODE ANN. § 25-41-1:

> "It being essential to the fundamental philosophy of the American constitutional form of representative government and to the maintenance of a democratic society that public business be performed in an open and public manner, and that citizens be advised of and be aware of the performance of public officials and the deliberations and decisions that go into the making of public policy, it is hereby declared to be the policy of the State of Mississippi that the formation and determination of public policy is public business and shall be conducted at open meetings except as otherwise provided herein."

MISS. CODE ANN. § 25-41-7 states the limited circumstances in which Defendants, the Commission and/or the State Board may go into executive session closed to the public:

> (1) Any public body may enter into executive session for the transaction of public business; provided, however, all meetings of any such public body shall commence as an open meeting, and **an affirmative vote of three-fifths (3/5) of all members present shall be required to declare an executive session**.
>
> (2) The procedure to be followed by any public body in declaring an executive session shall be as follows: Any member shall have the right to request by motion a closed determination upon the issue of whether or not to declare an executive session. Such motion, by majority vote, shall require the meeting to be closed for a **preliminary determination of the necessity for executive session**. No other business shall be transacted until the discussion of the nature of the matter requiring executive session has been completed and **a vote, as required in subsection (1) hereof, has been taken on the issue.**
>
> (3) **An executive session shall be limited to matters allowed to be exempted from open meetings by subsection (4) of this section. The reason for holding such an executive session shall be stated in an open meeting, and the reason so stated shall be recorded in the minutes of the meeting.** Nothing in this section shall be construed to require that any meeting be closed to the public, nor shall any executive session be used to circumvent or to defeat the purposes of this chapter.
>
> (4) A public body may hold an executive session pursuant to this section for one or more of the following reasons:
>
> > (a) Transaction of business and discussion of personnel matters relating to the job performance, character, professional competence, or physical or mental health of a person holding a specific position.
> >
> > (b) Strategy sessions or negotiations with respect to prospective litigation, litigation or issuance of an appealable order when an open meeting would have a detrimental effect on the litigating position of the public body.
> >
> > (c) Transaction of business and discussion regarding the report, development or course of action regarding security personnel, plans or devices.
> >
> > (d) Investigative proceedings by any public body regarding allegations of misconduct or violation of law.
> >
> > (e) Any body of the Legislature which is meeting on matters within the jurisdiction of such body.

> (f) Cases of extraordinary emergency which would pose immediate or irrevocable harm or damage to persons and/or property within the jurisdiction of such public body.
>
> (g) Transaction of business and discussion regarding the prospective purchase, sale or leasing of lands.
>
> (h) Discussions between a school board and individual students who attend a school within the jurisdiction of such school board or the parents or teachers of such students regarding problems of such students or their parents or teachers.
>
> (i) Transaction of business and discussion concerning the preparation of tests for admission to practice in recognized professions.
>
> (j) Transaction of business and discussions or negotiations regarding the location, relocation or expansion of a business or an industry.
>
> (k) Transaction of business and discussions regarding employment or job performance of a person in a specific position or termination of an employee holding a specific position. The exemption provided by this paragraph includes the right to enter into executive session concerning a line item in a budget which might affect the termination of an employee or employees. All other budget items shall be considered in open meetings and final budgetary adoption shall not be taken in executive session.
>
> (l) Discussions regarding material or data exempt from the Mississippi Public Records Act of 1983 pursuant to Section 25-11-121.
>
> (5) **The total vote on the question of entering into an executive session shall be recorded and spread upon the minutes of such public body.**
>
> (6) Any such vote whereby an executive session is declared shall be applicable only to that particular meeting on that particular day.

MISS. CODE ANN. § 25-41-7 (emphasis added).

Defendants have clearly violated the Mississippi Open Meeting Act, and failed to follow the procedures outlined under Mississippi law for going into an executive session closed to the public. Moreover, none of the exceptions to the Defendants failed to follow the procedures outlined under the Mississippi Open Meeting Act for going into closed executive session. Though it was without any legal authority to do so, Defendants illegally closed the Commission Hearing and the

conservatorship hearing to Plaintiffs and the public, without articulating any exception under the Mississippi Open Meetings Act, as statutorily required, much less a valid one.

Under Rule 57 of the Federal Rules of Civil Procedure, Plaintiffs JPS Schoolchildren and JPS Parents are entitled to a declaratory judgment that Defendants have violated the Mississippi Public Meetings Act, and that the deliberations and votes taken by Defendants in secrecy and other Commissioners and Board Members are invalid, and violate due process. Further, for the reasons set forth herein, and particularly Sections II, III, IV.A and IV.B, Plaintiff JPS Schoolchildren and JPS Parents are also entitled to a declaratory judgment that Defendants' policies, procedures, hearings, and actions have violated Plaintiffs' rights under the Due Process Clause.

2. A Preliminary Injunction Would Serve the Public Interest and Prevent Immediate and Irreparable Harm.

There are four prerequisites for preliminary injunctive relief. To prevail, a plaintiff must demonstrate: (i) a substantial likelihood of success on the merits; (ii) a substantial threat of immediate and irreparable harm for which it has no adequate remedy at law; (iii) that greater injury will result from denying the temporary restraining order than from its being granted; and (iv) that a temporary restraining order will not disserve the public interest. *Clark v. Prichard*, 812 F.2d 991, 993 (5th Cir. 1987); *Canal Authority v. Callaway*, 489 F.2d 567, 572 (5th Cir. 1974) (*en banc*). The party seeking such relief must satisfy a cumulative burden of proving each of the four elements enumerated before a preliminary injunction can be granted. *Mississippi Power and Light Co. v. United Gas Pipeline*, 760 F.2d 618, 621 (5th Cir. 1985); *Clark*, 812 F.2d at 993.

a. Likelihood of Success on the Merits

Discussing the right to education in light of the U.S. Constitution and the property interest created by the Mississippi Constitution and statutes, the Mississippi Supreme Court has declared the right to a minimally adequate, free public education to be a *fundamental* right of all students

by the Mississippi Supreme Court. *Clinton Mun. Separate Sch. Dist. v. Byrd*, 477 So.2d 237, 240 (Miss. 1985). *See also Hill ex rel. Hill v. Rankin County, Miss. Sch. Dist.*, 834 F. Supp. 1112, 1117 (S.D. Miss. 1993) (MISS. CODE ANN. § 37-1-2 provides the children of Mississippi the right to a free public education). The Mississippi Supreme Court's decision is worth quoting at length given its stress upon the fundamental nature of the right and its entitlement to procedural protection.

> "A student's interest in obtaining an education has been given substantive and procedural due process protection. *See, e.g., Plyler v. Doe*, 457 U.S. 202, 217, 102 S. Ct. 2382, 2395, 72 L. Ed. 2d 786 (1982); *Bolling v. Sharpe*, 347 U.S. 497, 500, 74 S. Ct. 693, 98 L. Ed.884 (1954); *Pierce v. Society of Sisters*, 268 U.S. 510, 535, 45 S. Ct. 571, 69 L. Ed.1070 (1925); *Meyer v. Nebraska*, 262 U.S. 390, 400, 43 S. Ct. 625, 67 L. Ed.1042 (1923); 46 Miss.L.J., at 1043. This protected interest, however, is largely a state created interest, for the provision of free public education has been accepted as a responsibility of this state (as well as the other 49 states).
>
> Our legislature has declared a part of the public policy of this state the provision of "quality education for all school age children in the state", Miss. Code Ann. § 37-1-2(f) (Supp.1984), this out of recognition of the effect of education "upon the social, cultural and economic enhancement of the people of Mississippi." Miss. Code Ann. § 37-1-2 (Supp. 1984). Thus while there may be no federally created fundamental right to education, as the school board argues, relying upon *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 29-39, 93 S. Ct. 1278, 36 L. Ed. 2d 16, 40-47 (1973), the right to a minimally adequate public education created and entailed by the laws of this state is one we can only label fundamental. As such this right, to the extent our law vests it in the young citizens of this state, enjoys the full substantive and procedural protections of the due process clause of the Constitution of the State of Mississippi, whatever construction may be given the Constitution of the United States."

Clinton Municipal Separate School Dist. v. Byrd, 477 So. 2d 237, 240 (Miss. 1985).

Additionally, primary and secondary students have a recognized property and liberty interest in their right to a public education under the Due Process Clause of the Fourteenth Amendment to the United States Constitution. *See Goss v. Lopez*, 419 U.S. 565, 576 (1975). Students' right to due process is triggered whenever the deprivation is not *de minimis*. *Id.* at 576. In *Goss*, the Supreme Court recognized a 10-day suspension as being more than *de minimis* and serious enough to require due process protection before it is imposed. *Id.*

Plaintiffs recognize that the Fifth Circuit has found that mere transfer to an Alternative School does not implicate a property interest, unless—as in the instant case—there is a state created interest in a particular type of education. In so holding, the Fifth Circuit stated:

> We have previously held that no protected property interest is implicated in a school's denial to offer a student a particular curriculum. In *Arundar*, a high school student had claimed that her property right to education was implicated when she was denied enrollment in certain courses of study. We affirmed the district court's dismissal of the case and held that although state law could create a protected interest in a particular kind of education, for example by mandating special education for exceptional children, absent such a basis in state law, there was no cause of action.

Nevares v. San Marcos Consol. Indep. Sch. Dist., 1997 U.S. App. LEXIS 14955, *5 (5th Cir. 1997) (citing *Arundar v. DeKalb Cty. School Dist.*, 620 F.2d 493 (5th Cir. 1980)) (internal citations omitted).

It is Plaintiffs' contention that, just as contemplated by the Fifth Circuit in *Nevares, supra*, Mississippi here has promulgated a statute to "create a protected interest in a particular kind of education," the precise prerequisite to creating a constitutionally protected right as recognized by the Fifth Circuit.

Thus, in MISS. CODE ANN. § 37-1-2 the Legislature states that:

> "The legislature finds and determines that the quality of public education and its effect upon the social, cultural and economic enhancement of the people of Mississippi is a matter of public policy, the object of which is the education and performance of its children and youth. The legislature hereby declares the following to be the policy of the State of Mississippi:
>
> (a) That the students, parents, general citizenry, *local* schoolteachers and administrators, *local* governments, *local* school boards, and state government have a joint and shared responsibility for the quality of education delivered through the public education system in the State of Mississippi;
> …
> (h) To encourage the common efforts of students, parents, teachers, administrators and business and professional leaders for the establishment of specific goals for performance;

Id. (Emphasis supplied).

And, of course, Mississippi has provided this above-quoted statutory policy and promulgated statutes such as those governing the District which provide for local school boards and methods for local appointment and election to same of local individuals. *See e.g.* MISS. CODE ANN. § 37-7-203 (Composition of boards of trustees of municipal separate school districts and certain mayor-council forms of government; qualifications, selection, and terms of office of members of boards). In contrast, when such local control has not been intended, Mississippi has explicitly so provided. *See, e.g.*, MISS. CODE ANN. §43-5-1 (State Board of Education to be Board of Trustees of Mississippi School for the Deaf and Mississippi School for the Blind; no consolidation of schools required).

Once a school district is taken over and a conservator is appointed, Plaintiffs are immediately deprived of their "local school board," "local government" and "local administrators," and stripped of their "joint and shared responsibility" with those local entities for the education to which they are statutorily entitled. *See* MISS. CODE ANN. §37-1-2(a) *supra.* Plaintiffs do not contend that the State is never entitled to intervene when a district's performance is inadequate. What Plaintiffs do contend, however, is that they are entitled to notice and a hearing prior—with an opportunity to participate—prior to being deprived of their right to local control by local government, a local school board, and local administrators over their children's education, which action also undercuts and deprives them of their joint responsibility for their children's education.

In Re Gault, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967), is analogous to the issue presented in the case at bar. There, the U.S. Supreme Court was asked to declare unconstitutional juvenile court procedures prefatory to a determination of delinquency status which would curtail

the affected child's liberty by transferring him from a regular school and home environment to an "industrial school." *Id,* 387 U.S. 1, 3, 87 S. Ct. 1428, 1431, 18 L. Ed. 2d 527, 533. The Supreme Court held, *inter alia*: "Notice, to comply with due process requirements, must be given sufficiently in advance of scheduled court proceedings so that reasonable opportunity to prepare will be afforded, and it must "set forth the alleged misconduct with particularity." *Id.,* 387 U.S. 1, 33, 87 S. Ct. 1428, 1446, 18 L. Ed. 2d 527, 549, (1967). The Court also held: "[T]he Due Process Clause of the Fourteenth Amendment requires...the child and his parents must be notified of the child's right to be represented by counsel retained by them, or if they are unable to afford counsel, that counsel will be appointed to represent the child." *Id.,* 387 U.S. 1, 41, 87 S. Ct. 1428, 1451, 18 L. Ed. 2d 527, 554.

As in *Gault*, the case at bar concerns a procedure prefatory to an adjudication of delinquency—in this case not of the children, but of their educational system itself. Nevertheless it is an adjudication which will in effect transfer them from the regular school system to which they are statutorily entitled, and which is subject to their and their parents' local control, to what in essence is an industrial school, in which their property and liberty interests in their education are entirely usurped and ceded to the state. However, even the procedures declared unconstitutional in *Gault, supra,* at least allowed the parents and children to participate in the "kangaroo court" proceeding there at issue, albeit absent the protection of adequate and notice and right to counsel. *See Gault, supra,* 387 U.S. 1, 28, 87 S. Ct. 1428, 1444, 18 L. Ed. 2d 527, 546. Here, the Plaintiffs have been denied even the opportunity to participate in Defendants' proceedings before being subjected to the arbitrary deprivation of their constitutionally protected liberty and property interest in their education. To characterize the proceeding in issue as a "kangaroo court," as the Supreme Court did the proceeding in *Gault,* would be to accord it a degree of dignity, albeit a

derogatory dignity, which is still more than it deserves. Plaintiffs quite simply have not just been accorded an insufficient hearing; they have been accorded no hearing at all.

Defendants' actions—their lack of any notice, their refusal to grant JPS the allotted time to respond to the audit, their refusal to consult with parents or students either during or after its accreditation review, their refusal to allow Plaintiffs to attend the Commission Hearing or the Board Meeting, their refusal to hear from parents or students during the Commission Hearing or the Board Hearing, and their illegal "executive sessions"—have completely denied Plaintiffs, as JPS students and parents of JPS students, municipal taxpayers, and municipal voters, any voice in the determination of the future of their children's education, thus infringing on their children's fundamental right to an education and their rights to local control and governance of their children's schools.

b. Irreparable Harm

Plaintiffs have also demonstrated irreparable injury without injunctive relief. As noted *supra*, Plaintiffs' right to local control and governance of their children's schools, and Plaintiffs' children's fundamental right to education, will be irreparably injured absent injunctive relief. Pursuant to Mississippi law, once the Governor declares an "emergency" pursuant to Defendants' flawed hearing process, Plaintiffs will lose access to local and state funds for their schools, lose local control of their local school boards, lose qualified teachers and staff, and face ever-increasing taxes, all without any recourse. *See* Complaint, ¶¶ 25, 135; *see also* MISS. CODE ANN. § 37-17-6(12)(b). Furthermore, once the Governor declares an "emergency," Plaintiffs will have no other remedy at law, as the Mississippi Supreme Court has determined that no right to appeal the Governor's declaration exists in circuit court. *Miss. State Bd. Educ. v. Leflore County Bd. of Educ.*, 2013 Miss. LEXIS 552 (Miss. 2013).

Finally, and most importantly, federal courts at all levels have recognized that violation of constitutional rights constitutes irreparable harm as a matter of law. *See, e.g., Cohen v. Coahoma County, Miss.*, 805 F. Supp. 398, 406 (N.D. Miss. 1992); *Elrod v. Burns*, 427 U.S. 347, 373, 96 S. Ct. 2673, 49 L. Ed. 2d 547 (1976) (noting that loss of constitutional "freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury").

c. Balance of the Equities

Third, the issuance of a preliminary injunction will not cause more harm than the denial of same. As discussed *supra*, Plaintiffs' fundamental and statutory rights, and those of their minor children, will be irreparably injured unless an injunction is granted. If the injunction is granted, however, no injury will result—neither Defendants, MDE nor the State of Mississippi will be prohibited from performing their functions in attempting to improve JPS, and other parents and children who either disapprove or approve of Defendants' and MDE's "emergency" declaration will also have an opportunity to be heard. The purpose of the proposed preliminary injunction is not for the Court to re-determine the merits of an accreditation hearing—indeed, after a new hearing, Defendants, the Commission, and the Board may arrive at the exact conclusion they have already reached. The preliminary injunction will serve to ensure, however, that Plaintiffs (and any other interested parents/guardians) are given an opportunity to participate in and observe the decision-making process and maintain their local control of their children's schools in accordance with their constitutional and statutory rights.

d. Public Interest

Lastly, a preliminary injunction will serve the public interest. Plaintiffs do not deny that the public interest is served by improving a failing public school district. Plaintiffs' interests are not opposed to improvements to JPS—quite the contrary. Plaintiffs are students and interested

parents concerned about the welfare and education of their children, which is precisely why the public interest favors their input and participation in the process. Plaintiffs do not seek to subvert Defendants, but rather to work with them to ensure that their needs, and the needs of their children, are adequately addressed, an opportunity denied them by Defendants' policies, procedures, hearings, and actions.

Ultimately, the public interest is best served when the law is followed, including constitutional protections afforded under the Due Process Clause, and that is all that Plaintiffs seek—a protection, recognition and enforcement of their constitutional and statutory rights to notice, a hearing, and an opportunity to participate meaningfully in the local governance of their children's schools. *See De Leon v. Perry*, 975 F. Supp. 2d 632, 665 (W.D. Tx. 2014) (quoting *Am. Freedom Def. Initiative v. Suburban 15 Mobility for Reg. Transp.*, 698 F.3d 885, 896 (6th Cir. 2012) ("[T]he public interest is promoted by the robust enforcement of constitutional rights.").

V. CONCLUSION

This is a classic case for issuance of a Rule 57 declaratory judgment. Additionally, all four prongs of the test for issuance of a Rule 65 preliminary injunction in this matter have been met by the JPS Schoolchildren and JPS Parents. There is a substantial likelihood that the JPS Schoolchildren and JPS Parents will prevail on the merits of this case, the JPS Schoolchildren and JPS Parents will suffer irreparable injury should the preliminary injunction not be granted, the injury that would occur to the JPS Schoolchildren and JPS Parents if injunctive relief is denied far outweighs any injury to the Defendant public officials that might follow from the grant of injunctive relief, and the granting of injunctive relief will not disserve (and will actually serve) the public interest.

WHEREFORE, PREMISES CONSIDERED, for the reasons provided herein and in the Amended Complaint filed by Plaintiffs David Caballero, Judith Caballero, Dorsey Carson, Susan Carson, Lashron Cooley, Keyonda Craft, Anita DeRouen, Amelie Hahn, Anna Ingebretsen Hall, Wes Harp, Tarasa Briefly-Harp, Constance Lloyd, Robby Luckett, Rukia Lumumba, Chaka Benjamin, Joy Parikh, Keri Perez, Trey Perez, Earline Rawls, Kim Robinson, Larry Stamps, Albert Sykes, Lakendra Travis, Steve Tuttle, Julia Weems, Kristian Woodruff, and Charles H. Wilson, III, and their minor school children, all students of the Jackson Public School District, Plaintiffs respectfully move this Court:

(a) to grant their Emergency Motion for a Declaratory Judgment and declare that Defendants Carey Wright, Rosemary Aultman, and Heather Westerfield's policies, procedures, and determination that an "extreme emergency situation … that jeopardizes the safety, security or education ***interests of the children …***" exists, without providing Plaintiffs with notice and an opportunity to be heard, violated the Mississippi Open Meetings Act, MISS. CODE ANN. § 25-41-1, *et seq.*, and violated Plaintiffs JPS Schoolchildren and JPS Parents' due process rights to such notice and an opportunity to be heard, as required by the Due Process Clause; and

(b) pursuant to Rule 65, grant their Emergency Motion for a Preliminary Injunction and enjoin any further action taken based upon the Defendants' violative policies, procedures, and hearings without first affording Plaintiffs notice and an opportunity to be heard, including enjoining a state takeover of the Jackson Public School District and their public schools unless and until such due process is provided.

Respectfully submitted, this the 10th day of October, 2017.

/s/Dorsey R. Carson, Jr.
Dorsey R. Carson, Jr., MSB #10493
David S. Humphreys, MSB #100085
Julie C. Skipper, MSB #101591
S. Anna Powers, MSB #103201
Gerald A. Mumford, MSB #101902
Attorneys for Plaintiffs

OF COUNSEL:

CARSON LAW GROUP, PLLC
Capital Towers, Suite 1336
Jackson, MS 39201
Telephone: 601.351.9831
Facsimile: 601.510.9056
Email: dcarson@thecarsonlawgroup.com
dhumphreys@thecarsonlawgroup.com
jskipper@thecarsonlawgroup.com
apowers@thecarsonlawgroup.com

THE MUMFORD LAW FIRM, PLLC
820 North St.
Jackson, MS 39202
Telephone: 601.398.2347
Facsimile: 888.801.9389
Email: gmumfordlaw@gmail.com

MISSISSIPPI CENTER FOR JUSTICE
Jeremy Eisler, Esq., Of Counsel
963 Division St.
Biloxi, MS 39530
Telephone: 228.435.7284
Facsimile: 228.435.7285

CERTIFICATE OF SERVICE

I, Dorsey R. Carson, Jr., hereby certify that I filed a true and correct copy of the foregoing pleading to all parties via the Court's ECF Filing System.

This the 10th day of October, 2017.

/s/Dorsey R. Carson, Jr.
OF COUNSEL

Title 7: Education K-12
Part 139

THE INTENT OF THE MISSISSIPPI DEPARTMENT OF EDUCATION (MDE), AS WELL AS, THE OFFICE OF ACCREDITATION AND ACCOUNTABILITY (OAA) IS TO SUPPORT SCHOOL DISTRICTS IN THEIR EFFORTS TO RESOLVE ACCREDITATION DEFICIENCIES TO AVOID MOVING FORWARD WITH RECOMMENDATIONS TO THE COMMISSION ON SCHOOL ACCREDITATION (CSA) FOR ACTION SUCH AS DOWNGRADING THE DISTRICT'S ACCREDITATION STATUS, WITHDRAWING THE DISTRICT'S ACCREDITATION, OR DECLARING A STATE OF EMERGENCY. DURING THIS PROCESS, THE MDE SHALL REMAIN STEADFAST IN ITS COMMITMENT TO PROTECT THE WELFARE OF STUDENTS IN THE EVENT THAT A DETERMINATION MUST BE MADE THAT AN EXTREME EMERGENCY IS FOUND TO EXIST, OR THAT A DISTRICT'S ACCREDITATION STATUS IS DOWNGRADED OR WITHDRAWN.

Accreditation Audit Procedures

Guidance to accreditation audits is provided in accordance with Accreditation Policy 5.0. The on-site audit is conducted by an audit team of Mississippi Department of Education (MDE) personnel and/or MDE-trained auditors under contract with the Office of Accreditation. Under the direction of an accreditation auditor, this team uses the site visit guidelines, along with checklists, to collect data for each standard set forth in the current edition of the Mississippi Public Schools Accountability Standards. The audit team uses four methods of data collection: **interviews, document analysis, surveys, and observation**. All district superintendents have been provided notebooks that contain the monitoring forms used by every MDE program office. These forms are also accessible on SharePoint at https://districtaccess.mde.k12.ms.us/Accreditation/Documents/Forms/AllItems.aspx.

How Districts and Schools Are Selected for On-Site Audits

The State Board of Education (SBE), the State Superintendent of Education, or the Commission on School Accreditation (CSA) has the authority to call for an on-site audit or investigation of a school district at any time in accordance with Accreditation Policy 5.0.

An on-site-audit may also be conducted in a public school district in response to a formal complaint(s). Policy 5.2 of the current edition of the ***Mississippi Public School Accountability Standards*** states that all formal complaints made against school districts must be submitted in writing and bear the signature of the person or persons filing the complaint. The written complaint should contain specific details concerning alleged violations of accreditation standards. When the complaint(s) is received, it is determined if an on-site investigation is needed. Final decisions are made after conferring with upper level management in MDE.

Procedures for conducting audits are as follows:

1. The team of auditors arrives in the district with or without prior notification. The number of auditors assigned to the team will depend on the nature and seriousness of the allegations.
2. The lead auditor meets with the local district superintendent and informs him or her of the purpose of the audit and the procedures to be followed.
3. The auditors proceed to collect the information needed through examinations/reviews of official records, interviews with school district personnel, and documentation of any observations made.
4. Upon completion of the investigation, the lead auditor compiles a written report that is sent to the local district superintendent, the chair of the local school board, and other MDE officials who request a copy of the report. If serious violations of accreditation standards are found in the district, a copy of the report is also sent to the Commission on School Accreditation.

EXHIBIT
1

Office of Accreditation and Accountability
Approved by Commission on School Accreditation October 14, 2014
Approved by the State Board of Education October 17, 2014

Summary of On-Site Audit Procedures

Initial Notification of On-Site Audit

At the beginning of the audit, the selected team leader provides the superintendent with a letter of notice from the State Superintendent of Education. The notice includes a request for a space for the auditors to work and a list of documents that will be needed for review. The lead auditor assigned to supervise the audit team also discusses with the superintendent the audit procedures.

Length of On-Site Audit

Based on the number of schools within the district and the number of auditors assigned to the team, the length of the on-site audit will vary.

a. *Full investigative audits* which may be unannounced, are comprehensive audits of all program areas and are conducted by MDE staff. Typically, a window of approximately 15 working days is allowed to complete the audit.
b. *Unannounced audits* are conducted primarily by MDE-trained Accreditation Auditors under contract with the Department of Education, who work in the district approximately 3 to 5 days per audit. A limited number of accreditation standards are audited, and depending on the size of the district, this audit may include only a sampling review of schools.
c. *Special Test Audits* may be unannounced visits that are conducted prior to, during, and following each test administration and also shall include investigations of alleged violations of test security procedures and any other evidence of testing violations.

Audit Team

a. *Full investigative unannounced audit teams* consist of MDE staff from all MDE program areas and program offices as well as Office of Accreditation auditors. The team will be chaired by the Bureau Manager or Bureau Director from the Office of Accreditation.
b. *Unannounced audit teams* will consist primarily of MDE-trained Accreditation Auditors under contract with the Department of Education, with possible assistance from MDE staff. The team will be chaired by a MDE contract auditor.
c. *Special Test Audits* are conducted by MDE staff from program offices within the Department of Education and may also include contractors as agents of MDE.

Procedures for Conducting Interviews

MDE staff may interview any district staff member without authorization from the superintendent or school board. Board members, superintendents, principals and selected district and school personnel will be interviewed. Teachers may be interviewed during their planning periods or whenever available, and will also be given the opportunity to respond through online surveys. While auditors are open to interviews with parents, representatives of businesses, and the community, these interviews are not an established component of the audit procedure.

On-Site Audit Activities

The lead auditor will report to the superintendent's office according to schedule to conduct the initial conference with the superintendent and to provide a list of documents to be reviewed. The team of accreditation auditors will report to the assigned school according to schedule to begin the school level audit.

During the initial conference with the superintendent, the lead auditor will identify all auditors by name and their respective assignments and explain all audit procedures both at the district and school levels.

List of Suggested Documents to Review

In order for the audit to be completed in an efficient manner, the school district is to provide auditors access to all school and district official records. A list of documents such as board policies, board minutes, student handbooks, calendars and school schedules are examples of items included but not limited to those that will be requested at both the district level and the school level.

Reporting and Interpreting On-Site Audit Findings

Exit Conference

Near the completion of the on-site audit, the lead auditor will schedule a time to meet with the superintendent, school board chair, and any other district staff, including principals, to review preliminary audit findings. If the district appears to be noncompliant with one or more standards, reference will be made to the *Mississippi Public Schools Accountability Standards* to review the standards in question. A list of standards in question will be provided to the superintendent and the board chair. The auditor will explain the basis for citing noncompliance. It will also be explained to the superintendent that the list is a preliminary finding and may be amended as the audit is finalized.

Compiling Final Report

Procedures followed when reporting, interpreting, and responding to on-site audit findings are outlined below.

1. Upon completion of the audit, the lead auditor will review all responses and notes taken during the on-site audit. This review enables the lead auditor to determine what documentation is needed in order to correct any cited deficiency, as well as to identify violations of accreditation standards and facilitate improvement.
2. A report of the on-site audit findings including suggestions for corrective action, is compiled within 30 calendar days from the close of the audit. The report, along with a cover letter stating the number of standards that did not meet compliance will be mailed, emailed, or hand-delivered to the district. If the report is hand-delivered, it will be provided to both the superintendent and the school board chair. It will be mailed to all board members on the day it is hand-delivered.
3. The superintendent is given 30 school days (from the day of receipt of the report) to respond in writing to any deficiency cited. The date the district's response is due in the Office of Accreditation is indicated in the report cover letter.
4. During the 30-day period, school district officials are encouraged to schedule a conference with the lead auditor to review the preliminary report. During the conference, district officials are informed of the explanation provided for any standard not met; officials are also given recommendations concerning the appropriate evidence for correcting deficiencies.
5. The district must refute any findings with which it disagrees during the 30-day period. If the district has not challenged the findings in the audit report by the end of the 30-day timeline, the report becomes final and all deficiencies become a part of the district's official Accreditation Record Summary. The district is expected to respond in writing to the findings and corrective actions.
6. The district must clear all deficiencies before district accreditation statuses are assigned in the fall or the district accreditation status will be adversely affected.

Depending on the severity and extent of deficiencies, one of the following will take place:

- No action is taken and the district responds to the Site Visit Findings;
- A recommendation is made to the Commission to downgrade the district's Accreditation Status to Probation;
- A recommendation is made to the Commission to withdraw the district's Accreditation; or
- A recommendation is made to the Commission to determine that an extreme emergency exists in the district.

Recommendation to Downgrade District Accreditation Status to Probation

In accordance with Accreditation Policy 2.5.1, districts in violation of any of the following standards will be presented to the Commission on School Accreditation for action. That action may include downgrading the district's accreditation status to Probation.

- Accreditation Policy 2.1, reporting false information,
- Standard 1.1, failure to implement appropriate standards of governance,
- Standard 1.2, failure to comply with school board policies that meet state and federal statutes, rules, and regulations,
- Standards 4 and 5, failure to comply with financial accountability requirements,
- Standard 14, failure to comply with graduation requirements,
- Standard 16, failure to comply with test security procedures of the Mississippi Statewide Assessment System,
- Standards 17.1-17.8, failure to comply with state/federal regulations, or
- Standards 29, 30, and 31, failure to comply with standards that sustain a safe school climate.

Recommendation to Withdraw District's Accreditation

In accordance with Accreditation Policy 2.5.2, districts in violation of any of the following standards will be presented to the Commission on School Accreditation for action. That action may include withdrawal of the district's accreditation.

- Standard 1.1, failure to implement appropriate standards of governance,
- Standard 1.2, failure to comply with school board policies that meet state and federal statutes, rules, and regulations,
- Standards 4 and 5, failure to comply with financial accountability requirements of a serious nature,
- Standard 14, failure to comply with graduation requirements specified in Standards 14.1, 14.2, and 14.5,
- Standard 16, failure to comply with test security procedures required by the Mississippi Statewide Assessment System in Appendix F, numbers 8 and 9,
- Standards 17.4-17.6, federal programs whose regulations call for strong sanctions for continued patterns of noncompliance, or
- Standards 29, 30, and 31, failure to comply with standards that pose life-threatening conditions for students and staff.

Recommendation to Declare a State of Emergency

In accordance with MS Code 37-17-6(12)(a), after consideration of the results of the hearing to allow the district to present evidence why its accreditation should not be withdrawn, 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 if:

- 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; or
- The school district violates accreditation standards that have been determined by the policies and procedures of the SBE to be a basis for withdrawal of school district's accreditation without a probationary period.

Process of Review

- The Office of Accreditation, with assistance from the MDE legal team, will evaluate the results of the on-site audit and district report to determine if an extreme emergency exists under MS Code 37-17-6(12)(b).
- A full legal review of the finalized report will be conducted by MDE legal team.
- The report and supporting documentation will be presented to MDE's Executive Leadership Team for review and analysis of supporting data.

Extreme Emergency Situation

If the audit team and MDE staff determine that the findings are of such a serious nature that the situation warrants the conditions addressed in MS Code 37-17-6(12)(b), MDE shall make a recommendation to declare a state of emergency to the Commission on School Accreditation.

Based on MS Code 37-17-6(12)(b), the Commission may determine that an extreme emergency exists if any one (1) of the following three (3) conditions are found in a district:

- The safety, security, or educational interests of the children enrolled in that district are jeopardized,
- A school district meets the State Board of Education's definition of a failing school district for two (2) consecutive full school years, or
- If more than 50% of the schools within the district are designated as Schools at Risk in any one year. School at Risk is defined in the Mississippi Public School Accountability Standards as a failing school in any one year.

Commission on School Accreditation Meets to Hear Presentation that Extreme Emergency Exists

Pursuant to Section 37-17-6 (12)(b) of the Mississippi Code of 1972, as amended, the Commission on School Accreditation meets to determine whether there is sufficient cause to consider that an extreme emergency exists in the

School District which jeopardizes the safety, security, and educational interests of the children enrolled in the district, or when a school district's impairments include serious failure to meet minimum academic standards, as evidenced by a continued pattern of poor student performance.

The Office of Accreditation, will present evidence to the Commission to support the existence of an extreme emergency in the school district that jeopardizes the safety, security, and educational interests of the children and the belief that the emergency situation is related to a serious violation or violations of accreditation standards or state or federal law or failure to meet academic standards as evidenced by a continued pattern of poor student performance. This presentation shall not exceed 40 minutes.

Following the Office of Accreditation's presentation, District Representative(s) which shall include, but are not limited to, the superintendent and school board chair, will be allowed to address the Commission. While the district may be represented by counsel, only district employees and/or school board members may address the Commission during the 40 minutes total allowed for the district to present evidence pertinent to this matter. This time may not be delegated to anyone else. Following the presentations from the Office of Accreditation and the district, the attorney for the MDE and the attorney for the district (if applicable) will be allowed 10 minutes each to provide closing statements. Following all presentations, the CSA will be allowed to address MDE staff and local district representatives to ask any clarifying questions.

Completion of Process

Based on the evidence presented, the Commission acts on one of the following:

- Accepts the recommendation of MDE and determines that an extreme emergency exists. The Commission submits the resolution to the State Superintendent and the State Board of Education;
- Rejects the recommendation of MDE; or
- Issues an Order to the district and/or MDE.

If the Commission accepts the recommendation of MDE, the State Board of Education (SBE) meets to determine one of the following:

- Accepts the Commission's recommendation and requests the Governor to declare a state of emergency;
- Rejects the Commission's recommendation; or
- Remands the recommendation back to the Commission for further consideration.

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 educational 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.

If the Governor declares a state of emergency in a school district, the State Board of Education may:

- Assign an interim conservator, or in its discretion, contract with a private entity with experience in the academic, finance and other operational functions of schools and school districts, or
- Abolish the school district and assume control and administration of the schools formerly constituting the district, and appoint a conservator to carry out this purpose under the direction of the State Board of Education.