

By: Representatives Bennett, Dixon

To: Education

HOUSE BILL NO. 1036

1 AN ACT TO AMEND SECTION 37-13-91, MISSISSIPPI CODE OF 1972,  
2 TO CLARIFY THAT A STUDENT IS CONSIDERED PRESENT FOR AVERAGE DAILY  
3 ATTENDANCE REPORTING PURPOSES WHEN PARTICIPATING IN AUTHORIZED  
4 SCHOOL ACTIVITIES APPROVED BY THE SUPERINTENDENT OF THE SCHOOL  
5 DISTRICT; TO AMEND SECTION 37-151-5, MISSISSIPPI CODE OF 1972, IN  
6 CONFORMITY THERETO; AND FOR RELATED PURPOSES.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

8 **SECTION 1.** Section 37-13-91, Mississippi Code of 1972, is  
9 amended as follows:

10 37-13-91. (1) This section shall be referred to as the  
11 "Mississippi Compulsory School Attendance Law."

12 (2) The following terms as used in this section are defined  
13 as follows:

14 (a) "Parent" means the father or mother to whom a child  
15 has been born, or the father or mother by whom a child has been  
16 legally adopted.

17 (b) "Guardian" means a guardian of the person of a  
18 child, other than a parent, who is legally appointed by a court of  
19 competent jurisdiction.



20 (c) "Custodian" means any person having the present  
21 care or custody of a child, other than a parent or guardian of the  
22 child.

23 (d) "School day" means not less than five and one-half  
24 (5-1/2) and not more than eight (8) hours of actual teaching in  
25 which both teachers and pupils are in regular attendance for  
26 scheduled schoolwork.

27 (e) "School" means any public school, including a  
28 charter school, in this state or any nonpublic school in this  
29 state which is in session each school year for at least one  
30 hundred eighty (180) school days, except that the "nonpublic"  
31 school term shall be the number of days that each school shall  
32 require for promotion from grade to grade.

33 (f) "Compulsory-school-age child" means a child who has  
34 attained or will attain the age of six (6) years on or before  
35 September 1 of the calendar year and who has not attained the age  
36 of seventeen (17) years on or before September 1 of the calendar  
37 year; and shall include any child who has attained or will attain  
38 the age of five (5) years on or before September 1 and has  
39 enrolled in a full-day public school kindergarten program.

40 (g) "School attendance officer" means a person employed  
41 by the State Department of Education pursuant to Section 37-13-89.

42 (h) "Appropriate school official" means the  
43 superintendent of the school district, or his designee, or, in the  
44 case of a nonpublic school, the principal or the headmaster.



45 (i) "Nonpublic school" means an institution for the  
46 teaching of children, consisting of a physical plant, whether  
47 owned or leased, including a home, instructional staff members and  
48 students, and which is in session each school year. This  
49 definition shall include, but not be limited to, private, church,  
50 parochial and home instruction programs.

51 (3) A parent, guardian or custodian of a  
52 compulsory-school-age child in this state shall cause the child to  
53 enroll in and attend a public school or legitimate nonpublic  
54 school for the period of time that the child is of compulsory  
55 school age, except under the following circumstances:

56 (a) When a compulsory-school-age child is physically,  
57 mentally or emotionally incapable of attending school as  
58 determined by the appropriate school official based upon  
59 sufficient medical documentation.

60 (b) When a compulsory-school-age child is enrolled in  
61 and pursuing a course of special education, remedial education or  
62 education for handicapped or physically or mentally disadvantaged  
63 children.

64 (c) When a compulsory-school-age child is being  
65 educated in a legitimate home instruction program.

66 The parent, guardian or custodian of a compulsory-school-age  
67 child described in this subsection, or the parent, guardian or  
68 custodian of a compulsory-school-age child attending any charter  
69 school or nonpublic school, or the appropriate school official for



70 any or all children attending a charter school or nonpublic school  
71 shall complete a "certificate of enrollment" in order to  
72 facilitate the administration of this section.

73 The form of the certificate of enrollment shall be prepared  
74 by the Office of Compulsory School Attendance Enforcement of the  
75 State Department of Education and shall be designed to obtain the  
76 following information only:

77 (i) The name, address, telephone number and date  
78 of birth of the compulsory-school-age child;

79 (ii) The name, address and telephone number of the  
80 parent, guardian or custodian of the compulsory-school-age child;

81 (iii) A simple description of the type of  
82 education the compulsory-school-age child is receiving and, if the  
83 child is enrolled in a nonpublic school, the name and address of  
84 the school; and

85 (iv) The signature of the parent, guardian or  
86 custodian of the compulsory-school-age child or, for any or all  
87 compulsory-school-age child or children attending a charter school  
88 or nonpublic school, the signature of the appropriate school  
89 official and the date signed.

90 The certificate of enrollment shall be returned to the school  
91 attendance officer where the child resides on or before September  
92 15 of each year. Any parent, guardian or custodian found by the  
93 school attendance officer to be in noncompliance with this section  
94 shall comply, after written notice of the noncompliance by the



95 school attendance officer, with this subsection within ten (10)  
96 days after the notice or be in violation of this section.  
97 However, in the event the child has been enrolled in a public  
98 school within fifteen (15) calendar days after the first day of  
99 the school year as required in subsection (6), the parent or  
100 custodian may, at a later date, enroll the child in a legitimate  
101 nonpublic school or legitimate home instruction program and send  
102 the certificate of enrollment to the school attendance officer and  
103 be in compliance with this subsection.

104 For the purposes of this subsection, a legitimate nonpublic  
105 school or legitimate home instruction program shall be those not  
106 operated or instituted for the purpose of avoiding or  
107 circumventing the compulsory attendance law.

108 (4) An "unlawful absence" is an absence for an entire school  
109 day or during part of a school day by a compulsory-school-age  
110 child, which absence is not due to a valid excuse for temporary  
111 nonattendance. For purposes of reporting absenteeism under  
112 subsection (6) of this section, if a compulsory-school-age child  
113 has an absence that is more than \* \* \* fifty percent (50%) of the  
114 instructional day, as fixed by the school board for the school at  
115 which the compulsory-school-age child is enrolled, the child must  
116 be considered absent the entire school day. Days missed from  
117 school due to disciplinary suspension shall not be considered an  
118 "excused" absence under this section. This subsection shall not  
119 apply to children enrolled in a nonpublic school.



120       If a compulsory-school-age child is participating in an  
121 authorized school activity with the prior approval of the  
122 superintendent of the school district, or his/her designee, the  
123 student is considered present for average daily attendance  
124 reporting purposes. The activities may include, but are not  
125 limited to: field trips, athletic contest, student conventions,  
126 musical festivals, 4-H or Future Farmers of America (FFA). The  
127 excuse for the 4-H or FFA event must be provided in writing to the  
128 appropriate school superintendent by the Extension Agent or High  
129 School Agricultural Instructor/FFA Advisor.

130       Each of the following shall constitute a valid excuse for  
131 temporary nonattendance of a compulsory-school-age child enrolled  
132 in a noncharter public school, provided satisfactory evidence of  
133 the excuse is provided to the superintendent of the school  
134 district, or his designee:

135       \* \* \*

136               ( \* \* \*a) An absence is excused when the absence  
137 results from illness or injury which prevents the  
138 compulsory-school-age child from being physically able to attend  
139 school.

140               ( \* \* \*b) An absence is excused when isolation of a  
141 compulsory-school-age child is ordered by the county health  
142 officer, by the State Board of Health or appropriate school  
143 official.



144 ( \* \* \*c) An absence is excused when it results from  
145 the death or serious illness of a member of the immediate family  
146 of a compulsory-school-age child. The immediate family members of  
147 a compulsory-school-age child shall include children, spouse,  
148 grandparents, parents, brothers and sisters, including  
149 stepbrothers and stepsisters.

150 ( \* \* \*d) An absence is excused when it results from a  
151 medical or dental appointment of a compulsory-school-age child.

152 ( \* \* \*e) An absence is excused when it results from  
153 the attendance of a compulsory-school-age child at the proceedings  
154 of a court or an administrative tribunal if the child is a party  
155 to the action or under subpoena as a witness.

156 ( \* \* \*f) An absence may be excused if the religion to  
157 which the compulsory-school-age child or the child's parents  
158 adheres, requires or suggests the observance of a religious event.  
159 The approval of the absence is within the discretion of the  
160 superintendent of the school district, or his designee, but  
161 approval should be granted unless the religion's observance is of  
162 such duration as to interfere with the education of the child.

163 ( \* \* \*g) An absence may be excused when it is  
164 demonstrated to the satisfaction of the superintendent of the  
165 school district, or his designee, that the purpose of the absence  
166 is to take advantage of a valid educational opportunity such as  
167 travel, including vacations or other family travel. Approval of  
168 the absence must be gained from the superintendent of the school



169 district, or his designee, before the absence, but the approval  
170 shall not be unreasonably withheld.

171 ( \* \* \*h) An absence may be excused when it is  
172 demonstrated to the satisfaction of the superintendent of the  
173 school district, or his designee, that conditions are sufficient  
174 to warrant the compulsory-school-age child's nonattendance.  
175 However, no absences shall be excused by the school district  
176 superintendent, or his designee, when any student suspensions or  
177 expulsions circumvent the intent and spirit of the compulsory  
178 attendance law.

179 \* \* \*

180 ( \* \* \*i) An absence is excused when it results from  
181 the compulsory-school-age child officially being employed to serve  
182 as a page at the State Capitol for the Mississippi House of  
183 Representatives or Senate.

184 (5) Any parent, guardian or custodian of a  
185 compulsory-school-age child subject to this section who refuses or  
186 willfully fails to perform any of the duties imposed upon him or  
187 her under this section or who intentionally falsifies any  
188 information required to be contained in a certificate of  
189 enrollment, shall be guilty of contributing to the neglect of a  
190 child and, upon conviction, shall be punished in accordance with  
191 Section 97-5-39.

192 Upon prosecution of a parent, guardian or custodian of a  
193 compulsory-school-age child for violation of this section, the





194 presentation of evidence by the prosecutor that shows that the  
195 child has not been enrolled in school within eighteen (18)  
196 calendar days after the first day of the school year of the public  
197 school which the child is eligible to attend, or that the child  
198 has accumulated twelve (12) unlawful absences during the school  
199 year at the public school in which the child has been enrolled,  
200 shall establish a prima facie case that the child's parent,  
201 guardian or custodian is responsible for the absences and has  
202 refused or willfully failed to perform the duties imposed upon him  
203 or her under this section. However, no proceedings under this  
204 section shall be brought against a parent, guardian or custodian  
205 of a compulsory-school-age child unless the school attendance  
206 officer has contacted promptly the home of the child and has  
207 provided written notice to the parent, guardian or custodian of  
208 the requirement for the child's enrollment or attendance.

209 (6) If a compulsory-school-age child has not been enrolled  
210 in a school within fifteen (15) calendar days after the first day  
211 of the school year of the school which the child is eligible to  
212 attend or the child has accumulated five (5) unlawful absences  
213 during the school year of the public school in which the child is  
214 enrolled, the school district superintendent, or his designee,  
215 shall report, within two (2) school days or within five (5)  
216 calendar days, whichever is less, the absences to the school  
217 attendance officer. The State Department of Education shall  
218 prescribe a uniform method for schools to utilize in reporting the



219 unlawful absences to the school attendance officer. The  
220 superintendent, or his designee, also shall report any student  
221 suspensions or student expulsions to the school attendance officer  
222 when they occur.

223 (7) When a school attendance officer has made all attempts  
224 to secure enrollment and/or attendance of a compulsory-school-age  
225 child and is unable to effect the enrollment and/or attendance,  
226 the attendance officer shall file a petition with the youth court  
227 under Section 43-21-451 or shall file a petition in a court of  
228 competent jurisdiction as it pertains to parent or child.  
229 Sheriffs, deputy sheriffs and municipal law enforcement officers  
230 shall be fully authorized to investigate all cases of  
231 nonattendance and unlawful absences by compulsory-school-age  
232 children, and shall be authorized to file a petition with the  
233 youth court under Section 43-21-451 or file a petition or  
234 information in the court of competent jurisdiction as it pertains  
235 to parent or child for violation of this section. The youth court  
236 shall expedite a hearing to make an appropriate adjudication and a  
237 disposition to ensure compliance with the Compulsory School  
238 Attendance Law, and may order the child to enroll or re-enroll in  
239 school. The superintendent of the school district to which the  
240 child is ordered may assign, in his discretion, the child to the  
241 alternative school program of the school established pursuant to  
242 Section 37-13-92.



243 (8) The State Board of Education shall adopt rules and  
244 regulations for the purpose of reprimanding any school  
245 superintendents who fail to timely report unexcused absences under  
246 the provisions of this section.

247 (9) Notwithstanding any provision or implication herein to  
248 the contrary, it is not the intention of this section to impair  
249 the primary right and the obligation of the parent or parents, or  
250 person or persons in loco parentis to a child, to choose the  
251 proper education and training for such child, and nothing in this  
252 section shall ever be construed to grant, by implication or  
253 otherwise, to the State of Mississippi, any of its officers,  
254 agencies or subdivisions any right or authority to control,  
255 manage, supervise or make any suggestion as to the control,  
256 management or supervision of any private or parochial school or  
257 institution for the education or training of children, of any kind  
258 whatsoever that is not a public school according to the laws of  
259 this state; and this section shall never be construed so as to  
260 grant, by implication or otherwise, any right or authority to any  
261 state agency or other entity to control, manage, supervise,  
262 provide for or affect the operation, management, program,  
263 curriculum, admissions policy or discipline of any such school or  
264 home instruction program.

265 **SECTION 2.** Section 37-151-5, Mississippi Code of 1972, is  
266 amended as follows:

267 37-151-5. As used in Sections 37-151-5 and 37-151-7:



268 (a) "Adequate program" or "adequate education program"  
269 or "Mississippi Adequate Education Program (MAEP)" shall mean the  
270 program to establish adequate current operation funding levels  
271 necessary for the programs of such school district to meet at  
272 least a successful Level III rating of the accreditation system as  
273 established by the State Board of Education using current  
274 statistically relevant state assessment data.

275 (b) "Educational programs or elements of programs not  
276 included in the adequate education program calculations, but which  
277 may be included in appropriations and transfers to school  
278 districts" shall mean:

279 (i) "Capital outlay" shall mean those funds used  
280 for the constructing, improving, equipping, renovating or major  
281 repairing of school buildings or other school facilities, or the  
282 cost of acquisition of land whereon to construct or establish such  
283 school facilities.

284 (ii) "Pilot programs" shall mean programs of a  
285 pilot or experimental nature usually designed for special purposes  
286 and for a specified period of time other than those included in  
287 the adequate education program.

288 (iii) "Adult education" shall mean public  
289 education dealing primarily with students above eighteen (18)  
290 years of age not enrolled as full-time public school students and  
291 not classified as students of technical schools, colleges or  
292 universities of the state.



293 (iv) "Food service programs" shall mean those  
294 programs dealing directly with the nutritional welfare of the  
295 student, such as the school lunch and school breakfast programs.

296 (c) "Base student" shall mean that student  
297 classification that represents the most economically educated  
298 pupil in a school system meeting the definition of successful, as  
299 determined by the State Board of Education.

300 (d) "Base student cost" shall mean the funding level  
301 necessary for providing an adequate education program for one (1)  
302 base student, subject to any minimum amounts prescribed in Section  
303 37-151-7(1).

304 (e) "Add-on program costs" shall mean those items which  
305 are included in the adequate education program appropriations and  
306 are outside of the program calculations:

307 (i) "Transportation" shall mean transportation to  
308 and from public schools for the students of Mississippi's public  
309 schools provided for under law and funded from state funds.

310 (ii) "Vocational or technical education program"  
311 shall mean a secondary vocational or technical program approved by  
312 the State Department of Education and provided for from state  
313 funds.

314 (iii) "Special education program" shall mean a  
315 program for exceptional children as defined and authorized by  
316 Sections 37-23-1 through 37-23-9, and approved by the State  
317 Department of Education and provided from state funds.



318 (iv) "Gifted education program" shall mean those  
319 programs for the instruction of intellectually or academically  
320 gifted children as defined and provided for in Section 37-23-175  
321 et seq.

322 (v) "Alternative school program" shall mean those  
323 programs for certain compulsory-school-age students as defined and  
324 provided for in Sections 37-13-92 and 37-19-22.

325 (vi) "Extended school year programs" shall mean  
326 those programs authorized by law which extend beyond the normal  
327 school year.

328 (vii) "University-based programs" shall mean those  
329 university-based programs for handicapped children as defined and  
330 provided for in Section 37-23-131 et seq.

331 (viii) "Bus driver training" programs shall mean  
332 those driver training programs as provided for in Section 37-41-1.

333 (f) "Teacher" shall include any employee of a local  
334 school who is required by law to obtain a teacher's license from  
335 the State Board of Education and who is assigned to an  
336 instructional area of work as defined by the State Department of  
337 Education.

338 (g) "Principal" shall mean the head of an attendance  
339 center or division thereof.

340 (h) "Superintendent" shall mean the head of a school  
341 district.



342 (i) "School district" shall mean any type of school  
343 district in the State of Mississippi, and shall include  
344 agricultural high schools.

345 (j) "Minimum school term" shall mean a term of at least  
346 one hundred eighty (180) days of school in which both teachers and  
347 pupils are in regular attendance for scheduled classroom  
348 instruction for not less than \* \* \* fifty percent (50%) of the  
349 instructional day, as fixed by the local school board for each  
350 school in the school district. It is the intent of the  
351 Legislature that any tax levies generated to produce additional  
352 local funds required by any school district to operate school  
353 terms in excess of one hundred seventy-five (175) days shall not  
354 be construed to constitute a new program for the purposes of  
355 exemption from the limitation on tax revenues as allowed under  
356 Sections 27-39-321 and 37-57-107 for new programs mandated by the  
357 Legislature.

358 (k) The term "transportation density" shall mean the  
359 number of transported children in average daily attendance per  
360 square mile of area served in a school district, as determined by  
361 the State Department of Education.

362 (l) The term "transported children" shall mean children  
363 being transported to school who live within legal limits for  
364 transportation and who are otherwise qualified for being  
365 transported to school at public expense as fixed by Mississippi  
366 state law.



367 (m) The term "year of teaching experience" shall mean  
368 nine (9) months of actual teaching in the public or private  
369 elementary and secondary schools and shall also include nine (9)  
370 months of actual teaching at postsecondary institutions accredited  
371 by the Southern Association of Colleges and Schools (SACS) or  
372 equivalent regional accrediting body for degree-granting  
373 postsecondary institutions. In no case shall more than one (1)  
374 year of teaching experience be given for all services in one (1)  
375 calendar or school year. In determining a teacher's experience,  
376 no deduction shall be made because of the temporary absence of the  
377 teacher because of illness or other good cause, and the teacher  
378 shall be given credit therefor. Beginning with the 2003-2004  
379 school year, the State Board of Education shall fix a number of  
380 days, not to exceed forty-five (45) consecutive school days,  
381 during which a teacher may not be under contract of employment  
382 during any school year and still be considered to have been in  
383 full-time employment for a regular scholastic term. If a teacher  
384 exceeds the number of days established by the State Board of  
385 Education that a teacher may not be under contract but may still  
386 be employed, that teacher shall not be credited with a year of  
387 teaching experience. In determining the experience of school  
388 librarians, each complete year of continuous, full-time employment  
389 as a professional librarian in a public library in this or some  
390 other state shall be considered a year of teaching experience. If  
391 a full-time school administrator returns to actual teaching in the





392 public schools, the term "year of teaching experience" shall  
393 include the period of time he or she served as a school  
394 administrator. In determining the salaries of teachers who have  
395 experience in any branch of the military, the term "year of  
396 teaching experience" shall include each complete year of actual  
397 classroom instruction while serving in the military. In  
398 determining the experience of speech-language pathologists and  
399 audiologists, each complete year of continuous full-time post  
400 master's degree employment in an educational setting in this or  
401 some other state shall be considered a year of teaching  
402 experience. Provided, however, that school districts are  
403 authorized, in their discretion, to negotiate the salary levels  
404 applicable to certificated employees employed after July 1, 2009,  
405 who are receiving retirement benefits from the retirement system  
406 of another state, and the annual experience increment provided in  
407 Section 37-19-7 shall not be applicable to any such retired  
408 certificated employee.

409 (n) \* \* \* The term "average daily attendance" shall be  
410 the figure which results when the total aggregate full-day  
411 attendance during the period or months counted is divided by the  
412 number of days during the period or months counted upon which both  
413 teachers and pupils are in regular attendance for scheduled  
414 classroom instruction, \* \* \* less the average daily attendance for  
415 self-contained special education classes. For purposes of  
416 determining and reporting attendance, a pupil must be present for



417 at least \* \* \* fifty percent (50%) of the instructional day, as  
418 fixed by the local school board for each school in the school  
419 district, in order to be considered in full-day attendance. Prior  
420 to full implementation of the adequate education program the  
421 department shall deduct the average daily attendance for the  
422 alternative school program provided for in Section 37-19-22.

423 \* \* \*

424 (o) The term "local supplement" shall mean the amount  
425 paid to an individual teacher over and above the adequate  
426 education program salary schedule for regular teaching duties.

427 (p) The term "aggregate amount of support from ad  
428 valorem taxation" shall mean the amounts produced by the  
429 district's total tax levies for operations.

430 (q) The term "adequate education program funds" shall  
431 mean all funds, both state and local, constituting the  
432 requirements for meeting the cost of the adequate program as  
433 provided for in Section 37-151-7.

434 (r) "Department" shall mean the State Department of  
435 Education.

436 (s) "Commission" shall mean the Mississippi Commission  
437 on School Accreditation created under Section 37-17-3.

438 (t) The term "successful school district" shall mean a  
439 Level III school district as designated by the State Board of  
440 Education using current statistically relevant state assessment  
441 data.



442 (u) "Dual enrollment-dual credit programs" shall mean  
443 programs for potential or recent high school student dropouts to  
444 dually enroll in their home high school and a local community  
445 college in a dual credit program consisting of high school  
446 completion coursework and a credential, certificate or degree  
447 program at the community college, as provided in Section  
448 37-15-38(19).

449 (v) "Charter school" means a public school that is  
450 established and operating under the terms of a charter contract  
451 between the school's governing board and the Mississippi Charter  
452 School Authorizer Board.

453 **SECTION 3.** This act shall take effect and be in force from  
454 and after July 1, 2018.

