

By: Representatives Bennett, Dixon

To: Education

COMMITTEE SUBSTITUTE
FOR
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, Future Farmers of America (FFA) or serving
127 as a page at the State Capitol for the Mississippi House of
128 Representative, Senate or Governor's Office. The excuse for the
129 4-H or FFA event must be provided in writing to the appropriate
130 school superintendent by the Extension Agent or High School
131 Agricultural Instructor/FFA Advisor.

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

137 * * *

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

142 (* * *b) An absence is excused when isolation of a
143 compulsory-school-age child is ordered by the county health



144 officer, by the State Board of Health or appropriate school
145 official.

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

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

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

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

165 (* * *g) An absence may be excused when it is
166 demonstrated to the satisfaction of the superintendent of the
167 school district, or his designee, that the purpose of the absence
168 is to take advantage of a valid educational opportunity such as



169 travel, including vacations or other family travel. Approval of
170 the absence must be gained from the superintendent of the school
171 district, or his designee, before the absence, but the approval
172 shall not be unreasonably withheld.

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

181 * * *

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

190 Upon prosecution of a parent, guardian or custodian of a
191 compulsory-school-age child for violation of this section, the
192 presentation of evidence by the prosecutor that shows that the
193 child has not been enrolled in school within eighteen (18)



194 calendar days after the first day of the school year of the public
195 school which the child is eligible to attend, or that the child
196 has accumulated twelve (12) unlawful absences during the school
197 year at the public school in which the child has been enrolled,
198 shall establish a prima facie case that the child's parent,
199 guardian or custodian is responsible for the absences and has
200 refused or willfully failed to perform the duties imposed upon him
201 or her under this section. However, no proceedings under this
202 section shall be brought against a parent, guardian or custodian
203 of a compulsory-school-age child unless the school attendance
204 officer has contacted promptly the home of the child and has
205 provided written notice to the parent, guardian or custodian of
206 the requirement for the child's enrollment or attendance.

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



219 suspensions or student expulsions to the school attendance officer
220 when they occur.

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

241 (8) The State Board of Education shall adopt rules and
242 regulations for the purpose of reprimanding any school



243 superintendents who fail to timely report unexcused absences under
244 the provisions of this section.

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

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

265 37-151-5. As used in Sections 37-151-5 and 37-151-7:

266 (a) "Adequate program" or "adequate education program"
267 or "Mississippi Adequate Education Program (MAEP)" shall mean the



268 program to establish adequate current operation funding levels
269 necessary for the programs of such school district to meet at
270 least a successful Level III rating of the accreditation system as
271 established by the State Board of Education using current
272 statistically relevant state assessment data.

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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

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

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

338 (h) "Superintendent" shall mean the head of a school
339 district.



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

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

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

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



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



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

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



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

421 * * *

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

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

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

432 (r) "Department" shall mean the State Department of
433 Education.

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

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



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

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

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

