



LEGISLATIVE BRIEF

2016 Education Landscape Analysis Part Three

- Mississippi Department of Education
- Literacy

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Table of Contents (TO BE UPDATED)

Introduction	3
Overview	3
Mississippi Department of Education	
HB 29: PEER Committee to oversee, evaluate, determine programs and funding for State Board of Education, State Department of Education and every local school districts.....	4
HB 47: Shift authority over accreditation from State Board of Education to State Auditor and legislative committees.....	5
HB 53: Shift Authority over accreditation from State Board of Education to State Auditor and legislative committees.....	6
HB 61: To make compliance with every law and constitutional provision a condition of school accreditation.....	6
SB 174: Eviscerate for 10 years the protections provided employees by the State Personnel Board law.....	6
HB 199: Eviscerate for 5 years the protections provided employees by the State Personnel Board law (amended to 3 years instead of 5).....	7
HB 963: Authorize Governor, rather than the State Board of Education, to appoint State Supt. of Education.....	8
HB 1004: Brings forward school accreditation and accountability standards to revise them.....	8
HB 1059: Reduce the salary of the State Supt. of Education.....	8
SB 2003: Shift authority over accreditation from State Board of Education to State Auditor and legislative committees.....	9
SB 2069: Reduce salary of the State Supt. of Education.....	9
SB 2101: Convert the position of State Supt. of Education from an appointed position to state-wide elected position in 2019.....	9
SB 2140: Transfer MDE Office of Accountability to control of Governor’s Office	10
Literacy	
HB 51: Increased standard to pass 3rd Grade Literacy requirement	12
HB 52: Enhanced training for teachers	12
HB 965: Brings forward the Literacy-Based Promotion Act to revise them	13
SB 2157: Increased standard to pass 3rd Grade Literacy requirement and Enhanced training for teacher.....	12
SB 2388: Reading Intervention Program	13

Introduction

This is *Part Three* of our attempt to organize bills from Mississippi’s 2016 Legislative session into a coherent picture of the Republican strategy while racing against the legislative timeline. In *Part Three* we will review 18 bills regarding 2 related categories:

- **The Mississippi Department of Education (13 bills)**
- **Literacy (5 bills)**

Overview:

- Once the jigsaw puzzle pieces of legislation this year are viewed together the picture that comes into focus is that the duties and responsibilities of the State Board of Education and MS Dept. of Education are being sliced and diced, one facet at a time, until at some point both SBE and MDE will become mere shadows of their former selves.
- The Governor, the State Auditor, House and Senate committees, PEER (the legislative investigative arm) and the Legislative Budget Office are the intended beneficiaries of this dramatic redistribution of authority over the administration of public education.
- These attempts to remove and distribute to other entities the duties and responsibilities of SBE and MDE violates the MS Constitution, which invests authority over the administration of public education in the State Board of Education, the State Superintendent of Education and the department she administers. [MS Constitution, Article 8, Sections 202 and 203.](#)
- The fallout from this shift in authority over public education to the Governor and Legislature will also have a dramatic impact on every local school district, as it is intended to do.

Some of the pieces that illustrate these points are:

Mississippi Department of Education

HB: 29; 47; 53; 61; 174; 199; 973; 1004; 1059

SB: 2003; 2069; 2101; 2140

[HB 29: PEER Committee to oversee, evaluate, determine programs and funding for State Board of Education, State Department of Education and every local school district \(Performance Based Budgeting/Frierson\)](#)

PEER is the acronym for *Joint Legislative Committee on Performance Evaluation and Expenditure Review*. It is a “watchdog” committee ... an investigative arm of the Legislature.

HB 29 attempts to shifts power using these strategies:

- Any report filed *by* or submitted *to* the State Board of Education or MDE, including every report submitted by local school districts, must also be submitted to PEER *at the same time*
- Every such report shall be evaluated by PEER staff to determine whether *each* school district’s curriculums and programs provide evidence-based and research-based instruction, intervention and best practices
- PEER staff must create its own standards for evaluation, including defining what it will mean by “evidence-based” and “research-based”, independent of what standards any other education entity deems necessary and appropriate.
- PEER staff must create an “independent rubric” to assess school districts’ programs of instruction and intervention using its own criteria of evidence-based and research-based programs
- By the 2021-2022 school year *every program of instruction in every school* must be evidence-based “*as determined by the **approval** of PEER committee staff ...*”
- PEER staff will have 21 days to assess every report as either “evidence-based”, “research-based”, or “promising practice” based on “*the presence and quality of empirically sound evidentiary material and research ... contained in a nationally recognized research clearinghouse.*”
- PEER staff shall transmit to the House and Senate Education and Appropriations chairs an “Evidence-Based Assessment Note” that assesses the local school district reports, **which shall be used by the respective committees in the allocation of funds to districts under the MS Adequate Education Program**
- **No MAEP funds shall be allocated to any school district that fails to use evidence-based and/or research-based programs of instruction and intervention in *all* component areas of its curriculum by the start of the 2021-2022 school year.**

Every education institution will necessarily be dependent upon, and therefore beholden, to the power vested in the PEER staff evaluations. But PEER is not an educational institution. Its staff is

relatively small. Nothing in the bill requires PEER staff to have any academic qualifications, or research-based or evidence-based experience whatsoever, either with education administration or classroom teaching, as a basis for evaluating and assessing complex educational programs for 144 school districts or the MDE.

Notwithstanding that this bill is draped in the flag of performance-based budgeting, this isn't about education. This is about the transfer of power and control.

HB 47: Shift authority over accreditation from State Board of Education to State Auditor and legislative committees

(Education/Currie, Campbell)

*****HB 47 was passed in the House Education Committee and sent to the House floor.**

This bill attacks the existing accreditation of school districts by the State Board of Education in this manner:

- Beginning with the 2017-2018 school year the annual accreditation rating process for schools and districts would not be able to take into account annual growth or progress, but rather must only consider data from the immediately preceding school year.
- Beginning with the 2016-2017 school year the State Board of Education must submit to the [State Auditor](#) individual scaled scores of *every student in Mississippi* so that the State Auditor can make an [accreditation assessment](#) *independent of the State Board of Education*.
- “The State Auditor shall conduct a focused assessment, which shall separately measure the achievement scores and growth rates of each school's individual students.” [lines 125-127]
- “The Office of the State Auditor shall review the scores and publish each school's accreditation ranking in a manner easily accessible to the public. Each school's accreditation ranking shall have separate designations for student achievement scores and growth rates. The accreditation ranking designations shall indicate a positive or negative shift of a school's individual student achievement scores and growth rates and shall be published in a manner that allows for comparison between each school year and between each age group ...” [lines 137-145]
- “The Department of Education shall submit *any proposed changes* to the school accountability standards to the Appropriations and Education Committees of the House and Senate and to the Executive Director of the Legislative Budget Office one (1) year before those standards become effective. The State Department of Education shall also submit a *statement of estimated economic impact* detailing how the proposed changes could impact the development of recommendations for the funding of the adequate education program ...” [lines 148-156]

This bill attempts to create a parallel, competing accreditation system under the control of the State Auditor and outside the purview of the State Board of Education. Further, it attempts to crimp the existing accreditation system by limiting the data that SBE can consider in its evaluation framework. Last, but not least, it attempts to shift the center of gravity regarding any proposed future changes in the SBE accreditation system to the House and Senate Education and Appropriations committees and the Legislative Budget Office.

HB 53: Shift authority over accreditation from State Board of Education to State Auditor and legislative committees

(Education; Performance Based Budgeting/[Frierson](#))

HB 53 is essentially the same bill as HB 47 discussed immediately above.

HB 61: To make compliance with every law and constitutional provision a condition of school accreditation

(Education/[Formby](#), Carpenter)

- HB 61 would make a condition of school district accreditation that the district be in compliance with *every* MS law and constitutional provision "... which requires or prohibits a specific action by or in a school district."
- Any school district noncompliance with any such law or provision "... must be deemed a violation of compulsory accreditation standards ..."
- Any person may file a complaint of noncompliance against any school district with MDE
- MDE must determine whether the district is in noncompliance
- If the district is in noncompliance MDE must demand that the district become compliant within 30 days
- If the district fails to become compliant within 30 days, then MDE must notify the State Board of Education and the Commission on Accreditation, which must follow the legal procedures to place the district on probation or withdraw its accreditation

HB 61 doesn't seem like much read in isolation. But this bill ought to be considered in context with other pending bills regarding the teaching of subjects that touch on what some parents deem hot controversial matters that implicate religion and politics, such as evolution versus creationism, sex education versus no sex education, climate change and history, and whether a parent ought to have the right to remove a child from what a parent may deem an unpalatable part of the curriculum.

In that light HB 61 may well have a chilling effect on the development of curriculums, even when complaints of violations of laws and provisions are without merit, because many districts can't afford either the down time away from educational responsibilities or the high cost of legal representation to address the risk of losing accreditation that will be attendant to every such complaint.

HB 174: Eviscerate for 10 years the protections provided employees by the State Personnel Board law

(Education/[Moore](#))

MS Code Sec. 25-9-127(4) created a 2-year hiatus from July 1, 2014 to June 30, 2016 during which employees hired by MDE prior to 2014 lost their protection theretofore provided by the State Personnel Board.

HB 174 would renew this removal of protection for *another 10 years*, beginning in 2016.

Why does this matter? What protections are employees losing? Here it is:

37-29-127(1), as it is now written, states:

No employee of any department, agency or institution who is included under this chapter or hereafter included under its authority, and who is subject to the rules and regulations prescribed by the state personnel system, may be dismissed or otherwise adversely affected as to compensation or employment status except for inefficiency or other good cause, and after written notice and hearing within the department, agency or institution as shall be specified in the rules and regulations of the State Personnel Board complying with due process of law; and any employee who has by written notice of dismissal or action adversely affecting his compensation or employment status shall, on hearing and on any appeal of any decision made in such action, be required to furnish evidence that the reasons stated in the notice of dismissal or action adversely affecting his compensation or employment status are not true or are not sufficient grounds for the action taken ...
[emphasis added]

The exceptions to these protections concern layoffs due to reductions in force, during an employee's 12-month probationary period, and for those who obtained their jobs as political appointees.

HB 174 seeks to wipe out these valued protections that insulate hard-working employees from arbitrary and capricious terminations that can devastate families dependent on these workers. This bill is designed to leave these workers exposed and give their employer a free hand to terminate them without any regard to due process. Shame! If a worker is avoiding doing the job or is not competent to do the job, the employer should go through the process that is designed to reassure everyone that it is a fair and just outcome. Yes ... fairness can be costly and time-consuming. But perspective on this dynamic is all about whose ox is getting gored!

These protections are especially important in hard economic periods, or when workers are up in years, are persons of color, or are women, each of which groups are more likely to face harsh discriminatory employment practices than their white counterparts in both the private and public sectors.

[HB 199: Eviscerate for 5 years the protections provided employees by the State Personnel Board law](#)

(Education/Moore)

*****HB 199 was amended to 3 years instead of 5, and passed the House Education Committee and was sent to the House floor.**

HB 199 is the same as HB 174 above, except that the period of hiatus in the bill, prior to amendment, was supposed to 5 years instead of 10.

HB 963: Authorize Governor, rather than the State Board of Education, to appoint State Supt. of Education
(Education/Dixon)

- HB 963 seeks to change how the state Supt. of Education is appointed by amending 37-3-9 and by amending the MS Constitution, Article 8, Sec. 202
- The MS Constitution, Article 8, Sec. 202 authorizes the *State Board of Education* to appoint the Superintendent.
- This bill seeks to take away the Board's appointment power and transfer it to the *Governor*, who would be authorized to appoint the Superintendent from among a number of recommendations that would be provided by the State Board of Education.
- The Governor's appointment would have to be ratified by the Senate.
- The effect of this bill is contingent on the passage by the Legislature of House Concurrent Resolution 33 (Rep. Dixon), which seeks to authorize a referendum to change the MS Constitution to empower the Governor to make this appointment
- If HCR 33 were to pass, then the proposed Constitutional amendment to Article 8, Sec. 202, would be put to the voters in a statewide referendum in November 2016.
- The constitutional change can only take effect if the referendum passes.

The only logic to this bill is the transfer of power and control from the Education agency to the Governor.

HB 1004: Brings forward school accreditation and accountability standards to revise them
(Education/Frierson)

HB 1004 is a placeholder bill that puts these 140 pages of law in play in the event there is a desire to amend them that are not now reflected in other bills that have been submitted.

HB 1059: Reduce the salary of the State Supt. of Education
(Education/Henley)

This bill does one thing:

- In 2011 MS Code Sec. 37-3-9 authorized the State Board of Education to set the salary of the State Supt. of Education.
- HB 1059 now seeks to tie the hands of the State Board of Education in negotiations with candidates for Supt. of Education by limiting the salary of the Superintendent to that provided by law for the MS Governor, MS Code 25-3-31.
- This shift in control of compensation would take effect July 1, 2016.

Governor Phil Bryant is paid \$122,160. State Supt. of Education Dr. Carey Wright earns \$300,000. *This bill seeks to reduce the Superintendent's salary to \$122,160 by cutting it by \$177,840.00 on July 1, 2016 ... a slash of 59%.*

The only logic to this bill: It would likely dramatically reduce the pool of excellent, qualified applicants to address the dire education problems faced in Mississippi, and/or make it difficult to retain them. My take is that this is an example of the intended consequence of conscious policies.

SB 2003: Shift authority over accreditation from State Board of Education to State Auditor and legislative committees
(Education/Gollott)

SB 2003 is the Senate companion to HB 47 and HB 53 discussed above.

SB 2069: Reduce the salary of the State Supt. of Education
(Education, Accountability, Efficiency, Transparency/Fillingane)

SB 2069 is the Senate companion to HB 1059 discussed above.

SB 2101: Convert the position of State Supt. of Education from an appointed position to state-wide elected position in 2019
(Education, Elections/Fillingane)

Senate Bill 2101 is designed to convert the position of State Supt. of Education into a *statewide elected position*.

- Beginning *November 2019* State Supt. of Education will be elected in same manner as other statewide elected officials
- Term of 4 years
- Elected State Supt. to take office in January 2020
- Will remain in office until successor is elected and qualified
- Candidate for Supt. ***must be resident of Mississippi for 15 years*** at time candidate qualifies for office
- SB 2101 is designed to prevent current State Supt. of Education Dr. Carey Wright from continuing in office after 2019, since in 2019 Dr. Wright will not have been a resident of Mississippi for 15 years.

Electing the state supt. of education:

- absolutely politicizes the office of State Supt. of Education
- turns the search for the best education leader for MS education into a contest rooted in competing political alliances and public popularity that will have little to do with advancing education
- creates an emphasis on the effectiveness of prospective candidates as *political candidates* rather than their vision, skills and experience as education leaders
- shifts the focus from program strategies to campaign slogans
- limits the field to those willing to subject themselves and family to statewide electoral rigors and stress
- shrinks the available pool of candidates to long-term Mississippians ... a standard far more restrictive than for any other office, including the Governor ... and deprives the state of the opportunity to search for the best possible education leader with the most valuable experience, regardless of where the person may have been a resident
- builds an unfortunate and inappropriate intellectual wall around the state ... harkening back to the 1960s angst of segregationist forces ... as if we are afraid that “outside influences” will undermine pure Mississippi values.

SB 2140: Transfer MDE Office of Accountability to control of Governor's Office
(Education, Appropriations/Carmichael)

Senate Bill 2140 is a poorly-disguised attempt to politicize public education and represents another move toward the systematic dismantling of the MS Dept. of Education. In effect this bill would radically transform the administration of Mississippi public education at the state and local school district levels. It would constitute an *unconstitutional Gubernatorial coup over public education*.

THE BILL

Senate Bill 2140 is designed to rip asunder the MS Dept. of Education by transferring the entire MDE [Office of Accountability](#) to the unilateral control of an education czar inside the Governor's office who will be appointed by and solely accountable to the Governor. The czar will be called an executive director.

The *Office of Accountability* deals with values, implementation, assessment, and remediation. The roles of the Office of Accountability are integrally entwined in the entire fabric of MDE. To rip it out and transfer it to the Governor's office will de-stabilize, undermine and fragment the entire MDE operations. Furthermore, because accountability is to education administration what the heartbeat is to the human body, this transfer of authority will give the Governor effective control and veto power over MDE operations.

SB 2140 will create an organizational scheme of authority divided between the Governor and the State Supt. In a scheme rooted in divided executive power across two separate legal entities, there is no way for the State Supt. to compete with the Governor in a disagreement over perspective, values, policy, programs or implementation. The Governor of the state holds too many cards.

Here are some examples of how the bill *shifts to the Governor* complete control over critical segments of MDE responsibilities to manage public education on behalf of the people:

- Transfer of the entire Office of Educational Accountability from the State Dept. of Education to the Office of the Governor
- The Governor will appoint an Executive Director responsible to oversee all of the responsibilities that are detailed in the bill
- There are no stated qualifications nor experience required to become the Governor's Director of the Office of Educational Accountability
- Data gathering and analysis regarding school district performance will shift to the Governor
- Evaluation of education programs will shift to the Governor
- The Governor will structure recommendations about which educational programs ought to move forward and which should be terminated, which ought to get financial support from the legislature and which should not
- The Governor will determine the values for assessments of school districts and schools
- The Governor will assess individual school districts and schools
- The Governor will prepare the annual school district report cards, determine the data to be included therein, and control the disclosure of information to parents about the

- performance of each school district
- The Governor will control the hiring and termination of personnel and have the authority to combine or abolish positions

THE MISSISSIPPI CONSTITUTION

The state constitution trumps state statutes. The Mississippi Constitution, Article 8, Sections 202(2) and 203(2) invest the authority over public education only in the *State Board of Education* and the *State Superintendent of Education*.

SECTION 202.

(2) From and after July 1, 1984, there shall be a **State Superintendent of Public Education** who shall be appointed by the State Board of Education, with the advice and consent of the Senate, and serve at the board's will and pleasure. He shall possess such qualifications as may be prescribed by law. He shall be the chief administrative officer for the State Department of Education and shall administer the department in accordance with the policies established by the State Board of Education. He shall perform such other duties and receive such compensation as shall be prescribed by law.

SECTION 203.

(2) From and after July 1, 1984, there shall be a **State Board of Education** which shall manage and invest school funds according to law, formulate policies according to law for implementation by the State Department of Education, and perform such other duties as prescribed by law. . . .

The Mississippi Constitution, Article 5, concerns the powers of the *Governor* and *Lt. Governor*. No provision in Article 5 authorizes the Governor to be involved with the administration of the State Board of Education, State Supt. of Education or education generally. The Governor can appoint 5 members of the 9-member State Board, but the Governor is not empowered to interfere with the conduct of their responsibilities, Sec. 203(2). The Governor can ask the agency for written reports regarding the work of the agency, Article 5, Sec. 122.

And that's it! The Governor has no constitutional authority over the day-to-day policies or the administration of the State Board or the State Superintendent. Nor does the Legislature have the power under the Constitution to provide for it.

A stunning irony: The significant improvements made by the SBE and MDE in its critical educational accountability process is now highly regarded nationally in the leading evaluations, notwithstanding Mississippi's very low rankings in school finance and student performance. Just as we are doing something well, the move is to undercut it. Again ... *SB 2140 is another really bad idea!*

Literacy

HB: 51; 52; 965

SB: 2157; 2388

[HB 51 Committee Substitute: Increased standard to pass 3rd Grade literacy requirement \(Education/Moore\)](#)

[***This bill has passed the House Education Committee and has been sent to the floor.***](#)

The goal of this bill is to address the policy conundrum which the Mississippi Department of Education is seeking to resolve:

- As originally crafted in 2013 the Literacy-Based Promotion Act did *not* require that a student be *proficient* in reading as determined by the Grade 3 Literacy Summative Assessment test administered in the spring of the year. Rather, the law required only that the student score *higher* than the *lowest* score level on the test, which MDE acknowledged was a standard *less than* proficient
- If students are not held to a proficiency standard in reading by the end of the 3rd grade, then the essential rationale for the law is structurally compromised
- Hence, the attempt in this bill to “correct” the standard to require that a student score *higher* than the *two lowest score levels*, i.e. reach the proficiency level, on the Grade 3 Literacy Summative Assessment.
- Unfortunately, under the Mississippi law, 37-177-5, retention of students in the 3rd grade continues to be the consequence for failure to meet the standard, notwithstanding the research-based evidence that to a meaningful degree retention of students in the 3rd grade may well be counter-productive

HB 51 would amend [37-177-5](#) to state:

“... cut scores to be used to determine promotion to the fourth grade of those third grade students who *** did not score at the required achievement level on the state annual accountability assessment as outlined in Section 37-177-9, or who, for unforeseen circumstances, were unable to take the assessment.”

HB 51 refers to [37-177-9](#) for the standard and would amend the standard to state:

“(3) *Beginning in the 2018-2019 school year*, if a student's reading deficiency is not remedied by the end of the student's third grade year, as demonstrated by the *student scoring at the lowest two (2) achievement levels* in reading on the state annual accountability assessment or on an approved alternative standardized assessment for third grade, the student shall not be promoted to fourth grade.” [emphasis added]

[HB 52: Enhanced training for teachers \(Education/Moore\)](#)

This bill requires the State Board of Education to include in the training for teachers and administrators the *Language Essentials for Teachers of Reading and Spelling*, the acronym for which is LETRS.

HB 965: Brings forward the Literacy-Based Promotion Act to revise them
(Education/Moore)

HB 965 is a placeholder bill that puts the entire Literacy-Based Promotion Act in play in the event there is a desire to amend provisions that are not now reflected in other bills that have been submitted.

SB 2157: Increased standard to pass 3rd Grade literacy requirement and Enhanced training for teachers
(Education/Tollison)

SB 2157 contains the same provisions as HB 51 and HB 52 discussed above, combined in a single bill.

SB 2388: Reading Intervention Program
(Education; Appropriations/Tollison)

SB 2388 moves the *pilot* literacy intervention program to a *regular* program with these changes:

- The pilot program was to be offered to “willing “C” districts *or* low-performing districts and/or schools that are located in a geographically concise region”. SB 2388 eliminates the requirement regarding “geographically concise region”.
- In the pilot program MDE was to partner “with a four-year institution of higher learning that has a center for literacy instruction to develop and implement the pilot.” SB 2388 eliminates the requirement that the four-year institution of higher learning have a center for literacy instruction.
- In the pilot program MDE was to work in consultation with the MDE Reading Panel regarding “the development and implementation of the pilot program.” SB 2388 eliminates reference to the Reading Panel.

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