



LEGISLATIVE BRIEF

2016 Education Landscape Analysis Part One

- Vouchers & Scholarships
- Charter Schools, School Choice, Open Enrollment, and Virtual Schools
- Achievement School District, Recovery District, Conservatorship

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“Power tends to corrupt and absolute power corrupts absolutely!” Lord Acton (1872)

Introduction:

To understand the emerging 2016 education landscape in the Mississippi Legislature is like trying to put together the pieces of a robust, complex jigsaw puzzle in a race against the clock. When the pieces are separated apart and lie in a jumble on the table, it is difficult to see how the pieces fit together.

The Speaker and Lt. Governor have dumped about 2,000 bills into the warren of disparate committees with only a limited amount of time to read and understand the patterns they form.

This email is **Part One** of our attempt to organize these bills into a coherent picture of the Republican strategy while racing against the legislative timeline. In *Part One* we will review 18 bills regarding 3 related categories:

- **Vouchers and Scholarships** (7 bills)
- **Charter Schools, School Choice, Open Enrollment and Virtual Schools** (8 bills)
- **Achievement School District/Recovery District/Conservatorship** (3 bills)

Overview:

- Republicans now control a super-majority in both House and Senate.
- With the assistance of the Republican legislative leadership, Republican Governor Phil Bryant is making an unprecedented, extraordinary attempt to wrest significant authority away from the State Board of Education and the MS Dept. of Education in order to place it under the control of the Governor, notwithstanding that the Mississippi Constitution, Article 8, Sections 202, 203, invests administrative control of education in the State Board of Education and its Superintendent.
- Until now the privatization entrepreneurs have had their noses under the education tent. In 2016 they are impatient to thrust their enormous collective weight inside the tent of public education to create a bevy of privately-owned, privately-governed, publicly-funded for-profit and non-profit educational institutions to the further detriment of existing public school districts, the children who attend them, and the families that depend on them.
- Some bills are audacious in their wanton disregard of Article 8, Section 208 of the MS Constitution, which prohibits appropriation of state funds for any school that charges tuition, which all private schools do.
- The Republican leadership is publicly committed to reducing funding for traditional public schools ... and public charters ... by reducing funding available through MAEP.

Some of the pieces of this 2016 educational landscape puzzle are:

Vouchers and Scholarships:

HB: 33; 37; 943; 1080

SB: 2385; 2455; 2551

HB 33: Disability Scholarships for Private School

(Education/Moore)

This bill makes the Education Scholarship Account created under **37-181-1**, et seq., available to any *student with special needs* who has had an IEP within the past 5 years instead of the past 18 months, a major change in the existing law. The amount of the scholarship to be used to pay for private school is \$6,500 for the 2015-2016 school year.

HB 37: Dyslexia Scholarship for Private Schools

(Education/Byrd)

This bill re-enacts the Dyslexia Scholarship Program created under **37-171-1**, et seq., and removes the provision that provides for an automatic repeal of the act by a date certain.

HB 943: Private School Scholarships for All

(Education; Appropriations/Moore + 22)

What's in a name? Everything! This bill reveals its core goal when it changes the title of "The Equal Opportunity for *Students with Special Needs* Act" created under **37-181-1**, et seq., to the "Equal Opportunity for *All Students* Act".

HB 943 expressly authorizes the use of the state-paid scholarship funds for private school *tuition, fees and other school expenses* in express violation of the MS Constitution, Article 8, Section 208, prohibition that states, "... *nor shall any funds be appropriated toward the support of any sectarian school, or to any school that at the time of receiving such appropriation is not conducted as a free school.*" [Emphasis added]

HB 943 authorizes state-paid scholarships for *any private school* and for *home schooling*, as defined in **37-13-91**. This bill radically alters the rationale for state funding for private schools *from* attempting to fill a need for students with special needs that has not been well provided in existing public schools, *to* wide-open plundering of tax revenues to benefit all families that prefer private schools or home schooling. Eligibility for a state-paid scholarship would be changed from a restriction to students with disabilities to a paid scholarship for *any child ... without exception ...* who has been enrolled in a public or charter school in the prior year or who is eligible to enroll in a public or charter school.

The annual scholarship would provide:

- \$6,500 per student with disabilities
- \$5,000 per student from families with household income not greater than 200% of federal poverty level (2016 - family of four – 200% = \$48,500)
- \$4,000 per student from families with household income greater than 200% but less than 300% of federal poverty level (2016 - family of four – 300% = \$72,750)
- \$3,000 per *all other students* household income greater than 300% of federal poverty level (i.e. 2016 – family of four - greater than \$72,750)

On top of all else, HB 943 would generate an unwarranted windfall boon to private school and home school entrepreneurs.

HB 1080: Tax Credit Scholarships

(Revenue and Expenditure General Bills/Moore + 6)

This bill opens up another avenue to promote privatization of public education. HB 1080 provides generous state tax credits for persons who contribute to state authorized scholarship organizations that provide scholarships for students to attend private schools.

NOTE! This bill expressly permits the use of state authorized and regulated Tax Credit Scholarships and tax credits, to pay for private schools that discriminate on the basis of religion ... which necessarily means state support for sectarian schools. HB 1080, Sec. 2(a)(iii) only prohibits discrimination on the basis of race, color, or national origin, but is intentionally silent as to religion.

HB 1080 violates [the MS Constitution, Article 8, Section 208, prohibition that states, “... nor shall any funds be appropriated toward the support of any sectarian school, or to any school that at the time of receiving such appropriation is not conducted as a free school.”](#) [Emphasis added]

State tax credits reduce state tax revenues that would otherwise be collected and received by the state. State tax credits that are authorized for the limited purpose of paying tuition and expenses for private schools are a form of *appropriation*. The effect of state tax credits would be to reduce collected state tax revenues that would otherwise be received by the state. The tax credits control and re-direct the use of these uncollected funds under strict state regulation. That is why it functions in the same way as an appropriation. HB 1080 has the same unconstitutional effect as if the state *directly appropriated* collected tax revenues for the private school scholarships.

Oh, and of course, MS Constitution, Article 8, Section 208, also prohibits appropriations for any school that charges tuition and expenses! So, HB 1080 is *unconstitutional* on both counts.

SB 2385: Private School Scholarships for All

(Education; Appropriations/Clarke)

SB 2385 is the Senate version of HB 943 discussed above.

SB 2455: Education Savings Scholarships Accounts

(Education/Watson)

This bill provides direct funding to private schools, secular and *sectarian*, for *tuition, expenses and fees* in brazen defiance of the dual prohibitions set forth in the MS Constitution, Article 8, Section 208.

SB 2455 provides for the diversion of 90% of the MAEP base student cost + local levies attributable to an individual student into a MS Education Savings Scholarship Account to pay for tuition, expenses and fees for any student who attends a private school. The MS Dept. of Education would administer these scholarship accounts.

Section 208 states: “... *nor shall any funds be appropriated toward the support of any sectarian school, or to any school that at the time of receiving such appropriation is not conducted as a free school.*” [Emphasis added]

SB 2551: Opportunity Scholarship Act of 2015

(Education; Appropriations/Watson)

This bill, shrouded in benevolent perspectives about improving educational opportunity for low-wealth and special needs students attending persistently under-performing schools, is in its essence a naked diversion of state education funding from public schools to pay tuition and expenses for private schools either within or without the school district in which the student resides.

This bill provides direct funding to private schools, secular and sectarian in an in-your-face defiance of the MS Constitution, Article 8, Section 208. Section 208 states: “... *nor shall any funds be appropriated toward the support of any sectarian school, or to any school that at the time of receiving such appropriation is not conducted as a free school.*” [Emphasis added]

Charter Schools/School Choice/Open Enrollment/Virtual Schools

HB: 202; 1010; 1015; 1042; 1043; 1044

SB: 2161; 2453

HB 202: Virtual schools

(Education/Young)

This bill seeks to make *publicly-funded virtual education* provided by either a for-profit or non-profit entrepreneur available to all K-12 students beginning with the 2017-2018 school year.

Every school district would be obligated to re-deploy its MAEP funding to contract with virtual learning providers to make multiple virtual learning opportunities available to every student ... regardless of whether the district considers this process to be advantageous to its students.

HB 202 flies in the face of the overwhelming nation-wide experience that virtual schools have not provided effective educational opportunities nor meaningful academic advancement for students from under-performing schools and districts.

HB 1010: School Choice

(Education; Revenue and Expenditure General Bills/Arnold, Dixon)

This bill seeks to enable any student *residing anywhere in the state* to have the right to transfer to attend *any* public school district *located anywhere in the state*, subject to consent by the school district, in its sole discretion, to which the student desires to transfer.

If the student's request for transfer were to be denied, the parents of the student would have the right to appeal to the State Board of Education.

HB 1010 also provides that a student can seek transfer to *any* school within the *same* district in which the child attends school, subject to the consent of the district superintendent and subsequent ratification by the district school board.

State and local funding would "follow the child" and be diverted from the district of residence to the new school district to which the student transfers.

HB 1015: School Choice

(Education; Revenue and Expenditure General Bills/Moore)

HB 1015 is essentially the same bill as HB 1010 discussed above.

This bill seeks to enable any student *residing anywhere in the state* to have the right to transfer to attend any public school district *located anywhere in the state*, subject to consent by the school district, in its sole discretion, to which the student desires to transfer.

If the student's request for transfer were denied, the parents of the student would have the right to appeal to the State Board of Education.

HB 1015 also provides that a student can seek transfer to any school within the same district in which the child attends school, subject to the consent of the district superintendent and subsequent ratification by the district school board.

State and local funding would "follow the child" and be diverted from the district of residence to the new school district to which the student transfers.

HB 1042: School choice for charter schools

(Education; Revenue and Expenditure General Bills/Moore)

This bill seeks to dismantle one of the key agreements that enabled the passage of the 2013 Charter law: that charter schools would be able to enroll *only* students from the school district in which the charter school is located.

HB 1042 would mandate that a charter school must be open to any student who resides anywhere in Mississippi. All state and local education funding would “follow the child” and be diverted *from* the school district in which the student resides *to* the charter school.

HB 1043: Charter school teacher certification and licensure
(Education/Busby)

This bill extends the time that a charter school teacher has to obtain state certification and licensure. In the existing Charter School law a teacher has 3 years to obtain certification and licensure *from the date of initial application* by the charter operator for approval by the state. HB 1043 would alter the timeline to 3 years *from the date of initial employment* of the teacher by the charter school.

HB 1044: Open enrollment in charter schools
(Education; Revenue and Expenditure General Bills/Busby)

This bill is essentially the same as HB 1042 discussed above.

This bill seeks to dismantle one of the key agreements that enabled the passage of the 2013 Charter law: that charter schools would be able to enroll only students from the school district in which the charter school is located.

HB 1044 would mandate that a charter school must be open any student who resides anywhere in Mississippi. All state and local education funding would “follow the child” and be diverted *from* the school district in which the student resides *to* the charter school.

SB 2161: Charter schools: deny veto to “C” districts; open enrollment
(Education/Tollison)

This bill seeks to dismantle 2 of the key agreements that enabled the passage of the 2013 Charter law that:

- “A”, “B” and “C” ranked school districts have the authority to veto applications to establish charter schools within the geographic boundaries of their respective school districts
- charter schools are able to enroll only students from the school district in which the charter school is located

SB 2161 would both eliminate the capacity of “C” districts to veto applications in their districts and would open enrollment in charters to all Mississippi students without regard to their legal residence.

All state and local education funding would “follow the child” and be diverted *from* the school district in which the student resides *to* the charter school.

SB 2453: Eliminate school board veto of charter applications re: special needs students *(Education/Watson)*

This bill seeks to dismantle one of the key agreements that enabled the passage of the 2013 Charter law: “A”, “B” and “C” ranked school districts have the authority to veto applications to establish charter schools within the geographic boundaries of their respective school districts.

SB 2453 would amend the existing charter law to authorize the MS Charter School Authorizer Board to approve applications for charter schools for special needs students *without approval of the local school board*.

Achievement School District/Recovery District/Conservatorship

HB: 228; 946; 989

SB: none at this time

HB 228: Administrative School District Receivership Program *(Education/Moore)*

This bill represents a radical misadventure in experimental re-structuring of control over school districts in an apparent effort to address the needs of systemically under-performing districts ... without any research-based evidence to support it.

Here are some of the key provisions of HB 228:

- The Administrative School District Receivership Program applies to districts which are designated “D” or “F” for two consecutive years
- The Program would be administered by the MS Recovery School District under 37-17-6(12)(g)
- If a district rated “D” or “F” for 2 years is rated “D” or “F” in a 3rd consecutive year, the Recovery District must seek to place the district under the administrative control of an adjacent “A” district (Note: in the bill “adjacent” is not defined; “adjacent” normally means “contiguous”, but can also be understood to mean “nearby”)
- When the “D” or “F” district is taken over by an “A” district the superintendent of the taken over district must be fired and the school board of the taken over district abolished, with all powers and duties of both to be assumed by the “A” district
- The length of time for the takeover would either be determined as an exercise of discretion by MDE or until the taken over district receives a “C” rating
- If the taken over district is to be returned to local control then the Governor must set a date for a special election to elect a new board; the new board members appoint a superintendent
- “A” rated districts can apply to MDE to be approved as “districts of receivership” that would have the power to assume administrative control of adjacent “D” or “F” districts
- “A” districts would have the right to petition MDE for approval to take over up to 2 adjacent “D” or “F” districts at any one time

- Within 90 days of takeover the “A” district must do a performance evaluation of all employees of the taken over district, with the discretion to retain or terminate any employee who receives an unsatisfactory evaluation
- The “A” district superintendent would control employment recommendations in the districts taken over by the “A” district and they would have to be approved by the “A” school board before an employment contract can be executed
- “A” districts would be able to receive up to \$200,000 per year per taken over district from a state fund appropriated by the legislature to assist with the expenses of administration of the taken over districts *and* to incentivize “A” district participation in the Program
- Virtually all state and local funding for the taken over districts would be diverted to the “A” district
- Any superintendent or school board member who is in office when a “D” or “F” district is taken over is forever barred from serving that school district when local control is restored

HB 946: Conservatorship status *(Education/Frierson)*

This bill makes several revisions to the existing conservatorship law:

- when a district is placed in conservatorship the *Governor* must immediately remove the school board and superintendent and the *Governor* shall appoint a new board of trustees, which in turn must appoint a new superintendent [See HB 946, line 720 to line 809, where it amends 37-17-6(21) and see the **NOTE** below]
- the Governor can appoint to the new board of trustees members who live anywhere in the state so long as they are citizens of Mississippi; they do not have to live in the district
- a district placed in conservatorship must remain in conservatorship until the district attains a “B” accountability rating
- When a district attains a “B” rating it must apportion the school district into 5 single member election districts and hold a special election for the new members who will serve 4-year terms
- If in *any* subsequent year the district falls below a “C” rating, local control of the district is *automatically* revoked (no exceptions) and returned to conservatorship for an indefinite period of time. *Talk about the tension on students and educators living year in and year out with the specter of having the administration of their schools pull out from under them.*

NOTE: The amendment to 37-17-6(21) creates an extraordinary usurpation by the Governor of the role that the State Board of Education has had to oversee and manage the conservatorship process.

HB 989: Achievement School District *(Education/Busby)*

As filed, HB 989 is the same that Rep. Busby filed in the 2014 and 2015 legislative sessions, neither of which passed. It is understood that the 2016 bill has been filed as a “placeholder” to give State Supt. of Education Dr. Carey Wright and Rep. Busby time to negotiate a substitute bill.

The new bill is supposed to take into account the work of the 2015 Achievement School District Task Force, authorized by the State Board of Education and comprised of 20 diverse, experienced education stakeholders. The Task Force met 6 times, studied extensive data about Mississippi's "D" and "F" school districts, researched the very mixed results of existing ASD experiments in other states, but failed to come to any agreements regarding the appropriateness of an administrative school district strategy in Mississippi.

We have heretofore analyzed the multiple shortcomings of the 2014 ASD bill, but will await the contents of the new ASD to be presented to the House Education Committee.

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