



**LEGISLATIVE BRIEF**

# **2016 Education Landscape Analysis Part Five**

**HB 989**

**An Act to Create the Mississippi Achievement School District**

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**February 2016**

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***“The definition of insanity is doing the same thing over and over again and expecting a different result.”*** *Attributed to Albert Einstein*

## Overview

On Monday, Feb. 22, 2016, the House Education Committee, in a step most unfortunate, voted *Title Sufficient Do Pass* on the [Achievement School District bill, HB 989 Committee Substitute](#), and sent the bill to the House floor.

- [HB 989](#) creates an untested experiment to mandate the state to take over every “failing” or “underperforming” school district wherever located in the state, abolish these districts and the participation of their leaders, and to incorporate all of these districts into one overarching [MS Achievement School District](#) independent of the State Board of Education.

### **But first, some back-story:**

- In the spring of 2015 the State Board of Education charged Supt. of Education Dr. Carey Wright with the extraordinary responsibility to create a [Mississippi Department of Education Achievement School District Task Force](#) to recommend to the MS State Board of Education how best to remedy the systemic and persistent underperformance of public schools so that all children can have access to and thrive in a quality, first-rate public school. Since the conservatorship process is not working, a new strategic remedy is required.
- The likely expectation of the State Board of Education was that the Task Force would recommend the creation of a MS Achievement School District ... hence the name of the Task Force ... and that this would require legislation to authorize, implement and fund.
- However, on several occasions in open meetings, Dr. Wright assured Task Force members that the question of *whether* an achievement school district is an appropriate remedy ... in the Mississippi context ... remained an open question for the Task Force to decide as part of its deliberative process.
- [The Task Force](#) was comprised of 20 education stakeholders: 3 school superintendents, 3 administrators, one conservator, one teacher, 2 members of professional education organizations, one member of the State Board of Education, one staff member of MDE, one business leader, 4 legislators, 2 education policy organization advocates and one grassroots organization advocate. Rep. Charles Busby, who submitted HB 989 in 2016, was a member of the Task Force.
- The Task Force met 6 times in six months from May to December 2015. The members, facilitated by the supportive and gracious leadership of Supt. Carey Wright, researched, analyzed and deliberated upon extensive data about chronically underperforming Mississippi school districts that was provided by the MDE staff, and available analyses about the three existing achievement school districts in Louisiana, Tennessee and Michigan produced by “outside” academic scholars, “inside” practitioner/leaders who were directly involved in the three experiments, and education stakeholders.
- The members of the Task Force agreed that *if* the state adopted an achievement school district model, *then* it would have to be *adapted* to the circumstances, culture and politics of the largely rural, geographically dispersed school districts of the State of Mississippi.
- Supt. Carey Wright was clear that the MS Dept. of Education did not have the capacity to oversee, manage and operate school districts that spanned the entire state. There was a

distinct inference drawn by many Task Force members that the creation of a MS Achievement School District was intended to create a pathway to transfer control of underperforming districts into privately owned, privately-governed, publicly-funded charter schools.

- In the face of the research-based evidence explored by the Task Force that raised serious doubts about the efficacy of the 3 existing achievement school district experiments, the 20 members of the Task Force never agreed on whether the achievement school district model had been a successful experiment or whether it could be adaptable to Mississippi.
- In December 2015 Dr. Wright shut down the Task Force without any report to be made by the Task Force. Dr. Wright stated that she would attempt to use the “suggestions” that had arisen during Task Force deliberations to negotiate their inclusion in whatever achievement school district bill emerged during the 2016 legislative session.
- Rep. Busby (Republican, Dist. 111, Jackson County) asserted that, for certain, there would be an achievement school district bill in 2016. In fact, from the first Task Force meeting in May 2015 Rep. Busby proudly declaimed that the 2016 bill was already written and that he had a copy of it in his briefcase. Rep. Busby’s HB 989 is such a bill.

## HB 989

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### CREATING A NEW STATEWIDE LEA

- HB 989 requires the creation of a statewide **Mississippi Achievement School District (MASD)** that
  - a. is “distinct and separate from every other school district”
  - b. is “not confined to specific geographic boundaries”
  - c. is “for the purpose of transforming persistently failing public schools throughout the state into quality educational institutions”
  - d. is a Local Education Agency (LEA) that would have all the powers of any other LEA
  - e. *All* districts in the state which, during two (2) consecutive school years, are designated “F” schools by the State Board of Education under the accreditation rating system, OR “which have been persistently failing or *chronically underperforming* may be absorbed into and become a part of the Mississippi Achievement School District.” [Emphasis added]  
[Note: There is no definition of “underperforming” or “chronically underperforming” in the bill.]

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### ABSORBING and ABOLISHING UNDERPERFORMING DISTRICTS

- The takeover of the district by the MASD would be **immediate** upon designation of the district as “failing (F) or persistently failing or chronically underperforming” unless the MASD exercises its **sole discretion** to create a more “gradual transfer of control.”
- However, the gradual transfer of control may not be completed later than the beginning of the school year next succeeding the year during which the school district receives the “F” designation  
[Note: Whatever might have been the intent, it appears that the fixed date limit for gradual transfer of control applies only to districts that receive an “F” designation, and not to underperforming districts. See Sec. 5(a), lines 138-142.]

- Accreditation grade ranks prior to the 2015-2016 school year shall NOT be considered in determining whether a school district is subject to absorption by the MASD
- During the 2017-2018 school year, any school district receiving an “F” after being ranked as an “F” in the 2015-2016 *and* 2016-2017 school years may be absorbed immediately by the MASD
- The absorption of school districts into the Achievement School District would be *mandatory* and *immediate* upon the school district’s designation as an “F” school for a second consecutive year.
- Once a school district is absorbed by the ASD the local school board would be divested of any purview over the school district.
- Once a school district is absorbed by the MASD, the MASD would also automatically assume the exclusive use and control of all facilities, grounds and personnel that had been used by the school prior to its takeover by the state.
- Once a school district is absorbed by the MASD, the MASD has the sole discretion as to whether to retain or terminate the employment of any professional or non-professional employees.
- Once a school district is absorbed by the MASD, the local school district is required to pay to the MASD, based on student enrollment in the school or schools taken over, a pro-rata share of local funding within 3 business days of receipt from the tax collector; and MDE is required to pay a pro-rata share of MAEP funding directly to the MASD on the same basis as any other Local Education Agency.
- The accreditation grade rank of districts absorbed by MASD would be included in the evaluation of accountability of the MASD

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## GOVERNANCE OF and BY THE MASD

- The MASD would have a new, separate and independent [MS Achievement School District school board](#), to be considered an independent, separate *Local Education Agency*, that would be comprised of 9 persons, 8 of whom are political appointments by the Governor and Lt. Governor and one by the State Supt. of Education ... and which governing board would be entirely independent of the State Board of Education
- Staggered terms are created for the 8 political appointees to the MASD school board; but no term is set for the person appointed by the State Supt. of Education  
[[Note: Under HB 989 no particular qualifications are required for any of the MS Achievement School District \(MASD\) governing board members.](#)]
- The MS Achievement School District school board and the State Board of Education would be delegated *joint* responsibility to work together to adopt rules and regulations to govern the MASD.
- The MASD may not levy taxes or borrow money, issue bonds, or otherwise incur indebtedness if repayment requires the levy of a special tax.
- “The Legislature shall appropriate sufficient funding, in an amount not less than \$250,000 to the State Department of Education for the 2018 fiscal year [*i.e. 2017-2018 school year*] for the specific purpose of funding the startup, operational and any other required costs of the MASD during the 2017-2018 school year, which shall include the establishment of the MASD school board and the employment of a superintendent for the district.”
- MASD would have the right to possess, access and use, UNRESTRICTED and FREE OF CHARGE, any and all property and assets of the absorbed district or that was available to the district

[Note: Here again is evidence that the intent is to turn over control of the absorbed districts to private corporations. There would be no issue as to restrictions or fees if the state possessed, accessed and used the property of the absorbed districts. But there is most certainly an issue about a private entity paying fair market value for the possession and use of publicly owned property and facilities. See Sec. 7(a), lines 238 – 248.]

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## EMPLOYMENT UNDER THE MASD

- The MASD school Board shall select a superintendent of the MASD, who must meet statutory qualifications under 37-9-13 AND must be deemed “highly qualified as demonstrated by a proven record of success in education administration.”
- The MASD superintendent would recommend to the MASD board AND to the State Board of Education all principals, teachers and non-instructional personnel to be employed in school districts absorbed into the MASD, each of whom must be “highly qualified individuals as demonstrated by a demonstrable record of success”
- The MASD board has the discretion to continue or discontinue the employment of any person employed by the district absorbed by the MASD

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## HOW ABOLISHED DISTRICTS CAN BE RETURNED TO LOCAL CONTROL

- Even if an absorbed and abolished school district achieves improved grade ranks higher than “F”, the school district cannot come out from under the MASD and be returned to local control UNLESS the MASD board “determines that it is in the best interest of that school district that it be returned to the control of the local district”
- When an absorbed and abolished school district achieves a “C” grade rank or better for “five (5) consecutive years, the *local governing authority with jurisdiction over a school district*” may petition the MASD board to turn the absorbed district back to local governance and control

[Note:

1. This provision, Sec. 5(f), reveals, however unintentionally, that the real goal of HB 989 is to turn authority to manage and operate absorbed districts over to third-party education entrepreneurs. See Sec. 5(f), lines 183 – 208.
2. Throughout HB 989 the absorbed districts are governed by the MASD school board, EXCEPT in this provision. See Sec. 5(f), lines 183- 190. A “local governing authority with jurisdiction over a school district” does not mean the MASD school board. Nor does it mean the local school board that used to control the district prior to state take over. So what is it? Who is it? It is undefined in the bill.
3. I suggest that “local governing authority ...” is meant to refer to not-yet-created charter schools that will be brought to life to handle the burdens of the MASD generated by HB 989. However, HB 989 does not prescribe any values, standards, guidelines, qualifications or methods of selection whatsoever regarding any “local governing authority with jurisdiction over a school district”.

4. [Nor does HB 989 reference the very high standards for charter schools that ought to be used as a condition for the approval of any charter school seeking to become a “local governing authority ...”\]](#)
- When the “local governing authority” petitions the MASD school board, the MASD board must conduct a “referendum” at the administrative offices of the absorbed district’s property within 180 days of receipt of the petition
  - The voters in the referendum would be:
    - a. All personnel employed by the school district, including administrative, instructional, noninstructional, service, support and maintenance
    - b. Parents or legal guardians of students enrolled in the school district (only one vote per student to be cast by a parent or legal guardian)
  - The issue in the referendum is whether to return the district to local governance
  - A majority of parents or legal guardians enrolled in the district AND a majority of school personnel must vote to return the district to local governance ... i.e. BOTH must vote in the majority ... or the referendum fails

**[Note:**

[How impressively difficult it would be to succeed in this referendum process!](#)

1. [The petition does not come from parents or personnel. It must come from the local governing authority, which is undefined in the statute, and appears to have unfettered discretion whether to file such petition.](#)
2. [To achieve a majority vote it requires a majority of \*all enrolled\* students, not just a majority of those casting ballots.](#)
3. [School personnel have a distinct conflict of interest. “YES” votes to return the district to local control might be in the best interest of the students and community, but for some or many a shift in control over employment contracts might also put their continued school district employment at risk. People often prefer to “stay with the devil they know”.\]](#)

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## **ANALYSES OF THE EXPERIMENT CALLED “ACHIEVEMENT SCHOOL DISTRICT”**

### **HB 989 is more outline than comprehensive plan.**

HB 989 is significantly incomplete as a comprehensive plan to generate quality education. HB 989 failed to address key elements, including, but not limited to:

- Other than the single reference to transforming failing districts into quality schools, HB 989 is silent as to the vision, rationale, goals, strategies or outcomes that explain how a MASD would transform persistently failing or chronically underperforming districts into quality educational institutions.
- It is laudable that HB 989 calls for the creation of a “quality” educational opportunity, rather than a mere “adequate” one. But the bill makes no attempt to identify the standards and elements that constitute “quality” or steps necessary to achieve “quality”, nor mandates methods to evaluate their implementation.

- HB 989 provides no guidance or standards whatsoever for the rules and regulations to manage and operate the MASD that the State Board of Education and the new MASD school board would have the joint responsibility to create.
- HB 989 is silent as to whether the MASD would directly manage and operate the districts and schools absorbed by the ASD, or whether privately-owned, privately-governed, publicly-funded charter entrepreneurs would manage and operate the districts and schools.
- If charters are to be used, HB 989 is silent as to how charter operators would apply, be vetted, accepted or rejected, or whether the selection of charter operators by the MASD would have to comply with, apply through, and work under the monitoring by the MS Charter School Authorizer Board as provided by the 2013 Charter School law (37-28-1 through 63).
- HB 989 is silent as to any kind of accountability for the MASD. There are no specified outcomes and no timetable for achieving specified improvements against which to measure the success or failure of the MASD, or for any charters that operated the districts or schools.
- There is no provision for the MASD to create, enforce or terminate contracts with charter operators. If charter operators were to run the districts and schools absorbed by the ASD, HB 989 is silent as to the authority of the MASD to hold the charter operators accountable, or any standards with which to hold them accountable.
- HB 989 is silent as to any obligation on the part of the MASD to involve and engage the community in the school improvement process.
- Compare HB 989 to the detailed vision, rationale, standards, constraints, accountability and community involvement framework mandated in the current Mississippi Charter School law (37-28-1, et seq.). What a difference!

### **Two key questions about the Achievement School District experiment:**

Task Force members had the opportunity to view a video of a conference of achievement district leaders, to read authoritative studies, and to deliberate upon, these two threshold questions:

1. Whether an achievement school district has produced an effective model in any of the three cities (New Orleans, LA; Memphis, TN; and Detroit, MI) where such districts constitute a recent experiment?
2. However we answer the first question ... *whether* an achievement school district is a suitable, appropriate, manageable education model that can be adapted to a predominantly rural Mississippi framework for which no experimental model exists anywhere in the nation?

### **HB 989 appears to contain three *assumptions* that beg at least three questions:**

- a. Assumption: “student performance data” are *the* criteria that ought to determine whether a *school district* is ripe for state takeover and absorption into a yet-to-be-created new state process.  
*Question: are there additional criteria that ought to be considered to determine whether it is appropriate for the state to absorb a particular district (or school)?*
- b. Assumption: the focus for state takeover ought to be on *entire districts* rather than *individual schools*.  
*Question: what are the underlying reasons, capacity of the state to handle, and criteria for selecting, whole districts rather than individual schools?*



- c. Assumption: a new governance structure or structures ought to oversee the school districts taken over by the state.

*Question: does the research-based evidence demonstrate that new governance structures generate sustainable progress toward creating a quality educational outcome accessible to all students in the absorbed districts or schools?*

There is no dispute that:

- There are numerous districts and schools that are systemically under-performing and in dire need of immense improvement;
- A great many students, parents, educators and public officials feel a sense of desperation about how to overcome the apparent inertia of under-performance to create a quality public education accessible to all children; and
- The sense of desperation for some has led to the visceral contention, “We have to do something!”

“We had to do something!” should not become the hallmark of this major alteration of the education landscape. Given the depth and importance of these issues to the future of education for Mississippi children and families, we ought to have a standard of *research-based evidence* as the basis for experimenting with such fundamental change. For example, it would be helpful for legislators, educators and community to engage in dialogue with some of the education experts who have done significant studies on the outcomes of turnaround and achievement district experiments in order to be able to assess whether such experiments can be *adapted appropriately* to the Mississippi context.

To date there is no *rural* achievement school district model or experiment anywhere in the nation. All of the examples are distinctly urban with the schools involved being in relatively close geographic proximity. The data in Mississippi demonstrates conclusively that a “conventional” state-based achievement district governance structure would have to manage many schools from different districts widely dispersed across a far-reaching rural geography. It is by no means clear that such a process is do-able.

At the August 12, 2015 meeting of the Task Force, members raised some of the issues in our educational landscape that ought to be addressed if the MASD experiment is to reflect Mississippi values, needs and interests:

- There seemed to be a lot of agreement within the Task Force that Mississippi is different from other states and that we need to adopt strategies rooted in Mississippi culture, circumstances, needs, and values. Furthermore, there was some feeling that within Mississippi there are diverse needs and local school cultures, which might require fashioning a variety of remedies with particular districts or schools in mind, rather than attempting to create a statewide “one remedy fits all” approach.
- Early in the Task Force process, Supt. Wright provided Task Force members with written studies and a video webinar regarding three Achievement District experimental models in New Orleans, Memphis and Detroit. The author of these studies concluded that none of the models have been operative long enough to test their *sustainability*. The studies also showed

that each of the 3 models have *mixed records of success and failure*, each with strong adherents and vigorous opponents.

- From the studies we learned that there are no achievement school district models in rural areas anywhere in the nation. New Orleans, Memphis and Detroit are all large urban district areas. This means that none of the experimental elements in those 3 models have been attempted in rural, geographically widely dispersed, school district or school settings.
- There was much discussion as to whether the standard ought to be that all students are expected to achieve grade level proficiency, and whether it is insufficient for districts to show growth when students perform well below proficient. It was also discussed that such a proficiency standard would require that districts have the means to provide the leadership, teacher quality, programs and budgetary support necessary to achieve such a proficiency standard.
- There was discussion that a framework of success for students needs to address what it will take to provide effectively for student health and healthy schools.
- During the discussion, the analytical lens widened to entertain a comprehensive view of what it might take to create a transformational and sustainable model, not just a short-term lift in test scores. As a result, the discussion raised issues of district and school governance; student instruction; teacher training and development, recruitment, and retention; the role of poverty, class and race in leadership, teacher, and student performance; the role of political will and ideology in fiscal and budget policy as it affects education; and the pressure for privatization as a challenge to support for public schools. HB 989 fails to address any of these issues.

### ***We should not rush to judgment***

This Legislature should not rush to judgment before it has done all of its necessary investigation and deliberation ... simply in order to respond to the mantra, “We’ve got to do something.” If the preparation for legislation is *incomplete*, it would be wrong to pretend the preparation is *complete* to rationalize and justify premature passage.

We need to take the time to do it right. If the pathway to success were so clear, it would have been traveled a long time ago. Our systemic problems are entrenched for many reasons. If we do not effectively address the underlying causation, then the strategies to solve the problems will barely scratch the surface, most likely result in another round of disappointment, and enhance the notion that the problems are intractable.

There is intense pressure on members of the Legislature from a variety of sources to give their imprimatur of approval for a Mississippi achievement school district model. Legislators ought to engage in due diligence as the basis for approving legislative experiments with fundamental changes to the educational landscape.

## *The privatization/charter school equation*

- At the present time the MS Dept. of Education concedes that it does not have the financial resources or human capital necessary to *directly* manage and operate numerous underperforming school districts and schools spread across Mississippi's rural landscape.
- The conservator process, as it has been undertaken, does not appear to lay the foundation for long-term success in under-performing districts and, in the Task Force mission statement, was been deliberately set aside as inadequate.
- In the states of Louisiana, Tennessee and Michigan, where the three operating administrative school districts are in motion, the focus is on using a charter school model to manage and operate most of the schools taken over by the state.

*If we assume that the state does take over several systemic underperforming districts in Mississippi, and infer from past conduct that the Mississippi legislature would not provide sufficient resources to enable MDE to directly manage and operate these districts, then the policy equation that would result appears to necessitate that underperforming districts taken over by the state be privatized to become charter schools. The equation may be visualized in this way:*

*Systemic underperforming districts plus (+) state takeover of such districts minus (-) conservators process minus (-) sufficient additional MDE funding equals (=) privatization of these districts into charter schools.*

Assessing whether this policy equation would work is one of the functions of the Legislature. We ought to keep in mind:

- Chris Barbic, the former Tennessee Achievement School District superintendent, noted during a panel of turnaround district leaders that had been sponsored by the pro-charter school Fordham Institute, ["The bottom line is that there are not a lot of great charter operators to begin with, and there are even fewer who understand how to do turnaround.... If we don't solve the charter supply problem, we can have as many of these \[turnaround districts\] on the books as we want, but it's going to be very difficult for them to actually be executed and done well."](#)<sup>1</sup>
- The October 19, 2015 [Hechinger article](#) which reported on the status of the Louisiana, Tennessee and Michigan achievement school district experiments<sup>2</sup> highlighted that:
  - a. the results thus far have fallen substantially below expectations, especially at the high school level
  - b. local education leaders are skeptical about being able to replicate their few outstanding successes
  - c. it has taken much more than academic disciplines to address the complex needs of students in high poverty, low-performing schools
  - d. building achievement district experiments has proven expensive and slow-moving in terms of demonstrable gains in outcomes
  - e. achievement districts have depended heavily on the creation of charter schools to

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<sup>1</sup> Felton, Emmanuel, *Are turnaround districts the answer for America's worst schools?*, Hechinger Report, Oct. 19, 2015, online. The link is <http://hechingerreport.org/are-turnaround-districts-the-answer-for-americas-worst-schools/>

<sup>2</sup> Ibid.

operate the achievement district schools; but finding and attracting quality, first rate charter operators has been a difficult challenge with very mixed results, and f. some key local education leaders involved in these experiments are pessimistic about the prospects for success in the future for these achievement district experiments.

***If there is to be an Achievement School District (ASD) experiment, what kind of governing structure should it have?***

If the Legislature is determined to create an MASD, a single statewide governing unit is the best way to fabricate an ASD, since there are *no current rural models* from which to derive lessons?

This is why it would be helpful for legislators, as part of their investigation, to have meaningful dialogue with some of the educators who have dealt with the complexities of trying to lead and govern either turnaround or achievement district experiments.

If there is going to be an ASD of any kind, the *test* ought to be whether the ASD has the clearest vision and rationale, most meaningful goals, highest educational standards, stiffest accountability, and provides for meaningful community engagement with the process throughout.

If there is going to be an ASD law that is going to permit the utilization of charters to manage and operate the districts and schools, then the policy framework should be at least as stringent and detailed as the Charter School law to vindicate what ought to be the education vision and the rights, needs and interests of the children and families impacted.

At the same time, it is important to recognize that the record of charter schools in Achievement School Districts, and turnaround frameworks, is that they have not proven to be a panacea for systemic underperforming districts. This appears to be the case in the ASDs in Memphis, Detroit and New Orleans.

As Chris Barbic, who led the ASD process in Tennessee pointed out, it is easier to start a school from scratch, grade by grade, than to fix one that has already been in deep trouble.

Members of the Legislature need to do their homework.

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