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Chapter No. 495
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SENATE BILL NO. 2347

Originated in Senate _____ Secretary

SENATE BILL NO. 2347

AN ACT TO ESTABLISH THE "LITERACY-BASED PROMOTION ACT" TO IMPROVE KINDERGARTEN AND FIRST THROUGH THIRD GRADE PUBLIC SCHOOL STUDENTS' READING SKILLS SO THAT EVERY STUDENT COMPLETING THIRD GRADE READS AT OR ABOVE GRADE LEVEL; TO REQUIRE SCHOOL DISTRICTS TO PROVIDE INTENSIVE READING INSTRUCTION AND INTERVENTION TO STUDENTS EXHIBITING A SUBSTANTIAL DEFICIENCY IN READING IN KINDERGARTEN AND GRADES 1 THROUGH 3; TO PROHIBIT THE PROMOTION OF STUDENTS WHOSE READING DEFICIENCY IS NOT REMEDIED BEFORE THE END OF THIRD GRADE; TO REQUIRE NOTICE TO BE GIVEN TO PARENTS OF KINDERGARTEN AND FIRST THROUGH THIRD GRADE STUDENTS EXHIBITING A READING DEFICIENCY; TO REQUIRE THE STATE DEPARTMENT OF EDUCATION TO ESTABLISH THE MISSISSIPPI READING PANEL TO COLLABORATE WITH THE DEPARTMENT ON ADOPTION OF APPROPRIATE ALTERNATIVE STANDARDIZED ASSESSMENTS AND APPROPRIATE SCREENING ASSESSMENTS; TO PROHIBIT THE PROMOTION OF PUBLIC SCHOOL STUDENTS BASED SOLELY ON A STUDENT'S AGE OR OTHER SOCIAL PROMOTION FACTORS; TO ESTABLISH GOOD CAUSE EXEMPTIONS FOR PROMOTION FOR THIRD GRADE STUDENTS FAILING TO MEET ACADEMIC REQUIREMENTS FOR PROMOTION; TO SPECIFY CERTAIN ACTIONS SCHOOL DISTRICTS MUST TAKE IN IMPLEMENTING THE LITERACY-BASED PROMOTION ACT IN KINDERGARTEN AND GRADES 1 THROUGH 3; TO REQUIRE SCHOOL BOARDS TO SUBMIT ANNUAL REPORTS TO PARENTS ON THEIR RESPECTIVE STUDENT'S PROGRESS IN READING; TO REQUIRE SCHOOL BOARDS TO PUBLISH DATA REFLECTING STUDENT PROGRESSION AND PERFORMANCE IN A LOCAL NEWSPAPER; TO REQUIRE THE STATE BOARD OF EDUCATION TO ADOPT POLICIES NECESSARY FOR THE IMPLEMENTATION OF THE PROGRAM; TO AMEND SECTION 37-13-91, MISSISSIPPI CODE OF 1972, AS AMENDED BY HOUSE BILL NO. 74, 2013 REGULAR SESSION, TO PROVIDE THAT CHILDREN AGE 5 ON OR BEFORE SEPTEMBER 1 OF THE CALENDAR YEAR WHO HAVE ENROLLED IN PUBLIC KINDERGARTEN ARE SUBJECT TO THE PROVISIONS OF

THE MISSISSIPPI COMPULSORY SCHOOL ATTENDANCE LAW; AND FOR RELATED PURPOSES.

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

SECTION 1. (1) There is established an act prohibiting social promotion to be known as the "Literacy-Based Promotion Act," the purpose of which is to improve the reading skills of Kindergarten and First through Third Grade students enrolled in the public schools so that every student completing the Third Grade is able to read at or above grade level. It is the intent of the Legislature, in establishing this act, to ensure that: each Kindergarten and First through Third Grade student's progression is determined, in part, upon the student's proficiency in reading; the policies of local school boards facilitate this proficiency; and each student and the student's parent or legal guardian is informed of the student's academic progress.

(2) Each public school student who exhibits a substantial deficiency in reading at any time, as demonstrated through performance on a reading screener approved or developed by the State Department of Education or through locally determined assessments and teacher observations conducted in Kindergarten and Grades 1 through 3 or through statewide end-of-year assessments or approved alternate yearly assessments in Grade 3, must be given intensive reading instruction and intervention immediately following the identification of the reading deficiency.

(3) The universal reading screener or locally determined reading assessment may be given in the first thirty (30) days of

the school year and repeated if indicated at midyear and at the end of the school year to determine student progression in reading in Kindergarten through Third Grade. If it is determined that the student continues to have a reading deficiency, the student must be provided with continued intensive reading instruction and intervention by the school district until the reading deficiency is remedied. A student exhibiting continued reading deficiency with continued intensive interventions should be considered for exceptional criteria evaluation.

(4) A Kindergarten or First, Second or Third Grade student identified with a deficiency in reading must be provided intensive interventions in reading to ameliorate the student's specific reading deficiency, as identified by a valid and reliable diagnostic assessment. The intensive intervention must include effective instructional strategies, and appropriate teaching methodologies necessary to assist the student in becoming a successful reader, able to read at or above grade level, and ready for promotion to the next grade. A Kindergarten, First, Second or Third Grade student identified with a reading deficiency or not promoted may be placed in a transition class.

SECTION 2. Immediately upon the determination of a reading deficiency, and subsequently with each quarterly progress report until the deficiency is remediated, the parent or legal guardian of a Kindergarten or First, Second or Third Grade student who

exhibits a substantial deficiency in reading must be notified in writing by the student's teacher of the following:

(a) That the student has been identified as having a substantial deficiency in reading;

(b) A description of the services that the school district currently is providing to the student;

(c) A description of the proposed supplemental instructional services and supports that are designed to remediate the identified area of reading deficiency which the school district plans to provide the student;

(d) That if the student's reading deficiency is not remediated before the end of the student's Third Grade year, the student will not be promoted to Fourth Grade unless a good cause exemption specified under Section 6 of this act is met;

(e) Strategies for parents and guardians to use in helping the student to succeed in reading proficiency; and

(f) That while the state annual accountability assessment for reading in Third Grade is the initial determinant, it is not the sole determiner of promotion and that approved alternative standardized assessments are available to assist the school district in knowing when a child is reading at or above grade level and ready for promotion to the next grade.

SECTION 3. The State Department of Education shall establish a Mississippi Reading Panel to collaborate with the State Department of Education in recommending appropriate equitable

alternative standardized assessments and cut scores to be used to determine promotion to the Fourth Grade of those Third Grade students who scored at the lowest achievement level on the state annual accountability assessment or who, for unforeseen circumstances, were unable to take the assessment. The panel should have knowledge and input in the adoption or development of a universal screener for required use only in select schools most in need for the leading intervention program to identify reading deficiencies and determine progress. A suggestive list of no less than four (4) screening assessments should be available to schools not selected for the critical leading intervention program taking into consideration those screening assessments already being used satisfactorily in Mississippi elementary schools. An approved alternative standardized reading assessment may be used in 2014-2015 in the transition to common core standardization of testing. The panel shall consist of six (6) members as follows: the State Superintendent of Education, or his/her designee, who will chair the committee; the Chair of the House Education Committee, or his designee; the Chairman of the Senate Education Committee, or his designee; one (1) member appointed by the Governor; and two (2) additional members appointed by the State Superintendent of Education.

SECTION 4. The State Department of Education shall:

(a) Select schools most in need for the leading intervention program and create criteria for selection for

participation based on number and percentages of students scoring in the lowest two (2) achievement levels on state-adopted yearly reading assessments, screening results, and other relevant data; and

(b) Assign a supervisory position within each school to be responsible for the faithful implementation of the Reading Intervention Program.

SECTION 5. A public school student may not be assigned a grade level based solely on the student's age or any other factors that constitute social promotion.

Beginning in the 2014-2015 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 achievement level 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.

SECTION 6. (1) A Third Grade student who does not meet the academic requirements for promotion to the Fourth Grade may be promoted by the school district only for good cause. Good cause exemptions for promotion are limited to the following students:

(a) Limited English proficient students who have had less than two (2) years of instruction in an English Language Learner program;

(b) Students with disabilities whose individual education plan (IEP) indicates that participation in the statewide accountability assessment program is not appropriate, as authorized under state law;

(c) Students with a disability who participate in the state annual accountability assessment and who have an IEP or a Section 504 plan that reflects that the individual student has received intensive remediation in reading for more than two (2) years but still demonstrates a deficiency in reading and previously was retained in Kindergarten or First, Second or Third Grade;

(d) Students who demonstrate an acceptable level of reading proficiency on an alternative standardized assessment approved by the State Board of Education; and

(e) Students who have received intensive intervention in reading for two (2) or more years but still demonstrate a deficiency in reading and who previously were retained in Kindergarten or First, Second or Third Grade for a total of two (2) years and have not met exceptional education criteria. A student who is promoted to Fourth Grade with a good cause exemption shall be provided intensive reading instruction and intervention informed by specialized diagnostic information and delivered through specific reading strategies to meet the needs of each student so promoted. The school district shall assist schools and teachers in implementing reading strategies that

research has shown to be successful in improving reading among students with persistent reading difficulties.

(2) A request for good cause exemptions for a Third Grade student from the academic requirements established for promotion to Fourth Grade must be made consistent with the following:

(a) Documentation must be submitted from the student's teacher to the school principal which indicates that the promotion of the student is appropriate and is based upon the student's record. The documentation must consist of the good cause exemption being requested and must clearly prove that the student is covered by one (1) of the good cause exemptions listed in Section 6(a) through (e) of this act.

(b) The principal shall review and discuss the recommendations with the teacher and parents and make a determination as to whether or not the student should be promoted based on requirements set forth in this act. If the principal determines that the student should be promoted, based on the documentation provided, the principal must make the recommendation in writing to the school district superintendent, who, in writing, may accept or reject the principal's recommendation. The parents of any student promoted may choose that the student be retained for one (1) year, even if the principal and district superintendent determines otherwise.

SECTION 7. Beginning in the 2014-2015 school year, each school district shall take the following actions for retained Third Grade students:

(a) Provide Third Grade students who are not promoted with intensive instructional services, progress monitoring measures, and supports to remediate the identified areas of reading deficiency, including a minimum of ninety (90) minutes during regular school hours of daily, scientifically research-based reading instruction that includes phonemic awareness, phonics, fluency, vocabulary and comprehension, and other strategies prescribed by the school district, which may include, but are not limited to:

(i) Small group instruction;

(ii) Reduced teacher - student ratios;

(iii) Tutoring in scientifically reasearch-based reading services in addition to the regular school day;

(iv) The option of transition classes;

(v) Extended school day, week or year; and

(vi) Summer reading camps.

(b) Provide written notification to the parent or legal guardian of any Third Grade student who is retained that the student has not met the proficiency level required for promotion and the reasons the student is not eligible for a good cause exemption. The notification must include a description of proposed interventions and supports that will be provided to the

child to remediate the identified areas of reading deficiency. This notification must be provided to the parent or legal guardian in writing, in a format adopted by the State Board of Education in addition to report cards given by the teacher.

(c) Provide Third Grade students who are retained with a high-performing teacher, as determined by student performance data, particularly related to student growth in reading, above-satisfactory performance appraisals, and/or specific training relevant to implementation of this act.

(d) Provide parents and legal guardians of Third Grade students with a "Read at Home" plan outlined in a parental contract, including participation in regular parent-guided home reading.

SECTION 8. Each district may provide, where applicable, an intensive acceleration class for any student retained in Grade 3 who was previously retained in Kindergarten or Grades 1 through 3. The focus of the intensive acceleration class should be to increase a student's reading level at least two (2) grade levels in one (1) school year. The intensive acceleration class should provide reading instruction and intervention for the majority of student contact each day and incorporate opportunities to master the Grade 4 state standards in other core academic areas.

SECTION 9. (1) Within thirty (30) days of final State Board of Education approval of state accountability results, the school board of each school district must publish, in a newspaper having

a general circulation within the school district, and report to the State Board of Education and the Mississippi Reading Panel the following information relating to the preceding school year:

(a) The provisions of this act relating to public school student progression and the school district's policies and procedures on student retention and promotion;

(b) By grade, the number and percentage of all students performing at each level of competency on the reading and math portion of the annual state accountability system and the number and percentage of students given an approved alternative standardized reading assessment and the percentage of these students performing at each competency level on said alternative standardized assessment;

(c) By grade, the number and percentage of all students retained in Kindergarten through Grade 8;

(d) Information on the total number and percentage of students who were promoted for good cause, by each category of good cause described in Section 6 of this act; and

(e) Any revisions to the school board's policy on student retention and promotion from the prior school year.

(2) The State Department of Education shall establish a uniform format for school districts to report the information required in subsection (1) of this section. The format must be developed with input from school boards and must be provided no later than ninety (90) days before the annual due date of the

information. The department shall compile annually the required district information, along with state-level summary information, and report the information to the Governor, Senate, House of Representatives and general public.

SECTION 10. (1) The State Board of Education shall adopt such policies, rules and regulations as may be necessary for the implementation of this act.

(2) The State Department of Education shall provide such technical assistance and training of teachers/administrators as may be needed to aid local school districts in administering the provisions of this act.

(3) Each local school district must include provisions required by this act as an addition to the district's published handbook of policy for employees and students beginning in school year 2013-2014.

SECTION 11. The provisions of Sections 1 through 10 of this act which include components necessary to provide for teacher training, instructional materials, remedial education training and administration of an intensive literacy curriculum shall be subject to legislative appropriation.

SECTION 12. Section 37-13-91, Mississippi Code of 1972, as amended by House Bill No. 74, 2013 Regular Session, is amended as follows:

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

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

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

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

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

(d) "School day" means not less than five (5) and not more than eight (8) hours of actual teaching in which both teachers and pupils are in regular attendance for scheduled schoolwork.

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

(f) "Compulsory-school-age child" means a child who has attained or will attain the age of six (6) years on or before September 1 of the calendar year and who has not attained the age of seventeen (17) years on or before September 1 of the calendar year; and shall include any child who has attained or will attain

the age of five (5) years on or before September 1 and has enrolled in a full-day public school kindergarten program. * * *

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

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

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

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

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

(b) When a compulsory-school-age child is enrolled in and pursuing a course of special education, remedial education or

education for handicapped or physically or mentally disadvantaged children.

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

The parent, guardian or custodian of a compulsory-school-age child described in this subsection, or the parent, guardian or custodian of a compulsory-school-age child attending any nonpublic school, or the appropriate school official for any or all children attending a nonpublic school shall complete a "certificate of enrollment" in order to facilitate the administration of this section.

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

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

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

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

(iv) The signature of the parent, guardian or custodian of the compulsory-school-age child or, for any or all

compulsory-school-age child or children attending a nonpublic school, the signature of the appropriate school official and the date signed.

The certificate of enrollment shall be returned to the school attendance officer where the child resides on or before September 15 of each year. Any parent, guardian or custodian found by the school attendance officer to be in noncompliance with this section shall comply, after written notice of the noncompliance by the school attendance officer, with this subsection within ten (10) days after the notice or be in violation of this section. However, in the event the child has been enrolled in a public school within fifteen (15) calendar days after the first day of the school year as required in subsection (6), the parent or custodian may, at a later date, enroll the child in a legitimate nonpublic school or legitimate home instruction program and send the certificate of enrollment to the school attendance officer and be in compliance with this subsection.

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

(4) An "unlawful absence" is an absence during a school day by a compulsory-school-age child, which absence is not due to a valid excuse for temporary nonattendance. Days missed from school due to disciplinary suspension shall not be considered an

"excused" absence under this section. This subsection shall not apply to children enrolled in a nonpublic school.

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

(a) An absence is excused when the absence results from the compulsory-school-age child's attendance at an authorized school activity with the prior approval of the superintendent of the school district, or his designee. These activities may include field trips, athletic contests, student conventions, musical festivals and any similar activity.

(b) An absence is excused when the absence results from illness or injury which prevents the compulsory-school-age child from being physically able to attend school.

(c) An absence is excused when isolation of a compulsory-school-age child is ordered by the county health officer, by the State Board of Health or appropriate school official.

(d) An absence is excused when it results from the death or serious illness of a member of the immediate family of a compulsory-school-age child. The immediate family members of a compulsory-school-age child shall include children, spouse,

grandparents, parents, brothers and sisters, including stepbrothers and stepsisters.

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

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

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

(h) An absence may be excused when it is demonstrated to the satisfaction of the superintendent of the school district, or his designee, that the purpose of the absence is to take advantage of a valid educational opportunity such as travel, including vacations or other family travel. Approval of the absence must be gained from the superintendent of the school district, or his designee, before the absence, but the approval shall not be unreasonably withheld.

(i) An absence may be excused when it is demonstrated to the satisfaction of the superintendent of the school district,

or his designee, that conditions are sufficient to warrant the compulsory-school-age child's nonattendance. However, no absences shall be excused by the school district superintendent, or his designee, when any student suspensions or expulsions circumvent the intent and spirit of the compulsory attendance law.

(j) An absence is excused when it results from the attendance of a compulsory-school-age child participating in official organized events sponsored by the 4-H or Future Farmers of America (FFA). The excuse for the 4-H or FFA event must be provided in writing to the appropriate school superintendent by the Extension Agent or High School Agricultural Instructor/FFA Advisor.

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

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

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

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

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

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

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

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

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

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

SECTION 13. This act shall take effect and be in force from and after its passage.

PASSED BY THE SENATE
February 7, 2013

Tate Reeves

PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES
March 7, 2013

Philip Gunn

SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR

Phil Bryant

GOVERNOR

4/17/13
7:45 pm