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Education Law

by Jerry A. Lumley

Primarily because of Governor Barnes' “A Plus Education Reform Act of 2000” (“the Reform Act”), Georgia experienced sweeping changes in the area of education law during the past year. This Article discusses the Reform Act, other education legislation, and decisions of Georgia appellate courts in the area of education during the past year.

I. “A PLUS EDUCATION REFORM ACT OF 2000”

The Reform Act is intended to provide for comprehensive reform of the delivery of education services in Georgia. Specifically, the legislation is designed to increase student academic performance and to hold local schools accountable for student progress. The following is a review of some of the significant provisions of the legislation.

A. Governance

The Reform Act brought about significant changes in the governance of education systems at the state, regional, and local levels. At the state level, the Education Coordinating Council, which is to be chaired by the Governor, and the Office of Education Accountability, whose director is to be appointed by the Governor, were created. Additionally, the chairman of the State Board of Education was given authority to require employees of the State Department of Education to perform functions for the State Board. At the regional level, regional education service agencies are required to provide additional services to their member

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2. Id. § 20-14-3(b) (Supp. 2000).
3. Id. § 20-14-25(b).
4. Id. § 20-2-5.1.
school systems and, upon the request of a member system, are to provide instructional care teams to schools that are educationally deficient. Locally, advisory school councils are required to be established at each school in the state. Each of these changes is discussed in more detail below.

1. The Education Coordinating Council

The Reform Act created the Education Coordinating Council to aid in interagency communication about educational policy and programs; to help create effective and efficient coordination of public education programs within the education system; to prevent duplicate services within the education system; and to supervise all education accountability programs from prekindergarten through postsecondary education.

Members of the Education Coordinating Council consist of the Governor, the State School Superintendent, the chairperson of the State Board of Education, the chancellor of the University System of Georgia, the chairperson of the Board of Regents of the University System of Georgia, the commissioner of the Department of Technical and Adult Education, the chairperson of the State Board of Technical and Adult Education, the executive secretary of the Professional Standards Commission, the chairperson of the Professional Standards Commission, and the director of the Office of School Readiness. The Governor will be the chairperson of the Education Coordinating Council. The Education Coordinating Council is given considerable powers and duties. Specifically, it has the power and duty:

1. to encourage coordination and cooperation between the chief officers of the departments, boards, and offices on the council;
2. to establish a more integrated public education system;
3. to ensure that expenditures for and utilization of facilities, personnel, and other resources is done efficiently;
4. to coordinate the curriculum among the departments, boards, and offices represented on the council;
5. to ensure that transition for students among the educational institutions represented on the council is done with reasonable ease;

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5. Id. § 20-2-270.1.
6. Id. § 20-2-271(c).
7. Id. § 20-2-85.
8. Id. § 20-14-2.
9. Id. § 20-14-1.
10. Id. § 20-14-3(a).
11. Id. § 20-14-3(b).
(6) to mandate high and necessary levels of student achievement at all levels of education;

(7) to supervise accountability systems within or among the departments, boards, and offices on the council and create overlay accountability systems through Office of Education Accountability;

(8) to supervise the Office of Education Accountability;

(9) to coordinate the activities among state, regional, and local cooperative public education agencies, offices, or councils;

(10) to provide for a more qualified work force through training, professional development, and nontraditional routes to employment;

(11) to supervise the creation and implementation of a comprehensive system-wide education student information system that will aid in creating an education accountability system and make the operation of public education more seamless;

(12) to make rules and regulations for all departments, boards, and offices represented on the council simpler;

(13) to create a state-wide mentoring program that will enhance the achievement of students at all levels of public education;

(14) to establish and coordinate a school safety collaborative with the help of agencies and organizations designated by the council to improve the climate and safety of the school; and

(15) to mediate disputes between the Department of Education, the University System of Georgia, the Department of Technical and Adult Education, the Professional Standards Commission, the Office of School Readiness, and the Office of Education Accountability regarding accountability or education system seamlessness matters.\textsuperscript{12}

The Education Coordinating Council may exercise its powers and duties directly or through the Office of Education Accountability.\textsuperscript{13} The council also directs and supervises the Office of Education Accountability with respect to the exercise of these powers and duties.\textsuperscript{14} The Reform Act gives the Education Coordinating Council power by requiring those entities represented on the council to take action on the council's decisions.\textsuperscript{15} Any decision or action by the council requiring action by any department, board, or office represented on the council must be placed on the agenda of the next regularly scheduled meeting of the affected department, board, or office's governing body for immediate

\textsuperscript{12} Id. \textsection 20-14-8.

\textsuperscript{13} Id.

\textsuperscript{14} Id.

\textsuperscript{15} Id. \textsection 20-14-10.
The action taken must be reported to the council at the council's next regularly scheduled meeting.\textsuperscript{17}

\section*{2. The Office of Education Accountability}

The Reform Act also created the Office of Education Accountability.\textsuperscript{18} The director is the chief administrative and executive officer of the office.\textsuperscript{19} The director is appointed by the Governor with the advice and consent of the Senate. The director's salary will be determined by the Governor.\textsuperscript{20} The Office of Education Accountability is also given significant powers and duties. As its name suggests, its primary duty is to develop accountability systems.\textsuperscript{21} The components of this system must include expectations of student achievement, measurement of student achievement, databases of the measurements, analysis of such data indicating trends in student achievement, interventions, awards, the appropriate spending of allotted education funds, and public awareness of all of these components.\textsuperscript{22} The Office of Education Accountability also has the power and duty:

\begin{enumerate}
\item to establish and recommend to the departments, boards, and offices represented council modifications to improve accountability systems presently existing or that may be created within or among the departments, boards, and offices represented on the council;
\item to audit and inspect for purposes of verification, research, analysis, reporting, or for other purposes regarding performance of its powers and duties and for purposes of auditing pre-kindergarten through postsecondary education, and education work force programs and schools, local school systems, institutes, colleges, universities, regional education service agencies, and other public education programs and entities as defined by the council;
\item to assist the council in establishing a state-wide education student information system;
\item to serve as a staff for the council; and
\item to exercise the powers and discharge duties of the council under its supervision and oversight.\textsuperscript{23}
\end{enumerate}

\textsuperscript{16} Id.
\textsuperscript{17} Id.
\textsuperscript{18} Id. § 20-14-25(a).
\textsuperscript{19} Id. § 20-14-25(b).
\textsuperscript{20} Id.
\textsuperscript{21} Id. § 20-14-26(a)(1).
\textsuperscript{22} Id.
\textsuperscript{23} Id. § 20-14-26(a).
The Reform Act requires all member agencies of the Education Coordinating Council and other departments, boards, and offices of the state to cooperate with the Office of Education Accountability. The agencies must also provide the Office of Education Accountability with all information that the council deems necessary for the office to discharge its duties regarding the education programs and units governed by the agencies or other departments, boards, or offices.

### 3. Chair of the State Board of Education

The Reform Act provides that the chairperson of the State Board of Education is to be elected by the state board, and his term is to be fixed by the state board. Additionally, the Reform Act significantly enhances the authority of the chairperson. After a reasonable attempt to consult with the State School Superintendent, the chairperson may require any employee of the Georgia Department of Education to give information to or to perform functions for the state board.

### 4. Regional Education Service Agencies

The Quality Basic Education Act ("QBE") required the State Board of Education to create a statewide network of regional education service agencies in order to provide shared services to improve the effectiveness of educational programs and services to local school systems and to provide instructional programs directly to a select group of public school students throughout the state. These agencies are commonly referred to as RESAs.

Under the Reform Act, the State Board of Education is required to establish and define geographically the service area of each RESA. All local school systems, Department of Technical and Adult Education facilities and institutions, and University System of Georgia facilities and institutions within a service area must be members of that RESA. The Reform Act requires each RESA to provide the following shared services to member local school systems:

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24. Id. § 20-14-26(b).
25. Id.
26. Id. § 20-2-5.2
27. Id.
28. Id. § 20-2-270(a).
29. Id. § 20-2-270(b).
30. Id.
(1) [i]dentifying or conducting research related to educational improvements and in planning for the implementation of such improvements;
(2) [d]eveloping and implementing staff development programs with an emphasis on improving student achievement and school accountability;
(3) [d]eveloping and implementing curricula and instruction of the highest quality possible, including implementing the uniformly sequenced core curriculum adopted by the state board;
(4) [d]eveloping and implementing academic assessment and evaluation programs;
(5) [i]dentifying and utilizing electronic technology, including computers, in an effort to improve the quality of classroom instruction as well as classroom, school, and school system management;
(6) [d]eveloping programs, resource materials, and staff development services relating to instruction on alcohol and drug abuse; and
(7) [a]ssistance in the development and implementation of a statewide mentoring program.  

Each RESA is also required to annually develop a regional plan for improving educational efficiency and cost effectiveness of its member institutions and submit it to the Department of Education for approval, with an additional copy to the Education Coordinating Council. Each of these plans must include the purposes and description of the services the RESA will provide to schools identified as low performing and to other schools.

By July 1, 2002, each RESA is required to introduce and provide core services for member and nonmember local school systems. These core services must include:

(1) [t]raining and assistance in teaching each subject area assessed . . . ;
(2) [a]ssistance specifically designed for any school that is rated academically failing . . . ;
(3) [t]raining and assistance to teachers, administrators, members of local boards of education, and members of local school councils on school-based decision making and control; and
(4) [a]ssistance in complying with applicable state laws and rules of the State Board of Education and the Educational Coordinating Council.

31. Id. § 20-2-270.1.
32. Id. § 20-2-271(a).
33. Id.
34. Id. § 20-2-271(b).
As part of the assistance provided by RESAs, each RESA must provide for the establishment of instructional care teams. When it is determined that a school under RESA's management and control is underperforming or is otherwise educationally deficient on a consistent basis, a local board of education may request the appointment of an instructional care team for that school by a RESA. The instructional care team will consist of experienced principals, teachers, or other education personnel in order to best address the needs of the school. The functions of the instructional care team are to conduct an investigation into such aspects of instruction at the school that the local school board requests, prepare a written evaluation, and render nonbinding recommendations to the local board regarding improvements at the school. These investigations, evaluations, and recommendations must focus on such areas of instruction as mathematics, science, reading and other English courses, and social studies. Teams may also provide long-term and short-term follow-up assistance. For example, teams may provide assistance with instruction and professional and staff development. Each RESA is required to create a listing of potential members of the instructional care teams that may be available to member or nonmember local school systems.

5. School Councils

One of the primary goals of the Reform Act was communication and participation of parents and the community in the management and operation of local schools. In order to achieve this goal, the Reform Act established school councils. In doing so it was the intent of the General Assembly “to help local boards of education develop and nurture participation, bring parents and the community together with teachers and school administrators to create a better understanding of and mutual respect for each other’s concerns, and share ideas for school improvement.” Local school boards continue to be responsible for management and control of public schools, and the principal remains the leader of the school. School councils are established only to provide “advice, recommendations, and assistance and [to] represent the community of parents and businesses.”

35. Id. § 20-2-271(c).
36. Id.
37. Id. § 20-2-85(a).
38. Id.
39. Id. § 20-2-85(b).
40. Id.
The Reform Act requires that, by October 1, 2001, local boards of education are required to establish a school council at a minimum of one high school, one middle school, and one elementary school. If a school system does not have its schools organized in this manner, the system may otherwise designate schools for a school council so long as it closely resembles the required organizational structure.\(^{41}\) By October 1, 2002, local boards of education must have a school council operational in at least fifty percent of the schools within its jurisdiction.\(^{42}\) By October 1, 2003, local boards of education must have a school council in operation at every school within its jurisdiction.\(^{43}\) Teachers, parents, and business representatives selected from all businesses that are designated as school business partners can be members of a school council.\(^{44}\) Members of the school council must include the school principal, who serves as chairperson,\(^ {45}\) and the following:

1. \(n\)two parents or guardians of students enrolled in the school, excluding employees who are parents or guardians of such students;
2. \(n\)two businesspersons, one of whom shall be selected by the local board of education and one of whom shall be selected by the other five nonbusiness members of the school council from the business partners of the school or, if there are no business partners, from the local business community;
3. \(n\)two certificated teachers, excluding any personnel employed in administrative positions, who are employed in at least four of the six school segments at the school; and
4. \(n\)he school principal.\(^ {46} \)

The school council will hold meetings at the school site and all meetings will be subject to the open meetings laws.\(^ {47}\) Members of the council will not receive remuneration for their service on the council or its committees.\(^ {48}\) The school council will have the same benefits of immunity as the local board of education in all matters directly related to council functions.\(^ {49}\) The members of the council are accountable to their constituents. They are required to: "(1) maintain a school-wide perspective on issues; (2) regularly participate in council meetings; (3)"

\(^{41}\) Id. § 20-2-86(a).
\(^{42}\) Id.
\(^{43}\) Id.
\(^{44}\) Id. § 20-2-86(c).
\(^{45}\) Id. § 20-2-86(c)(2).
\(^{46}\) Id. § 20-2-86(d).
\(^{47}\) Id. § 20-2-86(f).
\(^{48}\) Id.
\(^{49}\) Id. § 20-2-86(i).
[a]cticipate in information and training programs; (4) [a]ct as a link between the school council and the community; (5) [e]ncourage the participation of parents and others within the school community; and (6) [w]ork to improve student achievement and performance.\(^n60\)

The local board of education is required to provide all information, including budget information, that is not considered confidential by law to school councils upon request.\(^n51\) The local board must also designate a school system employee to attend school council meetings upon request by a school council in order to respond to questions the council may have with regard to information provided to it by the local board or actions taken by the local board.\(^n52\)

All recommendations and the annual report of the school council shall be received by the local board of education.\(^n53\) The local board of education also has the authority to overturn any decision of the school council under the following procedures:

1. Public notice shall be given to the community of the local board's intent to consider school council reports, recommendations, appointments, or any other decision of a school council;
2. Written notice shall be given to the members of the school council at least seven days prior to such local board meeting, along with a notice of intent to consider a council report, recommendation, appointment, or any other decision of the council;
3. The members of the school council shall be afforded an opportunity to present information in support of the school council's action; and
4. A majority of the board members present, representing a quorum, vote to overturn the council decision.\(^n54\)

The Reform Act requires local boards of education to submit a response to each recommendation of a school council within sixty days after being notified of the recommendation in writing.\(^n55\) The school councils, acting only as advisory bodies, are to give school principals and, when appropriate, the local boards of education advice and recommendations on any matter, including but not limited to, the following:

1. School calendar;
2. School codes for conduct and dress;
3. Curriculum, program goals, and priorities;

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\(^{50}\) Id. \(\S\) 20-2-86(k).
\(^{51}\) Id. \(\S\) 20-2-86(p).
\(^{52}\) Id.
\(^{53}\) Id. \(\S\) 20-2-86(q).
\(^{54}\) Id.
\(^{55}\) Id.
(4) [t]he responses of the school to audits of the school as conducted by the Office of Education Accountability;

(5) [p]reparation and distribution to the community of a school profile which contains data identified by the council to describe the academic performance, academic progress, services, awards, interventions, environment, and other such data as the council deems appropriate;

(6) [i]n the case of a vacancy in the position of school principal, the recommendation of a school principal from a list of qualified applicants submitted by the local board of education and local school superintendent to the council;

(7) [s]chool budget priorities, including school capital improvement plans;

(8) [s]chool-community communication strategies;

(9) [m]ethods of reporting to parents and communities other than through the school profile;

(10) [e]xtracurricular activities in the school;

(11) [s]chool-based and community services;

(12) [c]ommunity use of school facilities;

(13) [r]ecommendations concerning school board policies;

(14) [r]eceiving and reviewing reports from the school principal regarding progress toward the school's student achievement goals, including progress within specific grade levels and subject areas and by school personnel; and

(15) [t]he method and specifications for the delivery of early intervention services.56

B. Education Programs

With respect to education programs, the Reform Act, among other things, identifies additional needs and goals of education in Georgia. Early intervention and alternative education programs are also established for the delivery of educational services,57 and provisions are made for maximum class sizes.58

1. Needs and Goals of Education in Georgia

Several needs and goals of public education in Georgia were identified in the Quality Basic Education Act ("QBE").59 Consistent with its goals of increasing student academic progress and making schools accountable for student progress, the Reform Act identified additional needs and goals. The needs identified by the Reform Act are:

56. Id. § 20-2-86(s).
57. Id. § 20-2-131.
58. Id. § 20-2-161(b).
[1] Providing an accountability system to ensure that all students are receiving a quality instructional program so that all students can achieve at their highest level;

[2] Providing a seamless education system to allow for the delivery of educational programs at all levels and the movement of students between programs and education agencies as efficiently and effectively as possible and to provide for coordination on a continuing basis between agencies responsible for education services;

[3] Providing a safe school environment so that students can learn and mature without fear of violence or intimidation;

[4] Providing access to nursing services so that teachers can deliver instructional services without the added responsibility of addressing students’ nursing needs and so that students can receive nursing services while at school;

[5] Providing academic intervention programs designed to assist students who are performing below grade level in order to increase their mastery of critical academic knowledge and skills;

[6] Providing an alternative educational environment for those students who need a different educational structure in order to properly master critical academic knowledge and skills and to provide an environment where they can stay in school and acquire the knowledge and skills necessary for a productive life;

[7] Providing students with advice and assistance in planning and achieving their academic and career goals;

[8] Providing an evaluation process for all school system personnel to assure the public that personnel are performing at acceptable levels and providing quality educational services to all students;

[9] Providing an environment where parents and the community can participate in school activities and support school personnel as they work with students and address their academic needs; and

[10] Providing for parent and community participation in the establishment of school programs, policies, and management so that the school and community are connected in meaningful and productive ways and providing support for teachers and school leaders in addressing the school’s needs.\textsuperscript{60}

Additional goals identified by the Reform Act include the following: (1) an accountability system to track efficiency and effectiveness of educational programs, thereby ensuring they improve all students’ achievement scores; (2) a financial program and information system for evaluating program effectiveness; (3) an education system providing the most effective and efficient service possible to students; (4) a school environment free from violence; (5) a reduction in the amount of

\textsuperscript{60} Id. § 20-2-131.
students performing below their grade level; (6) greater involvement in schools by parents and the community; (7) improved coordination among agencies and organizations that provide educational services; (8) increased competence within the school work force via evaluation, training, and promotion of best practices; and (9) flexibility to adapt to student needs in schools with high performance.  

2. Instructional Programs and Class Sizes

The Reform Act accepts the existing Quality Core Curriculum as the standards for kindergarten through grade twelve. 

Curriculum content is to be delivered through eighteen QBE programs, including a newly established kindergarten early intervention program, a primary grades early intervention program, a middle school program, an alternative education program, and an English for speakers of other languages program. Additionally, teacher-student ratios are established for each program for funding purposes. The eighteen QBE programs and their corresponding teacher-student ratios are as follows:

<table>
<thead>
<tr>
<th>Program</th>
<th>Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Kindergarten program</td>
<td>1 to 15</td>
</tr>
<tr>
<td>(2) Kindergarten early intervention program</td>
<td>1 to 11</td>
</tr>
<tr>
<td>(3) Primary grades program (1-3)</td>
<td>1 to 17</td>
</tr>
<tr>
<td>(4) Primary grades early intervention program (1-3)</td>
<td>1 to 11</td>
</tr>
<tr>
<td>(5) Upper elementary grades program (4-5)</td>
<td>1 to 23</td>
</tr>
<tr>
<td>(6) Middle grades program (6-8)</td>
<td>1 to 23</td>
</tr>
<tr>
<td>(7) Middle school program (6-8)</td>
<td>1 to 20</td>
</tr>
<tr>
<td>(8) High school general education program (9-12)</td>
<td>1 to 23</td>
</tr>
<tr>
<td>(9) Vocational laboratory program (9-12)</td>
<td>1 to 20</td>
</tr>
<tr>
<td>(10) Program for persons with disabilities: Category I</td>
<td>1 to 8</td>
</tr>
<tr>
<td>(11) Program for persons with disabilities: Category II</td>
<td>1 to 6.5</td>
</tr>
<tr>
<td>(12) Program for persons with disabilities: Category III</td>
<td>1 to 5</td>
</tr>
<tr>
<td>(13) Program for persons with disabilities: Category IV</td>
<td>1 to 3</td>
</tr>
<tr>
<td>(14) Program for persons with disabilities: Category V</td>
<td>1 to 8</td>
</tr>
<tr>
<td>(15) Program for intellectually gifted students: Category VI</td>
<td>1 to 12</td>
</tr>
<tr>
<td>(16) Remedial education program</td>
<td>1 to 15</td>
</tr>
<tr>
<td>(17) Alternative education program</td>
<td>1 to 15</td>
</tr>
<tr>
<td>(18) English for speakers of other languages (ESOL) program</td>
<td>1 to 7</td>
</tr>
</tbody>
</table>

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61. Id. § 20-2-132(7)-(15).
62. Id. § 20-2-281.
63. Id. § 20-2-161.
64. Id.
The Reform Act requires the State Board of Education to establish the maximum number of students per teacher in every instructional program in a given instructional period. The maximum class sizes may be equal to or greater than the teacher-student ratios set forth above but shall not exceed these ratios by more than twenty percent unless specifically authorized by the State Board of Education. However, the twenty percent maximum may not in any case be exceeded for mathematics, science, social studies, or English classes. Further, the maximum class size for the first through third grades may not exceed twenty percent over these ratios except for art, music, or physical education classes. The Reform Act also requires the State Board of Education to set the maximum class size for special education, gifted, and English as a second language classes. 

Local school systems may exceed the maximum class sizes set forth above for a period of four years, beginning with the 2000-2001 school year. The Reform Act also requires the State Board of Education to lower its current maximum class sizes that were in effect for the 1999-2000 school year, beginning with the 2000-2001 school year, proportionally for each school year so that its rules are in compliance with the above standards by the 2003-2004 school year. The maximum class size in kindergarten may be raised from eighteen to twenty by using an aide. An aide may also be used in all other programs to increase class size as allowed by State Board of Education rules. However, an aide may not be used to increase the maximum class size in the first through third grades.

3. Early Intervention Program

The Reform Act requires the State Board of Education to create an early intervention program to assist those students who have developmental deficiencies that may prevent them from maintaining adequate levels of performance consistent with what is expected from children in

65. Id.
66. Id.
67. Id.
68. Id.
69. Id. § 20-2-182(i).
70. Id.
71. Id.
72. Id.
73. Id.
74. Id.
their age groups. The Reform Act creates two early intervention programs. The kindergarten early intervention program is to serve students enrolled in kindergarten. The primary grades early intervention program is to serve students enrolled in the first through third grades. Only students with documented developmental levels below expectations for their respective ages are eligible for the early intervention programs.

The purpose of the early intervention program is to provide additional instructional resources to help students who are performing below grade level obtain the necessary academic skills to reach grade level performance in the shortest possible time. The definition of "below grade level" is to be made by the Office of Education Accountability and adopted by the Education Coordinating Council and State Board of Education. In developing accountability standards for schools, the Office of Education Accountability is to consider the length of time that students spend in the early intervention program as one of the determinants of performing and nonperforming schools. Students are not to be assigned to this program on a continuing or permanent basis.

4. Alternative Education Program

The Reform Act significantly changes alternative education programs in Georgia. Under the Reform Act, a school system's alternative education program is to provide a learning environment that includes the objectives of the quality core curriculum. The instruction in an alternative education program must enable students to return to a general or career education program as quickly as possible. A student in an alternative education program must be able to earn course credit in the same manner as in other education programs. The Reform Act makes it clear that under Georgia state policy, it is preferable to

75. Id. § 20-2-153.
76. Id.
77. Id.
78. Id.
79. Id.
80. Id. § 20-14-33(h).
81. Id. § 20-14-33(b)(11).
82. Id. § 20-14-33.
83. Id. § 20-2-154.1(a).
84. Id.
85. Id.
reassign disruptive students to an alternative education program rather than suspending or expelling such students from school.\textsuperscript{86}

The intent of alternative education programs is to provide assistance to students who have been suspended from their regular classes and to students who, though eligible to remain in their regular classes, are more likely to succeed in a nontraditional setting.\textsuperscript{87} In this respect, each local school system is required to provide an alternative education program that:

1. is provided in a setting other than a student's regular classroom;
2. is located on or off of a regular school campus and may include in-school suspension that provides continued progress on regular classroom assignments;
3. provides for disruptive students who are assigned to the alternative education program to be separated from nondisruptive students who are assigned to the program;
4. focuses on English language arts, mathematics, science, social studies, and self-discipline;
5. provides for students' educational and behavioral needs; and
6. provides supervision and counseling.\textsuperscript{88}

The Reform Act requires local school systems to allocate the same amount of federal, state, or local funds for each student attending an alternative program that would have been sent to the student's school if the student were still attending his or her regular classes.\textsuperscript{89}

If a student who is presently placed in an alternative education program enrolls in another local school system, the local board of education that initially placed the student in the alternative program shall provide the local system in which the student enrolls with a copy of the order placing the student in an alternative program.\textsuperscript{90} The local school system in which the student enrolls may choose to follow the order of placement and continue the alternative education program or allow the student to return to regular classes.\textsuperscript{91} In order to pursue the mission of alternative education programs to enable students to return to regular classes,\textsuperscript{92} the Office of Education Accountability is required to define for alternative education programs acceptable performance and

\textsuperscript{86} Id.
\textsuperscript{87} Id. § 20-2-154(b).
\textsuperscript{88} Id. § 20-2-154.1(d).
\textsuperscript{89} Id. § 20-2-154.1(i).
\textsuperscript{90} Id. § 20-2-154.1(k).
\textsuperscript{91} Id.
\textsuperscript{92} Id. § 20-2-154.1(l).
performance indicating a need for peer review on an annual basis. These performance levels shall be based primarily on standards defined by the Office of Education Accountability that measure a student’s progress toward normal performance while placed in an alternative education program.

5. Extended Day Programs

The Reform Act also requires the State Board of Education to create an extended day program for grades nine through twelve. Funding for these programs will be provided to local school systems via grants, subject to appropriation by the General Assembly.

C. Accountability

One of the primary goals of the Reform Act is to provide accountability. In order to make schools accountable, performance indicators will be established by the Office of Education Accountability, and each school in the state will be rated. Report cards for each school in the state will also be prepared and distributed. Schools that meet and maintain high performance levels may be rewarded. On the other hand, low-performing schools will be subject to interventions that may result in the removal of personnel. A student assessment program is also required. Under this program, nationally normed assessments, criterion-referenced competency tests, and state-created end-of-course assessments are to be administered to all students. Each provision is discussed in more detail below.

1. School Accountability Program

The Office of Education Accountability is required to adopt indicators of the quality of learning by students in an individual school.

93. Id.
94. Id.
95. Id. § 20-2-259.
96. Id.
97. Id. § 20-14-33(a).
98. Id. § 20-14-34(a).
99. Id. § 20-14-37.
100. Id. § 20-14-41.
101. Id. § 20-2-281.
102. Id.
103. Id. § 20-14-33(a).
performance indicators of student achievement and school performance are to include:

1. the results of assessment instruments...
2. dropout rates for each school;
3. student attendance rates for each school;
4. school completion rates for each school;
5. the percentage of graduating students who attain passing scores on the Georgia high school graduation test... until such time as the Georgia high school graduation test is discontinued...;
6. the percentage of graduating students who meet the course requirements established for the recommended high school program by State Board of Education rule;
7. the percentage of students taking end-of-course assessment instruments...
8. the percentage of high school students who pass the end-of-course assessment instrument in core subjects;
9. the results of the Scholastic Assessment Test or the ACT Assessment;
10. the percentage of students taking alternate assessments...
11. the average time that a student placed in an early intervention program remains before attaining grade level status and returning to regular status; and
12. any other indicator the [Office of Education Accountability] recommends, the [Education Coordinating] [Council approves, and the State Board of Education adopts].

The Office of Education Accountability is also required to create individual school ratings for each school in Georgia for annual academic performance on required assessment instruments. The school ratings for each school must contain:

1. a school grade of A, B, C, D, or F on the established absolute student achievement standard;
2. a school grade of A, B, C, D, or F for the school on the progress on improved student achievement; and
3. a school performance status on the other school performance indicators as defined in subsection (b) of this Code section.

The Office of Education Accountability is required to annually define exemplary, acceptable, and unacceptable performance for each academic excellence indicator identified above, except the results of assessments

104. Id. § 20-14-33(b).
105. Id. § 20-14-33(d).
106. Id.
The office must annually review the performance of each school on all indicators identified and make a determination as to whether the school's rating status should be altered.\textsuperscript{106}

a. Report Cards. The Office of Education Accountability is also required to prepare and distribute a report card for each school to each school system in Georgia. School performance on the report card must be compared to (1) previous school and local school system performance; (2) current school and local school system performance in relation to the absolute student achievement standards and progress on improved student achievement; and (3) comparable school group performance.\textsuperscript{109} The Reform Act makes this report card the official state education performance report.\textsuperscript{110} It supersedes all other reports generated by departments of the state government for matters of funding, awards, and interventions.\textsuperscript{111} The report card is required to include: “(1) the individual school grades . . .; (2) the academic excellence indicators identified above, excluding results of assessment instruments; (3) teacher-student ratios; and (4) administrative and instructional costs per student and other financial accounting information.”\textsuperscript{112} In addition, the Office of Education Accountability is required, “to prepare and distribute each school year a state-wide report card, aggregated by school systems and disaggregated by student groups, reporting on the students’ performance and school completion results of each school in the state and a rating for each school.”\textsuperscript{113}

The Reform Act requires the State Board of Education to adopt rules that require portions of the school report card be sent to each parent or other person having lawful control of a student.\textsuperscript{114} Local school systems are also required to provide a copy of the school report card to any other party upon request. These reports must also be placed on the state and local school system’s website.\textsuperscript{115}

b. Awards. In order to recognize those schools and school systems that demonstrate progress or success in achieving the education goals of the state and achieving excellence on the Office of Education Accounta-
bility's school rating system, the Reform Act created a school awards system. Under the system, financial awards will be provided to the schools that the Office of Education Accountability determines have demonstrated the greatest improvement in achieving the education goals of improved student achievement and improved school completion.

The director of the office will set limitations on the total amount of these financial awards that may be given to a school or local school system. Financial awards will also be provided to each school that achieves a grade of A or B for performance on either or both the absolute student achievement standard and progress on student achievement. Subject to appropriation by the General Assembly, certificated personnel in a school that achieves an A or B in either or both categories will be provided a bonus of $1,000 for each grade of A and $500 for each grade of B. The maximum individual annual bonus for certificated personnel may not exceed $2,000. Also subject to appropriation by the General Assembly, an additional financial award will be provided to each school for noncertificated personnel in the amount of $10,000 for each A grade the school receives and $5,000 for each B grade the school receives. However, the total lump sum for the noncertificated personnel award at an individual school may not exceed $20,000. The school's council will determine the distribution of the award among the noncertificated employees of its school. In addition to financial rewards, the Governor may present proclamations or certificates to schools and school systems that have met or exceeded the state's education goals.

c. Interventions. If a school has a grade of D or F on student performance for the absolute student achievement standard or on progress on improved student achievement, the Office of Education Accountability is required to report these findings and recommend appropriate action, based on a scale of increasingly severe interventions, to the State Board of Education. The State Board of Education then

116. Id. § 20-14-37.
117. Id. § 20-14-38(a).
118. Id.
119. Id. § 20-14-38(b).
120. Id.
121. Id.
122. Id.
123. Id.
124. Id. § 20-14-38(c).
125. Id. § 20-14-41(a).
prescribes an appropriate level of intervention.\textsuperscript{126} The intervention prescribed by the state board may include one or more of the following:

1. Issuing public notice of the deficiency to the local board of education;
2. Ordering a hearing to be conducted at the school by the local board of education . . . for the purpose of notifying the public of the unacceptable performance, the improvements in performance expected by the [Office of Education Accountability], and the interventions that may be imposed . . . if the performance does not improve . . . ;
3. Ordering the preparation of an intensive student achievement improvement plan that addresses each academic excellence indicator for which the school's performance is unacceptable . . . ;
4. Appointing a Department of Education school improvement team to:
   (A) Conduct a comprehensive on-site evaluation of each low-performing school to determine the cause for the school's low performance and lack of progress . . . ;
   (B) Recommend actions, including reallocation of resources and technical assistance, changes in school procedures or operations, staff development focused on student achievement for instructional and administrative staff, intervention for individual administrators or teachers, waivers from state statutes or rules, extended instruction time for low-performing students, smaller class size for low-performing students, or other actions the team considers appropriate;
   (C) Assist in the development of an intensive school improvement plan focused on student achievement . . . ;
   (D) Assist the director [of the Office of Education Accountability] in monitoring the progress of the school in implementing the intensive school improvement plan . . . .\textsuperscript{127}

If a school has received a grade of D or F for two consecutive years, the intervention prescribed by the state board may include appointing a school master or management team to oversee and direct the duties of the school principal until school performance improves and the school is released from intervention by the director of the Office of Education Accountability.\textsuperscript{128} The cost of the master or management team is to be paid by the state.\textsuperscript{129} If a school has received a grade of D or F for a period of three consecutive years, the State Board of Education is required to implement one or more of the following interventions or sanctions, in order of severity:

\textsuperscript{126} Id.
\textsuperscript{127} Id.
\textsuperscript{128} Id. § 20-14-41(a)(5).
\textsuperscript{129} Id.
(A) removal of school personnel on recommendation of the master or the school improvement team, including the principal and personnel whose performance has continued not to produce student achievement gains over a three-year period . . . ;
(B) allow for the implementation of a state charter school . . . ;
(C) mandate the complete reconstitution of the school, removing all personnel, appointing a new principal, and hiring all new staff. Existing staff may reapply for employment at the newly reconstituted school but shall not be rehired if their performance regarding student achievement has been negative for the past three years;
(D) mandate that the parents have the option to relocate the student to other public schools in the local school system . . . with transportation costs borne by the system; or
(E) mandate a monitor, master, or management team in the school.130

If this intervention is used, the cost of the monitor, master, or management team is to be paid by the local school system.131

The State Board of Education is required to annually report the status of the interventions imposed on low-performing schools to the Office of Education Accountability.132 The state board must also provide recommendations regarding ending, extending, or upgrading the interventions on those schools.133 The director of the Office of Education Accountability is required to review and respond to the report.134

### 2. Student Assessment Program

The Reform Act requires the State Board of Education to adopt a student assessment program.135 Students in grades three, five, and eight take nationally norm-referenced tests in reading, mathematics, science, and social studies.136 As part of the assessment program, the State Board of Education is required to review, revise, and upgrade the quality core curriculum.137 Following the adoption of a revised curriculum, the board is to contract for development of criterion-referenced competency tests to measure the quality core curriculum.138

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130. Id. § 20-14-41(a)(6).
131. Id.
132. Id. § 20-14-41(d).
133. Id.
134. Id.
135. Id. § 20-2-281(a).
136. Id.
137. Id.
138. Id.
referenced competency tests in English and language arts, mathematics, and reading will be administered annually to students in grades one through eight.\textsuperscript{139} Students in grades three through eight will also take tests in science and social studies.\textsuperscript{140} A curriculum-based assessment is to be administered to eleventh graders, and they must pass in order to graduate.\textsuperscript{141} Writing assessments are to be administered to students in grades three, five, eight, and eleven.\textsuperscript{142} The nationally normed assessments required by the Reform Act must provide students and their parents with grade equivalencies and percentile ranks.\textsuperscript{143} The criterion-referenced tests and the high school graduation test required by the Reform Act must provide for results that reflect student achievement at the individual student, classroom, school, system, and state levels.\textsuperscript{144} The results of the required testing must be provided to the Governor, the General Assembly, and the State Board of Education and reported to the citizens of Georgia.\textsuperscript{145}

The State Board of Education is also required to adopt end-of-course assessments for students in grades nine through twelve for all core subjects.\textsuperscript{146} The Department of Education is required to develop study guides for the criterion-referenced tests and end-of-course assessments.\textsuperscript{147} Each school system must distribute the study guides to students who do not perform satisfactorily on one or more parts of an assessment instrument and to the parents or guardians of such students.\textsuperscript{148} The high school graduation test now in use will continue to be used until all high school core subject end-of-course assessments have been developed and implemented.\textsuperscript{149} At that time, the state board will discontinue the test.\textsuperscript{150} Local boards of education have the option of allowing scores on end-of-course assessments to be counted as part of a student's grade in the course.\textsuperscript{151} Student performance data is to be made available to the public, with appropriate interpretations, by the State Board of Education, the Office of Education Accountability,
and local school systems. The information made available to the public will not contain the names of individual students or teachers.

D. Personnel Issues

The Reform Act also changed many provisions of the Education Code relating to personnel issues. Perhaps the most significant, and definitely the most controversial, was the abolition of so-called "tenure" for teachers in Georgia under Georgia's Fair Dismissal Act. This change, and others are discussed below.

1. Fair Dismissal Act and "Tenure"

Georgia's Fair Dismissal Act provides that teachers who have accepted a school year contract for a fourth consecutive year from the same local board of education may be demoted or have their employment contracts nonrenewed only for certain specified reasons. Further, teachers are entitled to certain procedural safeguards before they can be demoted or have their contract nonrenewed. Although it is not used in Georgia's Fair Dismissal Act, the word "tenure" is often mistakenly used in describing the rights afforded teachers by the Act. The Reform Act, however, removes these "tenure" rights for teachers that first became employed after July 1, 2000.

2. Notice of Intention of Nonrenewal

As a trade-off for not providing the rights set forth in O.C.G.A. section 20-2-942 to teachers that were employed after July 1, 2000, O.C.G.A. section 20-2-211(b) was amended by the Reform Act to provide that any teacher who has received notice of nonrenewal of their contract shall be

152. Id. § 20-2-281(n).
153. Id.
155. Id. § 20-2-940.
156. Id. § 20-2-942(b)(1).
157. Id. § 20-2-942(d).
given, upon request, a written explanation of the reasons for failure to renew the contract by the superintendent. 161 This provision applies equally to all teachers and not just those employed after July 1, 2000. 162

3. Employment

While the Reform Act does not prohibit a board of education from employing a member of the family of one of its board members, the Act requires that such decisions be made in an open manner. 163 Under the Reform Act, a board of education may not employ or promote any person who is a member of the immediate family of any board member unless a public, recorded vote is taken on such employment or promotion as a separate matter from any other matter. 164 A board member whose immediate family is being considered for employment may not vote on the question. 165 This provision will have no effect on the employment of any person who is employed by a local school system on July 1, 2000, or that is employed by a local school system when an immediate family member becomes a member of the board of education for that school system. 166 The term "immediate family" means a spouse, child, sibling, or parent or the spouse of a child, sibling or parent. 167

4. Criminal Record Checks

The Reform Act extends the duties of school systems to conduct criminal record checks. 168 After July 1, 2000, all personnel, not just certificated employees, employed by a school system must be fingerprinted and have a criminal record check made. 169 The Reform Act also requires subsequent criminal record checks of all employees. 170 Teachers, principals, and other certificated personnel whose employment in a local school system is renewed after July 1, 2000 must have a criminal record check made upon any certificate renewal application to

161. Id.
162. Id. § 20-2-211(b).
163. Id. § 20-2-58.1(b).
164. Id.
165. Id.
166. Id.
167. Id. § 20-2-58.1(a).
168. Id. § 20-2-211(e)(1).
169. Id.
170. Id.
the Professional Standards Commission.\textsuperscript{171} Local school systems are required to adopt policies to provide for the subsequent criminal record checks of noncertificated personnel continued in employment.\textsuperscript{172}

5. Certification

The Reform Act requires all applicants for a renewable certificate to demonstrate satisfactory proficiency on a test of computer skill competency.\textsuperscript{173} This requirement may be met by successful completion of the Phase I InTech Model Training at a state educational technology training center or by a redelivery team approved by the State Board of Education.\textsuperscript{174} Universities and colleges having teacher preparation programs for grades prekindergarten through twelve must require students in these programs to be proficient in computer and other instructional technology applications and skills.\textsuperscript{175}

The Reform Act requires a showing of actual teaching experience before a certificate can be renewed.\textsuperscript{176} Applicants for a renewable teaching or administrative certificate who already hold a valid renewable certificate must demonstrate that they have worked as teachers in a classroom for not less than five days during each school year preceding the expiration of their applicant's certificate.\textsuperscript{177} This requirement may be satisfied if the applicant has completed a teacher training course approved by the Professional Standards Commission.\textsuperscript{178} Upon certification from the National Board for Professional Teaching Standards, an applicant is deemed to have met state renewal requirements for the life of the teacher's national certificate.\textsuperscript{179} The Reform Act rewards teachers who receive a national teaching certification in other ways. Under the Act, any person who: (1) is currently teaching in a Georgia public school and holds a valid Georgia teaching certificate; (2) has completed three years of teaching in Georgia public schools prior to receiving national certification; and (3) has successfully completed the prerequisite portfolio of student work and examination and has received national certification is entitled to receive not less than a ten percent

\textsuperscript{171} Id.
\textsuperscript{172} Id.
\textsuperscript{173} Id. § 20-2-200(b)(2).
\textsuperscript{174} Id.
\textsuperscript{175} Id. § 20-2-201(b.1).
\textsuperscript{176} Id. § 20-2-200(b.1).
\textsuperscript{177} Id.
\textsuperscript{178} Id. § 20-2-200(b.1).
\textsuperscript{179} Id. § 20-2-200(b.1).
rate increase in state salary.\textsuperscript{180} This increase is in addition to any other increase for which the person is eligible.\textsuperscript{181} The Reform Act limits the ability of personnel who have a history of unsatisfactory job performance to obtain a certificate.\textsuperscript{182} An individual who has received two unsatisfactory annual performance evaluations in the five-year period before submitting a renewal application is not entitled to a renewable certificate until that individual demonstrates that his or her performance deficiency has been satisfactorily addressed.\textsuperscript{183} However, the individual may apply for a nonrenewable certificate.\textsuperscript{184}

6. Annual Evaluations

The Reform Act establishes criteria to be considered in annual teacher evaluations.\textsuperscript{185} At a minimum, the following must be taken into consideration:

(1) the role of the teacher in meeting the school's student achievement goals, including the academic gains of students assigned to the teacher;
(2) observations of the teacher by the principal and assistant principals during class time;
(3) participation in professional development opportunities and the application of concepts learned to classroom and school activities;
(4) communication and interpersonal skills as they relate to interaction with students, parents, other teachers, administrators, and other school personnel;
(5) timeliness and attendance for assigned responsibilities;
(6) adherence to school and local school system procedures and rules; and
(7) personal conduct while in performance of school duties.\textsuperscript{186}

The Reform Act also states that a local school system may require principals and assistant principals to be evaluated annually by the teachers in their school.\textsuperscript{187} These evaluations are to be confidential, solicited, and recorded on an anonymous basis and are to be made available only to the local school superintendent and the local board of

\textsuperscript{180} Id. § 20-2-212.2(b).
\textsuperscript{181} Id.
\textsuperscript{182} Id. § 20-2-200(b)(8).
\textsuperscript{183} Id.
\textsuperscript{184} Id.
\textsuperscript{185} Id. § 20-2-210(b).
\textsuperscript{186} Id.
\textsuperscript{187} Id. § 20-2-210(e).
These evaluations are also excluded from disclosure under Georgia's open records laws. With respect to placement on the state salary schedule, a teacher will not receive credit for any year in which the teacher receives an unsatisfactory performance evaluation.

7. Critical Field Designations

The Reform Act requires the State Board of Education to identify schools and local school systems where a need for qualified teachers exists in the fields of mathematics, science, special education, or foreign language. The State Board of Education is required to request funds yearly to provide for salary increases not to exceed one additional step on the state salary schedule for teachers in those locations and fields. Funding is subject to appropriation by the General Assembly.

E. School Choice

Two of the goals of the General Assembly in drafting the Reform Act were to allow students to receive academic instruction in permanent classrooms when possible and to allow students to be transported to schools that are within a reasonable distance from their place of residence. Thus, the parent or guardian of a student enrolled in a public school in Georgia may request reassignment to another public school that is located within the school district in which the student resides if the school to which the student has been assigned does not have permanent classroom space available and the school to which the student requests reassignment has such space.

The Reform Act also allows students to attend schools that are closer to their homes if: (1) the student's place of residence is closer to a school other than the school to which the student has been assigned; (2) the distance or travel time to the school to which the student has been assigned is, in the determination of the State Board of Education, excessive; and (3) the school to which the student is applying to attend

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188. Id.
189. Id.
190. Id. § 20-2-212(a).
191. Id. § 20-2-212.3(a).
192. Id.
193. Id.
194. Id. § 20-2-294(a).
195. Id. § 20-2-294(b).
is the closest available public school to the student’s residence and has available permanent classroom space.196 This provision applies even if the school district in which the closer school is located is not the school district in which the student resides.197 If the request for reassignment is granted, the student and his or her parents are responsible for transportation and transportation costs to the new school.198 The school choice provision will not be applied if it interferes with desegregation plans or contractual relationships between school systems.199

F. Charter Schools

The Reform Act authorizes the State Board of Education to grant a state charter when a petition for a charter school has been denied by a local board of education.200 The state board may grant such a charter if:

(A) [w]ith respect to a petition submitted by a local school, the petition has been agreed to on a secret ballot by a majority of the faculty and instructional staff of the petitioning local school . . . ;

(B) [w]ith respect to a petition submitted by a local school, the petition has been agreed to by a majority of the parents or guardians of students enrolled at the petitioning local school present at a public meeting . . . ; and

(C) [w]ith respect to a petition submitted by any charter petitioner, the state board finds that the petition meets the requirements of [Georgia’s Charter Schools Act] and is in the public interest.201

Whether the charter is granted by a local board or by the state board, charter schools are subject to the accountability assessment program provisions contained in the Reform Act.202

G. School Health Services

The Reform Act requires each local board of education to establish policies and procedures regarding a school health nurse program.203 The programs must be staffed by licensed health care professionals.204 A local board of education is allowed to contract or consult with health

196. Id. § 20-2-294(c).
197. Id.
198. Id. § 20-2-294(d).
199. Id.
200. Id. § 20-2-2064(d)(1).
201. Id.
202. Id. § 20-2-2065(a.1).
203. Id. § 20-2-771.2.
204. Id.
professionals knowledgeable in children's health issues to establish standards, policies, and procedures.\footnote{205}{Id.}

\section*{H. Compulsory Attendance and Pre-Enrollment}

Compulsory attendance laws are changed to apply to children between their sixth and sixteenth birthdays rather than children between their seventh and sixteenth birthdays.\footnote{206}{Id. § 20-2-690.1(a).} Thus:

\begin{quote}
\textit{every parent, guardian, or other person residing within this state having control or charge of any child or children between their sixth and sixteenth birthdays shall enroll and send such child or children to a public school, a private school, or a home study program that meets the requirements for a public school, a private school, or a home study program.}\footnote{207}{Id. § 20-2-771.1.}
\end{quote}

Boards of education are required to establish procedures to provide for the voluntary pre-enrollment of children at two years of age.\footnote{208}{Id. § 20-2-766.1.}

\section*{I. Proceedings Against Parents of Chronic Disciplinary Students}

The principal of a school is required to notify the parent or guardian of a student identified as a chronic disciplinary student, invite the parent or guardian to observe the student in a classroom situation, and request at least one parent or guardian to attend a conference with the principal or the student's teacher to devise a disciplinary and behavioral correction plan.\footnote{209}{Id. § 20-2-766.} Before such a student is permitted to return from an expulsion or a suspension, the school shall request at least one parent or guardian to attend a conference with the principal or his or her designee to devise a disciplinary and behavioral correction plan.\footnote{210}{Id. § 20-2-766.1.} Under the Reform Act, a local board of education may, by petition to the juvenile court, institute proceedings against a parent or guardian for failure to attend a conference requested by a principal pursuant to O.C.G.A. section 20-2-765 or section 20-2-766.\footnote{211}{Id. § 20-2-771.1.} If the court finds the parent has willfully and unreasonably failed to attend such a conference, the court may either order the parent or guardian to attend such a conference or participate in such programs or treatment as the court

\begin{footnotes}
\item[205] Id.
\item[206] Id. § 20-2-690.1(a).
\item[207] Id.
\item[208] Id. § 20-2-771.1.
\item[209] Id.
\item[210] Id. § 20-2-766.
\item[211] Id. § 20-2-766.1.
\end{footnotes}
deems appropriate to improve the student's behavior. After notice and opportunity for a hearing, the court may impose a fine, not to exceed $500, on a parent or guardian who willfully disobeys an order of the court in this respect.

II. OTHER LEGISLATION

A. Students

1. Equity in Sports Act

In order to ensure equal athletic opportunities to members of both genders and to prohibit discrimination based on gender in elementary and secondary athletic programs, the General Assembly enacted the Equity in Sports Act. The Act provides that "[n]o student shall, on the basis of gender, be excluded from participation in, be denied the benefits of, or otherwise be discriminated against in any interscholastic or intramural athletics offered by a local school system, and no local school system shall provide any such athletics separately on such basis." The Act is not intended to force school systems to have only one team for members of both genders in all sports. "[A] local school system may operate or sponsor separate teams for members of each gender where selection is based upon competitive skill or the activity involved is a "contact sport." The term "contact sport" is defined to include "boxing, wrestling, rugby, ice hockey, football, basketball, and any other sport the purpose or major activity of which involves bodily contact." However, when a local school system operates or sponsors a team in a particular sport for members of one gender but operates or sponsors no such team for members of the other gender, members of the excluded gender must be allowed to try out for the team offered unless the sport involved is a contact sport. . A local school system that sponsors interscholastic or intramural athletics must make all reasonable efforts to provide equal athletic

212. Id.
213. Id.
214. Id. § 20-2-315 to -316 (Supp. 2000).
215. Id. § 20-2-315(a).
216. Id. § 20-2-315(b).
217. Id.
218. Id.
219. Id.
opportunity for members of both genders. The following factors are to be used to determine whether equal opportunities are available:

(1) whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both genders; (2) the provision of equipment and supplies; (3) scheduling of games and practice time; (4) travel allowance; (5) opportunity to receive coaching and academic tutoring; (6) assignment and compensation of coaches and tutors; (7) provision of locker rooms and practice and competitive facilities; (8) provision of medical and training facilities and services; and (9) publicity.

Unequal aggregate expenditures for members of each gender or unequal expenditures for male and female teams if a local school system sponsors separate teams, will not constitute noncompliance with the Act, but the failure to provide essential funds for the basic operations of teams for one gender may be considered in assessing equality of opportunity for students of the other gender.

A school system may provide separate toilet, locker room, and shower facilities on the basis of gender, but these facilities must be comparable to such facilities provided for students of the other gender. The grouping of students in physical education classes by gender is permitted.

School systems are required to sponsor athletic activities or sports for which scholarships are provided in an institution of the University System of Georgia at a school if the school system sponsors similar sports or athletic activities at that particular school. However, if bona fide student surveys indicate a lack of interest at the school to field such a team, the school system is not required to sponsor such a sport or athletic activity at that school. A local school system must conduct the bona fide student surveys at the request of nine students at the school, but not more often than once every twelve months. The survey is generally valid for twenty-four months.

Each local school system must designate at least one employee to coordinate the school system's efforts to comply with gender equity under

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220. Id. § 20-2-315(c).
221. Id.
222. Id.
223. Id. § 20-2-315(d).
224. Id. § 20-2-315(e).
225. Id. § 20-2-315(f)(1).
226. Id. § 20-2-315(f)(3).
227. Id.
228. Id.
the Act, including the investigation of complaints alleging noncompliance. Each local school system must adopt and publish grievance procedures providing for prompt and equitable resolution of written student complaints, including complaints brought by a parent or guardian on behalf of his or her minor child, alleging any action that would be prohibited by the Act. The employee designated to coordinate the requirements of the Act must render decisions on complaints in writing no later than thirty days after receipt of the complaint. A copy of this decision must be provided to the complainant within five days of the date of the decision, and a complainant has the right to appeal the decision to the local board within thirty-five days of the date of the decision. A complainant may also appeal a decision of a local board to the State Board of Education.

The State Board of Education is given considerable progressive authority to remedy violations of the Act. If the state board determines that a local school system has failed to comply with the Act, the state board must provide the local school system with opportunities to prepare a corrective plan. If the state board determines that the corrective plan adequately plans and provides for future compliance, the state board will approve the plan and direct the school system to implement it. But, if the state board determines that the local school system has willfully failed to comply with the Act, the state board may notify the Department of Community Affairs. The Department of Community Affairs is then prohibited from making a grant to a local school system for the construction or operation of athletic facilities during the next fiscal year. If, one year later, the state board determines that the local school system has still failed to comply with the Act, the state board may also order that a team or teams in the school system not participate in interscholastic postseason athletic contests and that participation in violation of the order could result in the withholding of state funds.

229. Id. § 20-2-315(g).
230. Id. § 20-2-315(h).
231. Id.
232. Id.
233. Id.
234. Id. § 20-2-315(i).
235. Id. § 20-2-315(i)(1).
236. Id.
237. Id.
238. Id. § 20-2-315(i)(2).
239. Id. § 50-8-8(a).
240. Id. § 20-2-315(i)(3).
compliance one year later, the state board may withhold state funds in an amount the state board determines is sufficient to secure compliance.\textsuperscript{241} When the system is in compliance, withheld funds are to be released to the system.\textsuperscript{242}

The Act extends to athletic associations that conduct interscholastic sports for high schools in local school systems. High schools are prohibited from participating in interscholastic sports conducted under the authority of any athletic association unless the charter, bylaws, or other governing documents of such athletic association comply with the Act.\textsuperscript{243} In order to comply with the Act, the athletic association must, among other things, comply with Georgia's open records and open meetings laws.\textsuperscript{244}

\section*{2. Suspension of Student for Act of Violence}

Local boards of education are now required to provide in their policies and student codes of conduct that a student who commits any act of violence that injures a teacher shall be suspended from all public school programs, including alternative education programs, for the remainder of the school quarter or semester.\textsuperscript{245} A school system may not enroll any student who has been suspended by another local board of education during the term of the suspension.\textsuperscript{246} However, if suspension would infringe any right provided to students with Individualized Education Programs under the Individuals with Disabilities Education Act, Vocational Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990, this requirement may be waived.\textsuperscript{247}

\section*{3. Compulsory Attendance Law Applies to Alternative Education Attendance}

The compulsory attendance law was amended to make it clear that it applies to children who have been assigned to attend an alternative public school program and to the parent, guardian, or other person residing in Georgia who has control or charge of the child.\textsuperscript{248} Although the compulsory attendance law clearly applies, the law is not to “be

\begin{flushright}
\textsuperscript{241} Id. § 20-2-315(i)(4).
\textsuperscript{242} Id.
\textsuperscript{243} Id. § 20-2-316(b).
\textsuperscript{244} Id. § 20-2-316(b)(2).
\textsuperscript{245} Id. § 20-2-751.6(a).
\textsuperscript{246} Id. § 20-2-751.6(b).
\textsuperscript{247} Id. § 20-2-751.6(d).
\textsuperscript{248} Id. § 20-2-690.1(a).
\end{flushright}
construed to require a local board of education or its delegate to assign a child to attend an alternative public school program rather than suspending or expelling the child.\textsuperscript{249}

B. Personnel

1. Certification

The statute relating to regulation of certificated professional personnel was amended to require the Professional Standards Commission to grant a renewable teaching certificate at the four-year and five-year levels to an applicant who has not completed a teacher preparation program.\textsuperscript{250} However, such applicant must satisfy an alternative certification program established by the Professional Standards Commission and meet the other conditions set forth in the statute.\textsuperscript{251}

2. Issuing of Arrest Warrants for Educators

Whenever a warrant is issued for the arrest of a teacher or school administrator for any offense alleged to have been committed while performing his or her duties, the warrant may be issued only by a judge of the superior court, a judge of a state court, or a judge of a probate court.\textsuperscript{252} A magistrate judge can no longer issue such a warrant.\textsuperscript{253}

C. Safety: Battery Against Sports Official

Georgia's simple battery statute, O.C.G.A. section 16-5-23,\textsuperscript{254} was amended to provide that

\begin{quote}
[a]ny person who commits the offense of simple battery against a sports official while such sports official is officiating an amateur contest or while such sports official is on or exiting the property where he or she will officiate or has completed officiating an amateur contest shall, upon conviction thereof, be punished for a misdemeanor of a high and aggravated nature.\textsuperscript{255}
\end{quote}

\begin{thebibliography}{9}
\bibitem{249} Id.
\bibitem{250} Id. § 20-2-200(c) and (d).
\bibitem{251} Id.
\bibitem{252} Id. § 17-4-40(e).
\bibitem{253} Id.
\bibitem{254} Id. § 16-5-23.
\bibitem{255} Id. § 16-5-23(h).
\end{thebibliography}
The term “sports official” means “any person who officiates, umpires, or referees an amateur contest at the collegiate, elementary or secondary school, or recreational level.”

D. Curriculum and Testing: Testing Material not Subject to Public Disclosure

The Open Records Act was amended to exclude standardized testing materials from public disclosure. The Act is now inapplicable to:

[records consisting of questions, scoring keys, and other materials, constituting a test that derives value from being unknown to the test taker prior to administration, which is to be administered by the State Board of Education, the Office of Education Accountability, or a local school system, if reasonable measures are taken by the owner of the test to protect security and confidentiality.]

The State Board of Education is given the authority to establish procedures where such records may be viewed, but not copied, if viewing will not, in the judgment of the board, affect the result of administration of such test.

E. Pupil Transportation: Communications Devices Required on School Buses

It is unlawful to operate any school bus that is transporting children unless the driver of the bus is equipped with a device that allows live communication between the driver and school officials or public safety officials or both. This may be accomplished by two-way radio, cellular telephone, or any other device that provides similar communications capability.

256. Id.
258. Id. § 50-18-72(b)(3).
259. Id.
260. Id. § 40-6-161(b).
261. Id.
III. APPELLATE DECISIONS

A. Supreme Court

1. Conflicts of Interest of Board of Education Members

The Supreme Court of Georgia addressed issues concerning alleged conflicts of interest of members of school boards in *Ianicelli v. McNeely*. A complaint was filed against members of the Glynn County Board of Education who were married to employees of the Glynn County School System. In the complaint it was alleged that the board members' participation in decisions affecting the compensation and benefits accorded school system employees necessarily affected their spouses and thus violated the Georgia Constitution's prohibition against public officers and trustees engaging in conflicts of interest. It was also alleged that the board members' participation in a recent election of a new Glynn County School Superintendent was improper because it was alleged that the new superintendent would "be beholden to the [board members] and would reciprocate by granting [the board members'] spouses additional privileges, compensation, or benefits." The trial court dismissed the complaint due to its failure to state a claim upon which relief could be granted. On appeal the Supreme Court of Georgia affirmed the trial court's decision.

The request to prohibit the board members from taking action that might affect the pecuniary interest of their spouses was based upon the Georgia Constitution's provision that "[p]ublic officers are the trustees and servants of the people and are at all times amenable to them." Relying upon this provision, it was argued that the board members' participation in acts such as the preparation and adoption of the school system's budget, from which their spouses would be paid, violated their "constitutional trust." The supreme court rejected this argument because it was based solely upon speculation. No allegations were made that the board members had definitely benefited financially or...
definitely stood to benefit financially. Further, after observing that the argument would, when taken to its logical extreme, prohibit not only the spouses of school system employees from seeking elected school board positions but also would exclude the parents, siblings, children, and grandchildren of school system employees from seeking election to local school boards, the supreme court determined that the State Constitution's "public trust" language was not intended to effectuate such a sweeping and all-encompassing prohibition against the valuable right to seek election to local school boards.

The supreme court also considered the role of the Georgia Education Code in making its decision. The court determined that, if accepted, the argument made by plaintiff would subvert and effectively rewrite the statutory scheme setting forth the eligibility criteria for school board members in Georgia. The Georgia Education Code establishes the criteria of eligibility to be elected to local school boards, and prohibits certain individuals from serving on a school board, including: (1) employees of a school system, (2) employees or board members of private schools, (3) employees of the State Department of Education, and (4) members of the State Board of Education. As noted by the supreme court, "the ineligibility criteria listed in the Education Code are not concerned with where family members of an elected school board member are employed." Finding that plaintiff was not entitled to any relief under the allegations of his complaint, the supreme court determined that the trial court properly dismissed plaintiff's petition for relief.

2. Are RESAs State Agencies?

The supreme court considered whether a regional educational service agency ("RESA") is a state agency subject to the state whistleblower statute's coverage or a local governmental unit to which the statute did not apply in North Georgia Regional Educational Service Agency v. Weaver. The court concluded that RESA is not a state agency and,

270. Id.
271. Id. at 236-37, 527 S.E.2d at 190.
273. 272 Ga. at 237, 527 S.E.2d at 192.
274. Id.
275. Id. (quoting O.C.G.A. § 20-2-51(c)).
276. Id.
277. Id. at 238, 527 S.E.2d at 192.
therefore, does not fall within the definition of a “public employer” subject to the statute. In reaching its decision, the supreme court first examined the statutory definition of “public employer” contained in the whistleblower statute. O.C.G.A. section 45-1-4(a) describes the employers who are subject to the statute. “Public employer’ means the executive branch of the state and any other department, board, bureau, commission, authority, or other agency of the state which employs or appoints a public employee or public employees except the office of the Governor, the judicial branch, or the legislative branch.” After examining this definition, the court concluded that the whistleblower statute applies solely to persons employed in state government. The supreme court then looked to the laws establishing RESAs and concluded that they are not part of the state government. Specifically, the court reviewed those parts of the Quality Basic Education Act (“QBE”) that provided for the establishment of the statewide network of RESAs. These agencies were established by QBE in order to promote shared services among local school systems and mandate instructional programs to selected public school students. Under QBE, RESAs are governed by a board of control made up of one staff member from each school system that participates and citizens elected by a caucus of local school board members. Moreover, the QBE designates all RESAs as “local units of administration.” After reviewing the legislation relating to RESAs, the supreme court concluded that they are more closely related to local school systems than state agencies. Thus, the supreme court concluded that a RESA does not meet the statutory definition of “public employer” contained in the whistleblower statute.

279. Id. at 289, 527 S.E.2d at 865.
280. Id. at 290, 527 S.E.2d at 865.
281. Id. (quoting O.C.G.A. § 45-1-4(a)(2)).
282. Id.
283. Id., 527 S.E.2d at 865-66.
284. Id. at 291, 527 S.E.2d at 865-66.
286. Id. (citing O.C.G.A. § 20-2-270).
287. Id., 527 S.E.2d at 866 (citing O.C.G.A. § 20-2-270).
288. Id., 527 S.E.2d at 866-67.
289. Id. at 292, 527 S.E.2d at 867.
B. Court of Appeals

1. Official and Sovereign Immunity

In *Chamlee v. Henry County Board of Education*, the court of appeals addressed the issue of official immunity for employees of a school district, the issue of sovereign immunity for the board of education, and the issue of waiver of sovereign immunity when automobile liability insurance is purchased by the board of education. Samuel and Linda Jane Chamlee brought suit against Jeff Ianitello and the Henry County Board of Education arising out of an automobile accident. Ianitello was employed by the board as an automotive shop instructor, and plaintiff's son, Samuel Chamlee, Jr., was a student in his class. As a part of the instruction, students got hands-on training by working on cars owned by students and teachers at the school. As a part of the class, Mike Felix, another student, or Samuel test-drove a car owned by another teacher. During the test drive, Samuel was injured in an accident. The Chamlees contended that Ianitello negligently instructed and allowed Felix and Samuel to leave the classroom unsupervised, contrary to board of education rules, and the board failed to establish sufficient policies to protect against such an accident. The trial court granted summary judgment to Ianitello on the ground of official immunity and to the board of education on the ground of sovereign immunity. The court of appeals affirmed the entry of summary judgment in favor of Ianitello on the ground of official immunity. The court of appeals noted official immunity "protects individual public agents from personal liability for discretionary actions taken within the scope of their official authority, and done without willfulness, malice or corruption." According to the court of appeals, monitoring, supervising and otherwise controlling students are considered discretionary acts. Further, "[s]upervision of students is considered discretionary even where specific school policies designed to help control and monitor students have been violated."

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291. Id. at 183-89, 521 S.E.2d at 78-83.
292. Id.
293. Id. at 189, 521 S.E.2d at 83.
294. Id. at 184, 521 S.E.2d at 79 (citing Guthrie v. Irons, 211 Ga. App. 502, 503, 439 S.E.2d 732, 734 (1993)).
295. Id., 521 S.E.2d at 80.
296. Id.
Because the policies that Ianitello supposedly violated all related to the monitoring, supervision and control of students, the court of appeals determined that the implementation of those policies was discretionary.\textsuperscript{297} The court therefore ruled that Ianitello was protected by official immunity.\textsuperscript{298} However, the Court ruled that an issue of fact remained with respect to whether the board of education waived sovereign immunity by the purchase of liability insurance pursuant to O.C.G.A. section 33-24-51.\textsuperscript{299} Sovereign immunity can be waived only by a specific act of the General Assembly.\textsuperscript{300} O.C.G.A. section 33-24-51(b) provides that sovereign immunity is waived if a board of education purchases insurance as described in O.C.G.A. section 33-24-51(a), but only if the insurance “provide[s] liability coverage for the negligence of a duly authorized officer, agent, servant, attorney, or employee in the performance of his official duties.”\textsuperscript{301}

The court of appeals first determined that an issue of fact existed as to whether the board of education had purchased the insurance described in O.C.G.A. section 33-24-51(a) and as to whether the insurance policy covered “the negligence of any duly authorized officer, agent, servant, attorney, or employee in the performance of his official duties.”\textsuperscript{302} The issue that had to be resolved next was whether the Chamlees' claim arose out of Ianitello's negligence such that it would be covered by the policy.\textsuperscript{303} In answering this question, the trial court ruled that sovereign immunity was waived only if an official representative of the board of education acting in his or her professional capacity was actually driving a vehicle at the time of the accident.\textsuperscript{304} In doing so the trial court relied upon \textit{Blumsack v. Bartow County}.\textsuperscript{305} In \textit{Blumsack} a panel of the court of appeals ruled that “[m]ere ownership or negligent maintenance cannot, by itself, waive sovereign immunity.”\textsuperscript{306} Finding that \textit{Blumsack} improperly limited the law of waiver of sovereign immunity, the court of appeals overruled \textit{Blumsack}.\textsuperscript{307} The court held that sovereign immunity is waived not only in cases when the

\textsuperscript{297} Id.
\textsuperscript{298} Id.
\textsuperscript{299} Id. at 185-86, 521 S.E.2d at 82-83.
\textsuperscript{300} Ga. Const. art. I, § 2, para. 9.
\textsuperscript{301} 293 Ga. App. at 184, 521 S.E.2d at 80 (citing O.C.G.A. § 33-24-51(b) (2000)).
\textsuperscript{302} Id. at 184-85, 521 S.E.2d at 80 (citing O.C.G.A. § 33-24-51(b)).
\textsuperscript{303} Id. at 186, 521 S.E.2d at 81.
\textsuperscript{304} Id. at 187, 521 S.E.2d at 82.
\textsuperscript{306} Id. at 396, 477 S.E.2d at 646.
\textsuperscript{307} 239 Ga. App. at 188, 527 S.E.2d at 82.
negligent act arises from the "use" of a vehicle but also in cases when
the negligent act arises from the "ownership, maintenance, or operation"
of a vehicle. Thus, a representative of the board of education is not
required to be driving a vehicle at the time of an accident in order for
there to be a waiver of sovereign immunity. In this case the court of
appeals determined that an issue of fact remained with regard to
Ianitello's use of the car in the performance of his official duties in
connection with his teaching of automotive shop class. The court
therefore determined that summary judgment in favor of the Henry
County Board of Education was improper.

2. Legal Status of Board of Education

The legal status of a board of education was again addressed in
Tidwell v. Coweta County Board of Education. Bobby and Lillie
Tidwell sued the Coweta County Board of Education for the wrongful
death and suffering of their developmentally disabled son, who died from
injuries caused when he jumped or fell from a moving school bus
through the back emergency door exit. The Board moved for summary
judgment on the grounds that it was not a corporate entity and could not
be sued. The trial court granted the motion. The court of appeals
affirmed.

A county board of education, unlike the school district which it
manages, is not a corporate body and does not have the capacity to sue
or be sued. Only if the legislature in creating the board expressly gave
it the power to sue or be sued is there an exception. The enabling act
here did not.

3. School System is not a "Motor Common Carrier"

In Hancock v. Bryan County Board of Education, the court of
appeals considered whether the duties placed upon "motor common
carriers" under Georgia law can be imposed upon school systems in
connection with the operation of their school buses. Shirley Han-

308. Id.
309. Id. at 188, 527 S.E.2d at 82-83.
310. Id., 527 S.E.2d at 83.
312. Id. at 55, 521 S.E.2d at 890.
313. Id. at 56, 521 S.E.2d at 891.
314. Id., 521 S.E.2d at 890.
316. Id. at 623, 522 S.E.2d at 663-64.
cock's grandson was suspended from riding a school bus because of abusive behavior. The next morning Ms. Hancock boarded the school bus on one of its regularly scheduled stops and attempted to talk to the school bus driver about the suspension. The bus driver asked Ms. Hancock to leave the bus because school policy precluded the discussion of discipline problems while the bus was in route and also prohibited parents and other adults from boarding the bus. Ms. Hancock fell as she disembarked. Ms. Hancock filed a negligence action against the bus driver, the Bryan County Board of Education, and their insurance carrier, seeking damages for an alleged back injury.\(^\text{317}\)

In the suit Ms. Hancock contended that, upon boarding the school bus, she became a "passenger" on a "common carrier."\(^\text{318}\) The evidence was undisputed, however, that the school bus involved was engaged solely in transporting school children and teachers to and from public schools.\(^\text{319}\) Therefore, the court of appeals, citing O.C.G.A. section 46-1-1(9)(C)(i), ruled that the bus was not a "motor common carrier" as a matter of law.\(^\text{320}\)

**IV. CONCLUSION**

As shown above, it has been a very active year in the area of education law in Georgia. Many developments will take place in the upcoming year, particularly with the implementation of the A Plus Education Reform Act of 2000 and the Equity in Sports Act, and the judicial decisions that are likely to be made in connection with these statutes. These developments should generate much interest among education lawyers and the public at large.

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\(^{317}\) Id. at 622, 522 S.E.2d at 663.

\(^{318}\) Id. at 623, 522 S.E.2d at 663-64.

\(^{319}\) Id. at 624, 522 S.E.2d at 664.

\(^{320}\) Id.