

The Senate Committee on Education and Youth offered the following substitute to HB 853:

A BILL TO BE ENTITLED  
AN ACT

To amend Article 6 of Chapter 2 of Title 20 of the Official Code of Georgia Annotated, relating to the "Quality Basic Education Act," so as to provide that a child placed in a psychiatric residential treatment facility by his or her parent or legal guardian pursuant to a physician's order is eligible for education services from the local school system in which the psychiatric residential treatment facility is located; to provide for related matters; to provide for statutory construction; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

Article 6 of Chapter 2 of Title 20 of the Official Code of Georgia Annotated, relating to the "Quality Basic Education Act," is amended by revising subsections (a) and (b) of Code Section 20-2-133, relating to free public instruction, as follows:

"(a) Admission to the instructional programs funded under this article shall be free to all eligible children and youth who enroll in such programs within the local school system in which they reside and to children as provided in subsection (b) of this Code section. Therefore, a local school system shall not charge resident students tuition or fees, nor shall such students be required to provide materials or equipment except for items specified by the State Board of Education, as a condition of enrollment or full participation in any instructional program. However, a local school system is authorized to charge nonresident students tuition or fees or a combination thereof; provided, however, that such charges to a student shall not exceed the average locally financed per student cost for the preceding year, excluding the local five mill share funds required pursuant to Code Section 20-2-164; provided, further, that no child ~~in a placement operated by the Department of Human Services or the Department of Behavioral Health and Developmental Disabilities or for which payment is made by the Department of Juvenile Justice, the Department of Human Services or any of its divisions, or the Department of Behavioral Health and Developmental Disabilities~~ and no child who is in the physical or legal custody of the

~~Department of Juvenile Justice, under the care or physical or legal custody of the Department of Human Services or any of its divisions, or under the physical custody of the Department of Behavioral Health and Developmental Disabilities~~ described in subparagraph (A) of paragraph (1) of subsection (b) of this Code section shall be charged tuition, fees, or a combination thereof. A local school system is further authorized to contract with a nonresident student's system of residence for payment of tuition. The amount of tuition paid directly by the system of residence shall be limited only by the terms of the contract between systems. Local units of administration shall provide textbooks or any other reading materials to each student enrolled in a class which has a course of study that requires the use of such materials by the students.

~~(b)(1)(A) Any child, except a child in a secure residential facility as defined in Code Section 15-11-2,~~ as otherwise specifically provided in subparagraph (D) of this paragraph, who is:

- (i) In in the physical or legal custody of the Department of Juvenile Justice or the Department of Human Services or any of its divisions;
- (ii) In in a placement operated by the Department of Human Services or the Department of Behavioral Health and Developmental Disabilities; or
- (iii) In in a facility or placement paid for by the Department of Juvenile Justice, the Department of Human Services or any of its divisions, or the Department of Behavioral Health and Developmental Disabilities; or
- (iv) Placed in a psychiatric residential treatment facility by his or her parent or legal guardian pursuant to a physician's order, if such child is not a home study, private school, or out-of-state student

and who is physically present within the geographical area served by a local unit of administration for any length of time is eligible for enrollment in the educational programs of that local unit of administration; provided, however, that the child meets the age eligibility requirements established by this article. Except for children who are committed to the Department of Juvenile Justice and receiving education services under Code Section 20-2-2084.1, the local unit of administration of the school district in which such child is present shall be responsible for the provision of all educational programs, including special education and related services, at no charge so long as the child is physically present in the school district.

(B) A child shall be considered in the physical or legal custody of the Department of Juvenile Justice or the Department of Human Services or any of its divisions if custody has been awarded either temporarily or permanently by court order or by voluntary agreement, or if the child has been admitted or placed according to an individualized treatment or service plan of the Department of Human Services. A child shall be

considered in a facility or placement paid for or operated by the Department of Behavioral Health and Developmental Disabilities if the child has been admitted or placed according to an individualized treatment or service plan of the Department of Behavioral Health and Developmental Disabilities or its contractors.

(C) A facility providing educational services onsite to a child described in subparagraph (A) of this paragraph who is unable to leave such facility shall enter into a memorandum of understanding with the local unit of administration in which the facility is located. Such memorandum of understanding shall include, at a minimum, provisions regarding enrollment counting procedures, allocation of funding based on actual days of enrollment in the facility, and the party responsible for employing teachers. A memorandum of understanding shall be reviewed and renewed at least every two years.

(D) No child in a secure residential facility as defined in Code Section 15-11-2, regardless of his or her custody status, shall be eligible for enrollment in the educational programs of the local unit of administration of the school district in which such facility is located. No child or youth in the custody of the Department of Corrections or the Department of Juvenile Justice and confined in a facility as a result of a sentence imposed by a court shall be eligible for enrollment in the educational programs of the local unit of administration of the school district where such child or youth is being held; provided, however, that such child or youth may be eligible for enrollment in a state charter school pursuant to Code Section 20-2-2084.1.

(2) Except as otherwise provided in this Code section, placement in a facility ~~by a parent or~~ by another local unit of administration shall not create an obligation, financial or otherwise, on the part of the local unit of administration in which the facility is located to educate the child.

(3) For any child described in subparagraph (A) of paragraph (1) of this subsection, the custodian of or placing agency for the child shall notify the appropriate local unit of administration at least five days in advance of the move, when possible, when the child is to be moved from one local unit of administration to another.

(4) When the custodian of or placing agency for any child notifies a local unit of administration, as provided in paragraph (3) of this subsection, that the child may become eligible for enrollment in the educational programs of a local unit of administration, such local unit of administration shall request the transfer of the educational records and Individualized Education Programs and all education related evaluations, assessments, social histories, and observations of the child from the appropriate local unit of administration no later than ten days after receiving notification. Notwithstanding any other law to the contrary, the custodian of the records has the obligation to transfer these

records and the local unit of administration has the right to receive, review, and utilize these records. Notwithstanding any other law to the contrary, upon the request of a local unit of administration responsible for providing educational services to a child described in subparagraph (A) of paragraph (1) of this subsection, the Department of Juvenile Justice, the Department of Behavioral Health and Developmental Disabilities, or the Department of Human Services shall furnish to the local unit of administration all medical and educational records in the possession of the Department of Juvenile Justice, the Department of Behavioral Health and Developmental Disabilities, or the Department of Human Services pertaining to any such child, except where consent of a parent or legal guardian is required in order to authorize the release of any of such records, in which event the Department of Juvenile Justice, the Department of Behavioral Health and Developmental Disabilities, or the Department of Human Services shall obtain such consent from the parent or guardian prior to such release.

(5) Any local unit of administration which serves a child pursuant to subparagraph (A) of paragraph (1) of this subsection shall receive in the form of annual grants in state funding for that child the difference between the actual state funds received for that child pursuant to Code Section 20-2-161 and the reasonable and necessary expenses incurred in educating that child, calculated pursuant to regulations adopted by the State Board of Education. Each local board of education shall be held harmless by the state from expending local funds for educating students pursuant to this Code section; provided, however, that this shall only apply to students who are unable to leave the facility in which they have been placed.

(6) Enrollment of an eligible child pursuant to this Code section shall be effectuated in accordance with rules and regulations adopted by the State Board of Education.

(7) For purposes of the accountability program provided for in Part 3 of Article 2 of Chapter 14 of this title, all facilities serving children described in subparagraph (A) of paragraph (1) of this subsection shall be, consistent with department rules and regulations, treated as a single local education agency; provided, however, that this paragraph shall not be construed to alleviate any responsibilities of the local unit of administration of the school district in which any such children are physically present for the provision of education for any such children.

(8) The Department of Education, the State Charter Schools Commission, the Department of Human Services, the Department of Juvenile Justice, the Department of Behavioral Health and Developmental Disabilities, and the local units of administration where Department of Education, State Charter Schools Commission, Department of Juvenile Justice, Department of Behavioral Health and Developmental Disabilities, or Department of Human Services placements, facilities, or contract facilities are located

138 shall jointly develop procedures binding on all agencies implementing the provisions of  
139 this Code section applicable to children and youth in the physical or legal custody of the  
140 Department of Juvenile Justice, under the care or physical or legal custody of the  
141 Department of Human Services, or under the physical custody of the Department of  
142 Behavioral Health and Developmental Disabilities."

143 **SECTION 2.**

144 This Act shall not be construed to create a precedent that state education funds always follow  
145 a student who leaves a public school to attend a private school or be admitted to a facility,  
146 if not already provided for by law.

147 **SECTION 3.**

148 All laws and parts of laws in conflict with this Act are repealed.