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SB 47: Eligibility Expansion for the Georgia Special Needs Scholarship Program

Saskia Olczak
solczak1@student.gsu.edu

Baker Swain
bswain3@student.gsu.edu

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EDUCATION

Elementary and Secondary Education: Amend Article 33 of Chapter 2 of Title 2020 of the Official Code of Georgia Annotated, Relating to the Georgia Special Needs Scholarship Act, so as to Revise the Prior School Year Requirement; Expand Eligibility for Students; Revise the Basis for Calculating Scholarship Amounts; Require Annual Parent Surveys; Provide for a Review Procedure for Scholarship Calculation, Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes

CODE SECTIONS:	O.C.G.A. §§ 20-2-2113 (amended); -2114 (amended); -2116 (amended); -2117 (amended)
BILL NUMBER:	SB 47
ACT NUMBER:	243
GEORGIA LAWS:	2021 Ga. Laws 541
SUMMARY:	The Act expands the eligibility requirements for the Georgia Special Needs Scholarship Program. The Act removes the requirement of having to reside in Georgia for one year before becoming eligible for the Scholarship. Further, the Act requires the Georgia Department of Education to conduct annual surveys of parents whose children participate in the Scholarship to increase transparency and facilitate budget allocation.
EFFECTIVE DATE:	July 1, 2021

*History**Section 504 Plans and Individualized Education Programs*

Congress passed the Rehabilitation Act of 1973 to create programs that meet the needs of individuals with disabilities.¹ Section 504 of the Rehabilitation Act of 1973 (Section 504) provides that “programs or activities” receiving federal funding cannot deny benefits to or discriminate against anyone because of disability.² A public school is considered a program or activity.³

Thus, if a public school determines that a student has a qualifying disability, the school must develop a “504 plan” to prevent discrimination because of the disability.⁴ A 504 plan refers to how the school will address, support, and remove barriers to learning for students who have a disability such that they can adequately learn in the classroom.⁵

The goal of a 504 plan is to give students with disabilities the same opportunities for educational success as their peers without disabilities.⁶ A child must satisfy two requirements to qualify for a 504

1. Rehabilitation Act of 1973, Pub. L. No. 93-112, § 2, 87 Stat. 355, 357 (codified as amended at 29 U.S.C. § 701).

2. § 504, 87 Stat. at 394 (codified as amended at 29 U.S.C. § 794).

3. 29 U.S.C. § 794(b)(2)(A) (including “public system of higher education” as a “program or activity”).

4. *What Is a 504 Plan?*, UNDERSTOOD, <https://www.understood.org/en/school-learning/special-services/504-plan/what-is-a-504-plan> [<https://perma.cc/BF5Q-85Q7>].

5. RICHARD WOODS, GA. DEP’T OF EDUC., SECTION 504 OF THE REHABILITATION ACT OF 1973, at 4 (2018), <https://www.gadoe.org/Curriculum-Instruction-and-Assessment/Student-Support-Teams/Documents/GaDOESection504Guidance.pdf> [<https://perma.cc/2K5Q-RHDP>]; see also NAT’L COUNCIL ON DISABILITY, CHOICE & VOUCHERS—IMPLICATIONS FOR STUDENTS WITH DISABILITIES 66–67 (Nov. 15, 2018), https://ncd.gov/sites/default/files/NCD_Choice-Vouchers_508_0.pdf [<https://perma.cc/CFY8-QR2H>]. Under a 504 plan, public schools and private schools that receive federal funding must comply with nondiscrimination requirements. *Id.* at 66. For example:

[T]hey are prohibited from excluding or limiting the participation of students with disabilities and from segregating students with disabilities. They are also required to provide physical accessibility[;] . . . reasonable modifications to policies, practices, and procedures when necessary to allow a student with a disability to participate; and auxiliary aids and services to ensure effective communication with students with disabilities

Id. at 66–67.

6. *What Is a 504 Plan?*, *supra* note 4.

plan.⁷ First, the child must have a disability, which can include many different learning or attention issues.⁸ Second, the disability must interfere with the child’s ability to learn in the classroom.⁹ The Georgia Special Needs Scholarship Program originally did not include students solely on a 504 plan.¹⁰ Students under a 504 plan may be performing at their grade level but “need some kind of help” to be on an equal footing with their peers.¹¹

In 1975, Congress passed the Education for All Handicapped Children Act, which not only created individualized education programs (IEPs) but also gave the Department of Education (then called the Department of Health, Education, and Welfare) the discretion to issue federal grants to states that met certain requirements related to providing education to children with disabilities.¹² This Act later became known as the Individuals with Disabilities Education Act (IDEA).¹³ The IDEA not only requires states to provide “free appropriate public education” but also requires “school districts and state educational agencies . . . to locate and identify all children with disabilities in the state”¹⁴

Thus, students attending a public school who meet certain eligibility criteria qualify for an IEP—a plan documenting how students will receive their education and other related services.¹⁵ To receive an IEP,

7. WOODS, *supra* note 5, at 5.

8. *Id.*

9. *Id.*

10. *Georgia Legislature Expands Special Education Voucher Program to Include Students with 504 Plans*, OPEN MINDS (Apr. 21, 2021), <https://openminds.com/market-intelligence/news/georgia-legislature-expands-special-education-voucher-program-to-include-students-with-504-plans/> [<https://perma.cc/579V-ZNBC>].

11. Jeff Amy, *Georgia House Panel Narrows Special Education Voucher Plan*, AP NEWS (Mar. 22, 2021), <https://apnews.com/article/atlanta-bills-georgia-73d6c042829363b2984e6a13170fab71> [<https://perma.cc/UE4B-CUZV>].

12. Education for All Handicapped Children Act of 1975, Pub. L. No. 94-142, §§ 4(19), 619, 89 Stat. 773, 776, 793 (codified as amended at 20 U.S.C. §§ 1401(14), 1419).

13. Individuals with Disabilities Education Act (IDEA), tit. IX, Pub. L. No. 101-476, 104 Stat. 1103, 1141–51 (1990) (codified as amended in scattered sections of 20 U.S.C.).

14. Andrew F. *ex rel.* Joseph F. v. Douglas Cnty. Sch. Dist. RE-1, 137 S. Ct. 988, 993 (2017) (citing *Bd. of Educ. v. Rowley*, 458 U.S. 176 (1982)); Ian Farrell & Chelsea Marx, *The Fallacy of Choice: The Destructive Effect of School Vouchers on Children with Disabilities*, 67 AM. U. L. REV. 1797, 1824 (2018) (citation omitted).

15. WOODS, *supra* note 5, at 14; Gail Belsky, *What Is an IEP?*, UNDERSTOOD, <https://www.understood.org/articles/en/what-is-an-iep> [<https://perma.cc/G52W-8N9M>].

the child must first receive a formal diagnosis with at least one of the thirteen specific disabilities listed within the IDEA.¹⁶ Second, the disability must affect the child's ability to learn and benefit from the general educational curriculum.¹⁷

School districts work with parents of children with disabilities to craft an IEP for that student.¹⁸ An IEP includes the following: (1) a statement of the child's current academic achievement and performance, (2) a statement of annual goals for the child, (3) a description of how the child will progress toward meeting the annual goals, (4) a statement of education aids and services that the child will receive and supporting services that the school will provide for the child, (5) an explanation of whether the child will participate with non-disabled children in classes, (6) a statement of individual accommodations that are necessary to measure the child's academic and functional performance, (7) the IEP's projected start date and the projected duration that the child will need the IEP, and (8) a statement of goals for the child when the child reaches postsecondary education.¹⁹

Because Section 504 defines "disability" more broadly than the IDEA, a child may qualify for a 504 plan but not an IEP.²⁰ In addition, students under a 504 plan cannot receive specialized instruction or other services, including occupational, speech, or physical therapy.²¹

16. WOODS, *supra* note 5, at 5.

17. *Id.*

18. See 20 U.S.C. § 1414(a)(1)(D) (requiring state educational agencies to obtain informed consent from parents of children with special needs before giving special education and creating an IEP for those children).

19. *Id.* § 1414(d).

20. WOODS, *supra* note 5, at 5, 9.

21. *What Is an IEP? Everything You Need to Know About IDEA, IEPs, and 504 Plans*, ADDITUDE, <https://www.additudemag.com/iep-vs-504-plan-idea-adhd-disability-education/> [https://perma.cc/664M-Y8GM] (Aug. 6, 2021); see also Farrell & Marx, *supra* note 14, at 1841 ("[T]he purpose of section 504 is equal access, rather than [the IDEA's purpose of] ensuring meaningful educational opportunities for children with disabilities.").

The Georgia Special Needs Scholarship Program

The Georgia General Assembly created the Georgia Special Needs Scholarship Program in 2007 for students with disabilities.²² The Assembly modeled the Scholarship after Florida’s John M. McKay Scholarships for Students with Disabilities Program, also known as the McKay Scholarship Program.²³ The McKay Scholarship Program gives students funding to attend private schools if the students have an IEP or 504 plan.²⁴ The Georgia Special Needs Scholarship Program was designed to give students with special needs the option to pursue private-school education and give parents with special needs children the ability to make educational choices for them.²⁵ The Scholarship provides eligibility requirements for students and schools.²⁶

About 5,200 students in Georgia have used the Scholarship since its creation.²⁷ Students who participate in the Georgia Special Needs Scholarship Program receive on average \$6,743, and the Program earmarks this money for school tuition and fees.²⁸

22. O.C.G.A. §§ 20-2-2110 to -2118 (2016).

23. FLA. STAT. ANN. § 1002.39 (West, Westlaw through 2021 First Regular Sess.); *see* Video Recording of Senate Floor Debate at 1 hr., 59 min., 06 sec. (Mar. 3, 2021) [hereinafter March 3 Senate Floor Debate Video] (remarks by Sen. Steve Gooch (R-51st)), <https://livestream.com/accounts/26021522/events/7940809/videos/218281990> [<https://perma.cc/2FVE-MGJE>]; Kathryn K. Lemmond & Patrick H. Ouzts, *Education: Elementary and Secondary Education*, 24 GA. ST. U. L. REV. 95, 103–05 (2007) (discussing the McKay Scholarship Program and how the General Assembly “[adopted] much of the same language and policy” from Florida’s scholarship program).

24. § 1002.39(1) (Westlaw).

25. March 3 Senate Floor Debate Video, *supra* note 23, at 1 hr., 58 min., 37 sec. (“[The Georgia Special Needs Scholarship Program] has opened the doors for students with special needs to . . . pursue a private school option when the public school just was not working for their individual needs.”); O.C.G.A. § 20-2-2111(4) (2016) (“The [Georgia Special Needs Scholarship Program] . . . is for . . . enabling families to make genuine and independent private choices to direct their resources to appropriate schools . . .”).

26. *See* O.C.G.A. § 20-2-2114 (2016 & Supp. 2021) (listing eligibility requirements for students); O.C.G.A. § 20-2-2115 (2016) (listing eligibility requirements for schools); *see also* Lemmond & Ouzts, *supra* note 23, at 109–10.

27. March 3 Senate Floor Debate Video, *supra* note 23, at 1 hr., 58 min., 32 sec. About 1.8 million students in Georgia are enrolled in public schools, so less than 0.3% of Georgia’s public school population is enrolled in the Georgia Special Needs Scholarship Program. *See* Video Recording of Senate Committee on Education and Youth Meeting at 48 min., 19 sec. (Feb. 8, 2021) [hereinafter February 8 Senate Education and Youth Committee Video] (remarks by Sen. Gooch (R-51st)), <https://livestream.com/accounts/26021522/events/8743306/videos/217295568>; *id.* at 1 hr., 16 min., 11 sec. (remarks by Lisa Morgan, President, Georgia Association of Educators).

28. February 8 Senate Education and Youth Committee Video, *supra* note 27, at 1 hr., 17 min., 37 sec.

In the 2020 legislative session, the Georgia General Assembly introduced Senate Bill (SB) 386, the precursor to SB 47.²⁹ Most of the language in SB 386 is the same as the earlier versions of SB 47.³⁰ Although SB 386 passed out of the Senate, the bill did not make it out of the House.³¹

Bill Tracking of SB 47

Consideration by the Senate

Senator Steve Gooch (R-51st) sponsored SB 47 in the Senate with Senator Butch Miller (R-49th), Senator Mike Dugan (R-30th), Senator John Kennedy (R-18th), Senator Larry Walker, III (R-20th), Senator Jason Anavitarte (R-31st), Senator Greg Dolezal (R-27th), Senator Billy Hickman (R-4th), Senator Lee Anderson (R-24th), Senator Brian Strickland (R-17th), Senator Ben Watson (R-1st), Senator Randy Robertson (R-29th), Senator Bruce Thompson (R-14th), Senator John Albers (R-56th), Senator Max Burns (R-23rd), and Senator Jeff Mullis (R-53rd).³²

SB 47 was first introduced in the Senate on January 28, 2021.³³ The following day, it was read for the first time and referred to the Senate Committee on Education and Youth, which ultimately made one change to the bill.³⁴ The Committee discarded the bill's portion that discussed the method by which the Georgia Department of Education would provide quarterly scholarship payments to the parents of scholarship students.³⁵

(remarks by Lisa Morgan, President, Georgia Association of Educators); O.C.G.A. § 20-2-2116 (2016 & Supp. 2021).

29. SB 386, as introduced, 2020 Ga. Gen. Assemb.; SB 386 (SCFSA), 2020 Ga. Gen. Assemb.

30. Compare SB 386 (SCFSA), 2020 Ga. Gen. Assemb. with SB 47, as introduced, 2021 Ga. Gen. Assemb., and SB 47 (SCSFA), 2021 Ga. Gen. Assemb.

31. Georgia General Assembly, SB 386, Bill Tracking, <https://www.legis.ga.gov/legislation/57348>.

32. Georgia General Assembly, SB 47, Bill Tracking [hereinafter SB 47, Bill Tracking], <https://www.legis.ga.gov/legislation/59080>.

33. *Id.*

34. State of Georgia Final Composite Status Sheet, SB 47, May 13, 2021; SB 47 (SFA), § 2, p. 4, l. 93, 2021 Ga. Gen. Assemb. (replacing “licensed physician or psychologist” with “physician or psychologist licensed in this state”).

35. Compare SB 47 (SCS), § 3, 2021 Ga. Gen. Assemb. (revising only subsections (a) and (b) of Code

After its changes, the Committee reported favorably on the bill.³⁶ After the bill was read for a third time on the Senate floor, it passed on March 3, 2021.³⁷ The Senate passed the bill by a vote of 30 to 23.³⁸

Consideration by the House

Representative Will Wade (R-9th) sponsored the bill in the House and first read it on March 5, 2021.³⁹ The bill was read for the second time on March 8, 2021, after which the bill was referred to the House Committee on Education.⁴⁰ The Committee made several changes to the bill. First, the Committee changed the criteria for how students qualify for the Georgia Special Needs Scholarship Program. The Committee specified that a “formal diagnosis from a licensed physician or psychologist” is not enough; instead, a student specifically needs a “Section 504 Plan.”⁴¹ In that same section of the bill, the Committee also added the requirement that the State Board of Education adopt rules and a process to ensure that students who qualify for the scholarship through a Section 504 Plan meet the eligibility requirements.⁴²

Finally, the House Committee on Education omitted some of the student fees that were previously included in the calculation for the scholarship amount.⁴³ Specifically, the Committee omitted fees for athletics, before or after-school care, books and school supplies, and field trips.⁴⁴ Accordingly, these fees can no longer factor into the determination of a student’s scholarship amount. The Committee

section 20-2-2116), with SB 47, as introduced, § 3, 2021 Ga. Gen. Assemb. (revising subsections (a), (b), and (e), with subsection (e) concerning quarterly scholarship payments to parents).

36. State of Georgia Final Composite Status Sheet, SB 47, May 13, 2021.

37. *Id.*

38. Georgia Senate Voting Record, SB 47, #114 (Mar. 3, 2021).

39. State of Georgia Final Composite Status Sheet, SB 47, May 13, 2021; SB 47, Bill Tracking, *supra* note 32.

40. State of Georgia Final Composite Status Sheet, SB 47, May 13, 2021.

41. SB 47 (HCS), § 2, p. 4, l. 93, 2021 Ga. Gen. Assemb.

42. *Id.* § 2, p. 4, ll. 119–21.

43. *Id.* § 3, pp. 6–7, ll. 147–54.

44. Compare *id.*, with SB 47, as passed Senate, § 3, pp. 6–7, ll. 144–54, 2021 Ga. Gen. Assemb.

added school-provided transportation fees to the list of appropriate fees considered when determining the scholarship amount.⁴⁵

After the Committee made the changes, the bill was read in the House for the third time on March 25, 2021, and it passed the same day.⁴⁶ The Senate adopted the House Committee on Education's substitute version of SB 47 on March 29, 2021.⁴⁷

SB 47 was sent to Governor Brian Kemp (R) on April 7, 2021.⁴⁸ Governor Kemp signed SB 47 into law on May 6, 2021, and the Act went into effect on July 1, 2021.⁴⁹

The Act

The Act amends Article 33 of Chapter 2 of Title 20 of the Official Code of Georgia Annotated relating to the Georgia Special Needs Scholarship Program.⁵⁰ The Act's purpose is to increase accessibility to the Georgia Special Needs Scholarship Program for children with special needs.⁵¹

Section 1

Section 1 of the Act amends Code section 20-2-2113, relating to the school system's process for notifying parents of children with disabilities of the options available under the Georgia Special Needs Scholarship Program.⁵² The Scholarship originally applied only to children who had an IEP, so schools had to provide parents options under the Scholarship program only at the first IEP meeting where the

45. SB 47 (HCS), § 3, p. 7, l. 150, 2021 Ga. Gen. Assemb.

46. State of Georgia Final Composite Status Sheet, SB 47, May 13, 2021; Georgia House Voting Record, SB 47, #309 (Mar. 25, 2021).

47. State of Georgia Final Composite Status Sheet, SB 47, May 13, 2021.

48. *Id.*

49. *Id.*; SB 47, Bill Tracking, *supra* note 32; *see also* Ty Tagami, *Kemp Signs Special Needs Voucher Expansion Bill*, ATLANTA J.-CONST. (May 6, 2021), <https://www.ajc.com/education/kemp-signs-special-needs-voucher-expansion-bill/KVUDUQGYXFBCRCBG5SQZZTAYKQ/> [<https://perma.cc/TQ7D-FSXX>].

50. *See generally* 2021 Ga. Laws 541.

51. *Id.*

52. 2021 Ga. Laws 541, § 1, at 541 (codified at O.C.G.A. § 20-2-2113 (Supp. 2021)).

child's disability was identified.⁵³ Now, because the Act makes children on 504 plans eligible for the Scholarship, the Act requires that schools also provide parents with options under the Georgia Special Needs Scholarship Program at the time that the child is deemed eligible for disability accommodations under Section 504.⁵⁴ The Act also removes the phrase "individualized education program" and replaces it with "Individualized Education Program or Section 504 Plan."⁵⁵

Section 2

Section 2 of the Act amends Code section 20-2-2114 to establish the qualifications for eligibility of the Georgia Special Needs Scholarship Program, which also include exceptions to the eligibility requirements and details how the State Board of Education will oversee compliance.⁵⁶

To qualify, the student's parents must be residents of Georgia, although an exception applies for military parents.⁵⁷ Additionally, the student must have been enrolled at a Georgia public school or received preschool special education during the prior school year.⁵⁸ Exceptions apply if the student has a parent who is an active-duty military service member stationed in Georgia within the previous year, if the student has been adopted or placed in a permanent guardianship from foster care, or if the student previously qualified for this scholarship.⁵⁹ Additionally, to qualify for this scholarship, the student must either have an IEP or the student must have a Section 504 Plan relating to one or more of the conditions that the State Board of Education identified.⁶⁰

53. See O.C.G.A. § 20-2-2113(a) (2016).

54. § 20-2-2113(a) (Supp. 2021).

55. 2021 Ga. Laws 541, § 1, at 541–42 (codified at § 20-2-2113(b)(1)).

56. 2021 Ga. Laws 541, § 2, at 542 (codified at O.C.G.A. § 20-2-2114 (Supp. 2021)).

57. § 20-2-2114(a)(1).

58. *Id.* § 20-2-2114(a)(2).

59. *Id.* § 20-2-2114(a)(2)(A)–(D).

60. *Id.* § 20-2-2114(3)(A).

Section 3

Section 3 of the Act amends Code section 20-2-2116, which relates to an individual's scholarship amount and methods of payment under the Georgia Special Needs Scholarship Program.⁶¹ The maximum amount of scholarship funding available to students is equivalent to the amount the student would have received in a public school.⁶² Subsection (a) clarifies that, if the student has an IEP, the student's scholarship grant amount is also based on the services in the IEP at the time the school most recently reported its enrollment.⁶³

Subsection (b) specifies eligible fees and services for which participating students can use the Scholarship proceeds.⁶⁴ New services include student assessment, uniforms, therapy programs, school transportation, meals, summer school, tutoring, and other services that the Department of Education authorizes.⁶⁵

61. 2021 Ga. Laws 541, § 3, at 544 (codified at O.C.G.A. § 20-2-2116 (Supp. 2021)).

62. § 20-2-2116(a). Georgia law allocates funding to public schools through a Quality Basic Education (QBE) Formula. See O.C.G.A. § 20-2-161 (2016 & Supp. 2021). Every year, public schools count the total number of students and the classes that students take, and then QBE uses the total number of students to determine the amount of funding that goes to public schools across Georgia. Stephen Owens, *How Does Georgia Fund Schools?*, GA. BUDGET & POL'Y INST. (May 23, 2019), <https://gbpi.org/how-does-georgia-fund-schools/> [<https://perma.cc/JSC5-8AJK>]. This funding also helps pay salaries and other expenses to run the schools. *Id.*

63. § 20-2-2116(a). Georgia law requires public schools to count their students at certain times during the year so that the Georgia Department of Education can determine the amount of funding for each public school. See O.C.G.A. § 20-2-160 (2016). Special education programs, including IEPs, have a different program weight from standard K-12 programs. Elton Davis & Isabel Ruthotto, *Financing Georgia's Schools* 11 tbl.3 (Andrew Young Sch. of Pol'y Stud., Ga. State Univ., Working Paper No. 19-10, 2019), <https://cslf.gsu.edu/files/2019/04/cslf1910.pdf> [<https://perma.cc/N3RG-N53S>]. These "program weights" reflect the projected cost of serving students in a particular program. ROSS RUBENSTEIN & DAVID L. SJOQUIST, ANDREW YOUNG SCH. OF POL'Y STUD., GA. STATE UNIV., FRC REPORT NO. 87, FINANCING GEORGIA'S SCHOOLS: A PRIMER 13 (2003), https://cslf.gsu.edu/files/2014/06/financing_georgias_schools_a_primer.pdf [<https://perma.cc/G96S-UYZ9>]. Because special education programs generally cost more than the high school program, special education programs have a high program weight. See *id.* at 15.

64. § 20-2-2116(b).

65. *Id.*

Section 4

Section 4 of the Act discusses the State Board of Education's adoption and promulgation of certain rules to ensure compliance.⁶⁶ This section also discusses how certain actions may bar schools from program participation.

Under this section, the State Board of Education is authorized to adopt rules to administer the scholarship program. Specifically, the Board is charged with adopting rules regarding student eligibility and participating schools, including the determination of the scholarship's timelines, the calculation and distribution of scholarships to eligible students and participating schools, and the application and approval procedures for eligible students and participating schools.⁶⁷

Finally, under this section, the Board may bar a school from participating in the program if it determines that the school "has intentionally and substantially misrepresented information or failed to refund to the state any scholarship overpayments in a timely manner."⁶⁸

Analysis

SB 47 is a controversial bill. Supporters see it as an opportunity for parents to have a choice in governing their children's education.⁶⁹ Because the Act expands the Scholarship eligibility to a student on a 504 plan, it helps resolve the confusion that parents had about Scholarship eligibility.⁷⁰ In response to the COVID-19 pandemic, this

66. 2021 Ga. Laws 541, § 4, at 545 (codified at O.C.G.A. § 20-2-2117 (Supp. 2021)).

67. § 20-2-2117(a).

68. *Id.* § 20-2-2117(d).

69. March 3 Senate Floor Debate Video, *supra* note 23, at 2 hr., 06 min., 54 sec. ("[I]t is necessary that the parent has a choice in being able to keep their kid educated. . . . But we believe this is a choice of a parent, and we believe during [the COVID-19] pandemic . . . we should not punish the child or the parent, and especially those with special needs.").

70. See Interview with Hannah Heck, Vice-Chair, Bd. of Dirs. of Westside Atlanta Charter Schs. (June 10, 2021) (on file with the Georgia State University Law Review) [hereinafter Heck Interview]. Vice-Chair Heck described the confusion that parents had about whether their child was eligible for the Scholarship:

I'll say . . . on the [expansion of the Scholarship to students with] 504 [plans] specifically, [after] talking with parents, they were surprised once they looked into

legislation also waived the requirement that children must be enrolled in a public school for at least one year before becoming eligible for the Scholarship.⁷¹ If a child attended classes virtually for the entire 2020 school year, then the child would not have been eligible for the Scholarship before the new legislation.⁷²

Legislation opponents, however, have several concerns about SB 47. They argue that the new legislation can invite fraud and abuse under the Scholarship program.⁷³ Additionally, critics also voice concerns that richer families would primarily benefit from the Scholarship program, meaning that the Scholarship may not benefit families in rural or metro areas as much.⁷⁴ The most prominent

the program that it didn't cover their child. They were like, 'Wait, my kid has special needs and so we got the 504.' . . . [Parents] would be like, 'Oh there's this program out there. There's an opportunity for us.' And when they researched it more, they're like, 'Wait my kid doesn't qualify.' That was confusing to a lot of parents because their child is having these exceptional learning challenges and so that was really kind of a motivation [to expand eligibility of the Georgia Special Needs Scholarship Program to students on 504 plans].

Id.

71. *See id.* (“[W]e’ve heard from a lot of parents who had to make hard decisions over this last year [because of the COVID-19 pandemic]. I’ve talked to some parents who . . . pulled [their] kid out [of public school] and put him in a private school because it was just not working . . .”).

72. *See* March 3 Senate Floor Debate Video, *supra* note 23, at 2 hr., 06 min., 34 sec. (“[SB 47] basically gives a one-year carve out for those kids . . . taken out of their . . . classroom [because of the COVID-19 pandemic] . . . and either stayed home for virtual schooling or [were] put in a different school setting by their parent or by homeschooling.”).

73. *Id.* at 2 hr., 21 min., 13 sec. (remarks by Sen. Elena Parent (D-42nd)) (“[T]he system proposed . . . is easily abused. Under Senate Bill 47, to secure a voucher for a child, a parent would simply need a doctor’s note or a Section 504 designation, both of which can be easily obtained by parents who can afford out-of-pocket psychiatry fees or otherwise manipulate the system.”). The final version of SB 47 alleviates some of these concerns by requiring the State Board of Education to enact measures to verify a child’s eligibility requirements before receiving Scholarship funding. *See* O.C.G.A. § 20-2-2114(a)(3)(B)(ii) (Supp. 2021); *see also* Interview with Sen. Elena Parent (D-42nd) (May 13, 2021) (on file with the Georgia State University Law Review) [hereinafter Parent Interview]. Senator Parent described her thoughts on the final version:

The House actually . . . tightened [SB 47] up a little bit, so that now, you can’t just use a doctor’s note. . . . So, essentially the school system would have had to have agreed, ‘Yes, your child does have some special education needs.’ Under this . . . fraud-inducing, fraud-welcoming plan [that the Senate version of SB 47 would have invited], it was like, ‘No!’ So now, you still have to have an IEP, and you will have to, except for under certain circumstances, go to the public school. So, there’s much less opportunity for fraud. I still don’t like it, but it’s certainly a lot better than it was when it left the Senate . . .

Id.

74. Parent Interview, *supra* note 73 (“[T]he families . . . whether or not they’re in metro Atlanta or

criticism about SB 47 is that the Scholarship diverts taxpayer money from the public schools to the private schools.⁷⁵ The Georgia Special Needs Scholarship Program is not unique in this aspect because other states have had scholarship programs that provide funding for children to go from public school to private school.

Other State Scholarship Programs

Other states have passed scholarship programs similar to the Georgia Special Needs Scholarship Program. All these public schools have at least one feature in common: they provide funding so that children can move from public schools to private schools. Taxpayers in Arizona, Florida, Indiana, and Oklahoma have challenged these programs in court.

Arizona—Arizona Scholarship for Pupils with Disabilities and the

whether or not they're in rural Georgia are going to have to stick with their public schools for a whole variety of reasons. So . . . in Georgia, where there just aren't really other options [besides the local public school].")

75. *Id.* Senator Parent described the situation as the following:

So, we have consistently been underfunding our [public] schools, so how . . . are they supposed to serve special needs kids when we're not funding them properly? . . . So, [how SB 47 passed the Senate] was just very blatant that families that . . . had the means and understanding to see what's going on in the [Scholarship] program can easily afford to get their kid what would be needed to then pull down all their state money for private school tuition, whether or not they intended to send the kid to private school in the first place, and whether or not they actually needed any money to go to private school.

Id.; see also March 3 Senate Floor Debate Video, *supra* note 23, at 2 hr., 19 min., 52 sec. (remarks by Sen. Elena Parent (D-42nd)). Senator Parent voiced her concerns about diverting taxpayer funding to private schools in the following way:

Supporters of [SB 47] are using this moment of uncertainty and crisis in our country and in our school systems to promote a longstanding agenda under the guise of assisting students with special needs. The facts have not changed. Private school vouchers undermine our public schools by diverting needed resources away from the public school system that educates over 90% of Georgia's children to fund the education of the select few whose families will be able to afford to pay the extra costs of private schooling.

Id.

Displaced Pupils Grant Program

Arizona had two scholarship programs for students with disabilities: the Arizona Scholarships for Pupils with Disabilities Program and the Displaced Pupils Choice Grant.⁷⁶ Similar to the Georgia Special Needs Scholarship Program, Arizona's scholarship programs gave students with disabilities the option to obtain a scholarship to attend a school of their choice, including a private school.⁷⁷ Arizona would send a check to the parents of students who participated in the scholarship programs, endorsing the check for the school that the student would attend.⁷⁸ Arizona taxpayers challenged the scholarship programs, arguing that they violated the Arizona Constitution.⁷⁹ The Arizona Constitution has a "no aid" provision, which prohibits allocating public money to private or religious schools.⁸⁰ The Arizona Supreme Court held that both scholarship programs violated the no aid provision of the Arizona Constitution.⁸¹ The no aid provision aims to "[restrict] . . . the disbursement of public funds to specified institutions, both religious and secular."⁸² And it was also intended to prohibit public funding to private schools.⁸³ The Arizona Supreme Court found that the funding to parents under these scholarships was "withdrawn from the public treasury and earmarked for an identified purpose."⁸⁴ Because the state endorsed the checks to the school where a participating student would attend, the parents did not have a choice about whether to use these

76. Displaced Pupils Choice Grants, ARIZ. REV. STAT. ANN. §§ 15-817 to -817.07 (2006) (repealed 2011) (Westlaw through 2021 Special Sess.); Arizona Scholarships for Pupils with Disabilities Program, ARIZ. REV. STAT. ANN. §§ 15-891 to -891.06 (2020) (amended 2014) (Westlaw through 2021 Special Sess.).

77. *Cain v. Horne*, 202 P.3d 1178, 1180 (Ariz. 2009) (en banc) (quoting ARIZ. REV. STAT. ANN. § 15-891(A) (2008), *invalidated by* *Cain v. Horne*, 202 P.3d 1178 (Ariz. 2009) (en banc)).

78. *Id.* at 1180–81 (quoting ARIZ. STAT. ANN. §§ 15-817.05, 15-891.03(F) (2008)).

79. *Id.* at 1181.

80. ARIZ. CONST. art. IX, § 10.

81. *Cain*, 202 P.3d at 1184.

82. *Id.* at 1182 (quoting *Cain v. Horne*, 183 P.3d 1269, 1273 (Ariz. Ct. App. 2008), *vacated en banc*, 202 P.3d 1178 (Ariz. 2009)).

83. *Id.* at 1183.

84. *Id.* (citing *Black & White Taxicab Co. v. Standard Oil Co.*, 218 P. 139, 145 (Ariz. 1923)).

funds, meaning that the primary funding beneficiaries were the private schools instead of the parents in violation of the no aid provision.⁸⁵

Oklahoma—Lindsey Nicole Henry Scholarships for Students with Disabilities Act

In 2010, Oklahoma enacted the Lindsey Nicole Henry Scholarships for Students with Disabilities Program Act.⁸⁶ Oklahoma’s scholarship program gives students with disabilities who have an IEP or an Oklahoma service plan a “scholarship to a private school of choice.”⁸⁷ Further, parents of public school students who have disabilities may request a scholarship for their child to “enroll in and attend a private school[,]” provided that the child meets the scholarship’s requirements.⁸⁸ The requirements for the Lindsey Nicole Henry Scholarship are similar to the Georgia Special Needs Scholarship Program.⁸⁹

As in Arizona, Oklahoma’s scholarship program drew legal challenges on constitutional grounds. In *Oliver v. Hofmeister*, Oklahoma taxpayers challenged Oklahoma’s scholarship program, arguing that paying tuition to private religious schools under the scholarship program violated the Oklahoma Constitution.⁹⁰ Oklahoma law requires public schools “to provide special education and related services necessary for children with disabilities”⁹¹ To fulfill this requirement, Oklahoma public schools can enter into a written

85. *Id.* at 1184 (“These [scholarship] programs transfer state funds directly from the state treasury to private schools. That the checks . . . first pass through the hands of parents is immaterial; once a pupil has been accepted into a qualified school under either program, the parents . . . have no choice; they must endorse the check . . . to the qualified school.” (citing ARIZ. REV. STAT. ANN. §§ 15-817.05, 15-891.04(F) (2008))).

86. Lindsey Nicole Henry Scholarships for Students with Disabilities Program Act, OKLA. STAT. ANN. tit. 70, §§ 13-101.1 to -101.2 (West, Westlaw through 2021 portion of 2021-2022 Legis. Sess.).

87. tit. 70, § 13-101.2(A)–(B) (Westlaw).

88. *Id.*

89. Compare tit. 70, § 13-101.2 (Westlaw), with O.C.G.A. § 20-2-2114 (2016 & Supp. 2021).

90. *Oliver v. Hofmeister*, 368 P.3d 1270, 1271–72 (Okla. 2016).

91. OKLA. STAT. ANN. tit. 70, § 13-101 (West, Westlaw through 2021 portion of 2021-2022 Legis. Sess.).

agreement with private schools and have private schools provide special education programs for children with disabilities.⁹²

Unlike the no aid provision in the Arizona Constitution, the no aid provision in the Oklahoma Constitution prohibits appropriating public funding only for religious institutions.⁹³ Oklahoma's scholarship program does not require students with disabilities or parents of students with disabilities to participate in the scholarship.⁹⁴ In addition, parents can choose the private school to which they wish to send their children under the scholarship.⁹⁵ Any school, not just religious schools, can participate in the scholarship program.⁹⁶

The Oklahoma Supreme Court upheld the Lindsey Nicole Henry Scholarships Program, emphasizing the private choice that parents make before Oklahoma distributes funding.⁹⁷ Therefore, the court found that the scholarship program did not promote any religion or fund any religious institution.⁹⁸

Indiana—Choice Scholarship Program

In 2011, Indiana enacted the Choice Scholarship Program, which is the fastest growing school voucher program in the nation.⁹⁹ Any school in Indiana is eligible to participate in the Choice Scholarship Program, including any private school.¹⁰⁰ Unlike the Arizona and Oklahoma scholarship programs, the Choice Scholarship Program is

92. *Id.* § 13-101(3).

93. Compare ARIZ. CONST. art. IX, § 10 (prohibiting public money to any “private or sectarian school”), with OKLA. CONST. art. II, § 5 (prohibiting public money to any “sectarian institution,” including religious schools).

94. See *Oliver*, 368 P.3d at 1276 (“Participation in the scholarship is strictly voluntary by the families and eligible students.”).

95. See *id.*

96. *Id.*

97. See *id.* (“When the scholarship payment is directed to a sectarian private school[,] it is at the sole and independent choice and direction of the parent and not the State.”).

98. *Id.* at 1277.

99. Farrell & Marx, *supra* note 14, at 1852.

100. IND. CODE ANN. § 20-51-1-4.7 (West, Westlaw through 2021 legislation) (defining “eligible school” as a “public or nonpublic” school that meets other requirements).

intended for children of low-income families, giving these children the option to attend private school.¹⁰¹

Indiana residents challenged the Choice Scholarship Program, arguing that the program violated the Indiana Constitution.¹⁰² The no aid provision of the Indiana Constitution prohibits appropriating public money for religious institutions but is silent about allocating private money to private, secular institutions.¹⁰³ Even though the Choice Scholarship Program imposes certain instructional requirements on participating schools, the program does not require schools to have certain content in their curricula, teach religion in schools, or restrict teacher or staff hiring.¹⁰⁴ Additionally, like Oklahoma's scholarship program, students and parents can voluntarily participate in Indiana's scholarship program, even if they meet the necessary eligibility requirements.¹⁰⁵

The Choice Scholarship Program did not violate the Education Clause of the Indiana Constitution.¹⁰⁶ In interpreting the Education

101. See IND. CODE ANN. § 20-51-1-4.3 (West, Westlaw through 2021 legislation) (requiring children to be in “a household with an annual income of not more than . . . 300% . . . of the amount required . . . to qualify for the federal free or reduced price lunch program”). These programs, also known as the National School Lunch Program, provide free school meals to children whose household income is below 130% of the federal poverty line, or \$28,000 per year for a family of three. *The National School Lunch Program (NSLP)*, FEEDING AM., <https://www.feedingamerica.org/take-action/advocate/federal-hunger-relief-programs/national-school-lunch-program> [https://perma.cc/J8JS-GPKU]; *A Quick Guide to SNAP Eligibility and Benefits*, CTR. ON BUDGET & POL'Y PRIORITIES, <https://www.cbpp.org/research/food-assistance/a-quick-guide-to-snap-eligibility-and-benefits> [https://perma.cc/YR33-VH7P] (Oct. 4, 2020). The National School Lunch Program provides reduced-price meals to children whose household income is between 130% and 185% of the federal poverty line, or between \$28,000 per year and \$40,600 per year for a family of three. *The National School Lunch Program (NSLP)*, *supra*; *Federal Poverty Levels – 3/2021-3/2022*, UNITED WAY OF CONN., <https://uwc.211ct.org/federal-poverty-levels-4115-33116/> [https://perma.cc/T64Z-2PZE].

102. *Meredith v. Pence*, 984 N.E.2d 1213, 1217 (Ind. 2013).

103. IND. CONST. art. I, § 6 (“No money shall be drawn from the treasury, for the benefit of any religious or theological institution.”).

104. *Meredith*, 984 N.E.2d at 1219.

105. *Id.* at 1220.

106. *Id.* at 1225. The Education Clause reads as follows:

Knowledge and learning, generally diffused throughout a community, being essential to the preservation of a free government; it shall be the duty of the General Assembly to encourage, by all suitable means, moral, intellectual, scientific, and agricultural improvement; and to provide, by law, for a general and uniform system of Common Schools, wherein tuition shall be without charge, and equally open to all.

IND. CONST. art. VIII, § 1.

Clause, the Indiana Supreme Court found that the Clause created two separate duties for the Indiana General Assembly: (1) to encourage certain kinds of knowledge and learning and (2) to provide a uniform public school system.¹⁰⁷ Therefore, the Choice Scholarship Program did not violate the Education Clause because the program would not displace the Indiana public school system, and public education was still available for Indiana schoolchildren.¹⁰⁸

The Choice Scholarship Program did not violate the no aid provision of the Indiana Constitution, either.¹⁰⁹ According to the Indiana Supreme Court, the scholarship program did not directly benefit religious institutions, including private religious schools.¹¹⁰ Just as the Oklahoma Supreme Court emphasized the private, independent choice of the parent in *Oliver*, the Indiana Supreme Court noted that parents of students eligible for the Choice Scholarship Program can choose where to send their children to school, and the state does not require parents to participate in the scholarship if accepted.¹¹¹ The Indiana Supreme Court upheld the Choice Scholarship Program for two reasons. First, the program did not “directly benefit” religious institutions but instead directly benefitted lower income children “by providing an opportunity for [lower income] children to attend [private] schools if desired.”¹¹² Second, the no aid provision did not apply to private, secular schools.¹¹³

107. See *Meredith*, 987 N.E.2d at 1222 (“The use of the conjunction ‘and’ . . . suggests that the General Assembly’s duty ‘to encourage, by all suitable means, moral, intellectual, scientific, and agricultural improvement’ is to be carried out *in addition to* provision for the common school system.”).

108. *Id.* at 1223.

109. See *id.* at 1227.

110. See *id.* at 1227–29 (noting the direct beneficiaries of the Choice Scholarship Program are low-income families and children, not the state or participating schools).

111. See *id.* at 1229.

112. *Id.* at 1230.

113. See *Meredith*, 987 N.E.2d at 1230 (“[T]he prohibition against government expenditures to benefit religious or theological institutions does not apply to institutions and programs providing primary and secondary education.”).

Florida—Opportunity Scholarship Program

In addition to the McKay Scholarship Program, Florida has another scholarship program called the Opportunity Scholarship Program.¹¹⁴ This scholarship program allowed students to transfer from public school to private school or a better-performing public school so that students could obtain a high-quality education.¹¹⁵ Florida parents of schoolchildren challenged the Opportunity Scholarship Program, arguing that the program violated the Florida Constitution.¹¹⁶ The Education Clause of the Florida Constitution sets forth education as a “fundamental value” for Florida residents and makes it the state’s “paramount duty” to provide a high-quality public school system and other education programs as necessary.¹¹⁷ After analyzing legislative findings to the Florida Constitution, the Florida Supreme Court found that the Education Clause imposed a restriction on the Florida Legislature by prioritizing a free public education over other forms of education.¹¹⁸ As a result, the Education Clause prohibited funding other forms of education through public money.¹¹⁹

114. FLA. STAT. ANN. § 1002.38 (West, Westlaw through 2021 First Regular Sess.) (effective July 1, 2012).

115. FLA. STAT. ANN. § 1002.38(1)–(2) (West, Westlaw through 2021 First Regular Sess.) (effective July 1, 2004 to June 30, 2011), *invalidated by* Bush v. Holmes, 919 So. 2d 392 (Fla. 2006).

116. Bush v. Holmes, 919 So. 2d 392, 398–99 (Fla. 2006). The plaintiffs in *Holmes* also alleged that the scholarship program violated the Establishment Clause of the First Amendment of the U.S. Constitution, but plaintiffs dismissed their challenge under the Establishment Clause because, while *Holmes* was pending, the U.S. Supreme Court held that a similar school-voucher program did not violate the Establishment Clause. *See id.* at 399. *See generally* Zelman v. Simmons-Harris, 536 U.S. 639 (2002) (finding constitutional under the Establishment Clause an Ohio scholarship program that provided tuition assistance for students to attend public or private school because the program was neutral with regard to religious institutions, applied to a broad class of citizens, and directed aid to religious schools because of citizens’ independent private choice).

117. FLA. CONST. art. IX, § 1(a).

118. *See Holmes*, 919 So. 2d at 407 (“[The Education Clause of the Florida Constitution] ‘mandates that a system of free public schools is the manner in which the [s]tate is to provide a free education to the children of Florida’ and that ‘providing a free education . . . by paying tuition . . . to attend private schools is a “substantially different manner” of provide a publicly funded education than . . . the one prescribed by the Constitution.’” (third, fourth, and fifth alterations in original) (quoting *Holmes v. Bush*, No. CV99-3370, 2000 WL 526364, at *5 (Fla. Cir. Ct. Mar. 14, 2000), *rev’d*, 767 So. 2d 668 (Fla. Dist. Ct. App. 2000), *disapproved of by* Bush v. Holmes, 919 So. 2d 392 (Fla. 2006)).

119. *See id.* at 408 (“[T]he state’s obligation is to provide for the education of Florida’s children, specifies that the manner of fulfilling this obligation is by providing a uniform, high quality system of free public education, and does not authorize additional equivalent alternatives.”).

The Florida Supreme Court also found that the Opportunity Scholarship Program diverted funds from public schools, an action that the Florida Constitution prohibits.¹²⁰ By diverting public funding from the public school system, the scholarship program “undermine[d]” the Florida Legislature’s constitutional duty of providing a high quality public education system for Florida students.¹²¹ The Opportunity Scholarship Program also did not provide oversight to the private schools that participated in the program, which meant the private schools would not have uniform standards and instruction, unlike public schools.¹²² As a result, the Florida Supreme Court held that the Opportunity Scholarship Program violated the Florida Constitution.¹²³ The court noted that its decision should not reflect that the court disapproves of parents choosing what education their children should pursue.¹²⁴ But the court limited its reasoning for the decision to strike down the scholarship program because “only when the private school option depends upon public funding is choice limited.”¹²⁵

Georgia Special Needs Scholarship Program

The Georgia Special Needs Scholarship Program does not violate the Georgia Constitution. Unlike the Florida Constitution, the Georgia Constitution requires only “an adequate public education,” as opposed to a “high quality” public education.¹²⁶ In addition, the no aid

120. *Id.* at 408–09 (“[T]he [Opportunity Scholarship Program] diverts funds that would otherwise be provided to the system of free public schools that is the exclusive means set out in the [Florida] Constitution for the Legislature to make adequate provision for the education of children.”).

121. *Id.* at 409.

122. *See id.* at 409–10; *see also* FLA. CONST. art. IX, § 1(a) (requiring a “uniform” public school system).

123. *Holmes*, 919 So. 2d at 412.

124. *See id.* (“Our decision does not deny parents recourse to either public or private school alternatives to a failing school.”). In addition, disapproving of a parent’s choice to make educational decisions for their children would have created other issues because the U.S. Supreme Court has held that parents have a fundamental right under the U.S. Constitution to choose how they educate their children. *See generally* *Pierce v. Soc’y of Sisters*, 268 U.S. 510 (1925) (holding the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to govern a child’s upbringing); *Meyer v. Nebraska*, 262 U.S. 390 (1923) (holding the Due Process Clause of the Fourteenth Amendment protects certain fundamental rights, including the right to acquire knowledge and to raise children).

125. *Holmes*, 919 So. 2d at 412.

126. *Compare* GA. CONST. art. VIII, § 1, para. 1, *with* FLA. CONST. art. IX, § 1(a).

provision of the Georgia Constitution prohibits public funding of religious institutions, unlike the Arizona Constitution, which also prohibits public funding of private schools.¹²⁷ The Georgia Constitution also allows the General Assembly to allocate public funding “to provide grants, scholarships, loans, or other assistance to students and to parents of students for educational purposes.”¹²⁸ It does not restrict what scholarships can receive public funding; therefore, the Georgia General Assembly has the constitutional authority to allocate public funding to children so that they can go to private school.¹²⁹

The Georgia Special Needs Scholarship Program also emphasizes the private choice of parents.¹³⁰ Under the Scholarship Program, parents can choose if they want their child to attend another public school in their school district, to attend another public school outside their school district, or to attend a private school that participates in the Scholarship Program.¹³¹ The Scholarship Program does not require private schools to accept students who participate in the Scholarship Program.¹³² Unlike the Arizona programs, the Georgia Scholarship Program does not require parents to endorse the proceeds to the school that their child will attend; thus, it does not effectively benefit private schools.¹³³ Because the Scholarship Program emphasizes private choice and primarily benefits parents and students with disabilities, and because the Georgia Constitution does not restrict public funding to secular institutions and requires funding for an adequate education,

127. Compare GA. CONST. art. I, § 2, para. 7, with ARIZ. CONST. art. IX, § 10.

128. GA. CONST. art. VIII, § 7, para. 1(a)(1).

129. See GA. CONST. art. VIII, § 7, para. 1.

130. See O.C.G.A. § 20-2-2111(4) (2016) (“The [Georgia Special Needs Scholarship Program] is . . . [to tailor] a student’s education to that student’s specific needs and [to enable] families to make genuine and independent private choices to direct their resources to appropriate schools”); see also O.C.G.A. § 20-2-2114(h) (2016 & Supp. 2021) (“Any scholarship directed to a participating school is so directed wholly as a result of the genuine and independent private choice of the parent.”).

131. O.C.G.A. § 20-2-2113(b)(1)–(2), (4) (2016 & Supp. 2021).

132. See O.C.G.A. § 20-2-2115(d) (2016) (“The creation of the [Scholarship P]rogram shall not be construed to expand the regulatory authority of the state, its officers, or any public school system to impose any additional regulations of nonpublic schools beyond those reasonably necessary to enforce the requirements of [the Scholarship Program].”).

133. For information about Arizona’s scholarship programs, see *supra* text accompany note 78; and see *supra* note 85 and accompanying text.

the Georgia Special Needs Scholarship Program would survive similar state challenges.

Constitutional Challenges (or Lack Thereof)

Accordingly, SB 47 will likely receive no constitutional challenges in the future, partly due to the long-standing nature of the Georgia Special Needs Scholarship Program.¹³⁴ The Scholarship Program has been around since the early 2000s—created by SB 10 during Georgia’s 2007 Legislative Session.¹³⁵ This well-established history combined with the fact that this bill does not meaningfully change any of the program’s provisions suggests that there will be no legal challenge.

The essential program elements remain intact, specifically the provisions relating to the determination for a school’s eligibility and how the money from the scholarship can be spent.¹³⁶ Therefore, this bill likely does not open any doors to either federal or state law challenges.¹³⁷

Conclusion

Although this bill was controversial when passing, the future of the Act and the impact it will have on families across Georgia is clear. Parents of special needs children in Georgia will continue to have options how they decide to educate their children, and at-risk students will receive the opportunity to attend the school that fits their individual needs.

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134. Heck Interview, *supra* note 70; Parent Interview, *supra* note 73.

135. *Georgia Special Needs Scholarship Program: Frequently Asked Questions (FAQs)*, GA. DEP’T OF EDUC. 1, <https://www.gadoe.org/External-Affairs-and-Policy/Policy/Documents/SB10%20FAQ%20for%20Parents.pdf> [<https://perma.cc/8JUA-3YH3>] (June 1, 2020).

136. Heck Interview, *supra* note 70.

137. *Id.*