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EDUCATION Elementary and Secondary Education: Amend Chapter 2 of Title 20 of the Official Code of Georgia Annotated, Relating to Elementary and Secondary Education, so as to Provide the Option for Parents to Enroll Their Child in Another School Within the Local School System or in a School in Another Local School System; Provide for Definitions; Provide for Statutory Constructions; Provide for Related Matters; Provide for an Effective Date and Applicability; Repeal Conflicting Laws; and for Other Purposes.

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EDUCATION

Elementary and Secondary Education: Amend Chapter 2 of Title 20 of the Official Code of Georgia Annotated, Relating to Elementary and Secondary Education, so as to Provide the Option for Parents to Enroll Their Child in Another School Within the Local School System or in a School in Another Local School System; Provide for Definitions; Provide for Statutory Constructions; Provide for Related Matters; Provide for an Effective Date and Applicability; Repeal Conflicting Laws; and for Other Purposes.

CODE SECTION:	O.C.G.A. § 20-2-2130 (new)
BILL NUMBER:	HB 251
ACT NUMBER:	164
GEORGIA LAWS:	2009 Ga. Laws 782
SUMMARY:	Beginning with the 2009–2010 school year this Act allows parents of students enrolled in public elementary or secondary school in the state to enroll their child in a public school in their school district other than the one the child has been assigned by the local board of education. Starting with the 2010–2011 school year, parents may request a transfer for their child to attend a public school outside of the student’s resident school district. In both circumstances parents are responsible for the cost of transportation of their child to and from the school.
EFFECTIVE DATE:	July 1, 2009

History

“Public education has relied too much on a one-size-fits-all approach, overlooking research showing that children learn in

different ways.”¹ On January 8, 2002, Congress passed the *No Child Left Behind Act* (NCLB).² NCLB brought the concept of public school choice to the forefront.³ Under NCLB, students attending a public school that does not meet Average Yearly Progress (AYP) for two consecutive years are eligible to transfer intra-district to a school that is meeting AYP.⁴ If there are no schools meeting AYP in the district, the school districts must try to enter into “transfer agreements with neighboring districts.”⁵ But NCLB only allowed for choice when a district was failing; it did not account for choice when a parent believed that his or her child would learn better in the school down the street.

Magnet or charter schools, open enrollment schools, tuition tax credits, scholarships, and voucher-programs are creative solutions that have emerged to foster school choice.⁶ Yet these are highly controversial ideas that have spurred much debate on the future of public education.⁷ Despite the varying opinions on this issue, different types of school choice can inspire learning and achievement for students if designed properly.⁸

Finding the way to best educate Georgia students is of extreme importance to the state because Georgia students have consistently performed poorly on standardized tests like the SAT.⁹ The 2008 SAT results show that Georgia seniors, from public and private schools, ranked 47th out of 50 in the nation.¹⁰ In 2009, Georgia SAT scores fell an additional six points.¹¹ As a result, several counties are injecting school choice into their school systems. For example,

1. Maureen Downey, *The Right Choice*, ATLANTA J.-CONST., Oct. 4, 2007, at A22.

2. Abigail Aikens, *Being Choosy: An Analysis of Public School Choice Under No Child Left Behind*, 108 W. VA. L. REV. 233, 244 (2005).

3. *Id.*

4. *Id.*

5. *Id.*

6. Debra Viadero, *Program Design Called Crucial Across Array of School Choices*, 27 EDUC. WEEK 1 (2008).

7. See generally Gerald Robinson, *EQUAL TIME: School Choice 101*, ATLANTA J.-CONST., Mar. 28, 2008, at A13.

8. Viadero, *supra* note 6, at 1.

9. Jessica Jordon, *Georgia Ranks Near the Bottom in SAT Scores*, gainesvilletimes.com, Aug. 30, 2008, <http://www.gainesvilletimes.com/news/archive/8199/>.

10. *Id.*

11. *Georgia SAT scores*, AJC.com, <http://www.ajc.com/news/georgia-sat-scores-123218.html>.

DeKalb County Public School System has created magnet and charter schools to help public school students have a choice in the type of education they will learn best from.¹² In 2007, DeKalb County was state's leader in public school choice, and its goal is to have new choice programs incorporated throughout the entire county by 2011, affecting a total of 38 schools.¹³

DeKalb County's creativity is not the only step Georgia has taken to expand public school choice for its primary and secondary education students. Effective May 18, 2007 was the "Georgia Special Needs Scholarship Act" which found that children with disabilities have special needs that "merit educational alternatives which allow students to learn in an appropriate setting and manner."¹⁴ The Special Needs Scholarship provides disabled students with a scholarship to attend any Georgia public or private school that meets their needs.¹⁵

Further, during the 2009 legislative session, Senator Eric Johnson (R-1st) sponsored Senate Bill (SB) 90, which advocated a K-12 voucher program for Georgia students, taking the intra-district transfer between public schools advocated by House Bill (HB) 251 even further.¹⁶ HB 251 makes it more streamlined and easier for students to transfer intra-district to other public schools and even out of district, but this is contingent on capacity¹⁷—whereas SB 90 advocates a statewide voucher program in which parents are able to send their child to any public or private school and "would earn a voucher equivalent to what the state pays to educate a child."¹⁸

Georgia has already been operating under a "Limited Public School Choice" statute.¹⁹ The purpose of this statute is to allow parents the opportunity to choose a school within their current school district to send his or her child to, other than the one assigned by the local school board.²⁰ Under this provision, a parent could only choose

12. Downey, *supra* note 1.

13. *Id.*

14. O.C.G.A. § 20-2-2111 (2009).

15. *Id.* § 20-2-2113. If a parent chooses to enroll his or her child in public school, the public school must have space for the child. *Id.*

16. SB 90, as introduced, 2009 Ga. Gen. Assem.

17. HB 251, as introduced, 2009 Ga. Gen. Assem.

18. Eric Johnson, *Proposal Gives Parents Control*, ATLANTA J.-CONST., Feb. 4, 2009, at A12.

19. O.C.G.A. § 20-2-293(a) (2009).

20. *Id.*

to send his or her child to another school located within the district for “compelling reasons and circumstances” and there was no streamlined procedure for how this process occurred.²¹ The decision of whether or not a student could transfer intra-district was a case-by-case decision left to the school administrators.²²

The purpose of this bill is to give parents the choice of which public school best suits their child’s needs.²³ This bill accomplishes this by charging districts to come up with a uniform process for this type of transfer by July 1, 2009.²⁴ Furthermore, it expands public school choice by not only allowing parents to choose intra-district schools, but also allowing parents to choose public schools in other districts.²⁵ Representative Alisha Morgan, the sponsor of HB 251, explained that this idea has been discussed by the legislature in the past, but never had the momentum to be pushed forward.²⁶ Now that vouchers have been introduced in so many arenas, however, “people are forced to talk about it and have conversations about it, which means they are facing it.”²⁷ On the other hand, perhaps the reason such legislation never gained support before is because of the perspective taken by opponents of this bill, such as Tommy Benton (R-31st). Mr. Benton views this bill as taking away the power of the local board of education to make decisions for their districts.²⁸ Further, it has a greater effect on smaller districts, where, for example, perhaps one high school is an athletics “power-house” and a parent prefers his or her child to go to this high school to increase the child’s chances of receiving a college athletic scholarship; then, all of a sudden, people might use this legislation for the wrong reasons.²⁹

21. *Id.*

22. *Id.*

23. Interview with Rep. Alisha Morgan (D-39th) (Mar. 23, 2009) [hereinafter Morgan Interview].

24. HB 251 (CCR), 2009 Ga. Gen. Assem.

25. *Id.*

26. Morgan Interview, *supra* note 23.

27. *Id.*

28. Interview with Rep. Tommy Benton (R-31st) (Sept. 21, 2009) [hereinafter Benton Interview].

29. *Id.*

*Bill Tracking of HB 251**Consideration and Passage by the House*

Representatives Alisha Morgan (D-39th), Margaret Kaiser (D-59th), Ed Setzler (R-35th), and Dee Dawkins-Haigler (D-93rd) sponsored HB 251.³⁰ The House of Representatives read the bill for the first time on February 2, 2009, and for the second time the following day.³¹ Speaker of the House Glenn Richardson (R-19th) assigned it to the House Committee on Education.³²

The bill, as originally introduced, amended the “Quality of Basic Education Act,” adding a new Code section that allowed for the parent or guardian of a student to choose which school within their public school system their child should attend.³³ This transfer was acceptable only if the transfer-to school had space available after all assigned students were enrolled.³⁴ If a parent or guardian elected such a transfer, the parent or guardian became responsible for the transportation of their student to this school.³⁵ Once a student transferred, he or she was eligible to attend that school and the schools it feeds to until he or she graduated high school.³⁶

The bill also charged each school system with implementing a streamlined process for these transfer requirements.³⁷ Under the previous limited school choice statute,³⁸ students were only allowed to transfer intra-district for “compelling reasons and circumstances.”³⁹ Further, these procedures were anything but streamlined.⁴⁰ Representative Morgan explained that the procedures employed a lot of “hoops to jump through” and were very

30. See HB 251, as introduced, 2009 Ga. Gen. Assem.

31. State of Georgia Final Composite Status Sheet, HB 251, Apr. 3, 2009.

32. State of Georgia Final Composite Status Sheet, HB 251, Apr. 3, 2009.

33. HB 251, as introduced, 2009 Ga. Gen. Assem. This version of the bill had no language about inter-district transfers.

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. O.C.G.A. § 20-2-293 (2009).

39. *Id.*

40. Morgan Interview, *supra* note 23.

subjective.⁴¹ The purpose of HB 251 is to give parents and guardians, those who know their child best, a chance to decide where the child will learn best, and this can only be accommodated through a streamlined, consistent process that is open to all students.⁴²

The House Committee on Education amended the bill to provide that this program would begin in school year 2009–2010 and, by no later than July 1, 2009, all the local school districts had to establish and implement their streamlined process for meeting the transfer requirements of this bill.⁴³ This was a minor change that gave school systems time to discuss and determine the best way to implement this transfer system.⁴⁴ The more significant change that came out of the House Committee on Education was that a student who transfers may continue to attend all grades of the school he or she transfers to, but if the student would like to attend the school or schools which the transfer school feeds into, the student's parent or guardian must reapply.⁴⁵ The reason for this change is to make sure that there is enough space in the schools.⁴⁶

On February 17, 2009, the Committee favorably reported on the bill after incorporating these changes.⁴⁷ The "bill [] passed . . . out of the school choice subcommittee under Education, the full Education committee, and the Rules committee."⁴⁸ House Bill 251 was read for the third time on February 19, 2009.⁴⁹ That same day, the House of Representatives passed HB 251 by a vote of 139 to 23.⁵⁰ On April 1, 2009, the House reviewed the Senate substitute and disagreed.⁵¹ On April 3, 2009, the bill went back to the Senate, where the Senate

41. *Id.*

42. *Id.*

43. HB 251 (HCS), 2009 Ga. Gen. Assem.

44. Morgan Interview, *supra* note 23.

45. *Id.*

46. *Id.*

47. State of Georgia Final Composite Status Sheet, HB 251, Apr. 3, 2009.

48. Video Recording of House Floor Proceedings, Feb. 19, 2009 at 1 hr., 20 min., 23 sec. (remarks by Rep. Alisha Morgan (D-39th)) http://www.georgia.gov/00/article/0,2086,4802_6107103_129987579,00.html [hereinafter House Floor Video]; State of Georgia Final Composite Status Sheet, HB 251, Apr. 3, 2009.

49. State of Georgia Final Composite Status Sheet, HB 251, Apr. 3, 2009.

50. Georgia House of Representatives Voting Record, HB 251, Feb. 19, 2009.

51. State of Georgia Final Composite Status Sheet, HB 251, Apr. 3, 2009.

disagreed with the House amendments.⁵² This same day, House and Senate conference committees were appointed.⁵³

The conference committee version of the HB 251 added two new code sections to the bill.⁵⁴ Section 2 amends O.C.G.A. section 20-2-51(c) by adding in subsection (c)(2), which imposed the following limitation on who can serve as a member on the local Board of Education:

No person who has an immediate family member sitting on a local board of education or serving as the local school superintendent or as a principal, assistant principal, or system administrative staff in the local school system shall be eligible to serve as a member of such local board of education.⁵⁵

Section 3 amends O.C.G.A. Section 20-2-101(b) by adding subsection (b)(2), which prohibits an individual from serving as superintendent of a school district if he or she has an immediate family member sitting on the local school board, or serving as a principal, assistant principal, or system administrative staff.⁵⁶

In an interview with Tommy Benton, (R-31st), Mr. Benton explained that this last minute change caused a great deal of opposition in the House of Representatives.⁵⁷ Mr. Benton did not vote for the Bill because these additions directly impacted his constituents.⁵⁸ Two school board members in his district had to step down because of this legislation.⁵⁹ He explained that this change may not have an effect on large school systems like Gwinnett county, but for smaller districts like the ones he represents in Barrow, Hall, and Jackson counties, this has a very real effect.⁶⁰ Mr. Benton, a former public school teacher, explained that is hard enough to get people to

52. *Id.*

53. *Id.*

54. HB 251 (CCR), 2009 Ga. Gen. Assem.

55. *Id.*

56. *Id.*

57. Benton Interview, *supra* note 28.

58. *Id.*

59. *Id.*

60. *Id.*

run for the school board, and this legislation is causing school districts to lose good people.⁶¹ He also explained that it is rare that undue influence would occur in such situations because the superintendent is the only school district employee who reports directly to the board of education; everyone else reports directly to the superintendent.⁶² Further, if undue influence is a problem in districts, this is something that can be remedied with local legislation.⁶³

Despite opposition by Mr. Benton and others, the House committee lost, the House reconsidered, and passed the conference committee version of the bill by a vote of 97 to 73.⁶⁴ Mr. Benton and other legislators are going to work to have this provision of the Act repealed in the 2010–2011 legislative session.⁶⁵

Consideration and Passage by the Senate

February 24, 2009 was the first time the Senate read HB 251 and Senate President Pro Tempore Tommie Williams (R-19th) assigned it to the Senate Education and Youth Committee.⁶⁶ Senator Daniel Weber (R-40th) carried this bill in the Senate. Some minor changes were made to the House's version of the bill (which became Section 1 of the Senate committee version) and the Senate also added a Section 2 to the bill.⁶⁷

In regards to Section 1, instead of amending the "Quality Basic Education Act," the Senate proposed adding a new article, Article 34, to Chapter 2 of Title 20 of the Official Code of Georgia Annotated for this bill.⁶⁸ Second, the intra-district school transfer provision, which, in the House version, was set to take effect for the 2010–2011

61. *Id.*

62. *Id.*

63. Benton Interview, *supra* note 28.

64. Georgia House of Representatives Voting Record, HB 251, Apr. 3, 2009.

65. Benton Interview, *supra* note 28.

66. State of Georgia Final Composite Sheet, HB 251, Apr. 3, 2009.

67. HB 251 (SCS), 2009 Ga. Gen. Assem.

68. *Id.*

school year, was changed and set to begin for the 2009–2010 school year.⁶⁹

The major changes came into play with the addition of Section 2 to the bill. In addition to the intra-district transfers allowed by Section 1 of the bill, Section 2 allows for inter-district transfers for students to adjacent public school systems at the discretion of the accepting district.⁷⁰ This section was to be implemented for the 2010–2011 school year, essentially increasing public school choice even further in the next two years. The language for this section comes from SB 90, which was the Senate Voucher bill.⁷¹ During the Senate floor debate on March 30, 2009 Senator Daniel Weber (R-20th) explained that adding Section 2 to this bill “is the type of reform that is empowering families and recognizing that students have unique needs, and those may not be met by local elementary school[s], middle school[s] or high school[s] [Parents] should be given options. This is a bill about giving those families and those students options.”⁷²

During this debate, however, Senator Vincent D. Fort (D-39th) opposed the Senate changes to the bill.⁷³ Senator Fort pointed out a few problems with the Committee’s addition of Section 2 to the bill. First, he raised the issue of funding. Inter-district transfers currently are allowed, but what this bill does is “grabs at local money” because if a student wants to transfer inter-district, the money funding that student in his or her current district goes with the student to the new district.⁷⁴ Second, Senator Fort points out that this bill does not provide transportation and posed the following question to Representative Morgan: “If this bill is in fact about helping children of limited means, isn’t it true that by virtue of not putting any

69. *Id.*

70. *Id.*

71. SB 90, as introduced, 2009 Ga. Gen. Assem. Senate Bill 90 did not survive crossover, which is most likely why this section was included in the Committee version of HB 251. State of Georgia Final Composite Sheet, SB 90, Apr. 3, 2009.

72. Video Recording of Senate Floor Proceedings, Mar. 30, 2009 at 4 hr., 5 min., 25 sec. (remarks by Sen. Vincent F. Fort (D-39th)) http://www.georgia.gov/00/article/0,2086,4802_6107103_129987583,00.html [hereinafter Senate Floor Video].

73. *Id.*

74. *Id.*

transportation money in it, that we are effectively locking those poor children, those children whose opportunities are so limited—aren't we locking those children out of this bill?"⁷⁵ Representative Morgan explained in an interview that Georgia is in a severe budget crisis and that it would place too much of a burden on the local school systems at this time to provide transportation for intra-district transfers of students.⁷⁶ This is something she would like to see happen in the future, but she feels strongly that school choice will benefit Georgia students even without transportation at this time.⁷⁷ Lastly, Senator Fort explains that if the State wants to see barriers to education broken down, control should actually be taken away from local school districts.⁷⁸

On March 26, 2009, the Senate Education and Youth Committee favorably reported on the bill; this same day, it was read a second time in the Senate.⁷⁹ Although SB 90 did not survive cross-over day, the language from that bill that was inserted into HB 251 did survive.⁸⁰ On March 30, 2009, the Senate read HB 251 for the third time and passed the bill by substitute with a vote of 29 to 21.⁸¹ As explained above, the House did not approve of the addition of Section 2 to the bill.⁸² On April 3, 2009, the last day of the legislative session, a conference committee was appointed, and after a final approval by the House of the conference committee report, the Senate adopted the conference committee report by a vote of 42 to 11.

The Act

The Act amends Chapter 2 of Title 20 to allow intra-district transfer for public school students.⁸³

75. *Id.*

76. Morgan Interview, *supra* note 23.

77. *Id.*

78. Senate Floor Video, *supra* note 72, at 4 hr., 5 min., 25 sec. (remarks by Sen. Vincent F. Fort).

79. HB 251 (SCS), 2009 Ga. Gen. Assem.

80. *Id.*

81. *Id.*

82. *Id.*

83. O.C.G.A. § 20-2-2131 (2009).

Section 1 of the Act adds a new Code section, 20-2-2131, and subsection (a) allows for intra-district public school transfer beginning with the 2009–2010 school year.⁸⁴ Parents are responsible for transportation of their child to the new school district, and the transfer can only occur if there is space in the transfer school.⁸⁵ In order to take the subjective component out of current Code section 20-2-293 (Georgia Limited School Choice Provision) all school districts are charged with creating a standardized process for all students to implement the transfer requirement set forth in subsection (a).⁸⁶ Once a student transfers to another school, he or she may stay in this school until completion of all grades in the school, and if the student wishes to attend another school that the transfer school feeds into, he or she must reapply.⁸⁷

Subsection (b) charges the Department of Education with establishing a streamlined process for implementing the intra-district transfer provisions put forth under the Act.⁸⁸ Subsection (c) charges the local school districts with notifying parents at the beginning of every school year of the options available to them under this Act; under subsection (d), the districts must notify parents of the schools that have available space and are eligible for transfer by July 1 of each year.⁸⁹

Section 2 under the Senate Committee Substitute was removed from the Conference Committee version of the bill and replaced with a revision to subsection (c) of Code section 20-2-51, which relates to the “election of county board of education members, persons ineligible to be members or superintendent, ineligibility for local boards of education, and ineligibility for other offices.”⁹⁰ The conference committee version added in Section 3, revising subsection (b) of Code section 20-2-101, which relate to the “appointment of county school superintendents.”⁹¹ Sections 2 and 3 do not allow a

84. *Id.* § 20-2-2131(a)(1).

85. *Id.*

86. *Id.*

87. *Id.* § 20-2-2131(a)(3).

88. *Id.* § 20-2-2131(b).

89. O.C.G.A. § 20-2-2131(c)–(d) (2009).

90. *Id.* § 20-2-51.

91. *Id.* § 20-2-101.

person who has an immediate family member on the local board of education, as a local school superintendent, principal, assistant principal, or system administrative staff in the local school system to serve as a member of the local board of education.⁹²

Analysis

This Act constitutes an effort to bring meaningful public school choice to all families that reside in Georgia.⁹³ Although public school choice already existed in Georgia before this Act, the system was undermined by inconsistencies, nepotism, and unpredictable subjectivity.⁹⁴ This Act seeks to remedy these deficiencies by implementing a public school choice system that is uniform, streamlined, and open to all students.⁹⁵ Thus, this Act furthers the emerging nation-wide policy that parents and children should be free to choose a school that reflects their own personal needs. Both President Obama and the new Secretary of Education, Arnie Duncan, have voiced their support for public school choice, and public school choice is therefore expected to experience further growth and development within the states during the next several years.⁹⁶ This Act is simply one right step in that direction and provides the state of Georgia with a solid foundation that can be used in the future for extending public school choice even further.

Preserving Local Control

Despite the relative simplicity of the Act, several unresolved issues exist.⁹⁷ One issue, voiced by Representative Tommy Benton (R-31st),

92. *Id.* §§ 20-2-51, -101.

93. Senate Floor Video, *supra* note 72, at 4 hr., 5 min., 21 sec. (remarks by Sen. Dan Weber (R-40th)).

94. Video Recording of House Committee Proceedings, Feb. 12, 2009 at 1 hr., 1 min., 59 sec. (remarks by Rep. Alisha Morgan (D-39th)) [hereinafter House Committee Video].

95. O.C.G.A. § 20-2-2131(a)(2) (2009).

96. Senate Floor Video, *supra* note 72, at 4 hr., 5 min., 25 sec. (remarks by Sen. Dan Weber (R-40th)).

97. House Committee Video, *supra* note 94, at 54 min., 34 sec. (remarks by Rep. Alisha Morgan (D-39th)) (stating that this is a very simple bill).

is whether the Act will deprive school systems of their local control.⁹⁸ His concern stems from the provisions of the Act that mandate a universal, streamlined process and mandate that all districts comply with a model system created by the State Department of Education.⁹⁹ In response to Representative Benton's concern, Representative Morgan assured him that this bill would not negatively impact local control.¹⁰⁰ Still concerned with the bill's implications, Representative Benton asked whether the State Department of Education would "come up with the guidelines for all the school systems as to what their policy should be," yet Representative Morgan again dispelled this concern by emphasizing that each local school system will be given the freedom to create its own rules.¹⁰¹ However, Representative Morgan's assurances seem to conflict to a degree with the Act's requirement that each district's transfer process incorporate the model transfer process created by Georgia's Department of Education.¹⁰² Stated differently, the school districts are required to comply with the model process created by the department, yet will supposedly retain local control because they "will have to administer . . . these rules and how it's carried out."¹⁰³

However, the Department of Education has yet to create its model transfer process, and so it is difficult to predict how much control the Act will actually wrestle away from local school boards.¹⁰⁴ Although the Act most likely intends for the department to create a general outline of the process that should be used, leaving the specific details up to the local school boards, there is a risk that the department will strip local systems of meaningful control. Thus, the preservation of local control directly depends upon the number, depth, and specificity

98. House Floor Video, *supra* note 48, at 1 hr., 24 min., 10 sec. (remarks by Rep. Tommy Benton (R-31st)).

99. O.C.G.A. § 20-2-2131(a)(2)–(b) (2009).

100. House Floor Video, *supra* note 48, at 1 hr., 24 min., 25 sec. (remarks by Rep. Alisha Morgan (D-39th)).

101. *Id.* at 1 hr., 24 min., 55 sec. (remarks by Rep. Alisha Morgan (D-39th)).

102. O.C.G.A. § 20-2-2131(b).

103. House Floor Video, *supra* note 48, at 1 hr., 24 min., 25 sec. (remarks by Rep. Alisha Morgan (D-39th)).

104. *Id.* ("[E]ach local school board will have their own process that they will put in place . . . so they do still have local control in that they will have to administer and of course promulgate these rules.").

of the guidelines set forth by the State Department of Education. When the State Department of Education does release its model transfer process, it should take great care in clearly delineating the rules that the local districts must incorporate into their plans and the rules that are merely suggestions. A failure to do so will create confusion in the districts regarding the amount of local control they may retain in implementing their own plans.

Limiting Local Power

Although the Act is ambiguous regarding the amount of control taken away from the local school systems, the Act does intend to specifically limit their authority in one important respect: the Act intentionally strips school systems of their ability to arbitrarily deny transfers. In the past, school districts allowed transfers only for “compelling reasons and circumstances” and this standard gave rise to transfer decisions based solely on the subjective beliefs of the school administration.¹⁰⁵ Though this standard seems fair and neutral on its face, in reality, students were being denied a transfer for arbitrary reasons and sometimes a transfer could be obtained only if the student had connections.¹⁰⁶ By mandating that each district implement a uniform, streamlined transfer process that is open to all students, the Act intends to abolish subjectivity in determining which students may transfer.¹⁰⁷ Therefore, the school districts, when creating their own rules and procedures for transferring under this Act, must ensure that their process is universal, objective, and leaves no room for arbitrary or biased decisions. Only then can each student be guaranteed an equal opportunity to transfer into a different school than the one to which they are assigned.

105. O.C.G.A. § 20-2-293 (2009); *see also* Morgan Interview, *supra* note 23.

106. House Committee Video, *supra* note 94, at 1 hr., 1 min., 59 sec. (remarks by Rep. Alisha Morgan (D-39th)) (stating that the purpose of the Act is to create “a uniform system so that there’s not these random ‘if you know this person in that district you can get in, but in this school system it’s something totally different’”).

107. *Id.*

Issues the Local School Systems Should Consider

As mentioned above, the local school systems must first comply with the model plan promulgated by the State Department of Education, and after doing so, they will be free to establish their own universal rules and procedures.¹⁰⁸ However, the Act is intentionally silent about which rules and procedures the local school systems should incorporate into their plans. This silence exists for the purposes of preserving local control and delegating this task solely to the local school systems. Indeed, Representative Alisha Morgan has emphasized on several occasions that the creators of the bill “purposefully didn’t put any language about what needs to be in the requirements” so that each local school system could individually determine the issues it wants to deal with.¹⁰⁹ As stated above, it is unclear whether the State Department of Education will resolve these issues for the school districts in its model plan.¹¹⁰ However, assuming that the State Department of Education respects the Act’s intent to leave many of these issues to the individual school systems, the following is a list of issues that the school systems should consider when formulating their plans.

First, the school systems should consider how to deal with disciplinary issues that might arise during transfer requests. During a House committee meeting, Representative Howard Maxwell expressed concern with the fact that troubled students can use this Act as a means of leaving a school in which they have had discipline problems.¹¹¹ This is problematic because it allows a troubled student to bring his or her disciplinary problems to a new school, which could potentially create disorder and disruption in that new school. Therefore, school systems should consider how to deal with students who may cause disciplinary problems in the new school, and there are several ways in which the school systems can do so. The school

108. O.C.G.A. § 20-2-2131(b) (2009).

109. House Committee Video, *supra* note 94, at 1 hr., 2 min., 32 sec. (remarks by Rep. Alisha Morgan (D-39th)).

110. *See supra Preserving Local Control*.

111. House Committee Video, *supra* note 94, at 1 hr., 0 min., 49 sec. (remarks by Rep. Howard Maxwell (R-17th)).

district may choose to forbid the transfer of students who have had certain types of disciplinary problems in the past. For example, the district can decide that students who have been suspended or expelled may not transfer into a different school.¹¹² The district may also take a less stringent approach by simply requiring troubled students to sign a contract by which they will be sent back to the old school if they cause any problems at the new school.¹¹³ Regardless of how the school districts decide to handle this issue, they must insure that their policy is uniform, objective, and will not cause decisions to be made on a case-by-case basis, because one of the Act's goals is to abolish arbitrary or subjective decisions.¹¹⁴

Another issue facing school districts is how to determine the number of spaces available in each school. The Act states that students may transfer only if the new school has available classroom space after all of its assigned students have been enrolled.¹¹⁵ However, the Act fails to specify what constitutes available classroom space. In resolving what constitutes available classroom space, the floor debates and committee meetings are particularly helpful in casting light on the statute's intent. First, the districts cannot contravene this requirement by deciding to lower their student to teacher ratio and thus decrease the amount of spots available.¹¹⁶ Second, the State Board of Education recently increased the number of students that are allowed in each classroom, yet this increase is permissive only.¹¹⁷ Thus, schools that wish to keep their current class size may do so without being impacted by this increase.¹¹⁸ Third, schools must include trailers when determining the amount of available space.¹¹⁹ With these requirements in mind, the school

112. *Id.* at 1 hr., 2 min., 48 sec. (remarks by Rep. Brooks Coleman (R-97th)).

113. *Id.* at 1 hr., 0 min., 49 sec. (remarks by Rep. Howard Maxwell (R-17th)).

114. House Committee Video, *supra* note 94, at 1 hr., 1 min., 59 sec. (remarks by Rep. Alisha Morgan (D-39th)).

115. O.C.G.A. § 20-2-2131(a)(1) (2009).

116. House Floor Video, *supra* note 48, at 1 hr., 0 min., 20 sec. (remarks by Rep. Alisha Morgan (D-39th)).

117. House Committee Video, *supra* note 94, at 1 hr., 5 min., 33 sec. (remarks by Brooks Coleman (R-97th)).

118. *Id.*

119. House Committee Video, *supra* note 94, at 1 hr., 0 min., 20 sec. (remarks by Rep. Alisha Morgan (D-39th)) (stating that the school count is not synonymous with "permanent" classroom space

system is free to set up its own procedure for determining the number of available slots.¹²⁰

The school districts also need to determine what to do when the number of transfer requests exceeds the school's capacity. According to Representative Morgan, the school districts "have the right to prioritize which students they would allow to transfer" and may create their own methods of prioritizing the students who will be transferred in this situation.¹²¹ Again, several options are available to school districts in determining which students to accept. The district may choose to implement a lottery, whereby the students who will fill up the school's open spots are chosen at random. It may also choose to fill up the school's remaining spots on a first-come, first-served basis. Alternatively, the school district may implement a ranking system where it selects students with the most achievement-oriented qualities, but this system is not preferred because it could potentially lead to the type of subjective decisions that the Act intended to abolish.¹²²

To further ensure that subjective transfer decisions are not made, the school boards might also want to establish an appeals process that would allow students to appeal a denial of their transfer request. An appeals procedure by which students can appeal their denial to a neutral group of individuals imposes a check on the school systems by ensuring that the school systems comply with their objective transfer process and remedying any subjective deviation from the process.

Lastly, one issue that the school systems do not have to consider is what to do when student athletes request transfers simply because they wish to attend a school with a better sports team. One concern with this Act is that it would provide schools with a way to recruit the most talented athletes for their sports teams. However, this was an issue before this Act existed and has already been resolved by a

and the word "permanent" was taken out because she did not want schools to include "only building space and not include trailers").

120. *Id.* at 1 hr., 34 min., 21 sec. (remarks by Rep. Alisha Morgan (D-39th)).

121. *Id.* at 1 hr., 32 min., 23 sec. (remarks by Rep. Alisha Morgan (D-39th)).

122. House Committee Video, *supra* note 94, at 1 hr., 1 min., 59 sec. (remarks by Rep. Alisha Morgan (D-39th)).

provision that prohibits an athlete who transfers to a new school from playing sports for an entire year.¹²³

Future Developments

Due to Georgia's current budget crisis, the Act does not require the school districts to provide and pay for transportation for the children who have transferred to a different school.¹²⁴ Instead, the cost and responsibility for transportation falls on the parents.¹²⁵ As a result, this Act renders it difficult, if not impossible, for families of limited means to transfer their children to different schools because these families cannot afford to pay for their children's transportation. This lack of transportation also disadvantages families who don't have time to transport their children to a different school. Thus, although the lack of a transportation provision has the benefit of saving money for school districts, it also imposes a burden on many families and effectively forecloses the option of school transfers for many other families.¹²⁶ The future of this Act will therefore probably include a provision by which the school districts must provide and pay for transportation for the transferring students.¹²⁷ Only then will public school choice truly be available for all Georgia students.

Aside from transportation, the next logical step in public school choice is to provide for inter-district transfers. Then students who reside in small districts with few schools to choose from, or students whose districts do not have schools that suit their needs, will receive a chance to fully exercise public school choice. Although an inter-district transfer provision was introduced in this bill and ultimately rejected, it is highly likely that such a provision will prevail within the next several years, evidenced by the fact that the inter-district provision passed through the Senate.¹²⁸ Such already-existing support

123. House Committee Video, *supra* note 94, at 1 hr., 2 min., 56 sec. (remarks by Rep. Howard Maxwell (R-17th)).

124. Morgan Interview, *supra* note 23.

125. O.C.G.A. § 20-2-2131(a)(1) (2009).

126. House Committee Video, *supra* note 94, at 54 min., 34 sec. (remarks by Rep. Alisha Morgan (D-39th)).

127. Morgan Interview, *supra* note 23.

128. HB 251 (SCS), 2009 Ga. Gen. Assem.

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for inter-district transfers signifies that the future holds even more positive changes for the educational system in Georgia. Until then, however, this Act successfully empowers families to choose public schools within their district that best fit their unique needs.

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