

10-1-2009

EDUCATION Amend Part 3 of Article 16 of Chapter 2 of Title 20, Relating to the Health of Students in Elementary and Secondary Education, so as to Require Local School Systems to Conduct an Annual Fitness Assessment and to Comply with State Physical Education Instruction Requirements; Provide for Reporting of Results; Provide for an Annual Report to the Governor; Provide for a Recognition Program; Provide for Automatic Repeal; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes.

Rosanne Cross

Ben Lorber

Follow this and additional works at: <https://readingroom.law.gsu.edu/gsulr>

 Part of the [Law Commons](#)

## Recommended Citation

Rosanne Cross & Ben Lorber, *EDUCATION Amend Part 3 of Article 16 of Chapter 2 of Title 20, Relating to the Health of Students in Elementary and Secondary Education, so as to Require Local School Systems to Conduct an Annual Fitness Assessment and to Comply with State Physical Education Instruction Requirements; Provide for Reporting of Results; Provide for an Annual Report to the Governor; Provide for a Recognition Program; Provide for Automatic Repeal; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes*, 26 GA. ST. U. L. REV. (2009).

Available at: <https://readingroom.law.gsu.edu/gsulr/vol26/iss1/12>

## EDUCATION

***Amend Part 3 of Article 16 of Chapter 2 of Title 20, Relating to the Health of Students in Elementary and Secondary Education, so as to Require Local School Systems to Conduct an Annual Fitness Assessment and to Comply with State Physical Education Instruction Requirements; Provide for Reporting of Results; Provide for an Annual Report to the Governor; Provide for a Recognition Program; Provide for Automatic Repeal; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes.***

CODE SECTION:	O.C.G.A. § 20-2-776 (new)
BILL NUMBER:	HB 229
ACT NUMBER:	54
GEORGIA LAWS:	2009 Ga. Laws 10
SUMMARY:	The Act requires each local school system to conduct an annual fitness assessment program of students in elementary and secondary school during a course taught by a certified physical education teacher in which the student is enrolled. Each local school system must report the individual results of each fitness assessment to the parent or guardian of each student assessed and the aggregate results of the fitness assessments by school to the State Board of Education. The State Board of Education shall adopt standards with which to assess the student health and physical education and shall submit an annual report to the Governor. The Governor may, in coordination with the State Board of Education, establish one or more recognition programs to acknowledge local school systems and schools that

have most improved in their physical fitness assessments.

EFFECTIVE DATE: July 1, 2009

### *History*

Benjamin Franklin once said, “An ounce of prevention is worth a pound of cure.”<sup>1</sup> Although these words were originally advice for fighting fires,<sup>2</sup> do they also ring true for student health? According to the Georgia Department of Human Resources, “[o]besity in children and youth is a significant public health problem in Georgia.”<sup>3</sup> In 2008, fourteen percent of middle school children and eleven percent of high school children were obese even though the national goal was five percent.<sup>4</sup> In 2008, the Healthy People 2010 national goal was still five percent, but the percent of obese middle school children in Georgia had climbed to fifteen percent and the percent of obese high school children had jumped to fourteen percent.<sup>5</sup> The age at which weight may become a problem for Georgia citizens is a low one—only eight or nine years of age.<sup>6</sup> Nearly 28,000 third grade children, comprising twenty-four percent of third graders across Georgia, were obese in 2008.<sup>7</sup>

The rise in childhood obesity, according to the Georgia Department of Human Resources, is due to “poor diet and physical inactivity.”<sup>8</sup> Only about half of Georgia middle school and high school students met the Center for Disease Control’s “requirements for recommended physical activity.”<sup>9</sup> Only sixty-eight percent of

---

1. USHistory.org, The Electric Ben Franklin: A Quick Biography of Ben Franklin, <http://www.ushistory.org/Franklin/info/index.htm> (last visited Apr. 20, 2009).

2. *Id.*

3. GEORGIA DEP’T OF HUMAN RES., 2008 GEORGIA DATA SUMMARY: OBESITY IN CHILDREN AND YOUTH (2008), <http://health.state.ga.us/pdfs/epi/cdiee/2008%20Obesity%20data%20summary.pdf> [hereinafter OBESITY IN CHILDREN AND YOUTH].

4. The definition of obesity is a body mass index-for-age percentile at the ninety-fifth percentile or higher. *Id.*

5. *Id.*

6. Children in the third grade are generally eight or nine years of age. GEORGIA DEP’T OF HUMAN RES., OBESITY IN GEORGIA’S 3RD GRADE CHILDREN (2005), <http://health.state.ga.us/pdfs/epi/3rdGradeBMISummary.pdf> (last visited Apr. 24, 2009).

7. OBESITY IN CHILDREN AND YOUTH, *supra* note 3.

8. *Id.*

9. *Id.*

Georgia's middle school students and fifty-nine percent of Georgia's high school students are regularly active.<sup>10</sup> The increase in children with weight problems may also be due to the decrease in the number of children who were breastfed.<sup>11</sup> "Although more research is needed, studies suggest that children who were exclusively or mostly breastfed are less likely to be overweight than children who were exclusively or mostly formula fed."<sup>12</sup> Other contributing factors to childhood obesity include a lack of fruits and vegetables<sup>13</sup> and an excessive amount of time spent viewing television.<sup>14</sup>

"Health conditions associated with child and adolescent obesity" are numerous and varied, including sleep apnea, flat feet, insulin resistance, Type 2 diabetes, hypertension, left ventricular hypertrophy, depression, and social isolation.<sup>15</sup> Additionally, "[e]xcess body fat is associated with increased mortality."<sup>16</sup> In a 2005 publication, the Georgia Department of Health and Human Resources estimated that "6,700 Georgians die annually because they are overweight or obese," which equates to approximately ten percent of all deaths.<sup>17</sup>

The economic costs of obesity in the United States are considerable. An estimated \$75 to \$100 billion is spent each year on medical costs for health conditions associated with obesity.<sup>18</sup> In Georgia, the cost is approximately \$2.1 billion per year, costing each Georgian \$250 annually.<sup>19</sup>

---

10. GEORGIA DEP'T OF HUMAN RES., DIV. OF PUBLIC HEALTH, OVERWEIGHT AND OBESITY IN GEORGIA 38 (2005), <http://health.state.ga.us/pdfs/familyhealth/nutrition/ObesityRep.DPH05.023HW.pdf> [hereinafter OVERWEIGHT AND OBESITY IN GEORGIA].

11. *Id.* at 25.

12. *Id.*

13. *Id.* at 30.

14. "US [sic] children spend as much time watching television in the course of a year as they do attending school." *Id.* at 44.

15. In a fact sheet developed by the ILSI Research Foundation and the Center for Health Promotion, twenty-nine different health conditions related to child and adolescent obesity were listed. Healthcare Georgia Foundation, *Preventing Childhood Obesity: Georgia Health Care Professions Can Make a Difference!*, [www.gafp.org/documents/Ped\\_OW\\_Fact\\_Sheet\\_1\\_Prevention.pdf](http://www.gafp.org/documents/Ped_OW_Fact_Sheet_1_Prevention.pdf) (last visited Oct. 24, 2009) [hereinafter *Preventing Childhood Obesity*].

16. OVERWEIGHT AND OBESITY IN GEORGIA, *supra* note 10, at 3.

17. *Id.* at 20.

18. *Id.* at 3.

19. *Id.*

Child and adolescent obesity is a growing problem in Georgia, but the problem is not without its proposed solutions. The Healthcare Georgia Foundation (“Foundation”) recommends that, beginning at the age of two, every child’s body mass index (“BMI”) be calculated after assessing his or her height and weight at all health visits.<sup>20</sup> The Foundation also advises that each child’s BMI be plotted annually, at least, “on gender-specific, BMI-for-age percentile growth charts.”<sup>21</sup> With the growing problem of childhood and adolescent obesity in mind, Representative Brooks Coleman (R-97th) championed the Student Health and Physical Education Act.

### *Bill Tracking of HB 229*

#### *Consideration and Passage by the House*

Representatives Brooks Coleman (R-97th), Tom Dickson (R-6th), Howard Maxwell (R-17th), Margaret Kaiser (D-59th), and Kathy Ashe (D-56th), respectively, sponsored HB 229.<sup>22</sup> The House of Representatives read the bill for the first time on January 20, 2009, and for the second time on February 2, 2009.<sup>23</sup> Speaker of the House Glenn Richardson (R-19th) assigned it to the House Committee on Education.<sup>24</sup>

The bill, as originally introduced, was entitled the “Student Health and Physical Education Act,” often referred to as “SHAPE.”<sup>25</sup> However, this title was removed from the bill in the House Committee on Education’s substitution to the original bill<sup>26</sup> and was renamed the “Physical Education Fitness Act.”<sup>27</sup> On February 22, 2008, a bill entitled the “Student Health and Physical Education Act,” requiring each local school system to conduct BMI testing of each

---

20. *Preventing Childhood Obesity*, *supra* note 15.

21. *Id.*

22. *See* HB 229, as introduced, 2009 Ga. Gen. Assem.

23. State of Georgia Final Composite Status Sheet, HB 229, Apr. 3, 2009.

24. *Id.*

25. HB 229, as introduced, 2009 Ga. Gen. Assem.

26. HB 229 (HCS), 2009 Ga. Gen. Assem.

27. State of Georgia Final Composite Status Sheet, HB 229, Apr. 3, 2009; *see also* Interview with Rep. Brooks Coleman (R-97th) (Apr. 15, 2009) [hereinafter Coleman Interview].

student twice a year,<sup>28</sup> was introduced in the Senate.<sup>29</sup> Although the bill passed by substitute in the Senate,<sup>30</sup> it failed in the House where the implementation of the BMI test was strongly opposed due to concern for the psychological impact of the test on students.<sup>31</sup> Among those opposed to the bill was Representative Coleman.<sup>32</sup> Because he had worked so hard to oppose the 2008 SHAPE Act, Representative Coleman worked equally hard in 2009 to formulate and support a new type of student physical fitness bill.<sup>33</sup> When Representative Coleman sponsored HB 229, all mention of the BMI test was removed because it was so controversial in 2008.<sup>34</sup> In fact, Representative Dickson (R-6th) emphasized that HB 229 was an improvement upon the 2008 SHAPE Act because, in removing the BMI test component, the bill avoided labeling children and showed concern for “their sense of well-being and sense of self.”<sup>35</sup>

Representative Coleman addressed the House on February 25, 2009, reminding representatives that HB 229 was not a mere repeat of the 2008 SHAPE Act.<sup>36</sup> However, the bill was not without its opposition. Representative Jeff May (R-111th), although recognizing there were some positive provisions in the bill, argued that it is not the government’s job to determine children’s BMIs.<sup>37</sup>

HB 229, the “Physical Education Fitness Act,” requires local schools to test students annually in a “physical education course that is taught by a certified physical education teacher in which a student is enrolled.”<sup>38</sup> Although this does not include every student in every year, potentially testing only one third of every school each year, Representative Coleman is confident that the bill will still complete

---

28. SB 506, as introduced, 2008 Ga. Gen. Assem.

29. SB 506 was sponsored by Senator Joseph Carter (R-13th), Senator Don Thomas (R-54th), Senator Valencia Seay (D-34th), Senator Chip Rogers (R-21st), Senator Judson Hill (R-32nd), and Senator Dan Moody (R-56th), respectively. State of Georgia Final Composite Status Sheet, SB 506, Mar. 25, 2008; *see also* Coleman Interview, *supra* note 27.

30. State of Georgia Final Composite Status Sheet, SB 506, Mar. 25, 2008.

31. Coleman Interview, *supra* note 27.

32. *Id.*

33. *Id.*

34. *Id.*

35. *See* Interview with Rep. Tom Dickson (R-6th) (Apr. 15, 2009) [hereinafter Dickson Interview].

36. *See Lawmakers 2009* (GPTV broadcast, Feb. 25, 2009) (remarks by Rep. Brooks Coleman) (on file with Georgia State University Law Review).

37. *Id.*

38. HB 229, as passed, 2009 Ga. Gen. Assem.

its articulated purpose of ensuring that physical education requirements in schools are working properly and monitoring the health and fitness of children in the programs that are already provided.<sup>39</sup>

Even though HB 229 does not specifically include a BMI test, the Act is written to give the State Board of Education the discretion to include assessments that are “appropriate as to ascertain levels of student physical fitness.”<sup>40</sup> Such assessments may examine different aspects of fitness, such as chin-ups, pull-ups, diet, body weight, and cardiovascular health and fitness.<sup>41</sup> If the State Board of Education should chose to do so, the BMI test may be implemented.<sup>42</sup> However, each local school system may “embellish or subtract from” whatever assessment list is created as they see fit.<sup>43</sup>

The House Committee on Education reported the bill favorably on February 17, 2009, and the bill was then read for the third time on February 25, 2009.<sup>44</sup> On that same day, the House of Representatives passed HB 229 by a vote of 116 to 42.<sup>45</sup>

#### *Consideration and Passage by the Senate*

HB 229 was read for the first time in the Senate on February 26, 2009.<sup>46</sup> It was referred on that same day to the Senate Committee on Education and Youth, which reported favorably on the bill on March 5, 2009.<sup>47</sup> On March 9, 2009, the bill was read in the Senate for the second time.<sup>48</sup> When the bill was read on the Senate floor for the third time on March 19, 2009,<sup>49</sup> Senator Don Thomas (R-54th), who presented the HB 229 to the Senate, emphasized that the school system, while recognizing star athletes, fails to recognize the average

---

39. Coleman Interview, *supra* note 27.

40. HB 229, as passed, 2009 Ga. Gen. Assem.

41. Coleman Interview, *supra* note 27.

42. *Id.*

43. *Id.*

44. State of Georgia Final Composite Status Sheet, HB 229, Apr. 3, 2009.

45. Georgia House of Representatives Voting Record, HB 229 (Feb. 25, 2009).

46. State of Georgia Final Composite Status Sheet, HB 229, Apr. 3, 2009.

47. *Id.*

48. *Id.*

49. *Id.*

child.<sup>50</sup> Senator Thomas also pointed out that for the first time the younger generation has a life expectancy lower than their parents.<sup>51</sup> Senator Thomas supported HB 229 because it recognizes students and schools who excel in the fitness assessments and encourages them without presenting any punitive measures or penalties.<sup>52</sup> Joining Senator Thomas in support of the bill, Senator Judson Hill (R-32nd) explained he was appalled by the nutrition offered in the lunchroom to children.<sup>53</sup> While agreeing with Senator John Wiles (R-37th) that it is the parents' role to monitor the health of children, Senator Hill stressed that in the end the government bore the cost of poor health decisions made by parents on behalf of their children—from the provision of nurses in schools to government-provided healthcare.<sup>54</sup> Senator Nan Orrock (D-36th) joined Senator Hill by explaining that sixty percent of Georgia's children are born on Medicaid today, and posturing that, in this instance, an ounce of prevention is worth a pound of cure.<sup>55</sup>

However, the bill was not without its opposition. Senator John Wiles asked the Senate to consider the fact there was no fiscal note attached to the bill stating how much the implementation of the bill would cost.<sup>56</sup> Recognizing that the Georgia Legislature has been cutting back on expenses in the 2009 session, Senator Wiles questioned the cost of HB 229 and emphasized the role of the public education system was not to monitor student health.<sup>57</sup> Despite the opposition, on the same day the bill was read for the third time, March 19, 2009, the Senate passed the bill by a vote of 34 to 14.<sup>58</sup> HB 229 was sent to the Governor on April 13, 2009.<sup>59</sup>

---

50. See *Lawmakers 2009* (GPTV broadcast, Mar. 19, 2009) (remarks by Sen. Don Thomas) (on file with the Georgia State University Law Review).

51. Video Recording of Senate Proceedings, Mar. 19, 2009 at 1 hr., 11 min., 54 sec. (remarks by Sen. Don Thomas), <http://www.gpb.org/lawmakers-tv/video-archive> [hereinafter Senate Video].

52. *Id.*

53. See *id.* at 1 hr., 17 min., 29 sec. (remarks by Sen. Judson Hill).

54. *Id.*

55. See *id.* at 1 hr., 25 min., 31 sec. (remarks by Sen. Nan Orrock (D-36th)).

56. See *id.* at 1 hr., 15 min., 27 sec. (remarks by Sen. John Wiles (R-37th)).

57. Senate Video, *supra* note 51, at 1 hr., 15 min., 27 sec.

58. State of Georgia Final Composite Status Sheet, HB 229, Apr. 3, 2009; see also Georgia Senate Voting Record, HB 229 (Mar. 19, 2009).

59. State of Georgia Final Composite Status Sheet, HB 229, Apr. 3, 2009.

*The Act*

The Act amends Part 3 of Article 16 of Chapter 2 of Title 20 by adding a new Code section, 20-2-776.<sup>60</sup> The Act requires each local school system to conduct an annual fitness assessment program of students in grades one through twelve<sup>61</sup> to evaluate both student fitness and school physical education programs<sup>62</sup> in an attempt to confront the burgeoning obesity problem in Georgia's youth.<sup>63</sup>

Starting in the 2011–2012 school year, subsection (a)(1) requires the program to be conducted one time each school year during a student's physical education course taught by a certified physical education teacher.<sup>64</sup> Only those students enrolled in such a course are to be tested; this Act does not impose additional physical education course requirements on students.<sup>65</sup> Despite concerns that the Act does not require evaluation of all students, Senator Tom Dickson (R-6th) is confident that representative samples will compose an accurate picture.<sup>66</sup>

The fitness assessment program must be approved and funded by the State Board of Education ("Board") and shall include methods deemed by the Board as appropriate to determine levels of student physical fitness.<sup>67</sup> Subsection (a)(1) also requires each local school system to report the individual results of the assessment to each student's parent or guardian on an annual basis.<sup>68</sup> Aggregate results of the school's fitness assessments must be reported to the Board.<sup>69</sup> The Board will also approve the format, set forth the minimum required contents, and provide funding for all reporting.<sup>70</sup>

---

60. O.C.G.A. § 20-2-776 (Supp. 2009).

61. *Id.*

62. Coleman Interview, *supra* note 27.

63. Senate Video, *supra* note 51, at 1 hr., 11 min., 54 sec. (remarks by Sen. Don Thomas (R-54th)).

64. O.C.G.A. § 20-2-776(a)(1) (Supp. 2009).

65. HB 229, as passed, 2009 Ga. Gen. Assem.

66. Dickson Interview, *supra* note 35.

67. O.C.G.A. § 20-2-776(a)(1) (Supp. 2009).

68. *Id.*

69. *Id.*

70. *Id.*

Subsection (a)(2) reinforces Section 20-2-142, requiring local school systems to provide the minimum instruction in physical education already prescribed by the Board under the Georgia Code.<sup>71</sup>

Under subsection (b), the Board has the responsibility to coordinate health and physical education as well as fitness activities and requirements.<sup>72</sup> This includes modification or dissemination of any rules and regulations related to this area.<sup>73</sup> Additionally, the Board will adopt standards, based on current and widely accepted practices, by which to guide local school systems.<sup>74</sup> The Board's efforts in this regard may be funded with any combination of state, federal, or private financing.<sup>75</sup> In fact, organizations such as the Heart Association and the Kidney Foundation have already offered donations in support of this Act.<sup>76</sup>

Subsection (c) requires that the Board provide the Governor with an annual report outlining compliance with each school and school system.<sup>77</sup> It also allows the Governor, in coordination with the Board, to create recognition programs to acknowledge schools and school systems that have the most improved assessment scores.<sup>78</sup> The Governor may also, in partnership with private corporations, provide monetary or other incentives to school systems for attaining certain levels of physical fitness health.<sup>79</sup> Finally, any school or school system so recognized will also be recognized on the Board's website.<sup>80</sup>

Subsection (d) acts to repeal this Code section on June 30, 2019, except for subsection (b).<sup>81</sup> This will remove all portions of the newly created Code section requiring the physical fitness assessment programs, assessment reports, and recognition programs.<sup>82</sup> This is in line with the legislation's intended goal of taking a "snapshot" of

---

71. O.C.G.A. § 20-2-776(a)(2) (Supp. 2009); *see also* O.C.G.A. § 20-2-142 (2009).

72. O.C.G.A. § 20-2-776(b) (Supp. 2009).

73. *Id.*

74. *Id.*

75. *Id.*

76. Coleman Interview, *supra* note 27.

77. O.C.G.A. § 20-2-776(c) (Supp. 2009).

78. *Id.*

79. *Id.*

80. *Id.*

81. O.C.G.A. § 20-2-776(d) (Supp. 2009).

82. *See id.* at § 20-2-776.

local schools and evaluating the efficacy of their current physical fitness programs.<sup>83</sup> Presumably, this will pave the way for future legislation to improve physical fitness education of Georgia's students.<sup>84</sup>

### *Analysis*

#### *Purpose*

The Act “speaks toward a policy of awareness and tries to create a database for the State Department of Education to develop a means to assist schools and parents [in] working with kids to keep them in better shape.”<sup>85</sup> Obesity has become a significant public health problem in Georgia.<sup>86</sup> Moreover, this problem puts a massive strain on the State, which spends \$2.1 billion per year on obesity-related healthcare costs.<sup>87</sup> Currently, 10% of the State's overall Medicaid budget is devoted solely to these problems.<sup>88</sup>

The Act's purpose is twofold. First, the Act is designed to educate and encourage students to exercise and to live healthier lifestyles.<sup>89</sup> Giving children the “right instructions from the beginning” about fitness, as well as recognizing their fitness-related achievements, will teach them the importance of exercise and healthy living.<sup>90</sup> In a society where children “have so much else to do they're not exercising,” the legislators hope this Act will help encourage them to once again make exercise a priority.<sup>91</sup>

The Act's other goal is to gather data on the current physical fitness of students and the standards of fitness education in schools.<sup>92</sup> It is hoped that “the reporting from this [Act] will shed some light on how little [schools] do now and show that there's a need for [them] to

---

83. Coleman Interview, *supra* note 27.

84. Coleman Interview, *supra* note 27.

85. Dickson Interview, *supra* note 35.

86. OBESITY IN CHILDREN AND YOUTH, *supra* note 3.

87. Senate Video, *supra* note 51, at 1 hr., 26 min., 42 sec. (remarks by Sen. Don Thomas (R-54th)).

88. *Id.*

89. See generally Coleman Interview, *supra* note 27.

90. Senate Video, *supra* note 51, at 1 hr., 26 min., 42 sec. (remarks by Sen. Don Thomas).

91. Coleman Interview, *supra* note 27.

92. *Id.*

do more.”<sup>93</sup> Legislators intend to use the information gathered as a stepping stone to future legislation to further combat the obesity problem in Georgia’s youth.<sup>94</sup>

Although the Act’s stated goals address an important problem, several concerns raised before its enactment may still become an issue.

### *Self-Esteem*

The 2008 incarnation of this Act, the SHAPE Act, was strongly opposed because of the inclusion of BMI testing.<sup>95</sup> Many legislators felt measuring BMI would label children and have negative psychological impacts on students.<sup>96</sup> Legislators were particularly concerned with its impact on the self-esteem and self-image of middle-school and young high school students.<sup>97</sup>

Now that BMI testing is no longer mandatory, these problems may be avoided.<sup>98</sup> BMI testing may not be completely eliminated under the Act, however.<sup>99</sup> Local school systems are given leeway to modify the plan recommended by the Board.<sup>100</sup> Thus, as long as the local school system tests and measures certain mandatory components, it is free to impose additional requirements on students, including BMI testing.<sup>101</sup> Given the controversy in 2008, it is unlikely that schools will voluntarily adopt the controversial testing, but the possibility schools will administer BMI testing lingers nonetheless.

Even without BMI testing, the dangers of labeling and negative self-image may still be present under the Act. Although students will be measured with a different yardstick, their fitness levels will still be tested, evaluated, and reported.<sup>102</sup> Legislative concerns over this

---

93. *Id.*

94. *Id.*

95. *Id.*

96. Dickson Interview, *supra* note 35.

97. Coleman Interview, *supra* note 27.

98. Dickson Interview, *supra* note 35.

99. Coleman Interview, *supra* note 27.

100. *Id.*

101. *Id.*

102. O.C.G.A § 20-2-776 (Supp. 2009).

danger seem to have disappeared along with the BMI requirement, but the Act may still impact students' self-esteem.<sup>103</sup>

### *Privacy*

Some legislators believe the Act oversteps the State's role and intrudes on parental responsibilities,<sup>104</sup> perhaps even representing an invasion of privacy.<sup>105</sup> Some believe that monitoring a child's fitness and health is the parent's job, and the legislature does not have the right to mandate such testing.<sup>106</sup> As Senator John Wiles (R-37th) believes, "[t]his is not [the] role of public education—their job is to educate our children."<sup>107</sup>

The Act's supporters respond that public schools are already involved in the physical education of children, and this Act merely improves the programs already in place.<sup>108</sup> Legislators acknowledge that "[i]n an ideal world a child's diet and physical fitness should be a parent's responsibility . . . [but] unfortunately we don't live in an ideal world."<sup>109</sup> Students spend a large portion of their time at school, often eating two out of three meals there every day.<sup>110</sup> Teachers already have responsibility for reporting to parents when students suffer from poor eyesight, hearing, or behavioral problems.<sup>111</sup> As Senator Greg Goggans (R-7th) points out, "what is the difference here in saying that it's not the school's responsibility to report to a parent a condition [such as obesity] that could have tremendous deleterious effects on that child in the future?"<sup>112</sup>

---

103. Eating Disorders Coalition, We Urge You to Oppose Mandatory BMI Reporting in the Schools, <http://www.eatingdisorderscoalition.org/documents/TalkingpointsBMI.pdf> (last visited Oct. 24, 2009).

104. Senate Video, *supra* note 51, at 1 hr., 15 min., 27 sec. (remarks by Sen. John Wiles (R-37th)).

105. Coleman Interview, *supra* note 27.

106. Senate Video, *supra* note 51, at 1 hr., 15 min., 27 sec. (remarks by Sen. John Wiles).

107. *Id.*

108. Coleman Interview, *supra* note 27.

109. Dickson Interview, *supra* note 35.

110. Senate Video, *supra* note 51, at 1 hr., 11 min., 54 sec. (remarks by Sen. Don Thomas).

111. *Id.* at 1 hr., 20 min., 5 sec. (remarks by Sen. Greg Goggans (R-7th)).

112. *Id.*

*Costs*

One unintended consequence of the Act could be hidden costs. Responding to criticism the Act “is a good idea but in a bad, tough budget year”<sup>113</sup> is not a wise decision, supporters of the Act claim “there’s no additional cost to the State.”<sup>114</sup> The Board will fund the program,<sup>115</sup> to avoid overburdening local school systems.<sup>116</sup> Moreover, funding has already been donated from several private organizations and charities.<sup>117</sup>

Costs may arise from reporting, both to parents and to the Governor.<sup>118</sup> Further costs may arise from the development of recognition programs and even the initial development of program standards.<sup>119</sup> Although these costs may not prove to be significant, it may prove more than anticipated.

*Future Legislation*

For Representative Tom Dickson (R-6th), one of the positive aspects of the Act is that “it did not mandate specific amounts of time for schools to spend in school fitness education.”<sup>120</sup> But once Georgia’s government begins analyzing the reporting statistics, legislation may be imposed doing just that.<sup>121</sup> Some legislators hope the results of these assessments will encourage lawmakers to extend physical education requirements, particularly in middle and high school.<sup>122</sup> As Representative Brooks Coleman (R-97th) lamented, “elementary school doesn’t even require recess anymore.”<sup>123</sup>

As the obesity problem grows, other areas of student health may be addressed, even beyond the realm of physical fitness. Several

---

113. *Id.* at 1 hr., 15 min., 27 sec. (remarks by Sen. John Wiles).

114. *Id.* at 1 hr., 26 min., 42 sec. (remarks by Sen. Don Thomas).

115. O.C.G.A. § 20-2-776(a)(1) (Supp. 2009).

116. Dickson Interview, *supra* note 35.

117. Coleman Interview, *supra* note 27.

118. O.C.G.A. § 20-2-776 (Supp. 2009).

119. *Id.*

120. Dickson Interview, *supra* note 35.

121. Coleman Interview, *supra* note 27.

122. *Id.*

123. *Id.*

senators are concerned with the quality of food in public schools.<sup>124</sup> As important as it is to establish good examples of exercise and physical fitness, it is also important to set an example by providing a nutritious diet, including fruits and vegetables.<sup>125</sup> Although many schools offer healthful lunches, these are compromised by the presence of junk food:<sup>126</sup> schools often sell junk food to students as a revenue source to offset other costs.<sup>127</sup> With medical expenses ballooning to combat the obesity problem,<sup>128</sup> it may be that legislators will no longer be willing to sacrifice student health for revenue supplements. Although the initial loss of revenue could be substantial, the reduction of future medical costs could more than make up for it. Once again, an ounce of prevention may be worth a pound of cure.

*Rosanne Cross & Ben Lorber*

---

124. Senate Video, *supra* note 51, at 1 hr., 17 min., 29 sec. (remarks by Sen. Judson Hill (R-32d)).

125. *Id.* at 1 hr., 11 min., 54 sec. (remarks by Sen. Don Thomas).

126. *Id.* at 1 hr., 17 min., 29 sec. (remarks by Sen. Judson Hill).

127. *Id.*

128. *Id.* at 1 hr., 11 min., 54 sec. (remarks by Sen. Don Thomas).