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## EDUCATION Education Legislation

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## EDUCATION

### *Education Legislation*

**CODE SECTIONS:** O.C.G.A. §§ 20-1-7 (new), 20-2-11, -57, -102, -108, -133, -154 (amended), 20-2-170 (new), 20-2-200 to -204, -210 to -217 (amended), 20-2-212.1, -218 (new), 20-2-230, -250, -281 to -282 (amended), 20-2-480 (new), 20-2-695, -792 to -794, -795.1, -796 to -797, -833, -850, -942, -981 to -990 (amended), 47-3-11 (amended)

**BILL NUMBERS:** HB 146, HB 589, HB 792, SB 71, SB 313, SB 328, SB 348, SB 396

**ACT NUMBERS:** 330, 525, 527, 539, 473, 524, 576, 299

**SUMMARY:** While all of these bills are related to education, they cannot be said to constitute a legislative package. HB 589 transfers authority for teacher certification from the Department of Education to a newly constituted Professional Standards Commission. SB 328 reduces the number of standardized tests public school students must take. SB 71 reduces the number of reports which high-achieving schools must file. SB 313 establishes penalties for providing or obtaining a fraudulent academic document. SB 348 allows a child who is a resident of a state facility for the mentally retarded to receive free public instruction. SB 396 provides that either local law or policy of a county board of education may govern the selection of the board's chairman. HB 146 eliminates adultery as an offense reportable to the Professional Practices Commission. HB 792 concerns financial arrangements between the State Board of Education and local school systems.

**EFFECTIVE DATES:** July 1, 1991. O.C.G.A. § 20-2-250 to be implemented in the 1992-93 school year.

*History HB 589, SB 328*

In 1990, as a candidate for governor, Zell Miller campaigned on a promise to improve the performance of Georgia's schools.<sup>1</sup> One plank in his education platform entailed a change in the way school personnel are certified in order to "[r]emove barriers that prevent qualified people from teaching."<sup>2</sup> The frustrated cries of already certified teachers furnished additional rationale for the change.<sup>3</sup> Teachers had experienced difficulty in ascertaining the status of their certificates or obtaining an upgrade of their certification upon completion of the requirements for a higher certificate.<sup>4</sup> The proposed changes were endorsed by the State School Superintendent and state education groups including the Georgia Association of Educators and the Professional Association of Georgia Educators.<sup>5</sup>

A second plank in the Governor's education platform altered a Quality Basic Education Act (QBE) requirement that the State Board of Education evaluate and monitor the progress of Georgia schools and students.<sup>6</sup> To satisfy this requirement, the Board had mandated testing of students in nine grades.<sup>7</sup> This meant that students underwent more than seventy hours of testing during their elementary and secondary school years.<sup>8</sup> The seventy hours did not include the time devoted to preparing students for the tests, time which otherwise would have been devoted to instruction.<sup>9</sup> The State School Superintendent and classroom teachers endorsed the reduction in hours.<sup>10</sup>

*HB 589*

The Act as amended establishes a new Professional Standards Commission (PSC) and abolishes the currently existing commission.<sup>11</sup>

1. Zell Miller, *Enriching the Lives of Georgia's Children: The 25 Point Education Plan for Grades K-12 and Higher Education*, 1990 (campaign literature discussing then-Lieutenant Governor Miller's proposals to improve education in the state, available in Georgia State University College of Law Library).

2. *Id.* at 9.

3. Telephone Interview with Rep. Dubose Porter, House District No. 97 (Apr. 8, 1991) [hereinafter Porter Interview].

4. *Id.*

5. Betsy White, *State Giving School Districts Greater Authority*, ATLANTA J. & CONST., Jan. 19, 1991, at B3.

6. O.C.G.A. § 20-2-281 (Supp. 1991).

7. *Id.*

8. *Briefing*, ATLANTA CONST., Mar. 7, 1991, at B3.

9. Telephone Interview with Sen. Harrill Dawkins, Senate District No. 45 (Apr. 9, 1991) [hereinafter Dawkins Interview]. Classroom teachers also favored the change. In addition to the instructional time allocated to the testing, up to a week and a half was devoted to preparing the students for the tests. *Id.*

10. *Briefing*, ATLANTA CONST., Feb. 20, 1991, at D3.

11. O.C.G.A. § 20-2-983(a) (Supp. 1991). The previously existing commission was called the Professional Practices Commission. O.C.G.A. § 20-2-981 (Supp. 1990).

The new PSC consists of eighteen members who are appointed by the Governor for three-year terms and who may serve no more than two terms.<sup>12</sup> The PSC is comprised of nine certified teachers, at least two of whom are from grades kindergarten through five, two from grades six through eight, and two from grades nine through twelve. Additional members must include two certified administrators, two faculty members from state teacher-education institutions, two local school board members, and three representatives from business or the private sector.<sup>13</sup>

The PSC is responsible for creating and implementing standards and procedures for certifying education personnel. It must establish the fewest number and kinds of certificates possible, provide for multiple routes to certification, and determine requirements to renew or maintain certification.<sup>14</sup> In addition, the PSC must work with state colleges and universities to develop teacher preparation programs leading to state certification.<sup>15</sup>

The Act allows those certificates in force before July 1, 1991, to continue in force until their natural expiration or until the commission modifies their terms or conditions.<sup>16</sup>

An executive secretary appointed by the Governor guides day-to-day operations of the PSC.<sup>17</sup> The personnel, equipment, funds, records, policies, and procedures necessary to the PSC's functioning are transferred from the Department of Education.<sup>18</sup> The PSC also succeeds to the rights and obligations granted to or undertaken by the Department.<sup>19</sup> Until the PSC can establish certification standards and classify the types of certificates awarded, it will use those established by the State Board of Education.<sup>20</sup>

Control of certification includes certification of local school superintendents. Whether elected or appointed, local superintendents must meet standards promulgated by the PSC before running for office or being appointed to the office. And, regardless of the method by which they gain office, all local superintendents are to be evaluated annually by their local board of education.<sup>21</sup>

The Act also prohibits schools from employing personnel who have not been certified by the PSC.<sup>22</sup> Before granting certification, the applicant must demonstrate her proficiency to the PSC by her satisfactory

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12. O.C.G.A. § 20-2-983(a) (Supp. 1991).

13. O.C.G.A. § 20-2-983(b) (Supp. 1991).

14. O.C.G.A. § 20-2-984(a) (Supp. 1991).

15. O.C.G.A. § 20-2-984(b) (Supp. 1991).

16. O.C.G.A. § 20-2-984(c) (Supp. 1991).

17. O.C.G.A. § 20-2-987(a) (Supp. 1991).

18. O.C.G.A. § 20-2-987(e) (Supp. 1991).

19. O.C.G.A. § 20-2-990(a) (Supp. 1991).

20. O.C.G.A. § 20-2-102 (Supp. 1991).

21. O.C.G.A. § 20-2-200(a) (Supp. 1991).

22. O.C.G.A. § 20-2-200(b) (Supp. 1991).

performance on tests of oral and written communication skills and during on-the-job evaluations.<sup>23</sup> Certain applicants may be exempted from certain segments of the testing process based upon prior teaching experience, other related experience, or their education.<sup>24</sup>

The Act establishes the mechanics and time frames for selecting, hiring, and entering into contracts with school personnel,<sup>25</sup> and provides for the creation of career ladder programs for teachers and other certified personnel.<sup>26</sup> The Act also delineates the requirements, responsibilities, and authority of aides, paraprofessionals, and substitute teachers.<sup>27</sup>

The amended Act creates a Professional Practices Commission (PPC) composed of fifteen members: eight teachers, two principals, one representative from the Department of Education, and four professional educators representing the State at large.<sup>28</sup> This Commission is charged with investigating complaints, alleged violations of the code of ethics, rules, regulations, or policies of the State Board of Education, and alleged failures to meet performance standards.<sup>29</sup> The PPC may not initiate investigations, but may act at the request of a local board of education, the state board, and the Professional Standards Commission.<sup>30</sup>

The Act sets forth procedures for the PPC to follow in investigations, and authorizes the PPC to conduct probable cause and plenary hearings.<sup>31</sup> The Act also grants the PPC the power to issue subpoenas, to find nonattendees in contempt, and to impose fines not to exceed \$300, imprisonment for not more than twenty days, or both.<sup>32</sup> At the conclusion of a hearing, the PPC may furnish to the requesting entity findings of fact, conclusions of law, and recommendations including the retention, suspension, or revocation of certification.<sup>33</sup>

23. *Id.*

24. O.C.G.A. § 20-2-212 (Supp. 1991). This section is at the heart of the legislation. One of the Governor's chosen methods for improving Georgia's schools is to raise the quality of the state's teachers. Porter Interview, *supra* note 3. Waiving the requirement that a teacher have a specified number of hours of education courses allows for greater flexibility and discretion in certification. It permits qualified individuals with college degrees in such fields as chemistry, biology, or history, for example, who have worked in business, industry, or the military, to teach. It also permits teachers who hold out-of-state certificates to teach. Teachers from these varied backgrounds may assist in improving the performance of Georgia schools and students, despite their lack of traditional education credentials. *Id.*

25. O.C.G.A. § 20-2-214 (Supp. 1991).

26. O.C.G.A. § 20-2-213 (Supp. 1991).

27. O.C.G.A. § 20-2-204 (Supp. 1991).

28. O.C.G.A. § 20-2-793(a) (Supp. 1991).

29. O.C.G.A. § 20-2-796(a) (Supp. 1991).

30. O.C.G.A. § 20-2-796(b) (Supp. 1991).

31. O.C.G.A. § 20-2-796(c) (Supp. 1991).

32. O.C.G.A. § 20-2-796(d) (Supp. 1991).

33. O.C.G.A. § 20-2-797 (Supp. 1991).

The Act also defines the terms student teaching, supervising teacher,<sup>34</sup> and certification for the supervising teacher,<sup>35</sup> and provides for supplemental payments to the supervising teacher when funds are available.<sup>36</sup>

*SB 328*

The bill's passage through the General Assembly was not smooth. The Senate insisted on its amendment to a Substitute adopted by the House. The House was equally adamant about its version, an amendment to the Senate's amendment of its Substitute.<sup>37</sup>

The Act requires that testing take place in grades three, five, eight, and eleven.<sup>38</sup> The tests are of two kinds: norm referenced and curriculum based.<sup>39</sup> Although some of the test results will furnish information to parents and students about the student's individual performance,<sup>40</sup> the primary focus is on performance at a cumulative level: the classroom, school, school system, and state levels.<sup>41</sup>

The Act permits the State Board of Education to award special education diplomas to special education students who are unable either to pass the tests or to complete all the requirements for a high school diploma, but who finish their Individualized Education Programs.<sup>42</sup>

34. O.C.G.A. § 20-2-833(a) (Supp. 1991).

35. O.C.G.A. § 20-2-833(b) (Supp. 1991).

36. O.C.G.A. § 20-2-833(c) (Supp. 1991).

37. Final Composite Status Sheet, Mar. 15, 1991. The differences revolved around the kind of testing that should be administered and the kind of information provided to parents and students about individual student performance. As introduced by the Senate Education Committee, the bill did not contain a provision to furnish data on individual student performance. The House Committee Substitute did. The nationally normed assessments would have provided students and their parents with grade equivalencies and percentile rankings.

38. O.C.G.A. § 20-2-281(a) (Supp. 1991). Those grades were selected because they are considered "gate" grades. That is, third grade is the gate out of the primary grades and into the higher elementary grades, fifth grade is the gate from which students must emerge to enter the middle or junior high school, and eighth grade is generally the gate into high school. The test for eleventh grade must be passed in order to graduate from high school. Telephone Interview with Steve Wrigley, Assistant to the Governor (Apr. 10, 1991) [hereinafter Wrigley Interview].

39. Dawkins Interview, *supra* note 9. See also *Briefing*, ATLANTA CONST., Mar. 7, 1991, at B3. Curriculum-based tests compare the performance of Georgia schools with schools all over the country. These tests are administered on a matrix basis; that is, not all Georgia students take all parts of all the tests. Instead, a statistically significant sample is taken. Norm-referenced tests are basic skills tests administered to all students to determine their achievement. Dawkins Interview, *supra* note 9.

40. Dawkins Interview, *supra* note 9.

41. *Briefing*, ATLANTA CONST., Feb. 20, 1991, at D3.

42. O.C.G.A. § 20-2-281(c) (Supp. 1991).

A final provision of the Act, an addition to the initial legislation, prohibits local school systems from using state funds to purchase or utilize tests other than those specified in the Act. However, local systems may use state funds when they participate in state-funded programs requiring individual student assessment data or when they attempt to obtain federal funds.<sup>43</sup>

### *History SB 71*

SB 71, like HB 589 and SB 328, is a product of the complaints of administrators and teachers.<sup>44</sup> In this case, the complaints arose from the flood of paperwork required by QBE.<sup>45</sup> The Act had established nine standards by which schools' performance was to be assessed. Six of the standards involved measurement of student achievement and how schools spent their funds. The three other standards involved measurement of administrative functions.<sup>46</sup> Measurement of the standards was done utilizing numerous reports prepared by the schools and school systems. Principals and classroom teachers were forced to use planning, counseling, or instruction time to fill out and file these reports.<sup>47</sup>

### *SB 71*

SB 71 is a paradigm of the political process at work.<sup>48</sup> The Act began its legislative life as an effort to reduce paperwork required by the evaluative component of QBE.<sup>49</sup> During its passage through the House and Senate, however, riders in the form of both amendments and substitutes were attached to the bill, so that by the time the bill passed out of both houses, it had become multi-purpose.<sup>50</sup>

The Act, as passed, did effectuate the bill's initial purpose by allowing those schools which are designated "high-achieving" schools to be exempt from evaluation of their performance of the three administrative standards.<sup>51</sup>

43. O.C.G.A. § 20-2-281(d) (Supp. 1991).

44. Telephone Interview with Sen. Sallie Newbill, Senate District No. 56 (Apr. 9, 1991) [hereinafter Newbill Interview].

45. Interview with Charles Meagher, Principal of Norcross High School (May 11, 1991) [hereinafter Meagher Interview].

46. Newbill Interview, *supra* note 44.

47. Meagher Interview, *supra* note 45.

48. Newbill Interview, *supra* note 44.

49. *Id.*

50. *Id.*

51. *Id.* See also O.C.G.A. § 20-2-282(e.1) (Supp. 1991). A high-achieving school is one at which performance exceeds what may be expected considering "the demographic characteristics of its student body . . ." O.C.G.A. § 20-2-282(e.1) (Supp. 1991). "Local schools which score in the highest 25 percent of a demographic group of comparable schools will be deemed to be significantly exceeding expectations in a given year and designated 'high-achieving schools.'" *Id.*

Code section 20-2-11 as amended contains the traditional language establishing that the State Board of Education supervises the Department of Education, prepares and submits the budget for education, and may delegate to the State School Superintendent authority to operate the Department of Education.<sup>52</sup>

Amended Code section 20-2-154 provides that students in the general career education programs receive remedial education services needed to address reading, mathematics, and writing deficiencies.<sup>53</sup> A new Code section, 20-2-212.1, provides for a salary increase to the educator named Georgia Teacher of the Year,<sup>54</sup> while new Code section 20-2-218 gives kindergarten through fifth grade teachers a duty-free lunch.<sup>55</sup> A new subsection was added to Code section 20-2-250 to permit school systems some flexibility in using funds for programs aimed at helping the at-risk student.<sup>56</sup>

### *SB 313*

This Act establishes as a misdemeanor the provision, procurement, creation, or alteration of a document which purports to be a diploma, certificate, academic record, or similar document from an educational institution in the state.<sup>57</sup> Penalties for violation include a fine of no more than \$1000, imprisonment for up to a year, or both.<sup>58</sup>

### *SB 348*

The Act, as amended, provides that any child who is in the custody of the Department of Human Resources (with the exception of a child in a youth development center), or who receives care in a state facility for the mentally retarded for sixty continuous days, is eligible for enrollment at no cost in the instructional program offered by the school system in the area in which the facility is located. This school system may charge the school system that otherwise would have responsibility for providing educational instruction for the child.<sup>59</sup>

### *SB 396*

The Act provides that either local law, or in the absence of such law, the policy of the county board of education, may govern the selection of the chair of the school board.<sup>60</sup>

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52. Newbill Interview, *supra* note 44. See also O.C.G.A. § 20-2-11 (Supp. 1991).

53. O.C.G.A. § 20-2-154 (Supp. 1991).

54. O.C.G.A. § 20-2-212.1 (Supp. 1991).

55. O.C.G.A. § 20-2-218 (Supp. 1991).

56. Newbill Interview, *supra* note 44. See also O.C.G.A. § 20-2-250(d) (Supp. 1991).

57. O.C.G.A. § 20-1-7(a) (Supp. 1991).

58. O.C.G.A. § 20-1-7(b) (Supp. 1991).

59. O.C.G.A. § 20-2-133(a) (Supp. 1991).

60. O.C.G.A. § 20-2-57 (1991).

*HB 146*

The Act alters the offenses committed by school system personnel that are reportable to the PPC.<sup>61</sup> The primary change involves the removal of adultery as a reportable offense.<sup>62</sup>

*HB 792*

The State Board of Education is authorized by the Act to withhold state monies to pay the indebtedness of a local school system, if so requested by that system.<sup>63</sup>

*Conclusion*

A number of education-related issues were addressed by the General Assembly in the 1991 session. Most of the successful bills were designed to "fine tune" or alter provisions of the Quality Basic Education Act or to respond to the needs or concerns of educators and administrators. The year 1991 was not a year of significant educational innovation, although the modification in teacher certification may have far-reaching results in the future.

*Lynn S. Samuels*

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61. O.C.G.A. § 20-2-795.1 (Supp. 1991).

62. *News at Six* (Channel 5, WAGA broadcast, Feb. 21, 1991). The bill's sponsor, Rep. Fred Aiken, stated that adultery should not constitute grounds for removal, even though it is not morally acceptable. *Id.*

63. O.C.G.A. § 20-2-170 (Supp. 1991).