

# 149TH GEORGIA GENERAL ASSEMBLY 2007 LEGISLATIVE SESSION

## SENATE BILL 10<sup>1</sup>: GEORGIA SPECIAL NEEDS SCHOLARSHIP ACT

*Creating O.C.G.A. §§ 20-2-2110 to -2118*

**First Signature:** Senator Eric Johnson (1st)

**Co-Sponsors:** Senator Chip Rogers (21st), Senator Dan Weber (40th), Senator Nancy Schaefer (50th), Senator Judson Hill (32nd), and Senator Ralph Hudgens (47th)

**Summary:** Senate Bill 10 amends Chapter 2 of Title 20 of the Official Code of Georgia Annotated relating to elementary and secondary education, so as to provide scholarships for public school students with disabilities to attend eligible private schools.<sup>2</sup> The Bill outlines the qualifications and criteria for the scholarship program, guidelines for participating private schools, and the amount of the scholarship and method of payment.<sup>3</sup> The Bill also gives authorization to the State Board of Education to promulgate certain rules.<sup>4</sup>

**Status:** Enacted into law as Act 117 on May 18, 2007<sup>5</sup>

### TEXT OF SENATE BILL 10

#### § 1.

Chapter 2 of Title 20 of the Official Code of Georgia Annotated relating to elementary and secondary education, is amended by

---

1. S.B. 10, 149th Gen. Assem., 1st Reg. Sess. (Ga. 2007) (enacted), available at [http://www.legis.ga.gov/legis/2007\\_08/pdf/sb10.pdf](http://www.legis.ga.gov/legis/2007_08/pdf/sb10.pdf) (last visited Mar. 22, 2010).

2. *Id.*

3. *Id.*

4. *Id.*

5. Ga. Gen. Assem., S.B. 10 (Oct. 22, 2008), [http://www.legis.ga.gov/legis/2007\\_08/sum/sb10.htm](http://www.legis.ga.gov/legis/2007_08/sum/sb10.htm) [hereinafter S.B. 10 Status Sheet].

adding at the end thereof a new article, to be designated as Article 33, to read as follows:

“ARTICLE 33

20-2-2110.

This article shall be known and may be cited as the ‘Georgia Special Needs Scholarship Act.’

20-2-2111.

The General Assembly finds that:

- (1) Students with disabilities have special needs that merit educational alternatives which will allow students to learn in an appropriate setting and manner;
- (2) Parents are best equipped to make decisions for their children, including the educational setting that will best serve the interests and educational needs of their children;
- (3) Children, parents, and families are the primary beneficiaries of the scholarship program authorized in this article and any benefit to private schools, sectarian or otherwise, is purely incidental;
- (4) The scholarship program established in this article is for the valid secular purpose of tailoring a student’s education to that student’s specific needs and enabling families to make genuine and independent private choices to direct their resources to appropriate schools; and
- (5) Nothing in this article shall be construed as a basis for granting vouchers or tuition tax credits for any other students, with or without disabilities.

20-2-2112.

As used in this article, the term:

- (1) ‘Board’ means the State Board of Education.
- (2) ‘Department’ means the Department of Education.
- (3) ‘Parent’ means a biological parent, legal guardian, custodian, or other person with legal authority to act on behalf of a child.

(4) 'Participating school' means a private school that has notified the department of its intention to participate in the program, and that complies with the department's requirements.

(5) 'Prior school year in attendance' means that the student was enrolled and reported by a public school system or school systems for funding purposes during the preceding October and March full-time equivalent (FTE) program counts in accordance with Code Section 20-2-160.

(6) 'Private school' means a nonpublic school, sectarian or nonsectarian, which is accredited or in the process of becoming accredited by one or more of the entities listed in subparagraph (A) of paragraph (6) of Code Section 20-3-519.

(7) 'Program' means the scholarship program established pursuant to this article.

(8) 'Resident school system' means the public school system in which the student would be enrolled based on his or her residence.

(9) 'Scholarship' means a Georgia Special Needs Scholarship awarded pursuant to this article.

(10) 'Scholarship student' means a student who receives a scholarship pursuant to this article.

20-2-2113.

The resident school system shall annually notify prior to the beginning of each school year the parent of a student with a disability by letter, electronic means, or by such other reasonable means in a timely manner of the options available to the parent under this article.

(1) The parent may choose for the student to attend another public school within the resident school system which has available space and which has a program with the services agreed to in the student's existing individualized education program. If the parent chooses this option, then the parent shall be responsible for transportation to such school. The student may attend such public school pursuant to this paragraph until the student completes all grades of the school, graduates, or reaches the age of 21, whichever occurs first, in accordance with federal and state requirements for disabled students;

(2) The parent may choose to enroll the student in and transport the student to a public school outside of the student's resident school system which has available space and which has a program with the services agreed to in the student's existing individualized education program. The public school system may accept the student, and if it does, such system shall report the student for purposes of funding to the department;

(3) The parent may choose for the student to attend one of the state schools for the deaf and blind operated by the State Board of Education, if appropriate for the student's needs. Funding for such students shall be provided in accordance with Code Section 20-2-302; or

(4) The parent may request and receive from the department a scholarship for the student to enroll in and attend a participating private school in accordance with this article.

20-2-2114.

(a) A student shall qualify for a scholarship under this article if:

(1) The student's parent currently resides within Georgia and has been a Georgia resident for at least one year;

(2) The student has one or more of the following disabilities:

(A) Autism;

(B) Deaf/blind;

(C) Deaf/hard of hearing;

(D) Emotional and behavioral disorder;

(E) Intellectual disability;

(F) Orthopedic impairment;

(G) Other health impairment;

(H) Specific learning disability;

(I) Speech-language impairment;

(J) Traumatic brain injury; or

(K) Visual impairment;

(3) The student has spent the prior school year in attendance at a Georgia public school and shall have had an Individualized Education Program (IEP) written by the school in accordance with federal and state laws and regulations;

(4) The parent obtains acceptance for admission of the student to a participating school; and

(5) The parent submits an application for a scholarship to the department no later than the deadline established by the department.

(b) Upon acceptance of the scholarship, the parent assumes full financial responsibility for the education of the scholarship student, including transportation to and from the participating school.

(c) For a student who participates in the program whose parents request that the student take the state-wide assessments pursuant to Code Section 20-2-281, the resident school system shall make available to the student locations and times to take all state-wide assessments. Test scores of private school students participating in the state-wide assessments shall not be applied to the system averages of the resident school system for data reported for federal and state requirements.

(d) Students enrolled in a school operated by the Department of Juvenile Justice are not eligible for the scholarship.

(e) The scholarship shall remain in force until the student returns to his or her assigned school in the resident public school system, graduates from high school, or reaches the age of 21, whichever occurs first. However, at any time, the student's parent may remove the student from the participating school and place the student in another participating school or public school as provided for in Code Section 20-2-2113.

(f) Acceptance of a scholarship shall have the same effect as a parental refusal to consent to services pursuant to the Individuals with Disabilities Education Act, 20 U.S.C.A. Section 1400, et seq.

(g) The creation of the program or the granting of a scholarship pursuant to this article shall not be construed to imply that a public school did not provide a free and appropriate public education for a student or constitute a waiver or admission by the state.

(h) Any scholarship directed to a participating school is so directed wholly as a result of the genuine and independent private choice of the parent.

(i) The parent of each student participating in the scholarship program shall comply fully with the participating school's rules and policies.

(j) Any parent who fails to comply with the provisions of this article and department regulations relating to the scholarship shall forfeit the scholarship.

20-2-2115.

(a) To be eligible to enroll a scholarship student, a participating school shall:

(1) Have a physical location in Georgia where the scholarship students attend classes and have direct contact with the school's teachers;

(2) Demonstrate fiscal soundness by having been in operation for one school year or by submitting a financial information report for the school that complies with uniform financial accounting standards established by the department and conducted by a certified public accountant. The report must confirm that the school desiring to participate is insured and the owner or owners have sufficient capital or credit to operate the school for the upcoming school year serving the number of students anticipated with expected revenues from tuition and other sources that may be reasonably expected. The report shall be limited in scope to those records that are necessary for the department to make a determination on fiscal soundness and to make payments to schools for scholarships;

(3) Comply with the antidiscrimination provisions of 42 U.S.C. Section 2000d;

(4) Comply with all health and safety laws or codes that apply to private schools;

(5) Comply with all provisions of Code Section 20-2-690 and any other state law applicable to private schools;

(6) Regularly report to the parent and the department on the student's academic progress, including the results of pre-academic

assessments and post-academic assessments given to the student, in accordance with department guidelines; and

(7) Employ or contract with teachers who hold a bachelor's degree or higher degree or have at least three years of experience in education or health and annually provide to the parents the relevant credentials of the teachers who will be teaching their students.

(b) A home school operating under the provisions of Code Section 20-2-690 shall not be eligible to enroll scholarship students.

(c) Residential treatment facilities licensed or approved by the state shall not be eligible to enroll scholarship students.

(d) The creation of the program shall not be construed to expand the regulatory authority of the state, its officers, or any public school system to impose any additional regulation of nonpublic schools beyond those reasonably necessary to enforce the requirements of this article.

(e) A participating school intending to enroll scholarship students shall submit an application to the department by June 30 of the school year preceding the school year in which it intends to enroll scholarship students. The notice shall specify the grade levels and services that the school has available for students with disabilities who are participating in the scholarship program. A school intending to enroll scholarship students in the 2007-2008 school year shall submit an application no later than June 30, 2007.

(f) The board shall approve a participating school's application to enroll scholarship students if the school meets the eligibility requirements of this article and complies with board rules established pursuant to Code Section 20-2-2117. The board shall make available to local school systems and the public a list of participating schools.

20-2-2116.

(a) The maximum scholarship granted a scholarship student pursuant to this article shall be an amount equivalent to the costs of the educational program that would have been provided for the student in the resident school system as calculated under Code Section 20-2-161. This shall not include any federal funds.

(b) The amount of the scholarship shall be the lesser of the amount calculated in subsection (a) or the amount of the participating school's tuition and fees, if applicable. The amount of any

assessment fee required by the participating school may be paid from the total amount of the scholarship.

(c) Scholarship students shall be counted in the enrollment of their resident school system; provided, however, that this count shall only be for purposes of determining the amount of the scholarship and the scholarship students shall not be included as enrolled for purposes of state or federal accountability requirements, including, but not limited to, the federal Elementary and Secondary Education Act, as amended by the No Child Left Behind Act of 2001 (P.L. 107-110). The funds needed to provide a scholarship shall be subtracted from the allotment payable to the resident school system.

(d) Each local school system shall submit quarterly reports to the department on dates established by the department stating the number of scholarship students in the resident school system. Following each notification, the department shall transfer from the state allotment to each school system the amount calculated under Code Section 20-2-161 to a separate account for the scholarship program for quarterly disbursement to the parents of scholarship students. When a student enters the program, the department must receive all documentation required for the student's participation, including the participating school's and student's fee schedules at least 30 days before the first quarterly scholarship payment is made for the student. The department may not make any retroactive payments.

(e) Upon proper documentation received by the department, the department shall make quarterly scholarship payments to the parents of scholarship students on dates established by the department during each academic year in which the scholarship is in force. The initial payment shall be made upon evidence of admission to the participating school, and subsequent payments shall be made on evidence of continued enrollment and attendance at the participating school.

(f) Payment to the parents must be made by individual warrant made payable to the student's parent and mailed by the department to the participating school of the parent's choice, and the parent shall restrictively endorse the warrant to the participating school for deposit into the account of such school.

(g) A person, on behalf of a participating school, may not accept a power of attorney from a parent to sign a warrant, and a parent of a scholarship student may not give a power of attorney designating a

person, on behalf of a participating school, as the parent's attorney in fact.

(h) If the participating school requires partial payment of tuition prior to the start of the academic year to reserve space for students admitted to the school, that partial payment may be paid by the department prior to the first quarterly payment of the year in which the scholarship is awarded, up to a maximum of \$1,000.00, and deducted from subsequent scholarship payments. If a student decides not to attend the participating school, the partial reservation payment must be returned to the department by such school. Only one reservation payment per student may be made per year.

20-2-2117.

(a) The board shall adopt rules to administer the program regarding eligibility and participation of participating schools, including, but not limited to, timelines that will maximize student and public and private school participation, the calculation and distribution of scholarships to eligible students and participating schools, and the application and approval procedures for eligible students and participating schools. The department shall develop and utilize a compliance form for completion by participating schools. The department shall be authorized to require any pertinent information as it deems necessary from participating schools for the purpose of implementing the program. Participating schools shall be required to complete such forms and certify their accuracy.

(b) No liability shall arise on the part of the department or the state or of any local board of education based on the award or use of a scholarship awarded pursuant to this article.

(c) The department may bar a school from participation in the program if the department determines that the school has intentionally and substantially misrepresented information or failed to refund to the state any scholarship overpayments in a timely manner.

20-2-2118.

The Office of Student Achievement, in conjunction with the department, shall provide the General Assembly not later than December 1 of each year with a report regarding the scholarship program for the previous fiscal year. The report shall include, but not be limited to, numbers and demographics of students

participating and numbers of participating schools. Such report shall also be posted on the Office of Student Achievement's website."

§ 2.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval and shall apply to the 2007-2008 school year and all school years subsequent thereto.

§ 3.

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

### FIRST SPONSOR'S RATIONALE

The Georgia Special Needs Scholarship Act, also known as Senate Bill 10, is the culmination of Senator Eric Johnson's longstanding support for bringing free market principles to education.<sup>6</sup> After resigning as the President Pro Tem of the Senate in 2007, Senator Johnson felt the time was right to move forward with some of his ideas for providing choice in education for the children of Georgia.<sup>7</sup> After researching the records of voucher programs in other states, Senator Johnson felt that a voucher for special needs children was most needed and would be most successful.<sup>8</sup> The Georgia Special Needs Scholarship Act was designed to emulate a similar program in Florida that has been in existence for many years and has proven to be very successful.<sup>9</sup>

Despite the success of voucher bills in other states, Senator Johnson's attempt at bringing a voucher to help special needs children to Georgia was not exactly welcomed with open arms. The two most common objections to Senate Bill 10 were that the vouchers are just a way for wealthy families to send their children to private schools for free and the fear that public schools would attempt to gain authority over the private schools

---

6. E-mail from Sen. Eric Johnson, S. Dist. 1, to Shaun Adams, Staff Member, John Marshall Law Journal (Nov. 19, 2009, 11:30a.m. EST) (on file with author) [hereinafter Johnson E-mail].

7. *Id.*

8. *Id.*

9. *Id.*

that participate in the scholarship program.<sup>10</sup> Proponents of the Bill cited vouchers program data from Florida, Wisconsin, and other states around the country to overcome these objections and to show that children who take advantage of the scholarship programs in these states perform better in their new schools.<sup>11</sup> Additionally, the language of the Bill was drafted to preserve the autonomy of private schools.<sup>12</sup> Senator Johnson was able to overcome these objections by keeping the discussion centered on the best interests of Georgia's children,<sup>13</sup> and the General Assembly passed Senate Bill 10 by one vote, cast by the House Speaker, on the last day of the 2007 legislative session.<sup>14</sup>

As is required by Senate Bill 10, the Georgia Department of Education provides an annual report to the General Assembly which contains the enrollment data on the program.<sup>15</sup> As of the 2008-2009 school year, there are 145 schools participating in the scholarship program and 1,596 students receiving scholarships.<sup>16</sup> These numbers indicate steady increases in

---

10. *Id.*

11. *Id.*

12. Johnson E-mail, *supra* note 6.

13. *Id.*

14. *Id.*; *See infra* note 33 and accompanying text.

15. Ga. S.B. 10; GEORGIA DEPT. OF EDUC., 2007-2008 GEORGIA SPECIAL NEEDS SCHOLARSHIP PROGRAM END OF SCHOOL YEAR REPORT (Nov. 18, 2008), *available at* <http://www.doe.k12.ga.us/DMGetDocument.aspx/End%20of%20Year%20Report%20-%202007%20-%202008%20Georgia%20Special%20Needs%20Scholarship%20End%20of%20Year%20Report-%20report%20sent%20to%20Legislature%20120308.pdf?p=6CC6799F8C1371F6E1764D2812D6897813D7F6853FDFD50ADA3C9695FC2D495E&Type=D> [hereinafter 2007-2008 EOY Report]; GEORGIA DEPT. OF EDUC., 2008-2009 GEORGIA SPECIAL NEEDS SCHOLARSHIP PROGRAM END OF SCHOOL YEAR REPORT (Nov. 23, 2009), *available at* <http://public.doe.k12.ga.us/DMGetDocument.aspx/GSNS2008-2009FinalReportsenttoLegis120109.pdf?p=6CC6799F8C1371F67C7B1AFED5C09650635D970DD42B77CAA8EAFEEEE83D5A4EE&Type=D> [hereinafter 2008-2009 EOY REPORT].

16. 2008-2009 EOY REPORT, *supra* note 15, at 4. Opponents focus on the 33% of students that had less than a year of gain in a year of learning, whereas the proponents focus on the 67% of students that showed a year or more of gain in a year of learning when making their arguments. *See id.* Although the 2009-2010 data has not yet been reported by the Georgia

participation, by both schools and students, when compared to the scholarship program's first year in 2007-2008.<sup>17</sup> Senator Johnson stated that the program's early growth is evidence of the success that he foresaw when looking at vouchers programs in other states.<sup>18</sup> Senator Johnson summed up this Bill by stating: "this [B]ill provides choice to special needs children, and there is no bill that I am more proud of."<sup>19</sup>

### LEGISLATIVE GENEALOGY

Senate Bill 10 was first read and referred to the Senate Education and Youth Committee on January 10, 2007.<sup>20</sup> The Senate Committee favorably reported on the Bill on January 26, 2007.<sup>21</sup> On January 29, 2007 the Senate read Senate Bill 10 a second time.<sup>22</sup> When the Senate read the Bill a third time, there were a series of proposed amendments.<sup>23</sup> According to Senator Johnson, "each of the proposed amendments were, in some form, centered on undercutting the ability of the parents to take their tax dollars and use it to best benefit their special needs child."<sup>24</sup> Ultimately, each of the amendments were rejected, and the Senate passed Senate Bill 10 on January 31, 2007.<sup>25</sup>

After passing the Senate, Senate Bill 10 moved into the House, was assigned to the House Committee on Education, and was first read on February 1, 2007.<sup>26</sup> The House read the Bill a second time on February 2, 2007, and the House Committee on

---

Department of Education, according to David Pusey, Policy Analyst for the Center for an Educated Georgia, 175 schools and 2,068 students participated in the Scholarship program this year. Interview with David Pusey, Policy Analyst, Center for an Educated Georgia, in Norcross, Ga. (Dec. 16, 2009).

17. 2007-2008 EOY REPORT, *supra* note 15, at 4 (indicating 117 participating schools and 825 participating students).

18. Johnson E-mail, *supra* note 6.

19. *Id.*

20. S.B. 10 Status Sheet, *supra* note 5.

21. *Id.*

22. *Id.*

23. *Id.*

24. Johnson E-mail, *supra* note 6.

25. S.B. 10 Status Sheet, *supra* note 5.

26. *Id.*

Education favorably reported on the Bill on April 13, 2007.<sup>27</sup> The Bill was read before the House again on both the 17th and 20th of April.<sup>28</sup> The House provided a substitute to Senate Bill 10 that passed on April 20, 2007.<sup>29</sup> The House substitute added an annual notification component which would require the resident school system to “notify, prior to the beginning of each school year, the parent of a student with a disability by letter, electronic means, or by such other reasonable means, in a timely manner, of the options available to the parent under the article.”<sup>30</sup> The House substitute also added Section 20-2-2118 which requires the Office of Student Achievement to provide the General Assembly, by December 1st of each year, with an annual report that contains the numbers and demographics of participating students along with the numbers of participating schools.<sup>31</sup> Further, this report is to be posted on the Office of Student Achievement’s website.<sup>32</sup>

The Senate agreed to the House substitute, passing it on April 20, 2007.<sup>33</sup> Senate Bill 10 was sent to the Governor on May 07, 2007, and later signed into law by Governor Sonny Perdue as Act 117 on May 18, 2007.<sup>34</sup>

During the 2010 legislative session, Senator Chip Rogers introduced Senate Bill 361 to amend Senate Bill 10.<sup>35</sup> Senate Bill 361 would allow children in foster care, children of active duty military members, and children who have a physical disability but do not require an individualized education

---

27. *Id.*

28. *Id.*

29. *Id.*; see S.B. 10, 149th Gen. Assem., 1st Reg. Sess. (Ga. 2007) (H. Substitute) *available at* [http://www.legis.ga.gov/legis/2007\\_08/versions/sb10\\_LC\\_33\\_2105S\\_hss\\_15.htm](http://www.legis.ga.gov/legis/2007_08/versions/sb10_LC_33_2105S_hss_15.htm) (last visited Mar. 22, 2010).

30. Ga. S.B. 10 (H. Substitute).

31. *Id.*

32. *Id.*

33. S.B. 10 Status Sheet, *supra* note 5.

34. *Id.*

35. S.B. 361, 150th Ga. Gen. Assem., 2d Reg. Sess. (Ga. 2010), *available at* [http://www.legis.ga.gov/legis/2009\\_10/pdf/sb361.pdf](http://www.legis.ga.gov/legis/2009_10/pdf/sb361.pdf) (last visited Mar. 22, 2010); Ga. Gen. Assem., S.B. 361, [http://www.legis.ga.gov/legis/2009\\_10/sum/sb361.htm](http://www.legis.ga.gov/legis/2009_10/sum/sb361.htm) (last visited Mar. 22, 2010) [hereinafter S.B. 361 Status Sheet].

program to become eligible for the school vouchers program.<sup>36</sup> Senate Bill 361 proposed to change the name of the Special Needs Scholarship Act to the Early HOPE Scholarship Act.<sup>37</sup> Other changes proposed by Senate Bill 361 seek to correct some of the implementation issues which affected Senate Bill 10 by allowing for a quarterly admissions process and establishing a deadline for the Georgia Department of Education to pay the scholarship vouchers to the parents of participating students.<sup>38</sup>

The Senate first read Senate Bill 361 on February 4, 2010.<sup>39</sup> The Bill was assigned to the Education and Youth Committee which favorably reported on the Bill on March 8, 2010.<sup>40</sup> While the Senate read Senate Bill 361 for a second time on the next day, the Senate was unable to come to an agreement on the Bill prior to the end of crossover day on March 26, 2010.<sup>41</sup>

**Prepared by:** *Shaun Adams*

---

36. Ga. S.B. 361.

37. *Id.*

38. *Id.*

39. S.B. 361 Status Sheet, *supra* note 35.

40. *Id.*

41. *Id.*