

Senate Bill 10

By: Senators Johnson of the 1st, Rogers of the 21st, Weber of the 40th, Schaefer of the 50th, Hill of the 32nd and others

**AS PASSED SENATE**

**A BILL TO BE ENTITLED**

**AN ACT**

1 To amend Chapter 2 of Title 20 of the Official Code of Georgia Annotated, relating to  
 2 elementary and secondary education, so as to enact the "Georgia Special Needs Scholarship  
 3 Act"; to provide for a short title; to define certain terms; to provide for scholarships for public  
 4 school students with disabilities to attend other public or private schools; to provide for  
 5 qualifications and criteria for the scholarship program; to establish certain requirements for  
 6 schools that participate in the scholarship program; to provide for the amount of scholarship  
 7 and method of payments; to authorize the State Board of Education to promulgate certain  
 8 rules; to provide for related matters; to provide for an effective date and applicability; to  
 9 repeal conflicting laws; and for other purposes.

10 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

11 **SECTION 1.**

12 Chapter 2 of Title 20 of the Official Code of Georgia Annotated, relating to elementary and  
 13 secondary education, is amended by adding at the end thereof a new article, to be designated  
 14 as Article 33, to read as follows:

15 **"ARTICLE 33**

16 20-2-2110.

17 This article shall be known and may be cited as the 'Georgia Special Needs Scholarship  
 18 Act.'

19 20-2-2111.

20 The General Assembly finds that:

21 (1) Students with disabilities have special needs that merit educational alternatives which  
 22 will allow students to learn in an appropriate setting and manner;

1 (2) Parents are best equipped to make decisions for their children, including the  
2 educational setting that will best serve the interests and educational needs of their  
3 children;

4 (3) Children, parents, and families are the primary beneficiaries of the scholarship  
5 program authorized in this article and any benefit to private schools, sectarian or  
6 otherwise, is purely incidental;

7 (4) The scholarship program established in this article is for the valid secular purpose of  
8 tailoring a student's education to that student's specific needs and enabling families to  
9 make genuine and independent private choices to direct their resources to appropriate  
10 schools; and

11 (5) Nothing in this article shall be construed as a basis for granting vouchers or tuition  
12 tax credits for any other students, with or without disabilities.

13 20-2-2112.

14 As used in this article, the term:

15 (1) 'Board' means the State Board of Education.

16 (2) 'Department' means the Department of Education.

17 (3) 'Parent' means a biological parent, legal guardian, custodian, or other person with  
18 legal authority to act on behalf of a child.

19 (4) 'Participating school' means a public school outside of the student's resident school  
20 system, any private school, or a state school for the deaf and blind operated by the State  
21 Board of Education that provides education to elementary or secondary students, that has  
22 notified the department of its intention to participate in the program, and that complies  
23 with the department's requirements.

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

28 (6) 'Private school' means any nonpublic school that provides education to elementary  
29 or secondary students.

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

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

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

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

- 1 20-2-2113.
- 2 (a) Any parent of a public school student with a disability may request and receive from  
3 the department a scholarship for the child to enroll in and attend a participating school in  
4 accordance with this article.
- 5 (b) To qualify for a scholarship:
- 6 (1) The student's parent shall reside within Georgia;
- 7 (2) The student shall have one or more of the following disabilities:
- 8 (A) Autism;
- 9 (B) Deaf/blind;
- 10 (C) Deaf/hard of hearing;
- 11 (D) Emotional and behavioral disorder;
- 12 (E) Intellectual disability;
- 13 (F) Orthopedic impairment;
- 14 (G) Other health impairment;
- 15 (H) Specific learning disability;
- 16 (I) Speech-language impairment;
- 17 (J) Traumatic brain injury; or
- 18 (K) Visual impairment;
- 19 (3) The student shall have spent the prior school year in attendance at a Georgia public  
20 school and shall have had an Individualized Education Program (IEP) written by the  
21 school in accordance with federal and state laws and regulations;
- 22 (4) The parent shall have obtained acceptance for admission of the student to a  
23 participating school; and
- 24 (5) The parent shall have submitted an application for a scholarship to the student's  
25 resident school system no later than the deadline established by the department.
- 26 (c) Upon acceptance of the scholarship, the parent assumes full financial responsibility for  
27 the education of the scholarship student, including transportation to and from the  
28 participating school.
- 29 (d) For a student who participates in the program whose parents request that the student  
30 take the state-wide assessments pursuant to Code Section 20-2-281, the resident school  
31 system shall make available to the student locations and times to take all state-wide  
32 assessments.
- 33 (e) Students enrolled in a school operated by the Department of Juvenile Justice are not  
34 eligible for the scholarship.
- 35 (f) The scholarship shall remain in force until the student returns to his or her public school  
36 in the resident school system, graduates from high school, or reaches the age of 21.

1 However, at any time, the student's parent may remove the student from the participating  
2 school and place the student in another participating school.

3 (g) Acceptance of a scholarship shall have the same effect as a parental refusal to consent  
4 to services pursuant to the Individuals with Disabilities Education Act, 20 U.S.C.A. Section  
5 1400, et seq.

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

9 20-2-2114.

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

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

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

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

23 (4) Comply with all health and safety laws or codes that apply to private or public  
24 schools, as applicable;

25 (5) For private schools, comply with all provisions of Code Section 20-2-690 and any  
26 other state law applicable to private schools;

27 (6) Regularly report to the parent and the department on the student's progress,  
28 including, but not limited to, the results of any annual assessment given to the student,  
29 in accordance with department guidelines; and

30 (7) Annually provide to the parents the relevant credentials of the teachers who will be  
31 teaching their students.

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

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

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

5 (e) A participating school intending to enroll scholarship students shall submit an  
6 application to the department by June 30 of the school year preceding the school year in  
7 which it intends to enroll scholarship students. The notice shall specify the grade levels  
8 and services that the school has available for students with disabilities who are participating  
9 in the scholarship program. A school intending to enroll scholarship students in the  
10 2007-2008 school year shall submit an application no later than June 30, 2007.

11 (f) The board shall approve a participating school's application to enroll scholarship  
12 students if the school meets the eligibility requirements of this article and complies with  
13 board rules established pursuant to Code Section 20-2-2116. The board shall make  
14 available to local school systems and the public a list of participating schools.

15 20-2-2115.

16 (a) The maximum scholarship granted a scholarship student pursuant to this article shall  
17 be an amount equivalent to the costs of the educational program that would have been  
18 provided for the student in the resident school system as calculated under Code Section  
19 20-2-161.

20 (b) The amount of the scholarship shall be the lesser of the amount calculated in  
21 subsection (a) or the amount of the participating school's tuition and fees, if applicable.  
22 The amount of any assessment fee required by the participating school may be paid from  
23 the total amount of the scholarship.

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

31 (d) Each local school system shall report on July 1, September 1, December 1, and  
32 February 1 of each year to the department the number of scholarship students in the  
33 resident school system. Following each notification, the department shall transfer from the  
34 state allotment to each school system the amount calculated under Code Section 20-2-161  
35 to a separate account for the scholarship program for quarterly disbursement to the parents  
36 of scholarship students. When a student enters the program, the department must receive

1 all documentation required for the student's participation, including the participating  
2 school's and student's fee schedules at least 30 days before the first quarterly scholarship  
3 payment is made for the student. The department may not make any retroactive payments.

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

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

14 (g) A person, on behalf of a participating school, may not accept a power of attorney from  
15 a parent to sign a warrant, and a parent of a scholarship student may not give a power of  
16 attorney designating a person, on behalf of a participating school, as the parent's attorney  
17 in fact.

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

25 20-2-2116.

26 (a) The board shall adopt rules to administer the program regarding eligibility and  
27 participation of participating schools, including, but not limited to, timelines that will  
28 maximize student and public and private school participation, the calculation and  
29 distribution of scholarships to eligible students and participating schools, and the  
30 application and approval procedures for eligible students and participating schools.

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

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

1 **SECTION 2.**

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

5 **SECTION 3.**

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