

Senate Bill 361

By: Senators Rogers of the 21st, Williams of the 19th, Moody of the 56th, Carter of the 1st, Hill of the 32nd and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 33 of Chapter 2 of Title 20 of the Official Code of Georgia Annotated,
2 relating to the scholarship program for special needs students, so as to expand eligibility for
3 the program; to rename the scholarship the "Georgia Early HOPE Scholarship"; to revise
4 definitions; to provide for additional notification of the program; to provide for additional
5 state funds to be included in the scholarship payment; to provide deadlines for scholarship
6 payments to parents; to provide for related matters; to provide for severability; to provide an
7 effective date; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Article 33 of Chapter 2 of Title 20 of the Official Code of Georgia Annotated, relating to the
11 scholarship program for special needs students, is amended by revising Code Section
12 20-2-2110, relating to the short title, as follows:

13 "20-2-2110.

14 This article shall be known and may be cited as the 'Georgia ~~Special Needs~~ Early HOPE
15 Scholarship Act.'"

16 **SECTION 2.**

17 Said article is further amended by revising Code Section 20-2-2111, relating to legislative
18 findings, as follows:

19 "20-2-2111.

20 The General Assembly finds that:

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

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

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

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

34 (5) Nothing in this article shall be construed as a basis for granting vouchers or tuition
 35 tax credits for any other students, ~~with or without disabilities~~ not expressly included in
 36 this article."

37 **SECTION 3.**

38 Said article is further amended by revising Code Section 20-2-2112, relating to definitions,
 39 as follows:

40 "20-2-2112.

41 As used in this article, the term:

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

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

44 (2.1) 'Eligible student' means a:

45 (A) Student with a disability;

46 (B) Section 504 student;

47 (C) Foster care student; or

48 (D) Military family student.

49 (2.2) 'Foster care student' means a student who is or has been in a foster home or
 50 otherwise in the foster care system under the Division of Family and Children Services
 51 of the Department of Human Services. A person who has legal authority to act on behalf
 52 of a foster care student shall not be considered a state actor or agent of the state.

53 (2.3) 'Military family student' means a dependent child of a:

54 (A) Parent in the military on active duty; or

55 (B) Parent in the national guard or reserves.

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

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

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

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

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

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

71 (9) 'Scholarship' means a Georgia ~~Special Needs~~ Early HOPE Scholarship awarded
 72 pursuant to this article.

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

75 (11) 'Section 504 student' means a student who is eligible for services under Section 504
 76 of the federal Rehabilitation Act of 1973 and shall have had a Section 504 plan written
 77 by the school in accordance with federal and state laws and regulations.

78 (12) 'Student with a disability' means a student who:

79 (A)(i) Has one or more of the following disabilities:

80 (I) Autism;

81 (II) Deaf/blind;

82 (III) Deaf/hard of hearing;

83 (IV) Emotional and behavioral disorder;

84 (V) Intellectual disability;

85 (VI) Orthopedic impairment;

86 (VII) Other health impairment;

87 (VIII) Specific learning disability;

88 (IX) Speech-language impairment;

89 (X) Traumatic brain injury; or

90 (XI) Visual impairment; and

91 (ii) Has had an individualized education program (IEP) written by the school in
 92 accordance with federal and state laws and regulations; or

93 (B) Is a student in the psychoeducational program."

94 **SECTION 4.**

95 Said article is further amended by revising Code Section 20-2-2113, relating to annual
96 notification of options available to parents of special needs children, as follows:

97 "20-2-2113.

98 (a) The resident school system shall ~~annually notify prior to the beginning of each school~~
99 ~~year the parent of~~ provide the following notice to the parents of all enrolled students a
100 ~~student with a disability~~ by letter, by electronic means, or by such other reasonable means
101 ~~in a timely manner of the options available to the parent under this article. and, if the school~~
102 ~~system utilizes automated telephone calls, by such automated system in each January and~~
103 April:

104 'Your child may be eligible for a Georgia Early HOPE Scholarship to attend a private
105 school or another public school if your child has an Individualized Education Program
106 (IEP) or Section 504 plan, is currently or has been in foster care, or has a parent
107 currently in the military, reserves, or national guard. Information may be found at
108 www.earlyhopescholarship.org relating to eligibility requirements.'

109 In addition, the resident school system shall ensure that a student with a disability is
110 notified at each individualized education program (IEP) meeting and a Section 504 student
111 is notified at each Section 504 meeting.

112 (b)(1) The parent may choose for the student to attend another public school within the
113 resident school system which has available space and which has a program with the
114 services agreed to in the student's existing individualized education program for a student
115 with a disability or in the student's existing Section 504 plan, if the student is a Section
116 504 student. If the parent chooses this option, then the parent shall be responsible for
117 transportation to such school. The student may attend such public school pursuant to this
118 paragraph until the student completes all grades of the school, graduates, reaches the age
119 of 20, if the student is a foster care student or a military family student, or reaches the age
120 of 21, if the student is a student with a disability or is a Section 504 student, whichever
121 occurs first, in accordance with federal and state requirements for disabled students. For
122 purposes of this paragraph, available space shall include all classrooms in permanent
123 buildings and existing portable units and trailers;

124 (2) The parent may choose to enroll the student in and transport the student to a public
125 school outside of the student's resident school system which has available space and
126 which has a program with the services agreed to in the student's existing individualized
127 education program for a student with a disability or in the student's existing Section 504
128 plan, if the student is a Section 504 student. The public school system may, in its sole
129 discretion, accept the student, and if it does, such system shall report the student for
130 purposes of funding to the department;

- 131 (3) The parent may choose for the student to attend one of the state schools for the deaf
 132 and blind operated by the State Board of Education, if appropriate for the student's needs.
 133 Funding for such students shall be provided in accordance with Code Section 20-2-302;
 134 or
 135 (4) The parent may request and receive from the department a scholarship for the student
 136 to enroll in and attend a participating private school in accordance with this article."

137 **SECTION 5.**

138 Said article is further amended by revising Code Section 20-2-2114, relating to qualifications
 139 for scholarship, as follows:

140 "20-2-2114.

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

142 (1) ~~The student's parent currently resides within Georgia and has been a Georgia resident~~
 143 ~~for at least one year~~ student has spent the prior school year in attendance at a Georgia
 144 public school;

145 (2) ~~The student has one or more of the following disabilities:~~ is an eligible student;

146 (A) ~~Autism;~~

147 (B) ~~Deaf/blind;~~

148 (C) ~~Deaf/hard of hearing;~~

149 (D) ~~Emotional and behavioral disorder;~~

150 (E) ~~Intellectual disability;~~

151 (F) ~~Orthopedic impairment;~~

152 (G) ~~Other health impairment;~~

153 (H) ~~Specific learning disability;~~

154 (I) ~~Speech-language impairment;~~

155 (J) ~~Traumatic brain injury; or~~

156 (K) ~~Visual impairment;~~

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

160 ~~(4)~~(3) The parent obtains acceptance for admission of the student to a participating
 161 school; and

162 ~~(5)~~(4) The parent submits an application for a scholarship to the department no later than
 163 the deadline established by the department; provided, however, that the department shall
 164 provide application deadline opportunities on August 1, October 1, January 1, and March
 165 1 of each school year for a student to transfer at any time throughout such school year.

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

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

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

177 (e) The scholarship shall remain in force until the student returns to his or her assigned
 178 school in the resident public school system, graduates from high school, reaches the age
 179 of 20, if the student is a foster care student or a military family student, or reaches the age
 180 of 21, if the student is a student with a disability or is a Section 504 student, whichever
 181 occurs first. However, at any time, the student's parent may remove the student from the
 182 participating school and place the student in another participating school or public school
 183 as provided for in Code Section 20-2-2113.

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

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

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

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

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

196 **SECTION 6.**

197 Said article is further amended by revising Code Section 20-2-2115, relating to eligibility
 198 requirements for schools participating in scholarship program, as follows:

199 "20-2-2115.

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

- 201 (1) Have a physical location in Georgia where the scholarship students attend classes and
 202 have direct contact with the school's teachers;
- 203 (2) Demonstrate fiscal soundness by having been in operation for one school year or by
 204 submitting a financial information report for the school that complies with uniform
 205 financial accounting standards established by the department and conducted by a certified
 206 public accountant. The report must confirm that the school desiring to participate is
 207 insured and the owner or owners have sufficient capital or credit to operate the school for
 208 the upcoming school year serving the number of students anticipated with expected
 209 revenues from tuition and other sources that may be reasonably expected. The report
 210 shall be limited in scope to those records that are necessary for the department to make
 211 a determination on fiscal soundness and to make payments to schools for scholarships;
- 212 (3) Comply with the antidiscrimination provisions of 42 U.S.C. Section 2000d;
- 213 (4) Comply with all health and safety laws or codes that apply to private schools;
- 214 (5) Comply with all provisions of Code Section 20-2-690 and any other state law
 215 applicable to private schools;
- 216 (6) Regularly report to the parent and the department on the student's academic progress,
 217 including the results of pre-academic assessments and post-academic assessments given
 218 to the student, in accordance with department guidelines; and
- 219 (7) Employ For participating schools that receive one or more scholarship students with
 220 a disability, employ or contract with special education teachers who hold a bachelor's
 221 degree or higher degree or have at least three years of experience in education or health
 222 and annually provide to the parents the relevant credentials of ~~the~~ such teachers who will
 223 be teaching ~~their~~ such scholarship students.
- 224 (b) A home school operating under the provisions of Code Section 20-2-690 shall not be
 225 eligible to enroll scholarship students.
- 226 (c) Residential treatment facilities licensed or approved by the state shall not be eligible
 227 to enroll scholarship students.
- 228 (d) The creation of the program shall not be construed to expand the regulatory authority
 229 of the state, its officers, or any public school system to impose any additional regulation
 230 of nonpublic schools beyond those reasonably necessary to enforce the requirements of this
 231 article.
- 232 (e) A ~~participating~~ school intending to enroll scholarship students shall ~~submit an~~
 233 ~~application to~~ notify the department by June 30 of the school year preceding the school
 234 year in which it intends to enroll scholarship students. The notice shall specify the grade
 235 levels and services that the school has available for students ~~with disabilities~~ who are
 236 participating in the scholarship program. ~~A school intending to enroll scholarship students~~
 237 ~~in the 2007-2008 school year shall submit an application no later than June 30, 2007.~~

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

242 (g) Nothing in this Code section shall be construed to require a participating school to
 243 adhere to the requirements of either the federal Individuals with Disabilities Education Act
 244 or Section 504 of the federal Rehabilitation Act of 1973 or to prevent a participating school
 245 from providing single-sex education."

246 **SECTION 7.**

247 Said article is further amended by revising Code Section 20-2-2116, relating to amount of
 248 scholarship, as follows:

249 "20-2-2116.

250 (a) The maximum scholarship granted a scholarship student pursuant to this article shall
 251 be an amount equivalent to the costs of the educational program that would have been
 252 provided for the student in the resident school system as calculated under Code Section
 253 20-2-161 plus a proportional share of state categorical grants, non-QBE state grants, state
 254 equalization grants, and all other state grants and a proportional share of funding for
 255 transportation, food services, and building programs. A proportional amount shall be
 256 calculated by dividing the total funding by the total number of students in the school
 257 system. This shall not include any federal funds.

258 (b) The amount of the scholarship shall be the lesser of the amount calculated in
 259 subsection (a) of this Code section or the amount of the participating school's tuition and
 260 fees, if applicable. The amount of any assessment fee required by the participating school
 261 may be paid from the total amount of the scholarship.

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

269 (d) Each local school system shall submit quarterly reports to the department on dates
 270 established by the department stating the number of scholarship students in the resident
 271 school system. Following each notification, the department shall transfer from the state
 272 allotment to each school system the amount calculated under Code Section 20-2-161 to a
 273 separate account for the scholarship program for quarterly disbursement to the parents of

274 scholarship students. When a student enters the program, the department must receive all
 275 documentation required for the student's participation, including the participating school's
 276 and student's fee schedules at least 30 days before the ~~first quarterly~~ initial scholarship
 277 payment is made for the student. The department ~~may not make any retroactive payments~~
 278 shall only make payments for days actually enrolled on a prorated basis.

279 (e) Upon proper documentation received by the department, the department shall make
 280 equal quarterly scholarship payments to the parents of scholarship students ~~on dates~~
 281 established by the department or, for students who have been enrolled in a participating
 282 school for at least ten days in the prior quarter if such students enrolled in the participating
 283 school after the school's start date, the department shall make scholarship payments to the
 284 parents of such students beginning on the next payment date included in this subsection.
 285 The department shall make payments on or before September 1, November 1, February 1,
 286 and April 1 for periods corresponding, respectively, to July 1 through September 30,
 287 October 1 through December 31, January 1 through February 28, and March 1 through
 288 June 30 during each academic year in which the scholarship is in force. In the event that
 289 a quarterly payment date is missed due to a student not having been enrolled for at least ten
 290 days in the prior quarter, the full or prorated scholarship amount, as applicable, for that
 291 deadline shall be included in the payment on the next following payment deadline. The
 292 state auditor shall cite as an audit exception any failure by the department to meet any such
 293 payment deadlines and shall include such audit exceptions on the website established
 294 pursuant to Code Section 50-6-32. The initial payment shall be made upon evidence of
 295 admission to the participating school, and subsequent payments shall be made on evidence
 296 of continued enrollment and attendance at the participating school.

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

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

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

310 reservation payment must be returned to the department by such school. Only one
311 reservation payment per student may be made per year."

312 **SECTION 8.**

313 In the event any section, subsection, sentence, clause, or phrase of this Act is declared or
314 adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect
315 the remaining portions of this Act, which shall remain of full force and effect as if such
316 portion so declared or adjudged invalid or unconstitutional were not originally a part of this
317 Act. The General Assembly declares that it would have enacted the remaining parts of this
318 Act if it had known that such portion hereof would be declared or adjudged invalid or
319 unconstitutional.

320 **SECTION 9.**

321 This Act shall become effective upon its approval by the Governor or upon its becoming law
322 without such approval.

323 **SECTION 10.**

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