

House Bill 853 (AS PASSED HOUSE AND SENATE)

By: Representatives Dempsey of the 13<sup>th</sup>, Efstoration of the 104<sup>th</sup>, Oliver of the 82<sup>nd</sup>, Benton of the 31<sup>st</sup>, and Coleman of the 97<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 6 of Chapter 2 of Title 20 of the Official Code of Georgia Annotated,  
2 relating to the "Quality Basic Education Act," so as to provide that a child placed in a  
3 psychiatric residential treatment facility by his or her parent or legal guardian pursuant to a  
4 physician's order is eligible for education services from the local school system in which the  
5 psychiatric residential treatment facility is located; to provide for related matters; to provide  
6 for statutory construction; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Article 6 of Chapter 2 of Title 20 of the Official Code of Georgia Annotated, relating to the  
10 "Quality Basic Education Act," is amended by revising subsections (a) and (b) of Code  
11 Section 20-2-133, relating to free public instruction, as follows:

12 "(a) Admission to the instructional programs funded under this article shall be free to all  
13 eligible children and youth who enroll in such programs within the local school system in  
14 which they reside and to children as provided in subsection (b) of this Code section.  
15 Therefore, a local school system shall not charge resident students tuition or fees, nor shall  
16 such students be required to provide materials or equipment except for items specified by  
17 the State Board of Education, as a condition of enrollment or full participation in any  
18 instructional program. However, a local school system is authorized to charge nonresident  
19 students tuition or fees or a combination thereof; provided, however, that such charges to  
20 a student shall not exceed the average locally financed per student cost for the preceding  
21 year, excluding the local five mill share funds required pursuant to Code Section 20-2-164;  
22 provided, further, that no child ~~in a placement operated by the Department of Human~~  
23 ~~Services or the Department of Behavioral Health and Developmental Disabilities or for~~  
24 ~~which payment is made by the Department of Juvenile Justice, the Department of Human~~  
25 ~~Services or any of its divisions, or the Department of Behavioral Health and~~  
26 ~~Developmental Disabilities and no child who is in the physical or legal custody of the~~

27 ~~Department of Juvenile Justice, under the care or physical or legal custody of the~~  
 28 ~~Department of Human Services or any of its divisions, or under the physical custody of the~~  
 29 ~~Department of Behavioral Health and Developmental Disabilities~~ described in  
 30 subparagraph (A) of paragraph (1) of subsection (b) of this Code section shall be charged  
 31 tuition, fees, or a combination thereof. A local school system is further authorized to  
 32 contract with a nonresident student's system of residence for payment of tuition. The  
 33 amount of tuition paid directly by the system of residence shall be limited only by the terms  
 34 of the contract between systems. Local units of administration shall provide textbooks or  
 35 any other reading materials to each student enrolled in a class which has a course of study  
 36 that requires the use of such materials by the students.

37 (b)(1)(A) Any child, except ~~a child in a secure residential facility as defined in Code~~  
 38 ~~Section 15-11-2,~~ as otherwise specifically provided in subparagraph (D) of this  
 39 paragraph, who is:

40 (i) In ~~in~~ the physical or legal custody of the Department of Juvenile Justice or the  
 41 Department of Human Services or any of its divisions;

42 (ii) In ~~in~~ a placement operated by the Department of Human Services or the  
 43 Department of Behavioral Health and Developmental Disabilities; ~~or~~

44 (iii) In ~~in~~ a facility or placement paid for by the Department of Juvenile Justice, the  
 45 Department of Human Services or any of its divisions, or the Department of  
 46 Behavioral Health and Developmental Disabilities; or

47 (iv) Placed in a psychiatric residential treatment facility by his or her parent or legal  
 48 guardian pursuant to a physician's order, if such child is not a home study, private  
 49 school, or out-of-state student

50 and who is physically present within the geographical area served by a local unit of  
 51 administration for any length of time is eligible for enrollment in the educational  
 52 programs of that local unit of administration; provided, however, that the child meets  
 53 the age eligibility requirements established by this article. Except for children who are  
 54 committed to the Department of Juvenile Justice and receiving education services under  
 55 Code Section 20-2-2084.1, the local unit of administration of the school district in  
 56 which such child is present shall be responsible for the provision of all educational  
 57 programs, including special education and related services, at no charge so long as the  
 58 child is physically present in the school district.

59 (B) A child shall be considered in the physical or legal custody of the Department of  
 60 Juvenile Justice or the Department of Human Services or any of its divisions if custody  
 61 has been awarded either temporarily or permanently by court order or by voluntary  
 62 agreement, or if the child has been admitted or placed according to an individualized  
 63 treatment or service plan of the Department of Human Services. A child shall be

64 considered in a facility or placement paid for or operated by the Department of  
 65 Behavioral Health and Developmental Disabilities if the child has been admitted or  
 66 placed according to an individualized treatment or service plan of the Department of  
 67 Behavioral Health and Developmental Disabilities or its contractors.

68 (C) A facility providing educational services onsite to a child described in  
 69 subparagraph (A) of this paragraph who is unable to leave such facility shall enter into  
 70 a memorandum of understanding with the local unit of administration in which the  
 71 facility is located. Such memorandum of understanding shall include, at a minimum,  
 72 provisions regarding enrollment counting procedures, allocation of funding based on  
 73 actual days of enrollment in the facility, and the party responsible for employing  
 74 teachers. A memorandum of understanding shall be reviewed and renewed at least  
 75 every two years.

76 (D) No child in a secure residential facility as defined in Code Section 15-11-2,  
 77 regardless of his or her custody status, shall be eligible for enrollment in the educational  
 78 programs of the local unit of administration of the school district in which such facility  
 79 is located. No child or youth in the custody of the Department of Corrections or the  
 80 Department of Juvenile Justice and confined in a facility as a result of a sentence  
 81 imposed by a court shall be eligible for enrollment in the educational programs of the  
 82 local unit of administration of the school district where such child or youth is being  
 83 held; provided, however, that such child or youth may be eligible for enrollment in a  
 84 state charter school pursuant to Code Section 20-2-2084.1.

85 (2) Except as otherwise provided in this Code section, placement in a facility ~~by a parent~~  
 86 ~~or~~ by another local unit of administration shall not create an obligation, financial or  
 87 otherwise, on the part of the local unit of administration in which the facility is located  
 88 to educate the child.

89 (3) For any child described in subparagraph (A) of paragraph (1) of this subsection, the  
 90 custodian of or placing agency for the child shall notify the appropriate local unit of  
 91 administration at least five days in advance of the move, when possible, when the child  
 92 is to be moved from one local unit of administration to another.

93 (4) When the custodian of or placing agency for any child notifies a local unit of  
 94 administration, as provided in paragraph (3) of this subsection, that the child may become  
 95 eligible for enrollment in the educational programs of a local unit of administration, such  
 96 local unit of administration shall request the transfer of the educational records and  
 97 Individualized Education Programs and all education related evaluations, assessments,  
 98 social histories, and observations of the child from the appropriate local unit of  
 99 administration no later than ten days after receiving notification. Notwithstanding any  
 100 other law to the contrary, the custodian of the records has the obligation to transfer these

101 records and the local unit of administration has the right to receive, review, and utilize  
102 these records. Notwithstanding any other law to the contrary, upon the request of a local  
103 unit of administration responsible for providing educational services to a child described  
104 in subparagraph (A) of paragraph (1) of this subsection, the Department of Juvenile  
105 Justice, the Department of Behavioral Health and Developmental Disabilities, or the  
106 Department of Human Services shall furnish to the local unit of administration all  
107 medical and educational records in the possession of the Department of Juvenile Justice,  
108 the Department of Behavioral Health and Developmental Disabilities, or the Department  
109 of Human Services pertaining to any such child, except where consent of a parent or legal  
110 guardian is required in order to authorize the release of any of such records, in which  
111 event the Department of Juvenile Justice, the Department of Behavioral Health and  
112 Developmental Disabilities, or the Department of Human Services shall obtain such  
113 consent from the parent or guardian prior to such release.

114 (5) Any local unit of administration which serves a child pursuant to subparagraph (A)  
115 of paragraph (1) of this subsection shall receive in the form of annual grants in state  
116 funding for that child the difference between the actual state funds received for that child  
117 pursuant to Code Section 20-2-161 and the reasonable and necessary expenses incurred  
118 in educating that child, calculated pursuant to regulations adopted by the State Board of  
119 Education. Each local board of education shall be held harmless by the state from  
120 expending local funds for educating students pursuant to this Code section; provided,  
121 however, that this shall only apply to students who are unable to leave the facility in  
122 which they have been placed.

123 (6) Enrollment of an eligible child pursuant to this Code section shall be effectuated in  
124 accordance with rules and regulations adopted by the State Board of Education.

125 (7) For purposes of the accountability program provided for in Part 3 of Article 2 of  
126 Chapter 14 of this title, all facilities serving children described in subparagraph (A) of  
127 paragraph (1) of this subsection shall be, consistent with department rules and  
128 regulations, treated as a single local education agency; provided, however, that this  
129 paragraph shall not be construed to alleviate any responsibilities of the local unit of  
130 administration of the school district in which any such children are physically present for  
131 the provision of education for any such children.

132 (8) The Department of Education, the State Charter Schools Commission, the  
133 Department of Human Services, the Department of Juvenile Justice, the Department of  
134 Behavioral Health and Developmental Disabilities, and the local units of administration  
135 where Department of Education, State Charter Schools Commission, Department of  
136 Juvenile Justice, Department of Behavioral Health and Developmental Disabilities, or  
137 Department of Human Services placements, facilities, or contract facilities are located

138 shall jointly develop procedures binding on all agencies implementing the provisions of  
139 this Code section applicable to children and youth in the physical or legal custody of the  
140 Department of Juvenile Justice, under the care or physical or legal custody of the  
141 Department of Human Services, or under the physical custody of the Department of  
142 Behavioral Health and Developmental Disabilities.”

143 **SECTION 2.**

144 This Act shall not be construed to create a precedent that state education funds always follow  
145 a student who leaves a public school to attend a private school or be admitted to a facility,  
146 if not already provided for by law.

147 **SECTION 3.**

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