

Senate Bill 41

By: Senators Jackson of the 41st, Jones II of the 22nd, Parent of the 44th, Halpern of the 39th, Orrock of the 36th and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 20 of the Official Code of Georgia Annotated, relating to education, so as to  
2 provide for equal athletic opportunities for public school students; to provide for a cause of  
3 action; to provide for statutory construction; to provide for related matters; to repeal  
4 conflicting laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 **SECTION 1.**

7 Title 20 of the Official Code of Georgia Annotated, relating to education, is amended in Part  
8 14 of Article 6 of Chapter 2, relating to other educational programs under the "Quality Basic  
9 Education Act," by revising Code Section 20-2-315, relating to gender discrimination  
10 prohibited, authorized separate gender teams, equal athletic opportunity, physical education  
11 classes, employee designated to monitor compliance, grievance procedures, and reporting  
12 requirements, as follows:

13 "20-2-315.

14 (a) No student shall, on the basis of gender, be excluded from participation in, be denied  
15 the benefits of, be treated differently from another student, or otherwise be discriminated

16 against in any interscholastic or intramural athletics offered by a local school system, and  
 17 no local school system shall provide any such athletics separately on such basis.

18 (b) Notwithstanding the requirements of subsection (a) of this Code section, a local school  
 19 system may operate or sponsor separate teams for members of each gender where selection  
 20 for such teams is based upon competitive skill or the activity involved is a contact sport.  
 21 However, where a local school system operates or sponsors a team in a particular sport for  
 22 members of one gender but operates or sponsors no such team for members of the other  
 23 gender, and athletic opportunities for members of that gender in that particular sport have  
 24 previously been limited, members of the excluded gender must be allowed to try out for the  
 25 team offered unless the sport involved is a contact sport. Nothing in this subsection shall  
 26 be construed to limit the authority of a local school system to operate or sponsor a single  
 27 team for a contact sport that includes members of both genders. As used in this subsection,  
 28 the term 'contact sport' includes boxing, wrestling, rugby, ice hockey, football, basketball,  
 29 and any other sport the purpose or major activity of which involves bodily contact.

30 (c) A local school system which operates or sponsors interscholastic or intramural athletics  
 31 shall ~~undertake all reasonable efforts to provide~~ for equal athletic opportunity for members  
 32 of both genders by taking all steps reasonably necessary to ensure. ~~In determining whether~~  
 33 ~~equal opportunities are available the following factors shall be considered:~~

34 ~~(1) Whether~~ that the selection of sports and levels of competition effectively  
 35 accommodate the interests and abilities of members and teams of both genders and that  
 36 comparable and equivalent funds, facilities access, equipment, supplies, and other  
 37 resources are being provided for members and teams of both genders as demonstrated  
 38 by:

39 ~~(2)~~(1) The provision of equipment and supplies;

40 (2) The location of locker rooms and practice and competitive facilities;

41 (3) The scheduling Scheduling of games and practice time practices;

42 (4) Travel allowance allowances;

- 43 ~~(5) Opportunity~~ Opportunities for students to receive coaching and academic tutoring;
- 44 (6) ~~Assignment~~ The assignment and compensation of coaches and academic tutors for
- 45 students, including, but not limited to, whether the compensation of coaches is
- 46 commensurate with time actually spent engaged in coaching, academic tutoring, or other
- 47 assigned duties;
- 48 (7) ~~Provision of locker rooms and practice and competitive facilities;~~
- 49 ~~(8) Provision~~ The provision of medical and training facilities and services; and
- 50 ~~(9)~~(8) Publicity.
- 51 Unequal aggregate expenditures for members of each gender or unequal expenditures for
- 52 male and female teams if a local school system operates or sponsors separate teams will
- 53 not constitute noncompliance with this subsection, but the failure to provide ~~essential funds~~
- 54 comparable and equivalent funds, facilities access, equipment, supplies, and other
- 55 resources for the basic operations of teams for one gender ~~may be considered in assessing~~
- 56 equality of opportunity for members of each gender shall constitute such noncompliance.
- 57 Nothing in Code Section 20-2-411 shall be construed to limit the authority of a local school
- 58 system to expend school tax funds as authorized by Article VIII, Section VI, Paragraph I(b)
- 59 of the Constitution in order to comply with the requirements of this Code section.
- 60 (d) A local school system may provide separate toilet, locker room, and shower facilities
- 61 on the basis of gender, but such facilities shall be comparable to such facilities provided
- 62 for students of the other gender.
- 63 (e) This Code section does not prohibit the grouping of students in physical education
- 64 classes by gender.
- 65 (f)(1) Subject to the provisions of paragraph (3) of this subsection, if a local school
- 66 system sponsors an athletic activity or sport at a particular school that is similar to a sport
- 67 for which an institution in the University System of Georgia offers an athletic
- 68 scholarship, it must sponsor the athletic activity or sport for which a scholarship is
- 69 offered at that school. This paragraph does not affect academic requirements for

70 participation nor prevent the local school system from sponsoring activities in addition  
71 to those for which scholarships are provided.

72 (2) Two athletic activities or sports that are similar may be offered simultaneously.

73 (3) If a local school system demonstrates by a bona fide survey of eligible students at the  
74 school, which is approved by the Department of Education for compliance with generally  
75 accepted opinion survey principles regarding neutral wording and other matters, that there  
76 is insufficient interest among students at the school to field a team described in  
77 paragraph (1) of this subsection, then the local school system shall not be required to  
78 sponsor such athletic activity or sport at that school. The exemption provided for by this  
79 paragraph shall be valid for 24 months following the date when the most recent bona fide  
80 student survey demonstrating a lack of student interest was completed, unless a new bona  
81 fide student survey is conducted within the 24 month period that demonstrates sufficient  
82 interest to field a team. If such a new bona fide student survey demonstrates such  
83 sufficient interest, then the local school system must comply with paragraph (1) of this  
84 subsection during the local school system's next fiscal year and until such time as a new  
85 bona fide student survey demonstrates insufficient interest to field a team described in  
86 paragraph (1) of this subsection. A local school system shall conduct the bona fide  
87 student survey described in this paragraph regarding interest in a team described in  
88 paragraph (1) of this subsection upon the request of nine students at the school, but no  
89 more frequently than once every 12 months.

90 (4) Nothing in this subsection shall be construed to preclude the application of generally  
91 applicable policies or rules regarding the cancellation of an athletic activity or sport due  
92 to lack of student participation in scheduled practices or contests.

93 (g) Each local school system shall designate at least one employee to coordinate its efforts  
94 to comply with and carry out its responsibilities under this Code section, including the  
95 investigation of any complaint communicated to such local school system alleging its  
96 noncompliance with this Code section. The employee designated under this subsection

97 may be the same person required to be designated under 34 C.F.R. Section 106.8. The  
98 local school system annually shall notify all its students of the name, office address, and  
99 office telephone number of the employee or employees appointed pursuant to this  
100 subsection. Such notification may be included in a student ~~handbook~~ code of conduct  
101 distributed pursuant to Code Section 20-2-736.

102 (h) Each local school system shall adopt and publish grievance procedures providing for  
103 prompt and equitable resolution of written student complaints, including complaints  
104 brought by a parent or guardian on behalf of his or her minor child who is a student,  
105 alleging any action which would be a violation of this Code section. Such procedures shall  
106 require that:

107 (1) The employee designated under subsection (g) of this Code section shall render his  
108 or her decision in writing no later than 30 days after receipt of the complaint, and such  
109 decision shall set forth the essential facts and rationale for the decision;

110 (2) A copy of such decision shall be provided to the complainant within five days of the  
111 date of the decision; and

112 (3) A complainant shall have a right to appeal such decision to the local board within 35  
113 days of the date of the decision.

114 (i)(1) A complainant may appeal a decision of a local board that is rendered under  
115 subsection (h) of this Code section in accordance with the procedures specified in Code  
116 Section 20-2-1160. If the State Board of Education determines that a local school system  
117 has failed to comply with this Code section, then the state board shall provide the local  
118 school system with opportunities to prepare a corrective plan. If the state board  
119 determines that a corrective plan of the local school system adequately plans and provides  
120 for future compliance with this Code section, then the state board shall approve the plan  
121 and direct the local school system to implement such plan.

122 (2) If, upon a complaint filed pursuant to subsection (h) of this Code section after one  
123 year following the date of a state board order directing implementation of a corrective

124 plan pursuant to paragraph (1) of this subsection but within four years of the date of such  
125 order, the state board determines that the local school system which was subject to such  
126 order has willfully failed to comply with this Code section, the state board may, after  
127 consideration of the local school system's efforts to implement the corrective plan  
128 approved in the earlier proceeding and of any other corrective plan that may be submitted  
129 by the local school system, transmit a certification of such determination to the  
130 Department of Community Affairs. If the state board's determination of noncompliance  
131 is later reversed or vacated upon appeal, the state board shall immediately notify the  
132 Department of Community Affairs of such action.

133 (3) If, upon a complaint filed pursuant to subsection (h) of this Code section after one  
134 year following the date of a state board certification to the Department of Community  
135 Affairs pursuant to paragraph (2) of this subsection but within four years of the date of  
136 such order, the state board determines that the local school system which was subject to  
137 such order has willfully failed to comply with this Code section, the state board may,  
138 after consideration of the local school system's efforts to implement a corrective plan  
139 approved in an earlier proceeding and of any other corrective plan that may be submitted  
140 by the local school system, order that a team or teams within the local school system or  
141 school within the local school system shall not participate in interscholastic postseason  
142 athletic contests and that participation in violation of such an order may result in  
143 withholding of state funds allotted pursuant to Code Section 20-2-186. An order of the  
144 state board barring participation in interscholastic postseason athletic contests shall be  
145 made and announced before the beginning of a school year.

146 (4) If, upon a complaint filed pursuant to subsection (h) of this Code section after one  
147 year following the date of a state board order prohibiting participation in interscholastic  
148 postseason athletic contests pursuant to paragraph (3) of this subsection but within four  
149 years of the date of such order, the state board determines that the local school system  
150 which was subject to such order has willfully failed to comply with this Code section, the

151 state board may, after consideration of the local school system's efforts to implement a  
152 corrective plan approved in an earlier proceeding and of any other corrective plan that  
153 may be submitted by the local school system, withhold state funds that are allotted  
154 pursuant to Code Section 20-2-186 in an amount that the state board determines is  
155 sufficient to secure the local school system's compliance with this Code section. In the  
156 event that state funds are withheld pursuant to this paragraph, such funds shall later be  
157 allotted to the local school system at such time as the state board determines that the local  
158 school system is in compliance with this Code section.

159 (j) The Department of Education ~~may~~ shall publish an annual report of local school  
160 systems to include information regarding expenditures and participation rates for each  
161 gender and such other information as the state board and department deem relevant.

162 (k)(1) In addition to any other rights or remedies otherwise provided by law, any student:

163 (A) Who is deprived of an athletic opportunity or suffers any direct or indirect harm  
164 as a result of a violation of this Code section shall have a private right of action to  
165 enforce the provisions of this Code section through injunctive or declaratory relief in  
166 the superior court of the county in which the relevant covered entity or competition is  
167 located. If an aggrieved student or such student's parent or guardian is the prevailing  
168 party in such action, such student or such student's parent or guardian shall be entitled  
169 to an award of reasonable attorney's fees, court costs, and expenses of litigation, but  
170 shall not be entitled to any monetary damages; or

171 (B) Who is subject to retaliation or other adverse action by a covered entity or a local,  
172 state, regional, or national athletic conference or association as a result of reporting a  
173 violation of this Code section to an employee or representative such covered entity,  
174 athletic association or conference, or any state or federal agency with oversight over  
175 covered entities in this state, shall have a private cause of action for injunctive relief,  
176 damages, and any other relief available under law against the covered entity or athletic  
177 association or conference. If an aggrieved student or such student's parent or guardian

178 is the prevailing party in such action, such student shall be entitled to an award of  
 179 monetary damages, including for any psychological, emotional, or physical harm  
 180 suffered, reasonable attorney's fees, court costs, and expenses of litigation, and any  
 181 other appropriate relief.

182 (2) All civil actions brought under this subsection shall be initiated within two years after  
 183 the alleged harm occurred.

184 (1) Nothing in this Code section shall be construed to abrogate or otherwise affect the  
 185 operation or application of the federal Individuals with Disabilities Education Act (IDEA),  
 186 Section 504 of the federal Rehabilitation Act of 1973, or the federal Americans with  
 187 Disabilities Act of 1990."

188

## SECTION 2.

189 Said title is further amended in said part by revising subparagraph (c)(1)(E) of Code Section  
 190 20-2-316, relating to involvement of athletic association in high school athletics, as follows:

191 "(E) The authority and duties of the executive oversight committee shall include:

192 (i) To meet in person or remotely not less than twice each school year;

193 (ii) To meet in person or remotely upon the call of the chairperson or a majority of  
 194 the executive oversight committee;

195 (iii) To establish policies and procedures for the executive oversight committee;

196 (iv) To conduct any independent audit, review, or investigation the executive  
 197 oversight committee deems necessary, including, but not limited to, the audit, review,  
 198 or investigation of the classifications of participating schools and ~~travel-related~~ travel  
 199 related issues of participating schools; and

200 ~~(v) If the athletic association determines that it is necessary and appropriate to~~  
 201 ~~prohibit students whose gender is male from participating in athletic events that are~~  
 202 ~~designated for students whose gender is female, then the athletic association may~~

203 ~~adopt a policy to that effect, provided, however, that such policy shall be applied to~~  
204 ~~all of the athletic association's participating public high schools; and~~  
205 (vi) To conduct an annual evaluation of the athletic association as a whole and  
206 present a report of its findings, recommendations, and conclusions to the General  
207 Assembly's High School Athletics Overview Committee; and"

208

**SECTION 3.**

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