

SCHOOL COLLEGE LAW SECTION

Spring/Summer 2001

State Bar of Georgia

A Message from the Chair

I hope to see all of you at the State Bar Convention in June at the Section Breakfast. It is always an enjoyable opportunity to discuss Section issues and ways that the Section can be more responsive to you.

Get involved in the Section! We can always use your input - and there are leadership opportunities for those of you who wish to get more involved in the Bar. It is an excellent way to meet others with similar interests.

Finally, your contributions to the newsletter are welcome. As you can see from this issue we have had a good response to our request for timely notes.

Thank you for your continued involvement in the Section.

Pat McKee

A Note

From The Editor:

Spring is here, and everything is in bloom. The School and College Law Section Newsletter is no exception.



This Newsletter is intended to be a forum for the dissemination and discussion of ideas and issues important to section members. We are grateful to Daryl J. Morton for sharing his concerns about school disciplinary tribunals. As Daryl indicates, this issue will no doubt take on increasing significance as more and more students get caught in the crackdown on school violence. "Zero tolerance" has a nice ring to it, but it can also become an unwitting example of the law of unintended consequences if it is not properly handled.

We are also grateful to Melanie Davis Stockwell, Director of Legal Services for the Georgia Department of Education, for providing us with a concise summary of 2001 legislation affecting K-12 education. This will be handy reference for many of our

School & College Law Section Newsletter

Editor's Notes Cont'd

section members who toil in this vineyard.

Marc Sirotkin, our faithful Section Assistant (who is off to law school in the fall) has compiled another helpful summary of law review articles, this time on the topic of educational reform, a timely and ever-changing issue.

Two announcements of note:

- the section will be having its next meeting as part of the annual meeting of the State Bar at the Kiawah Island Resort, Kiawah Island, South Carolina. This will be a breakfast meeting on June 14, 2001, from 8 to 9 a.m.
- the 32d Annual Conference on Law and Higher Education, sponsored by the Institute of Higher Education of the University of Georgia, will be held July 16-17, 2001, at the Georgia Center for Continuing Education in Athens, Georgia. A more detailed announcement can be found elsewhere in this issue.

Let us hear from you. We are essentially an "open mike." Take advantage of it.

*Best,
Mel Hill, Editor*

MARK YOUR CALENDARS



For the 32d Annual Conference on Higher Education and the Law...

"Navigating the Legal Minefields: Staying out of Trouble and Staying Out of Court"...

... sponsored by the Institute of Higher Education of

the University of Georgia...

... a conference designed to serve the needs of college and university presidents and vice-presidents, deans, faculty, student affairs administrators, consulting attorneys and other individuals concerned with the legal aspects of student, faculty, and administrative behavior in higher education.

Dates: Monday and Tuesday, July 16 - 17, 2001.

Location: Georgia Center for Continuing Education, University of Georgia, Athens, GA

Confirmed speakers and topics include:

- Parker Young on Current Issues in Student Life and Academic Affairs
- Don Gehring on Legal Problems on the Horizon in Higher Education
- David Shipley on Intellectual Property
- Mary Ann Connell on Managing Conflict in Higher Education
- Ann Franke on Preventing Employment Disputes on Campus
- Steven J. McDonald on Internet Law and Policy
- Pat McKee on Critical Issues in Private Colleges
- Jennifer Hackemeyer on Critical Issues in Two-Year Institutions
- James Chin on Critical Issues in Judicial Affairs
- And other luminaries in higher education law

Conference brochure to be distributed in early June.

For more information, contact:

Mel Hill, mbhill@arches.uga.edu, 706-583-0048; Nancy Breme, 706-542-1272; or Marc Sirotkin, 706-583-0454

SCHOOL DISCIPLINARY TRIBUNALS: The Challenge of Representing Students

**By Daryl J. Morton
Attorney at Law
886 Mulberry Street
Macon, Georgia 31201
(478) 741-0025**

A.B.C.

With every school shooting, calls increase for the utilization of "zero tolerance" policies for students who misbehave in school along with increased penalties for those children who are "convicted" of various discipline offenses. Indeed, the sentiment in public schools seems to be to exact significant punishments for virtually any offense. As someone who represents students in disciplinary proceedings, I see more and more students who receive long-term suspensions, assignments to an alternative school or expulsion for less and less severe offenses.,

In Goss v. Lopez, 419 U.S. 565 (1975); the United States Supreme Court established that students are entitled to a hearing before a disciplinary tribunal if the proposed or actual discipline is for out of school suspension for ten (10) days or more. Unfortunately, many times, school systems, in a rush to address the alleged discipline violation, do not provide students with the due process protections to which they are entitled. Unfortunately, families, and even experienced attorneys, are unaware of these protections. As a consequence, often only those students who can afford representation receive the full measure of the due process protections afforded to them in the disciplinary hearing process, and then only if their attorney is aware of these safeguards. Thus, this article provides a primer regarding the basic rights students have when faced with potential discipline for violations of various school rules.

Notice of the Hearing

invariably receive calls about representing a student in a disciplinary hearing the day before it occurs. I often

find that parents receive notice of the hearing by phone or receive a letter about it the day before the hearing. As is readily apparent, such a practice makes it difficult for an attorney to adequately prepare for a hearing.

While local school systems have an affirmative obligation to schedule a tribunal hearing before the tenth day of suspension, the State Board of Education has made it clear that due process requires that students are entitled to a reasonable amount of time before the hearing to prepare an adequate defense, and that local boards should grant a continuance when requested on that basis. N.L. v. Brooks County Board of Education, Case No. 1999-73. This decision also makes it clear that the student has the right to waive a hearing on the charge within the ten (10) day period if necessary to prepare an adequate defense. The State Board emphasized that having time to prepare an adequate defense is particularly important when the recommended discipline is extreme, such as expulsion.

O.C.G.A. Section 20-2-754(b)(1) requires that the parent or guardian of the; child in question be given reasonable written notice of the hearing delivered either personally or by mail. The notice must contain a statement of the time, date, and place of the hearing, and a short and plain statement of the matter asserted. The notice must advise the parent or guardian that all parties have the right to present evidence and to be represented by legal counsel. To ensure the presence of witnesses and requested documents, many school

School & College Law Section Newsletter

systems also include information that they will issue subpoenas if requested or even subpoena witnesses themselves with proper notice.

Composition of the Disciplinary Tribunal

O.C.G.A. Section 20-2-753(a) authorizes a variety of forms that the disciplinary tribunal can take consisting of a hearing officer, panel, or tribunal of school officials. Sometimes the school system will have a school administrator, usually a principal, who will question witnesses, or the school system may have its local counsel fulfill that role. The hearing itself is to be recorded in some manner so that it can be transcribed if necessary. O.C.G.A. Section 20-2-754(b)(3). The local school system attorney can provide information about the composition of the tribunal in a given county.

Evidence at the Tribunal/Rules of Evidence

In my experience, there are several items that are needed prior to the hearing to adequately represent a student. First, obtain a copy of the student code of conduct for the given district to determine how the alleged offense is defined along with the possible punishments for that offense. The student will often already have a copy, or one can be obtained from the Board of Education office.

A complete copy of the student's academic file is the single most important item to obtain and scrutinize prior to the hearing. A complete record will include including such items as the academic record, standardized test scores, discipline file, correspondence and special education records if applicable. Given the time constraints, I ask the parents to obtain a copy from the school. Although some school systems do not seem to know it, parents have an absolute right to a copy of that file with the provision that the school can charge a reasonable copying fee. If the parent is

unable to obtain the file, subpoena the custodian of records for the school system, or the principal of the school where the child attends.

With regard to the conduct of the hearing, the school system will have the burden of proving the alleged discipline violation. Gurley v. Gordon County Board of Education, Case No. 1996-33. Therefore, the school system will present their evidence first with the student going next in terms of evidence and/or testimony presentation. Both sides have the right to cross-examine the other's witnesses.

One of the most common problems I encounter is how school tribunals treat hearsay evidence. There is no doubt that the rules of evidence are relaxed in these hearings, and the tribunal will routinely admit hearsay evidence over objection. However, the State Board had made it explicitly clear that hearsay evidence cannot form the sole basis of the finding that the child violated the rule in question. B.M. v. Flood County Board of Education, Case No. 1999-55. Further, conclusions of fact, e.g., that the student under the influence of drugs, cannot be based on unsubstantiated opinion testimony. F.L. v. DeKalb Board of Education. Case No. 1999-65. As a practical consequence, for a "conviction" to be legally sufficient, there must be some direct, competent evidence that the child committed the disciplinary violation.

Most hearings are split into a guilt/innocence and penalty phase. If the child is "convicted", the tribunal will usually ask the school administrator what punishment they recommend. It is also customary to review the child's disciplinary record in this portion of the hearing. Any mitigating evidence should be presented at this point in the process.

Special Education Considerations

Children who commit disciplinary offenses that are receiving "special education" services under the

School & College Law Section Newsletter

Individuals with Disabilities Education Act (IDEA) have special protections when it comes to discipline. In essence, once the offense is committed, the child's special education committee must determine if the child's "disability" was the cause of the conduct. If it was, then the committee must institute changes to try to prevent future similar conduct. If the conduct was not related to the "disability", then the child can be disciplined just like any other child, except that placement in alternative school setting cannot be for more than forty-five (45) days, and, if the suspension is for more than ten days, the child's Individual Education Plan (IEP) must continue even if the child is not allowed to come to school.

It is also important to note that IDEA provides similar protections to children who have not been identified as having a "disability." Under IDEA a "disability" is a medical and/or psychological condition that significantly impacts a child's school performance. Given that school systems often do not identify children who have potential disabilities, students who have behavior problems may have an unidentified disability that has not been properly evaluated.

If the child does appear to have a potential disability as defined by IDEA, the school system must conduct an expedited evaluation, including appropriate testing, to determine if the child has a disability, and if the conduct subjecting the child to discipline was related to the disability. In other words, the school system must follow the same procedure as they would for a child with a previously established disability.

My experience is that school systems are very reluctant to follow the process described above for a child not yet identified as having a disability. To do so would require the school system to in essence admit that they have not properly identified the child as having a potential disability. For that reason, careful

review of the child's entire academic file is essential. For children who have chronic discipline or academic difficulty the school system should employ Student Support Team (SST) strategies, and these should be documented in the file along with referrals for evaluation for eligibility for special education services. It is common for children who have clear disabilities to be passed from grade to grade without identification or services. In these cases; often a child has passing grades but low scores on standardized tests.

In addition to academic issues, investigate whether the child is receiving any treatment, medical or psychological, that would indicate the existence of a potential disability. If there is reason to believe that the child does have a potential disability, bring that information to the attention of the school system as soon as possible and request the appropriate evaluation.

It is my opinion that a significant number of children who are chronic behavior problems and face significant discipline consequences before tribunals have a disability that has not yet been properly identified. To that end, I offer an example from my own practice.

I currently represent a 7th grader who was facing a recommended placement at the Alternative School for a series of repeated, though not overly serious, discipline violations. Although the child had passed from grade to grade in elementary school, I noted consistently low standardized test scores. The child had never been referred for an evaluation.

Because of concerns about the child's behavior, the child's mother had a psychological evaluation performed. The evaluation showed that the child had a full scale IQ of 62 along with severe Attention Deficit Hyperactivity Disorder and Oppositional Defiant Disorder. Only now is this child being evaluated for services. Without this intervention, this child would

School & College Law Section Newsletter

be at the alternative school and well on the path to dropping out of school.

Appeals

The disciplinary tribunal must provide its decision in writing within ten (10) days of the close of the record. O.C.G.A. Section 20-2-754(c). An appeal from this decision is with the County Board of Education and must be filed in writing within twenty (20) days from the date the decision is rendered. Id. The local board of education usually will; provide a hearing to the appealing party and must issue its decision in writing. An appeal from this decision is available to the Georgia State Board of Education and must be filed within thirty (30) days of the local board decision. O.C.G.A. Section 20-2-1160(c). Any appeal from the State Board's decision is to Superior Court and must be filed within thirty (30) days of the State Board's decision.

With regard to appeals, it is important to note that any reviewing body can only consider the record made at the disciplinary hearing. The standard of review is an "any evidence" standard. My experience has been that success in appeals is usually where there is a procedural/due process violation or some other type of legal error.

With regard to the severity of the punishment, the State Board of Education has concluded that it will not interfere with a decision regarding the discipline imposed unless there is a "shocking disparity between the offense and penalty". Michael C. v. Houston County Board of Education. Case No. 1992-19. In that case, the State Board in fact reversed the local decision because the school system did not attempt any sort of behavior interventions, including a referral for a special education evaluation, before expelling

the child from school. This case again underscores the need to investigate the existence of a potential "disability" in the context of school disciplinary proceedings.

In this article, I have referenced several State Board decisions. These are available directly from the State Board of Education. Also, a publication called *Georgia School Law Decisions* compiles the State Board of Education decisions. The Georgia Department of Education's website also provides a wealth of information including the various State regulations that address discipline; special education, attendance policies, and other issues. (<http://www.doe.k12.ga.us/index.asp>) I have found the State Board to be receptive to an appeal when the local school system has acted contrary to State regulation.

Conclusion

I fully expect school systems to continue to institute more "zero tolerance" policies and exercise more discretion in handing out significant punishments for virtually any offense. For those reasons, I also anticipate that the number of disciplinary tribunal hearings will increase.

Because school systems will invariably be scheduling these hearings in short order, I have concerns that the due process rights of the students involved will be compromised in the process. As a concerned parent and attorney, I do not know how we can teach our children respect for the system without doing everything in our power to ensure that our children's right to free and appropriate public education is not diminished or removed without adequate due process protection. Educational Reform Law Review Articles (2000).

School & College Law Section Newsletter

1. **Akron Law Review**, 2000, 34 Akron L. Rev. 1, 4973 words, SYMPOSIUM: EDUCATION AND THE CONSTITUTION: SHAPING EACH OTHER AND THE NEXT CENTURY: Education and the Constitution: Shaping Each Other & the Next Century, Elizabeth Reilly *
2. **Akron Law Review**, 2000, 34 Akron L. Rev. 107, 14169 words, SYMPOSIUM: EDUCATION AND THE CONSTITUTION: SHAPING EACH OTHER AND THE NEXTCENTURY: Sorting and Reforming: High-Stakes Testing in the Public Schools, Rachel F. Moran *
3. **Akron Law Review**, 2000, 34 Akron L. Rev. 137, 19392 words, SYMPOSIUM: EDUCATION AND THE CONSTITUTION: SHAPING EACH OTHER AND THE NEXTCENTURY: Free at Last? Charter Schools and the "Deregulated" Curriculum, Molly O'Brien *
4. **Akron Law Review**, 2000, 34 Akron L. Rev. 177, 13744 words, SYMPOSIUM: EDUCATION AND THE CONSTITUTION: SHAPING EACH OTHER AND THE NEXTCENTURY: The Contemporary Significance of Meyer and Pierce For Parental Rights Issues Involving Education, William G. Ross *
5. **Akron Law Review**, 2000, 34 Akron L. Rev. 209, 10514 words, SYMPOSIUM: EDUCATION AND THE CONSTITUTION: SHAPING EACH OTHER AND THE NEXTCENTURY: Rich Kids, Poor Kids, and the Single-Sex Education Debate, Rosemary Salomone *
6. **Albany Law Review**, 2000, 63 Alb. L. Rev. 1147, 12688 words, ARTICLE: SCHOOL FINANCE REFORM LITIGATION: WHY ARE SOME STATE SUPREME COURTS ACTIVIST AND OTHERS RESTRAINED? *, Karen Swenson**
7. **The American Academy of Political and Social Science The Annals of The American Academy of Political and Social Science**, November, 2000, 572 Annals 98, 8436 words, SCHOOL VOUCHER: The Pro-Voucher Left and the Pro-Equity Right, By John E. Coons, Lisa Graham Keegan, and T. Willard Fair
8. **The American Academy of Political and Social Science The Annals of The American Academy of Political and Social Science**, November, 2000, 572 Annals 115, 9901 words, SCHOOL VOUCHER: Is a Grand Bargain Between Left and Right Possible?, By Lamar Alexander, Clint Bolick, Andrew Rotherham, and Sandra Feldman
9. **University of Cincinnati Law Review**, Summer, 2000, 68 U. Cin. L. Rev. 1331, 15676 words, Comment: PARENTAL CHOICE V. STATE MONOPOLY: MOTHER KNOWS BEST-A COMMENT ON AMERICA'S SCHOOLS AND VOUCHERS, Keith Syler*
10. **Drake Law Review**, 2000, 48 Drake L. Rev. 403, 16530 words, NOTE: WALL OF SEPARATION OR PATH TO INTERACTION: THE

School & College Law Section Newsletter

UNCERTAIN CONSTITUTIONAL FUTURE OF SCHOOL VOUCHERS IN LIGHT OF INCONSISTENT DEVELOPMENTS IN JUDICIAL NEUTRALITY BETWEEN CHURCH AND STATE, Danielle Jess Latham

11. **Drake Law Review**, 2000, 48 Drake L. Rev. 605, 10267 words, APPROPRIATING PUBLIC FUNDS FOR PRIVATE SCHOOL INSTRUCTIONAL AIDS AND MATERIALS, Joel Wiegert

12. **Florida Law Review**, April, 2000, 52 Fla. L. Rev. 329, 43872 words, SETTING A NEW STANDARD FOR PUBLIC EDUCATION: REVISION 6 INCREASES THE DUTY OF THE STATE TO MAKE "ADEQUATE PROVISION" FOR FLORIDA SCHOOLS, Jon Mills*Timothy McLendon**

13. **Georgetown Law Journal**, November, 2000, 89 Geo. L.J. 225, 18852 words, NOTE: The Writing Is on the Wall of Separation: Why the Supreme Court Should and Will Uphold Full-Choice School Voucher Programs, Catherine L. Crisham *

14. **Gonzaga Law Review**, 1999 / 2000, 35 Gonz. L. Rev. 187, 23729 words, COMMENT: School Vouchers and the Establishment Clause: Is the First Amendment a Barrier to Improving Education for Low-Income Children?, Jason T. Vail*

15. **Jefferson Law Book Company, Division of Anderson Publishing Co. Journal of Law & Education**, July, 2000, 29 J.L. & Educ. 285, 11096 words, ARTICLE: Making Local School Councils Work: The Implementation of Local School Councils in Chicago Public Elementary Schools, S. Raja Krishnamoorthi *

16. **Jefferson Law Book Company, Division of Anderson Publishing Co. Journal of Law & Education**, October, 2000, 29 J.L. & Educ. 521, 8211 words, LAW REVIEW DIGEST: Articles, Notes, and Commentary: Primary and Secondary Education

17. **McGeorge School of Law, University of the Pacific McGeorge Law Review**, Winter, 2000, 31 McGeorge L. Rev. 386, 6018 words, EDUCATION: The Public School Performance and Accountability Program: Making the Grade, Mary Nebgen

18. **Walter F. George School of Law, Mercer University Mercer Law Review, Fall, 2000, 52 Mercer L. Rev. 221, 24816 words, ANNUAL SURVEY OF GEORGIA LAW JUNE 1, 1999 - MAY 31, 2000 SURVEY ARTICLES: Education Law, by Jerry A. Lumley*

19. **New England Journal on Criminal and Civil Confinement**, Winter, 2000, 26 N.E. J. on Crim. & Civ. Con. 95, 19692 words, COMMENT: Expanding the Rights of Children in Public Schools, Katherine Lush

20. **New England School of Law New England Law Review**, Spring, 2000, 34 New Eng.L. Rev. 565, 4303 words, SYMPOSIUM: CREATING A VIOLENCE FREE SCHOOL FOR THE TWENTY - FIRST

School & College Law Section Newsletter

CENTURY: Panel One: Truancy, School Violence, Punishment, and the Political Response: Suspension/Expulsion -- Punitive Sanctions From the Jail Yard to the School Yard, Anthony J. DeMarco*

21. **Northwestern University Law Review**, Winter, 2000, 94 Nw. U.L. Rev. 657, 25583 words, COMMENT: INTEGRITY, ACCOUNTABILITY, AND EFFICIENCY: USING DISCLOSURE TO FIGHT THE APPEARANCE OF NEPOTISM IN SCHOOL BOARD CONTRACTING, Christopher R. McFadden *

22. **Notre Dame Law Review**, November, 2000, 76 Notre Dame L. Rev. 109, 14031 words, SYMPOSIUM: TAKING PIERCE SERIOUSLY: THE FAMILY, RELIGIOUS EDUCATION, AND HARM TO CHILDREN, Richard W. Garnett*

23. **Trustees of the University of Pennsylvania University of Pennsylvania Journal of Constitutional Law**, April, 2000, 2 U. Pa. J. Const. L. 710, 17475 words, COMMENT: "FULLY PARTICIPATING" VOUCHER PROGRAMS AND THE WISCONSIN TEMPLATE: A BRICK OR A BREACH IN THE WALL OF CHURCH-STATE SEPARATION?, Greg Todd *

24. **The University of Texas at Austin School of Law Publication The Review of Litigation**, Winter, 2000, 19 Rev. Litig. 1, 10344 words, ARTICLE: Public School Finance, School Choice, and Equal Educational Opportunity in Texas: The Enduring Importance of Background Conditions, John J. Janssen *

25. **The University of Texas at Austin School of Law Publication The Review of Litigation**, Winter, 2000, 19 Rev. Litig. 135, 14269 words, NOTE: Charter Schools: Public or Private? An Application of

the Fourteenth Amendment's State Action Doctrine to These Innovative Schools, Jason Lance Wren

26. **San Diego Law Review Association San Diego Law Review**, Winter, 2000, 37 San Diego L. Rev. 211, 47260 words, COMMENT: Adequate Special Education: Do California Schools Meet the Test? *, Jane K. Babin

27. **University of South Carolina South Carolina Law Review**, Winter, 2000, 51 S.C. L. Rev. 420, 14019 words, NOTE: Abbeville County School District v. State: The Right to a Minimally Adequate Education in South Carolina, Jennifer L. Fogle

28. **University of South Carolina South Carolina Law Review**, Summer, 2000, 51 S.C. L. Rev. 781, 16834 words, ANNUAL SURVEY OF SOUTH CAROLINA LAW: CONSTITUTIONAL LAW Abbeville County School District v. State: The Right to a Minimally Adequate Education in South Carolina*

29. **Board of Trustees of the Leland Stanford Junior University Stanford Law & Policy Review**, Spring, 2000, 11 Stan. L. & Pol'y Rev 222, 121 words, DEPARTMENT: Articles In Brief: The Dangers of Fashionable Education Reform, Stephen L. Gessner

30. **Board of Trustees of the Leland Stanford Junior University Stanford Law & Policy Review**, Spring, 2000, 11 Stan. L. & Pol'y Rev 222, 117 words, DEPARTMENT: Articles In Brief: Risky Credit: Tuition Tax Credits and Issues of Accountability and Equity, Adele Robinson

31. Board of Trustees of the Leland Stanford Junior University Stanford Law & Policy Review, Spring, 2000, 11 Stan. L. & Pol'y Rev 235, 8087 words,

School & College Law Section Newsletter

SYMPOSIUM: The Dangers of Fashionable Education Reform: Rather than adopt untried gimmicks, let us instead commit to implementing rigorous standards, effective teaching, on-going assessments, and a clear system of accountability, by Stephen L. Gessner

32. **Board of Trustees of the Leland Stanford Junior University Stanford Law & Policy Review**, Spring, 2000, 11 Stan. L. & Pol'y Rev 245, 7392 words, SYMPOSIUM: Solving the Education Crisis Through Parental Choice: By giving parents . . . more power over education decisions and resources . . . we finally can deliver on the sacred promise of equal educational opportunities for all of America's school-children, by Clint Bolick

33. **Board of Trustees of the Leland Stanford Junior University Stanford Law & Policy Review**, Spring, 2000, 11 Stan. L. & Pol'y Rev 253, 19527 words, SYMPOSIUM: Risky Credit: Tuition Tax Credits and Issues of Accountability and Equity: Tuition tax credits are risky for private and public schools alike. They should be abandoned both for reasons of sound tax policy and sound education policy, by Adele Robinson

34. **Board of Trustees of the Leland Stanford Junior University Stanford Law & Policy Review**, Spring, 2000, 11 Stan. L. & Pol'y Rev 291, 19534 words, SYMPOSIUM: The Conceptual and Practical Development of Charter Schools: By expanding public school choice, charter schools are providing

options that families want for their children and are helping people throughout our public school systems ask what each of us can do to improve education for all children, by Judith Johnson and Alex Medler

35. **Board of Trustees of the Leland Stanford Junior University Stanford Law & Policy Review**, Spring, 2000, 11 Stan. L. & Pol'y Rev 311, 13449 words, SYMPOSIUM: Strong Charter School Laws: A Necessary Condition for the "Ripple Effect": The charter school movement is still in its nascent stage, but the ripple effect is already significant. We can encourage continued improvement by enacting strong charter laws, by David A. DeSchryver

36. **Board of Trustees of the Leland Stanford Junior University Stanford Law & Policy Review**, Spring, 2000, 11 Stan. L. & Pol'y Rev 325, 18863 words, SYMPOSIUM: The Politics of Accountability: California School Districts and Charter School Reform: Despite any . . . talk about accountability, the day-to-day experiences of people struggling to define charter school accountability [are] complicated, contradictory, and deeply enmeshed in political contexts, by Amy Stuart Wells, Ash Vasudeva, Jennifer Jellison Holme and Camille Wilson Cooper

37. **Texas Review of Law & Politics Texas Review of Law & Politics**, Spring, 2000, 4 Tex. Rev. Law & Pol. 301, 32864 words, ARTICLE: School Choice, the First Amendment, and Social Justice, Nicole Stelle Garnett & Richard W. Garnett *

2001 Legislative Results for K-12 Education

By

Melanie Davis Stockwell
Director of Legal Services
Georgia Department of Education

Compared to the 2000 Legislative Session in which education issues dominated the discussions, the 2001 Legislative Session was much less contentious. The A Plus Education Reform Act of 2000 brought significant changes to the education system, and the rhetoric and manner of its passage generated a great deal of animosity between educators and the legislative and executive branches of government. Thus, 2001 primarily brought adjustments to the A Plus Education Reform Act and other pieces of legislation designed to appeal to teachers. 2001 was often called the Year of the Teacher and that is reflected in the pieces of legislation that were passed by the General Assembly. What follows are summaries of these bills affecting K-12 education.

HB 65

Prevents disclosure under the Open Records Act of home addresses, home telephone numbers, or social security numbers of or insurance or medical information about teachers and employees of a public school. Bill becomes law on the Governor's signature. (See also SB 205)

HB 164

Teachers or other school employees who are injured by a physical assault while performing their duties shall not be charged with sick leave for absences resulting from such injuries. This law only applies to the first seven workdays of absence resulting from a single injury. The teacher or other employee shall not have his or her compensation reduced because of such

absence or be required to pay the cost of a substitute.

HB 176

Local boards of education shall issue high school diplomas to veterans who did not receive a diploma due to an interruption of their education by service in World War II.

HB 228

Publishers of textbooks recommended by the State Board of Education shall provide an electronic format version of such textbook.

HB 303

For boards or commissions that receive the same daily expense allowance as the members of the General Assembly, that amount has been increased to \$105.00.

HB 372

All eligible students in public schools shall be given an opportunity, arranged by the school administration, to register to vote at his or her school during the month of April of each year.

HB 491

This bill reduces the years of creditable service required for teachers and other employees of public schools to be offered continuing health insurance coverage from 20 years to 8 years. Also permits monthly premium payments for continuing health insurance coverage for members of the State Employees' Health Insurance Plan.

School & College Law Section Newsletter

HB 651

Local boards of education may now lease any school property that it has determined is no longer needed for school purposes to any person, group of persons, or corporation, for up to 50 years.

HB 695

Provides that the Georgia State Financing Commission may agree by contract or grant agreement with a local school system that income earned during grant administration of a direct appropriation of state funds for capital outlay will be applied to the capital outlay purposes of the appropriation. Otherwise, the interest on direct appropriations to the commission shall be deposited into the general treasury.

HB 724

Allows local boards of education members to participate in state health insurance plans as employees of the local school system, rather than be required to create a separate pool for the board members. Local board members would be treated as employees and the board would make the employer contributions required and take the deductions from the members' remuneration for the operation of such plans.

HB 725

The Georgia Technology Authority is permitted to create an employee purchase program whereby state employees and employees of local units of administration (including local school boards) can purchase personal computing and computer related equipment. To participate, employees would authorize deductions of designated amounts from their wages and salaries. If the person leaves employment with a balance owing, the balance would be deducted from any monies owed the person, including retirement benefits.

HB 813

Employees of local school systems may, with approval of the State Personnel Board and the

approval of the system, participate in the state deferred compensation plan.

SB 205

Provides that disclosure of an individual's social security number, mother's birth name, credit card information, debit card information, bank account information, financial data or information, and insurance or medical information and day and month of birth may not be required under the Open Records Act, with some exceptions. The most notable exception is that news media organizations may have access to social security numbers and day and month of birth in connection with news gathering and reporting. However this news media exception shall not apply to teachers and employees of a public school.

SB 274

Local boards of education shall pay beginning classroom teachers for the first salary payment for the number of days worked at the end of the first month of the school year in which service is rendered. The State Board of Education shall develop rules and procedures for implementing this subsection by July 1, 2001. This bill becomes law on the Governor's signature.

HB 656

The Governor introduced HB 656 which was designed to be Phase II of his education reform package. A detailed summary of this bill follows. The social promotion aspects proved to be and will continue to be the most controversial.

Early Intervention Programs

·Provides for Early Intervention Program (EIP) to serve students in kindergarten through grade five who are at risk of not reaching or maintaining academic grade level as identified through first grade readiness assessment or whose academic performance is defined

School & College Law Section Newsletter

as below grade level by the Office of Educational Accountability (OEA) for any criterion-referenced assessment for grades one through five. Requires local school systems to devise a process for identifying students at the beginning of each school year and during each school year. Requires students to be assigned to EIP as soon as practicable after identification as at risk or after the results of the first-grade readiness assessment or the criterion-referenced assessment are known.

·EIP must be designed to help students perform at expectations and exit the program in the shortest possible time. OEA shall consider the length of time that students spend in EIP as one factor of performing and nonperforming schools.

·The EIP shall have a teacher-student ratio of one teacher to 11 students.

·Removes provision of remedial education services from grades four and five, replacing it with EIP. Remedial education is now only in grades nine through 12.

Funding adjustments

·Provides description of funding for alternative education for the 2000-01, 2001-02, 2002-03 school years. For the FY 2000-01 and 2001-02 school years, state funding shall be based upon a FTE program count that equals 2.5 percent of the sum of the FTE count of the middle grades program, the middle school program, the high school general education program, and the vocational laboratory program (grades nine through 12). For the 2002-03 school year and thereafter, the amount of state funds appropriated and allocated shall be based on the actual count of students served during the preceding year, except that the count of students served shall not exceed 2.5 percent of the sum of the FTE.

·Adjust program weights and teacher-student ratios. The primary impact is to create provide additional funds for paraprofessionals in kindergarten classes.

·Provides that if the amount of local tax revenues is adjusted as a result of an audit of a LSS's annual financial report, the increase or decrease in local tax revenues resulting from the audit shall cause an adjustment to be made in the effective millage rate that was calculated initially. Any net change in the amount of equalization dollars earned as a result of such adjustment shall be applied to the amount of the local school system's equalization grant in a subsequent fiscal year. Also requires the LSS to furnish to the Department of Education in its annual report local tax revenues.

·Provides that for purposes of expenditure control, funds earned for counselors and technology specialists shall be summed to the school level. State-earned benefits or comparable state-earned benefits of technology specialists and classroom aides may be applied to the salary cost components for the purpose of meeting this expenditure control.

·Aides cannot be used in kindergarten or grades one through three to increase the maximum class size. Adds kindergarten to the grade levels for which maximum class size cannot exceed 20 percent over the funding ration, except for art, music, or physical education classes.

·Provides for funds to pay the beginning salaries for instructors needed to provide 20 additional days of instruction for 10 percent of the FTE of programs. Requires each local school system to spend 100 percent of the funds designated for additional days of instruction for costs.

School & College Law Section Newsletter

·Removes the requirement that local school system pay a salary supplement amount to each principal in one separate payment each school year. School systems are now free to pay a salary supplement amount according to a schedule set by the local school system.

National Board Certification and Professional Standards Commission

·Specifies the conditions an individual must meet in order to have a portion of the national certification program participation fee paid by the state prior to certification. Requires teachers to teach at least one year following the payment of the state portion of the national certification program participation fee. Individuals who do not teach the following year must repay the state's portion of the participation fee to the state.

·The Professional Standards Commission will now be administering the National Board Certification Program.

·The Professional Standards Commission will be now be handling Public School Recruitment and the Troops to Teachers program.

Capital Outlay

·Creates new definitions of "local school system's 1 percent local sales tax wealth" and "local wealth factor."

·Assigns the responsibility to provide construction projects that serve cooperative efforts between local school systems and postsecondary institutions and that use prototypical building designs approved by the Georgia State Financing and Investment Commission.

·Changes the required local participation to no more than 20 percent nor less than 8 percent of the eligible project cost as determined by the local ability ratio.

Permits an additional 2 percent reduction in the required local participation when using entitlement earnings for each new construction project that uses a Georgia State Financing and Investment Commission prototypical design.

·Starting with FY 03, the authorization level for capital outlay shall not exceed \$200 million.

·Provides local funds contributed in excess of required local participation on state eligible project costs may be credited toward earning entitlement for state eligible project costs.

·Directs the SBOE to provide eligible local school systems with low-wealth capital outlay grants sufficient to cover 92 percent of the state-eligible cost of the local school system's first priority project in the five-year facilities plan. A local school system may qualify for a grant not to exceed 95 percent of the state eligible cost of the local school system's first priority project in the five-year facilities plan if the system uses a Georgia State Financing and Investment Commission prototypical design with the project managed under the direction of the Georgia Financing and Investment Commission.

Social Promotion

·Adds code section to provide for the placement or promotion of a student into a grade, class, or program based on an assessment of the academic achievement of the student and a determination of the education setting in which the student is most likely to receive the instruction and other services needed in order to succeed and progress to the next higher level of academic achievement. Code sections 20-2-283 through 20-2-285 are known as the "Georgia Academic Placement and Promotion Policy."

·Requires the SBOE to adopt by January 1, 2002, criteria for the development of a placement and promo-

School & College Law Section Newsletter

tion policy by each local board of education and to adopt policies and procedures for implementation of this code section. Requires third-grade students to score at grade level on a third-grade criterion-referenced reading assessment and meet the promotional standards and criteria established by the state and local boards of education. Requires fifth grade students to score at grade level on fifth-grade criterion-referenced mathematics and reading assessments and meet the promotional standards and criteria established by the state and local boards of education. Requires eighth-grade students to score at grade level eighth-grade mathematics and reading criterion-referenced assessments and meet promotional standards and criteria established by the state and local boards of education.

·Provides a process to be followed when a student does not perform at grade level on any criterion-referenced assessment. This process includes written notification via mail of parents/guardians, provision of an additional opportunity to take the criterion-referenced assessment or an alternative assessment instrument, and provision for accelerated, differentiated or additional instruction in the applicable subject.

·Provides a process to be followed when a student does not perform at grade level on any criterion-referenced assessment and also does not perform at grade level on a second additional opportunity. This process includes written notification via mail of the parent or guardian and the teacher of the decision to retain the student and of the procedure to be followed to appeal the decision of retention. Should any party appeal the decision, the school principal or designee is required to convene a promotion/retention committee composed of the school principal or designee, the student's parent or guardian, and the teacher of the subject of the assessment instrument which the student failed to perform at grade level. For students receiving special education or related services, the Individualized

Education Plan Committee shall serve as the promotion/retention committee. The principal or designee is required to notify in writing via mail the parent or guardian of the time and place for convening the promotion/retention committee.

·The promotion/retention committee is responsible for reviewing the student's academic achievement for the purpose of making a decision to retain or promote. The decision to promote must be a unanimous decision of the promotion/retention committee that the student, if promoted, is likely to perform at grade level as defined by the Office of Education Accountability by the end of the school year. The promotion/retention committee is also required to prescribe for the student the accelerated, differentiated, or additional instruction as needed to perform at grade level by the conclusion of the subsequent school year, prescribe any assessments to be administered during the year, and provide for a plan of continuous assessment during the subsequent school year in order to monitor the progress of the student.

·The decision of the promotion/retention committee may be appealed only as provided for by the local board of education.

·Requires that each local board of education adopt a placement and promotion policy by July 1, 2003, consistent with state law and state board policy. This policy shall state how the criterion-referenced competency tests shall be weighted in determining the overall academic achievement of a student. The State Board of Education will develop a model placement and promotion policy to assist local boards of education.

·Establishes a timetable for the implementation of academic placement and promotion:

·Third grade - beginning with the 2003-04 school year

·Fifth grade – beginning with the 2004-05 school year

School & College Section Newsletter

·Eighth grade – beginning with the 2005-06 school year

·Creates a 19-person commission known as the "Georgia Closing the Achievement Gap Commission" whose focus is to be on closing the student achievement gap that exists for at-risk students by developing successful strategies, reports, and recommendations that will assist in closing this student achievement gap. The commission shall provide reports and recommendations to the Education Coordinating Council and General Assembly, including any recommended changes in state law.

Middle School Adjustments

·Adds English to the minimum five hours of instruction in middle schools. For students not performing at grade level, this minimum five hours of instruction shall include remedial academic instruction in English and language arts, reading, mathematics, science, or social studies, with priority for remediation being placed on reading and mathematics. Provides that beyond the minimum five hours of academic instruc-

tion, the local board shall have the authority to schedule for the remainder of the day such academic or exploratory classes as prescribed by the state board. However, students will be allowed to take additional academic classes instead of exploratory classes upon the request of the parent or guardian.

·Beginning with the 2001-02 school year, middle school teachers shall have a 55 minute common planning time.

Miscellaneous

·Reduces the GPA requirement for earning a PROMISE teacher's scholarship from 3.2 to 3.0.

·Amends the code section to provide that a PROMISE II teacher's scholarship may be applied toward no more than 30 semester or 45 quarter hours of study subject to appropriation by the General Assembly.

·Clarifies that a charter school means a public school that is operating under the terms of a charter granted by the state board ♦

**Visit the State Bar's Web site and this section's web page -
Go to www.gabar.org**

View the directory, bar rules, the Annual Meeting brochure, review your CLE hours, make sure we have your correct address & email so you can receive broadcast correspondence from this section.

It's Time To Rejoin The School & College Law Section of the State Bar of Georgia. See your dues notice for a listing of all sections.