Education Law

by Jerry A. Lumley*

While the 2003 session of the Georgia General Assembly did not produce as much legislation in the area of school law as in years past, significant school legislation was signed into law by Governor Perdue in 2003. Additionally, Georgia's appellate courts issued several important decisions in this area. This Article discusses the significant legislation passed and major appellate decisions issued during the survey period.

I. LEGISLATION

A. Relaxation of Expenditure Controls and Maximum Class Size Requirements

Georgia authorizes funding for nineteen instructional programs.[1] The State Board of Education annually computes the total funds needed for direct instructional costs for each program for each local school system.[2] For each program, each local school system must "spend a minimum of [ninety] percent of funds designated for direct instructional costs on the direct instructional costs of [that] program at the school site in which the funds were earned."[3]

These expenditure controls will be relaxed for one year because of the financial constraints many school systems are facing.[4] During the 2003-2004 school year only, each local school system may spend one hundred percent of funds designated for direct instructional costs for each authorized instructional program on one or more of the state-authorized programs at the system level.[5] Further, there is "no requirement that

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1. O.C.G.A. § 20-2-161(b) (2001).
2. O.C.G.A. § 20-2-167(a)(1) (2001).
3. *Id.*
4. O.C.G.A. § 20-2-167.1 (Supp. 2003).
5. *Id.* § 20-2-167.1(a)(1) (Supp. 2003).

the school system spend any specific portion of [the] funds at the site where [the] funds were earned."[6] Two exceptions to this exception exist. "Direct instruction[al] funds for the kindergarten early intervention program, the primary grades early intervention program, the upper elementary grades early intervention program, the remedial education program, and the alternative education program shall be expended on one or more of these programs at the system level . . . ."[7] But, there is "no requirement that the school system spend any specific portion" of the funds for these programs at the site where the funds were earned.[8] Similarly, "[e]ach local school system [must] spend [one hundred] percent of the funds designated for media center costs" and media materials at the system level.[9] Again, there is no requirement that the funds for these programs be spent at the site where they were earned.[10] Even in these areas, staff development funds may be spent on any state authorized program.[11]

The State Board of Education is required to adopt, for each instructional program, "the maximum number of students [that] may be taught by a teacher in an instructional period."[12] For funding purposes, the maximum class size for each program may not exceed ratios established for each instructional program by more than twenty percent.[13] Further, under the Education Reform Act of 2000, the State Board of Education was required to lower the maximum class sizes that were in effect for the 1999-2000 school year "by a proportional amount each school year so that, beginning with the 2003-2004 school year, [the] State Board of Education rules are in compliance" with the maximum class size statutory requirements.[14]

Again, because of financial constraints, these requirements have been relaxed for one year.[15] The maximum class sizes established by the State Board of Education for the 2002-2003 school year will be applied to the fourth through twelfth grades during the 2003-2004 school year.[16] These maximum class sizes will also apply to kindergarten and the first through third grades during the 2003-2004 school year, with the

6. *Id*.
7. *Id.* § 20-2-167.1(a)(2).
8. *Id*.
9. *Id.* § 20-2-167.1(a)(3).
10. *Id*.
11. *Id.* § 20-2-167.1(a)(4).
12. O.C.G.A. § 20-2-182(i) (Supp. 2003).
13. *Id*.
14. *Id.*
15. *Id.* § 20-2-182(k).
16. *Id.*

exception that a kindergarten class may be increased to twenty students if a paraprofessional is assigned to the class with a certificated teacher.[17] During the 2003-2004 school year, a school system's compliance with maximum class size requirements at each grade level will be determined by the school system average for that grade level.[18] However, no class can exceed the maximum class size applicable to that class by more than two students.[19]

B. Recruitment of Student-Athletes

Legislation designed to curtail improper recruitment of, and payments to, student-athletes in Georgia was passed in 2003.[20] It is now illegal to

> give, offer, promise, or attempt to give any money or other thing of value to a student-athlete or member of a student-athlete's immediate family: (1) [t]o induce, encourage, or reward the student-athlete's application, enrollment, or attendance at a public or private institution of postsecondary education in order to have the [student-] athlete participate in intercollegiate sporting events, contests, exhibitions, or programs at that institution; or (2) [t]o induce, encourage, or reward the student-athlete's participation in an intercollegiate sporting event, contest, exhibition or program.[21]

Exceptions to these prohibitions exist. Public or private institutions of postsecondary education and officers or employees of such institutions, when acting in accordance with an official written policy of the institution that is in compliance with the bylaws of the National Collegiate Athletic Association, are not subject to this law.[22] Similarly, exceptions exist for intercollegiate athletic awards, grants-in-aid and scholarships, members of the student-athlete's immediate family, and money or things of value in an annual amount less than $250.[23]

Criminal penalties apply to violators of the student-athlete recruitment and payment provisions. A person who violates the prohibitions imposed by O.C.G.A. section 20-2-317(b)[24] "shall be guilty of a misdemeanor of a high and aggravated nature."[25] Additionally, high school

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17. *Id.*
18. *Id.*
19. *Id*.
20. *See* O.C.G.A. §§ 20-2-317 to 318 (Supp. 2003).
21. O.C.G.A. § 20-2-317(b) (Supp. 2003).
22. *Id.* § 20-2-317(c)(1).
23. *Id.* § 20-2-317(c)(3) to (5).
24. *Id.* § 20-2-317(b).
25. *Id.*

student-athletes must receive written notice of the law.[26] At the beginning of each sports season, every high school in Georgia must give written notice of the provisions of section 20-2-317(b) to each student who participates in any interscholastic athletic program sponsored by the school and must provide each student with information concerning the effect of violating this law.[27]

In addition to criminal penalties for recruiting or paying student-athletes, violators can be subjected to civil actions for damages and injunctive relief.[28] Every Georgia public and private postsecondary education institution now has the right to bring suit against any person whose involvement with a student-athlete causes the institution to be "penalized, disqualified, or suspended" from participating in intercollegiate sports.[29] The institution is entitled to recover all damages related to improper activity.[30] These damages include: "loss of scholarships, loss of television revenue, loss of bowl revenue, and legal and other fees associated with the investigation of the activity and the representation of the institution before the sanctioning organizations."[31] If the institution prevails, it also can recover court costs and litigation expenses, including attorney fees.[32] Any person found liable may also be enjoined from attending any athletic event sponsored by the institution and from having any further contact with the institution and any of the institution's student-athletes or prospective student-athletes.[33]

C. *Salary Increase for Increased Test Scores*

Effective July 1, 2004, a tenured teacher, whose students earn a "significant increase" in average scores on tests selected by the State Board of Education in a school year following a school year in which the students were taught by that teacher, is entitled to a five percent increase in his or her annual state salary.[34] The State Board must define the term "significant increase."[35] The increase in salary for a

26. *Id.* § 20-2-317(e).
27. *Id.*
28. O.C.G.A. § 20-2-318(b) (Supp. 2003).
29. *Id.*
30. *Id.*
31. *Id*.
32. *Id*.
33. *Id*.
34. O.C.G.A. § 20-2-212.4 (Supp. 2003).
35. *Id.*

significant increase in test scores is supplemental to all other salary increases.[36]

D. *Tenure Rights for Teachers*

The Education Reform Act of 2000 excluded teachers employed on or after July 1, 2000 from acquiring rights to continued employment under the Fair Dismissal Act.[37] Effective July 1, 2004, "[a] person who first became a teacher on or after July 1, 2000, shall acquire rights . . . to continued employment as a teacher" under the Fair Dismissal Act in the same manner as teachers who were employed prior to that date.[38]

E. *Rape Prevention and Personal Safety Education Programs*

The State Board of Education is required to develop a rape prevention and personal safety education program and "a program for preventing teen dating violence for grade eight through grade [twelve]."[39] Local boards are not required to implement these programs.[40] However, local boards may implement them "at any time and for any grade [the] boards find appropriate."[41] The state board is required to encourage the implementation of the programs.[42]

II. APPELLATE DECISIONS

A. *Eligibility to Serve on School Board*

In *Hardin v. Brookins*,[43] the Georgia Supreme Court considered whether a plea of nolo contendere to a felony charge in another state disqualified a person from serving on a local board of education.[44] In 1982, "Brookins pled nolo contendere in Florida to a charge of possession of . . . a controlled substance. Subsequently, [Brookins] moved to Georgia and, in 1998, was elected to the Seminole County Board of Education."[45] Hardin, a citizen and taxpayer of Seminole County, filed a quo warranto action challenging Brookins's eligibility to hold office

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36. *Id*.
37. O.C.G.A. § 20-2-942(d) (Supp. 2003).
38. *Id.*
39. O.C.G.A. § 20-2-314 (Supp. 2003).
40. *Id*.
41. *Id*.
42. *Id*.
43. 275 Ga. 477, 569 S.E.2d 511 (2002).
44. *Id.* at 478, 569 S.E.2d at 512.
45. *Id.* at 477, 569 S.E.2d at 511.

under O.C.G.A. section 45-2-1(3).[46] Under that code section, a person is ineligible to hold public office if he or she has been convicted in Georgia, or any other state, of a felony involving moral turpitude if the offense in that state is also a disqualifying felony in Georgia.[47] This code section applies unless that person's rights have been restored by a pardon from the Georgia Board of Pardons and Paroles.[48]

The trial court denied the writ on the basis of O.C.G.A. section 17-7-95(c),[49] which provides that "a nolo plea 'shall not be deemed a plea of guilty for the purpose of effecting any civil disqualification of [a person] to hold public office.'"[50] Hardin contended on appeal that section 17-7-95(c) applies only to one who enters a nolo plea in Georgia. According to Hardin, section 17-7-95(c) did not apply because Brookins was convicted of a disqualifying felony under the laws of Florida.[51]

The Georgia Supreme Court disagreed with Hardin and affirmed the trial court's ruling.[52] According to the supreme court, the fact that the events at issue occurred in another state should not control.[53] "[T]he decisive factor is not where the nolo plea was entered, but simply whether the individual was convicted of a crime which is recognized as a disqualifying offense under Georgia law."[54] The supreme court therefore determined that the trial court was correct in deciding that Brookins was not disqualified from office.[55]

B. *Duty to Consider Employment Decisions*

The procedural duties of boards of education in employment matters were addressed in *Grady County Board of Education v. Hickerson*.[56] The Grady County Board of Education ("Board") terminated the employment of its superintendent, Hickerson. On review, an independent tribunal concluded that the termination was without cause.[57] However, "[t]he Board failed to affirm or reverse the tribunal's decision" as required by O.C.G.A. section 20-2-940.[58] Hickerson filed a manda-

46. O.C.G.A. § 17-7-95(c) (1997).
47. 275 Ga. at 477, 569 S.E.2d at 511.
48. *Id.*
49. O.C.G.A. § 17-7-95(c) (1997).
50. 275 Ga. at 478, 569 S.E.2d at 511-12 (quoting O.C.G.A. § 17-7-95(c) (1997)).
51. *Id.*, 569 S.E.2d at 512.
52. *Id.*
53. *Id.* at 478-79, 569 S.E.2d at 512.
54. *Id.* at 479, 569 S.E.2d at 512.
55. *Id.*
56. 275 Ga. 580, 571 S.E.2d 391 (2002).
57. *Id.* at 580, 571 S.E.2d at 391.
58. *Id.* at 580-81, 571 S.E.2d at 391; O.C.G.A. § 20-2-940 (Supp. 2003).

mus action to force the Board to act on the tribunal's decision. The trial court granted the writ,[59] and the supreme court affirmed.[60] According to the supreme court, Hickerson was required to exhaust his administrative remedies before he could pursue a claim in superior court.[61] The Board could effectively thwart Hickerson from pursuing rights made available to him by refusing to make a decision. Therefore, the court held that it was proper for the trial court to order the Board to make a decision.[62]

C. Liability for Transportation Costs

In *Schrenko v. DeKalb County School District*,[63] the supreme court ruled that the State Board of Education was not required to reimburse local school systems for expenses incurred for transportation costs arising out of desegregation measures.[64] The DeKalb County School District filed a mandamus action seeking to compel the State Board of Education to change its policy for allocating transportation funds to local school systems and reimburse the school district for its past costs of transporting students enrolled in its majority to minority ("M-to-M") transfer and magnet school programs.[65] The trial court concluded that the State had improperly interpreted the student transportation statute for nearly forty years and "ordered the State to pay $105 million to DeKalb [County] for transportation costs incurred since 1978."[66]

The student transportation statute, O.C.G.A. section 20-2-188,[67] governs the State's allotment of state aid to local school systems for costs in transporting students to schools.[68] Subsection (a) requires the State Board of Education to calculate the amount of funds that a local system needs to operate an economical and efficient student transportation program.[69] Subsection (d) describes the "transported students" that the State may count for the purpose of calculating the local school system's expense of transporting students to and from school.[70] The statute

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59. 275 Ga. at 581, 571 S.E.2d at 391.
60. *Id.*, 571 S.E.2d at 392.
61. *Id.*, 571 S.E.2d at 391.
62. *Id.*
63. 276 Ga. 786, 582 S.E.2d 109 (2003).
64. *Id.* at 795-96, 582 S.E.2d at 117.
65. *Id.* at 786, 582 S.E.2d at 111-12. These programs were instituted as part of the School District's efforts to desegregate its school system.
66. *Id.*, 582 S.E.2d at 112.
67. O.C.G.A. § 20-2-188 (2001).
68. *Id.*
69. *Id.* § 20-2-188(a).
70. *Id.* § 20-2-188(d).

requires that all students, except handicapped students, must live more than one and one-half miles from the "school to which they are assigned" before they are eligible to be counted.[71]

The primary issue in *Schrenko* was the proper interpretation of the phrase "school to which they are assigned" in subsection (d).[72] The State interpreted the phrase to mean the school within the student's attendance zone, which is the geographic area that the local school system draws around each school. Based on this interpretation, the State adopted a policy that reimbursed local school systems only for the transportation of students to and from the zone schools. The DeKalb County school district contended that the phrase meant the school that the child was actually attending. Under its interpretation, the State would be required to reimburse the school district for the additional expense incurred in transporting students in the M-to-M and magnet school programs. These students often lived considerable distances from the schools they attended.[73]

In reversing the trial court's ruling, the supreme court looked to the legislative intent and history behind statutes relating to school funding and student transportation laws.[74] The court held that the State's interpretation of "school to which they are assigned" to mean the school in the student's attendance zone was reasonable.[75] The court noted that "the State's definition employ[ed] an objective standard for defining a student's assigned school that can be applied uniformly to all students in every local school system throughout the State."[76] According to the court,

> [i]f "assigned" were defined as "attended," . . . state aid for pupil transportation would depend on each individual's choice of schools, as well as each local school system's financial ability to offer magnet schools and other special programs. Given the emphasis in the state funding statutes on uniformity, economy, and equity in public education, it [was] highly unlikely that the General Assembly intended for state officials to disregard the traditional pattern of school attendance and instead consider each child's actual attendance at the school of their choice, no matter where it was located. . . . Finally, . . . [this] decision is consistent with the general deference that courts give to public officers in determining how to appropriate public funds for education. . . . Because our State Constitution and state statutes vest

71. *Id.*
72. 276 Ga. at 786, 582 S.E.2d at 111.
73. *Id.* at 786-87, 582 S.E.2d at 111-12.
74. *Id.* at 792-93, 582 S.E.2d at 114-15.
75. *Id.* at 793, 582 S.E.2d at 115.
76. *Id.*

> education officials with broad discretion to operate the public schools in the best interest of the school children, courts should not interfere with the actions of these public officials in the area of student transportation unless they have violated the law or grossly abused their discretion.[77]

D. Status of Board of Education

The issue of the legal status of boards of education was considered in *Foskey v. Vidalia City School*.[78] Foskey sued a nonlegal entity, the Vidalia City School, for damages she sustained in a motor vehicle collision that occurred on April 15, 1998, and involved a school bus operated by the Vidalia City School District. The correct legal entity, the Vidalia City School District, answered and asserted that the wrong party had been sued. Foskey amended her complaint purportedly to correct a misnomer and named the Vidalia City School Board as defendant. The School District again answered. The School District denied that the Vidalia City School Board was the correct legal entity. After the statute of limitation expired, Foskey amended her complaint again to correct an alleged misnomer.[79] An order was entered in the Superior Court of Toombs County dismissing the complaint against the Vidalia City School District "because the [School District] had never been substituted as a new party by court order and served within the statute of limitation."[80] The court of appeals affirmed the trial court's order.[81]

In rendering its decision, the court of appeals analyzed the legal status of boards of education and school districts.[82]

> A municipal board of education, unlike the school district which it manages, is not a body corporate and does not have the capacity to . . . be sued. Only if the legislature in creating the Board expressly gave it the power to sue . . . is there an exception. The board of education is not a political subdivision but is instead the governing body of the political subdivision.[83]

The court of appeals determined that the legislature expressly granted the Vidalia City School Board the power to sue and to be sued.[84] Therefore, the court held that the board of education constituted a

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77. *Id.*
78. 258 Ga. App. 298, 574 S.E.2d 367 (2002).
79. *Id.* at 298, 574 S.E.2d at 369.
80. *Id.*
81. *Id.*
82. *Id.* at 301, 574 S.E.2d at 370.
83. *Id.*, 574 S.E.2d at 370-71 (citations omitted).
84. *Id.* at 301-02, 574 S.E.2d at 371.

separate legal entity from the school district.[85] Foskey did not simply correct a misnomer when she attempted to amend the complaint to change the defendant from the Vidalia City School Board to the Vidalia City School District.[86] Rather, according to the court of appeals, this change constituted a substitution of parties, which requires a court order.[87] Because Foskey did not obtain a court order, the Vidalia City School District was never procedurally made a party to the suit and was not served prior to the running of the statute of limitation.[88] Therefore, the court of appeals affirmed the decision of the trial court.[89]

E. Duty to Issue Teaching Contract

A school system's duty to issue teaching contracts was examined in *Atlanta Public Schools v. Diamond*.[90] Diamond was notified on March 15, 2002, that her annual teaching contract with the Atlanta Public Schools ("APS") would not be renewed for the 2002-2003 school year. Diamond timely requested notification of the reasons for her nonrenewal. Diamond was not notified of the reasons for the nonrenewal by APS, nor did APS implement any of the other procedural safeguards set forth in O.C.G.A. section 20-2-942(b)(2).[91] On May 23, 2002, Diamond demanded that APS issue her a renewal contract because of APS's failure to comply with section 20-2-942(b)(2). APS did not respond. On June 18, 2002, Diamond sued APS in Fulton County Superior Court asking that the court order APS to provide her with a contract for the 2002-2003 school year. Following two hearings, the court ordered APS to provide Diamond with a teaching contract.[92]

On appeal APS argued that Diamond was required to exhaust her administrative remedies available under sections 20-2-940, 20-2-942, and 20-2-1160 before bringing an action in superior court.[93] The court of appeals ruled that Diamond's failure to do so did not bar a direct proceeding in superior court.[94] The court noted that APS and the local board of education "*prevented* Diamond from obtaining a hearing [and] thereby frustrat[ed] her efforts to exhaust her statutory remedies by refusing . . . to respond to [Diamond's] March 28 request for such a

85. *Id.* at 302, 574 S.E.2d at 371-72.
86. *Id.* at 303, 574 S.E.2d at 372.
87. *Id.*
88. *Id.*
89. *Id.*
90. 261 Ga. App. 641, 583 S.E.2d 500 (2003).
91. O.C.G.A. § 20-2-942(b)(2) (Supp. 2003).
92. 261 Ga. App. at 641-42, 583 S.E.2d at 501-02.
93. *Id.* at 643, 583 S.E.2d at 502-03.
94. *Id.*, 583 S.E.2d at 503.

hearing."[95] Additionally, APS failed to give Diamond an explanation of the reasons for her nonrenewal, even though such a response was required by Georgia law.[96] The court of appeals held that the local board's actions made it futile for Diamond to attempt to exhaust the administrative remedies made available to her by Georgia law.[97]

F. Disrupting Public Schools

In *Pitts v. State*,[98] the court of appeals examined circumstances that could give rise to the offense of disrupting a public school.[99] "[O]n the morning of December 17, 2001, Pitts and another student of North Clayton High School engaged in a fistfight just outside the front entrance of the school."[100] Other students were arriving at school at the time of the fight and many students stopped to watch the fight. The fight was difficult to stop. Approximately four school administrators and a police officer were needed.[101] Accordingly, the court of appeals ruled that Pitts's conviction under O.C.G.A. section 20-2-1181[102] for disrupting a public school was supported by evidence demonstrating his involvement in the altercation.[103]

III. CONCLUSION

Although there were not as many developments in the area of school law as in years past, the developments during this survey period were significant. As expected, the law continued to develop with respect to issues arising out of the Education Reform Act of 2000. All three branches of state government will certainly be called upon to address these issues in the future.

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95. *Id.*
96. *Id.*
97. *Id.*
98. 260 Ga. App. 274, 581 S.E.2d 306 (2003).
99. *Id.* at 275, 581 S.E.2d at 307-08.
100. *Id.*, 581 S.E.2d at 308.
101. *Id.*
102. O.C.G.A. § 20-2-1181 (Supp. 2003).
103. 260 Ga. App. at 275, 581 S.E.2d at 308.