

2020 Legislative Update -
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This Policy Update discusses legislation enacted into law during the very unusual 2020 Session of the Georgia General Assembly and provides a sample policy with two options for implementing the soon-to-be mandated public comment period that a board of education may wish to use as a resource in updating its own policy.

The 2020 General Assembly met on a unique and unprecedented schedule when the President and Governor declared states of emergency due to the rapid spread of the novel coronavirus (COVID-19).

The 2020 Session convened in January as expected, was suspended in mid-March for nearly 3 months, then reconvened and adjourned in late June. Unlike previous years where causes pushed by regional, state or national advocacy groups tended to keep favored bills in the limelight, the 2020 Session focused primarily on budgetary and other issues viewed by the legislature as needed to maintain and support the recovery of state and local economic, educational, and health systems during an overwhelming health crisis.



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POLICY MATTERS

Senate Bill 68

SB 68 in its early form addressed financial management of local school systems but as passed included the substance of three other bills: HB 32, moving the position of Chief Turnaround Officer to the Department of Education; HB 86, the teacher evaluation bill; and HB 464, relating to public comments at local board meetings. All sections of SB 68 become effective July 1, 2021.

SB 68- Public Comment Period at Board Meetings

A frequently asked question is whether local boards of education are required to allow the public to speak at board meetings, and if so, under what conditions. Although many boards grant the right through local board policy, typically coded BCBI, or practice, the right to speak at board meetings was not mandated by law until the passage of SB 68, which becomes effective July 1, 2021. Code Section 20-2-58, which

requires “each local board of education to hold a regular monthly meeting during each calendar month,” has a new subsection, which requires local boards to “provide a public comment period during every regular monthly meeting.” Work sessions are not required by law, even though they may be regularly scheduled, thus are not subject to the public comment requirement.

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The public comment period must be included on the agenda required to be made available and posted prior to the meeting pursuant to Georgia's Open Meetings Act. A local board is prohibited from requiring notice by an individual more than 24 hours prior to the meeting as a condition of addressing the board during the public comment period. Another provision gives the board chair "the discretion to limit the length of time for individual comments and the number of individuals speaking for or against a specific issue."

The right to speak during the public comment period of a board meeting is different from the right to be placed on the board meeting agenda to address the board. Boards are cautioned against granting in policy a right not otherwise provided by law. The right for an individual to be placed on the board meeting agenda to address the board would more appropriately be determined by the superintendent or the board on a case-by-case basis.

Sample Policy BCBI contains the basic elements of the new statute but provides flexibility to develop procedures that set additional guidelines for the public participation as long as they are not inconsistent with the statutory requirements. Since public participation potentially implicates First Amendment issues, it will be important to consult with legal counsel as to any substantive restrictions, as opposed to purely procedural ones. Such an approach will allow districts to examine and revise existing procedures, regulations, practices, or paperwork before July 1, 2021.

Legally, there is no reason to postpone implementing the new requirements before the 2021 deadline, especially if the board already allows a public participation period. Practically speaking, districts who want to replace an existing policy or practice of allowing individuals to be placed on the agenda with procedures allowing a public comment period may want to consider whether public reaction to the proposed change may warrant a transition period, such as switching to a new process when the board organizes at its January meeting or at the beginning of a new school year. Regardless of timing, updated procedures could include the following or similar sample provisions:

1. The Board will include a public comment period on the agenda for every regular monthly meeting.
2. An individual wishing to address the Board during the public comment period must notify the Superintendent in writing [OPTIONS: at least 24 hours prior to the meeting; by 9 a.m. on the day of the board meeting; no later than noon on the day of the board meeting].
3. During the public comment period, the Board Chair will have the discretion to limit the length of time for individual comments and the number of individuals speaking for or against a specific issue.

SB 68 and HB 86- Teacher Evaluation Appeals

Since 1992, Code Section 20-2-989.5 has required local boards to "adopt a complaints policy for certified personnel" [generally coded GAE or GAE (2)] with specified definitions and provisions. Originally and for years thereafter, Code Section 20-2-989.7 stated that performance ratings in personnel evaluations, professional development plans and job performance were not subject to complaint under the policy. A 2016 amendment added a provision stating that the complaint exclusion "shall not apply to procedural discrepancies on the part of the local school system or charter school in conducting an evaluation."

The 2020 changes to Code Section 20-2-989.7 provide that for teachers who have accepted a school year contract for the fourth or subsequent consecutive school year from the local board, the following issues are subject to appeal:

1. Summative performance ratings of "Unsatisfactory" or "Ineffective" contained in personnel evaluations conducted pursuant to Code Section 20-2-210;
2. Procedural deficiencies on the part of the local school system or charter school in conducting an evaluation; and
3. Job performance.

Local units of administration are required to establish an appeals policy with specified details and to submit a copy to the State Department of Education no later than August 1, 2021, and any time thereafter if material changes are made to the policy. Seeing no need

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to rush the Bill's implementation, GSBA will distribute in a future Policy Update a sample policy in time to meet the 2021 deadline.

STUDENTS

SB 367- Reduced Student Testing

The U. S. Department of Education allowed Georgia to skip the spring 2020 high stakes testing that by federal law must play a role in school improvement and teacher performance measures. State officials, having been denied another federal waiver for the 2020-2021 school year due to continued challenges of operating during a pandemic, await a December State Board of Education called meeting decision on the End of Course final grade weight issue.

Students and their parents, teachers and administrators dream of the day when COVID-19 is under control and schools can return to normal. When that occurs, Georgia students will come back to fewer required standardized tests. SB 367 eliminated five of the mandatory Milestones tests, dropping the state-required total to 19 from the previous 24. Federal law requires only 17. One of the tests eliminated is social studies in the fifth grade. The other four eliminations are in high school—one each in the areas of math, science, social studies, and language arts, where previously two in each area were required. Intended to maximize student learning by reducing time spent in non-instructional activities after testing is finished, another change requires tests in elementary and middle school to be given within 25 days of summer break.

SB 430- Home Study and Private School Student Enrollment in CCAs

The bill created a new Code Section 20-2-319.5, which authorizes, but does not require, local school systems to enroll home study and private school students in one or more courses at a college and career academy located within the student's resident school system, so long as space is available. Local boards of education are prohibited from charging tuition but will earn FTE funds for each home study/private school student enrolled.

The State Board of Education is to develop implementing rules and regulations, which may include, but not be limited to forms, course enrollment and withdrawal timelines, grade reporting, and procedures for handling and reporting disciplinary issues that may arise while home study and private school students are attending courses at the college and career academy. After additional details are available from the State Board, local policies and procedures can be updated.

HB 444- Dual Enrollment Act

Although the bill has no policy requirements, revisions to Code Section 20-2-161.3 will impact implementation of the previously titled "Move On When Ready" program and likely will impact family finances of those expecting eligible high school students to enroll in an unlimited number of dual enrollment classes and earn college credit with all expenses paid. For the first time, postsecondary credit hours for state funding purposes will be capped at 30 semester hours, unless students earned a certain number of hours before June 30, 2020. Program eligibility is restricted to 11th and 12th graders, but 10th graders can be accepted if they meet additional specified conditions. A new provision clarifies that nothing in the Act "shall be deemed to preclude an eligible high school student from taking one or more dual credit courses at his or her own expense."

The Georgia Student Finance Commission (GSFC), rather than the Office of Student Achievement (OSA), is responsible for collecting and monitoring enrollment and student record data for dual enrollment courses. Statutory requirements for the 2020-2021 school year are reflected in the GSFC Regulations on its website. Among those are that no course retakes will be funded by the state except under extenuating circumstances as determined by the GSFC; after withdrawal from a second dual enrollment course, the student is ineligible except under extenuating circumstances as determined by the GSFC; and high schools are subject to audits by the GSFC for compliance.

HB 855- Foster Children Screening for Trauma

Finding that "foster care students are particularly vulnerable to exposure to traumatic events and situations," and that "a foster care

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student's exposure to trauma can be exacerbated by changing schools, especially when the student may be eligible for special education and related services," the General Assembly passed a bill to ensure such students' needs are immediately assessed upon enrollment.

No later than August 1, 2021, the Department of Education must adopt any rules or regulations necessary for school system personnel to immediately assess whether trauma "has had or is likely to have an adverse impact on the foster care student's educational performance, including both academics and classroom behavior." The school system's assessment must be part of its overall determination of whether the student in foster care should immediately be evaluated for eligibility for special education and related services.

HB 244- Broadband Availability

The lack of adequate internet service in rural Georgia has been a major impediment to delivering equitable instructional services during the coronavirus pandemic. Students in some rural communities have had to travel to parking lots of schools, libraries, or businesses to pick up WiFi signals needed to access online instruction replacing in-person classes. 2019 legislation enabled electric membership corporations (EMCs) to deliver broadband services to their customers. A 2020 rewrite of that legislation provides opportunities for economic incentives to EMCs or their affiliates that allow broadband service providers to attach their lines to EMC utility poles.

EMPLOYEES

HB 1090- Paid Break Time for Nursing Mothers

New Code Section 45-1-7 requires public agencies, including school districts, to "provide paid break time of a reasonable duration to an employee who desires to express breast milk during work hours at the agency's worksite." Hourly employees must be paid at the employee's regular pay rate and salaried employees cannot be required to use paid leave or have their salary reduced during such break. Employers must provide a place, other than a restroom, "in

close proximity to the employee's work area" where she can express breast milk in privacy. There is no liability for an agency that makes "reasonable efforts to comply with" the new law.

SB 431- On-Time Graduation Rate

The Bill amended Code Section 20-2-210 to define "on-time graduation rate" for the purpose of an educator's performance evaluation. Effective January 1, 2021, the term will mean "the graduation rate of the four-year cohort of students that attend a school continuously from October 1 of the calendar year four years prior to the calendar year of the regular date of graduation of that cohort and graduate on or before that regular date of graduation. This graduation rate shall be calculated in addition to, and not as a substitute for, any other graduation rate provided for by federal, state, or local law or regulation."

SB 294- Teachers Retirement System and Alternative Investments

Code Section 47-20-87 authorizing large retirement systems to invest in alternative investments was revised to delete the provision that previously excluded the Teachers Retirement System of Georgia.

GOVERNANCE

HB 755- Allotment Sheets to Local Charter Schools; Intradistrict Transfer Website Notice

An amendment to the charter school funding statutes requires school districts to provide an allotment sheet itemizing the state, federal, and local allocations to any local charters for the upcoming school year not later than 45 calendar days after the school system receives its preliminary annual allotment sheet from the Department of Education. If the allocation must be adjusted, the local board must give the charter 30 days' notice before making the adjustment and publish the amended itemized allotment sheet in a prominent location on its website.

Intradistrict Transfer Notice

HB 755 also revises Code Section 20-2-2131 (c), relating to notice of intradistrict transfer options available to parents, and requires [continued on page five...](#)

the notice to include “all relevant dates and deadlines.” Further, the school system must post all information required by the code section in a prominent location on its website.

HB 957- State Charter Bill

New provisions require certain employees of state charter schools to be included in the health insurance fund for public school teachers. Further, students entering a local start-up charter school or a state charter school can present proof of residency either at the time of enrollment, as previously required, or at the time of application.

HB 779- Title Ad Valorem Tax (TAVT) Distributions

Many cities reportedly lost TAVT revenue from 2018-2019 while counties and school districts had an increase in their local revenue share. This Bill changes the distribution percentages of the TAVT fees between local governments. With city and county government percentages changing, the bottom line is that 49% of the proceeds still will go to the county local board of education. The proceeds distributed to a local board of education in an independent city school district will decrease from 49% to 43%.

SB 359- COVID-19 Pandemic Business Safety Act

The Act limits liability for certain COVID-19 related claims. Briefly summarized, it provides immunity to healthcare facilities, healthcare providers, entities (including businesses, churches, and governmental entities), and individuals for certain COVID-19 related claims that are not the result of “gross negligence, willful and wanton misconduct, reckless infliction of harm, or intentional infliction of harm.”

A claimant in a COVID-19 related claim will generally be presumed to have assumed the risk related to the “transmission, infection, exposure or potential exposure of COVID-19” when “an individual or entity of the premises has posted at the point of entry, if present, to the premises, a sign in at least one-inch Arial font placed apart from any other text, a written warning stating the following:

Warning

Under Georgia law, there is no liability for an injury or death of an individual entering these premises if such injury or death results from the inherent risks of contracting COVID-19. You are assuming this risk by entering these premises.”

School districts and other governmental entities have even broader constitutional immunity. Thus, while included within this statutory protection, it is difficult to imagine circumstances where it is needed.

Legislation That May Be Back Next Year

As is customary, some legislation did not pass but was popular enough to expect that it might show up again. The following bills survived crossover day, but ultimately did not pass:

HB 336- Retired Teachers Return to Work

HB 349- Feminine Hygiene Products for Schools;

HB 736- \$3000 to Teachers in Turnaround Schools;

HB 1094- Paid Parental Leave;

HB 1026- Reduced Number of REACH Scholars by System;

HR 962/HB 829- Local Boards to Call for Vote on Property Tax Assessment at 20% for 65 and Older;

SB 40- Employee Prohibition on Sexual Contact with Students.

Each year for the past several years, the General Assembly has considered at least one voucher bill. The same goes for Tim Tebow legislation. Those pieces of legislation did not pass in 2020, but experience indicates there is a very good chance they will reappear during the next legislative session. ■

Sample Policy Disclaimer

This policy is provided solely as a sample. Any board of education adopting such a policy should use this sample as a framework or starting point and, after carefully reviewing the applicable laws, regulations and state rules, modify the policy as appropriate to meet the needs of the local school system. Any policy should be carefully reviewed by the board of education's legal counsel.

Board Policy

Descriptor Code: BCBI

Public Participation in Board Meetings

OPTION 1: [Provides maximum flexibility; procedures must contain statutory requirements regarding public comments.]

Meetings of the Board of Education are held to conduct the affairs and business of the school system. Although these meetings are not meetings of the public, the public is invited to attend all meetings and citizens are invited to address the Board at appropriate times and in accordance with procedures established by the Board or the Superintendent.

The Superintendent shall make available procedures allowing members of the public to address the Board on issues of concern.

These procedures shall be available at the Superintendent's office and shall be given, upon request, to anyone requesting a copy. All presentations to the Board are to be brief and are intended for the Board to hear comments or concerns without taking action.

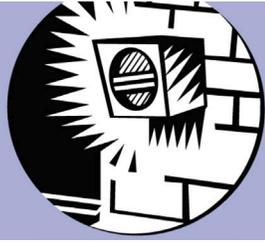
OPTION 2: [Policy sets parameters for procedures regarding public comments.]

Meetings of the Board of Education are held to conduct the affairs and business of the school system. Although these meetings are not meetings of the public, the public is invited to attend all meetings and citizens are invited to address the Board at all regular meetings at the time shown on the agenda and in accordance with procedures established by the Board or the Superintendent. Public participation may be allowed in the discretion of the Board at certain additional meetings under procedures set by the Board.

The Superintendent shall make available the procedures to allow citizens to address the Board at regular meetings in accordance with this policy. These procedures shall include a requirement that notice be given at least 24 hours in advance of the meeting and that the Chair shall have the discretion to limit the length of time for individual comments and the number of citizens speaking for or against an individual matter. These procedures shall be available at the Superintendent's office and shall be given, upon request, to anyone requesting a copy.

All comments to the Board in accordance with this policy are to be brief and are intended for the Board to hear from citizens but not to take action.

Monthly Policy Alerts



OCTOBER:

Litigation: No policy implications

Legislation: No policy implications

State Board Rules: No policy implications

NOVEMBER:

Litigation: No policy implications

Legislation: No policy implications

State Board Rules: No policy implications

DECEMBER:

Litigation: No policy implications

Legislation: No policy implications

State Board Rules: No policy implications ■

–SAVE THE DATE–

The 2020 GSBA Policy Workshop

Thursday, June 10

Savannah Hyatt Regency
2 W. Bay Street

As of now, we are looking forward to presenting an awesome workshop in person for you! We are closely monitoring the situation and will hold registration to begin in late April which will allow time for the latest updates.

For more information concerning the workshop, conference, and more, please visit gsba.com. Board members and superintendents, remember you can use the [GSBA Hub](#) for networking during this time of social distancing.