

Georgia State University Law Review

Volume 34
Issue 1 Fall 2017

Article 8

1-8-2018

HB 338 - Turnaround Eligible Schools

Eleanor F. Miller

Georgia State University College of Law, elliefmiller@gmail.com

Heather E. Obelgoner

Georgia State University College of Law, hobelgoner1@student.gsu.edu

Follow this and additional works at: <https://readingroom.law.gsu.edu/gsulr>

 Part of the [Administrative Law Commons](#), [Civil Law Commons](#), [Education Law Commons](#), [Law and Society Commons](#), and the [Legislation Commons](#)

Recommended Citation

Eleanor F. Miller & Heather E. Obelgoner, *HB 338 - Turnaround Eligible Schools*, 34 GA. ST. U. L. REV. 169 (2018).

Available at: <https://readingroom.law.gsu.edu/gsulr/vol34/iss1/8>

This Peach Sheet is brought to you for free and open access by the Publications at Reading Room. It has been accepted for inclusion in Georgia State University Law Review by an authorized editor of Reading Room. For more information, please contact mbutler@gsu.edu.

EDUCATION

Elementary and Secondary Education: Amend Title 20 of the Official Code of Georgia Annotated, Relating to Education, so as to Provide for a System of Supports and Assistance for the Lowest-Performing Schools Identified as in the Greatest Need of Assistance; Provide for a Chief Turnaround Officer; Provide for Turnaround Coaches; to Provide for Consultation with the State School Superintendent; Provide for a Definition of “Turnaround Eligible Schools”; Provide for the Identification of the Schools in the Greatest Need of Assistance; to Provide for Contract Amendments and Interventions; Provide for Third-Party Specialists; Provide for a Comprehensive On-Site Evaluation and Recommendations; Provide for the Development of an Intensive School Improvement Plan; Provide for Supports for Low-Performing Students; Provide for Grants by the Office of Student Achievement; Provide for Implementation of an Intensive School Improvement Plan; Provide for Interventions if the School does not Improve; Provide for the Creation of the Joint Study Committee on the Establishment of a State Accreditation Process; Provide for Its Membership and Duties; Provide for the Creation of the Joint Study Committee on the Establishment of a Leadership Academy; Provide for Its Membership and Duties; Provide for Removal of Members of a Local Board of Education if One-Half or More of the Schools in the Local School System are Turnaround Eligible Schools for Five or More Consecutive Years; Provide for Temporary Replacement Members; to Provide for Petitions for Reinstatement; Provide for a Hearing; Revise Provisions Relating to Contracts for Strategic Waivers School Systems; Revise Provisions Relating to Charters for Charter Systems; Provide for Annual Reports; Provide for a Short Title; Provide for Related Matters; Repeal Conflicting Law; and for Other Purposes

CODE SECTIONS: O.C.G.A. §§ 20-2-73 (amended); -83
 (amended); -2063.2 (amended);
 -2067.1 (amended);
 20-14-41 (amended);-43 (new);

-44 (new); -45 (new); -46 (new);
-47 (new); -48 (new); -49 (new);
-49.1 (new); -49.2 (new);
-49.3 (new); -49.4 (new)

BILL NUMBER:

HB 338

ACT NUMBER:

27

GEORGIA LAWS:

2017 Ga. Laws 75

SUMMARY:

The Act creates the position of Chief Turnaround Officer (CTO) and authorizes the State Board of Education, in collaboration with the State School Superintendent and the Education Turnaround Advisory Council, to search for and appoint the CTO. The CTO has the authority to recommend individuals to serve as turnaround coaches upon approval by the state board. The Act defines the term “turnaround eligible schools” and identifies factors upon which the CTO may identify such schools. The Act provides procedures by which the CTO and turnaround coaches shall intervene in such schools. The Act creates the Education Turnaround Advisory Council, which shall review reports created by the CTO informing the Council of the progress of each school in which the CTO elected to intervene. The Act also creates the Joint Study Committee on the Establishment of a Leadership Academy. Finally, the Act amends the reasons for which a local school board member may be suspended or removed from his or her position.

EFFECTIVE DATE:

July 1, 2017

History

House Bill (HB) 338, known as the First Priority Act, was signed into law immediately after Governor Nathan Deal's (R) failed Opportunity School District (OSD) proposal from 2015.¹ The controversial OSD enabling legislation, Senate Bill (SB) 133, did not go into effect after Georgia voters declined to amend the Georgia Constitution to imbue the General Assembly with the power to establish the OSD, which would have allowed the state to intervene in "chronically failing" schools.² Governor Deal championed the OSD legislation in response to the startling statistic that approximately eleven percent of Georgia's schools were considered "failing."³ Almost immediately, parents, teachers, and interest groups rallied in opposition to the legislation, sparking a highly contentious debate about the future of the state's educational system.⁴ While remnants of OSD can be seen in the First Priority Act, the new legislation appears to have addressed opponents' major concerns and has generally received wide bipartisan support.⁵

In recent years, "turnaround districts" have emerged throughout the nation as a potential answer to the growing problem of low-achieving schools.⁶ The 2015 OSD bill was modeled after similar school plans in Tennessee and Louisiana.⁷ Louisiana's Recovery

1. Ty Tagami, *Deal Signs School Turnaround Legislation, Calls It a 'Dramatic Step,'* ATLANTA J.-CONST. (Apr. 27, 2017, 5:23 PM), <http://www.myajc.com/news/local-education/deal-signs-school-turnaround-legislation-calls-dramatic-step/E8hAJJh49GWcbnXNkwRFJJ>.

2. Ty Tagami, *Voters Say "No" to Opportunity School District,* ATLANTA J.-CONST. (Nov. 9, 2016, 1:23 AM), <http://www.myajc.com/news/local-education/voters-say-opportunity-school-district/QFf8J42kfmPGx8gVFhrVVL>.

3. Greg Bluestein, *Deal to Push for New State Powers to Fix Georgia's Struggling Schools,* ATLANTA J.-CONST. (Jan. 10, 2015, 12:00 AM), http://www.myajc.com/news/state—regional-govt—politics/deal-push-for-new-state-powers-fix-georgia-struggling-schools/vc6UdYHWTcCjCobuSLoFaRI/?icmp=ajc_internallink_invitationbox_apr2013_ajcstubbyajcpremiu#71b3aeaf.3564794.735640.

4. See Emmanuel Felton, *Are Turnaround Districts the Answer for America's Worst Schools?*, HECHINGER REP. (Oct. 19, 2015), <http://hechingerreport.org/are-turnaround-districts-the-answer-for-americas-worst-schools/>; Greg Bluestein, *Georgia Unveils Statewide Plan to Take Over Failing Schools,* ATLANTA J.-CONST. (Feb. 11, 2015, 3:00 PM), <http://www.ajc.com/news/georgia-unveils-statewide-plan-take-over-failing-schools/4p45faoM8Q0R7h5TEHrbwN/>.

5. Video Recording of House Proceedings at 1 hr., 12 min., 55 sec. (Mar. 1, 2017) (remarks by Rep. Kevin Tanner (R-9th)), <http://www.gpb.org/lawmakers/2017/day-27> [hereinafter House Recording 1].

6. Felton, *supra* note 4.

7. Ty Tagami, *Model for Georgia's Opportunity School District Shows Mixed Results,* ATLANTA

School District (RSD) was the first and largest of the pioneer “turnaround” programs.⁸ The program began in 2003 and expanded greatly in 2005 when the entire New Orleans school district was incorporated into the RSD following Hurricane Katrina.⁹ A decade after its inception, RSD schools showed marked improvements in some achievement areas.¹⁰ However, persistent failure in key metrics, such as high school achievement indicators, called into question the true efficacy of the program.¹¹

The Tennessee Achievement School District (ASD) is generally viewed as the true model for the proposed 2015 Georgia OSD plan.¹² Like the Louisiana system, the Tennessee ASD schools saw a slight uptick in educational attainment metrics, but nevertheless remained some of the lowest performing schools in the state.¹³ In fact, opponents of the Georgia OSD plan frequently cited the dubious success of both the Tennessee and Louisiana systems.¹⁴ Under the Tennessee plan, low-achieving schools were placed under the control of charters, and parents did not have a choice regarding whether to send their children to the new charter or to another school in the district.¹⁵ Similarly, under the 2015 Georgia OSD proposal, eligible schools would be taken over by the OSD and either closed down, run by the government via the OSD, or converted into independent charter schools.¹⁶

Under the 2015 OSD proposal, a school was “chronically failing” if it scored an “F” on the Georgia Department of Education’s (DOE) accountability test, the College and Career Performance Index (CCPI), for three years in a row.¹⁷ In 2016, 127 of Georgia’s 2,089

J.-CONST. (Oct. 11, 2016, 12:00 AM), <http://www.myajc.com/news/local-education/model-for-georgia-opportunity-school-district-shows-mixed-results/zE8WcIJZNQQvEcv>.

8. Felton, *supra* note 4.

9. *Id.*

10. *Id.* Studies showed that RSD graduation rates improved, as did standardized test scores of third through eighth graders. *Id.* However, high school achievement remained low, and the average ACT scores for RSD students remained far below Louisiana’s state average. *Id.*

11. *Id.*

12. Tagami, *supra* note 7.

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. OFFICE OF THE GOVERNOR, GEORGIA’S PROPOSED OPPORTUNITY SCHOOL DISTRICT – OVERVIEW 1 (May 18, 2016),

schools fell into this category.¹⁸ Of these failing schools, the state would intervene in no more than twenty per year and would cap the number of schools in the OSD program at any given time at one hundred.¹⁹ The OSD would be under the control of a special superintendent, appointed by the Governor and confirmed by the Senate.²⁰ Once admitted to the OSD, a school would remain under the supervision of the OSD superintendent for a minimum of five consecutive years but could exit early if it scored higher than an “F” on the CCPI for three consecutive years.²¹ The OSD bill passed in both the House and the Senate and was signed by the Governor on April 21, 2015.²² However, this enabling legislation could not become effective unless voters passed an amendment to the Georgia Constitution because of strict language in the Georgia Constitution that specifically grants the authority to establish and maintain schools to local and area school boards.²³

The OSD amendment faced strong opposition.²⁴ Concerned citizens even filed a class-action lawsuit in Fulton County Superior Court against Governor Deal and his team.²⁵ The lawsuit alleged that the language of the OSD amendment was “so misleading and deceptive that it violates the due process and voting rights of all Georgia voters.”²⁶ Interest groups like the Georgia Parent Teacher Association (Georgia PTA),²⁷ Professional Association of Georgia Educators (PAGE),²⁸ and Georgia Association of Educational

https://gov.georgia.gov/sites/gov.georgia.gov/files/related_files/site_page/GA%20OSD%20Overview%20051816.pdf.

18. *Id.* This number excludes alternative, non-traditional, and special-purpose schools. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. State of Georgia Final Composite Status Sheet, SB 133, May 14, 2015.

23. GA. CONST. art. VIII, § 5, para. 1; 2015 Ga. Laws 92, § 6, at 103.

24. *See, e.g.*, GA. PARENT TEACHER ASS’N, OPPORTUNITY SCHOOL DISTRICT: POSITION STATEMENT,

http://doc.georgiapta.org/public/Advocacy_Materials/2016/Opportunity_School_District_Position_Statement_revised.pdf [hereinafter PTA POSITION STATEMENT].

25. Complaint at 1, McDonald v. Deal, No. 2016CV280611 (Super. Ct. Fulton Cty. Sept. 27, 2016).

26. *Id.* at 3–4.

27. PTA POSITION STATEMENT, *supra* note 24.

28. Dr. Allene Magill, *Flawed Foundation: OSD Takeover Relies on Standardized Tests, Outdated Federal Law, and Ignores Poverty Factors*, PROF’L ASS’N GA. EDUCATORS (June 27, 2016), <https://page.site-ym.com/news/295713/OSD-Takeover-Rests-on-Flawed-Foundation.htm> (on file with Georgia State University Law Review).

Leaders (GAEL)²⁹ all opposed the OSD amendment. OSD's opponents argued that the program robbed local school districts of control over their own public schools and vested that control in a non-elected political appointee who may be out of touch with the varying needs of Georgia's diverse school districts.³⁰ Critics also expressed concerns that the OSD plan would rob public education of much needed public funds and give those dollars to private educational management corporations to run the OSD schools, thereby effectively privatizing Georgia's educational system.³¹ On Election Day, six out of every ten voters rejected the OSD amendment.³²

After the overwhelming defeat of OSD at the ballot box, supporters of school turnaround began work on what would become the First Priority Act.³³ Sponsored by Dawsonville's Representative Kevin Tanner (R-9th), the Act demonstrates lawmakers' commitment to reaching across the aisle and addressing the concerns that plagued OSD.³⁴ Representative Tanner noted the collaborative effort behind the First Priority Act in his opening remarks in the House:

[O]ne of the conversations that we heard, and the complaints we heard with OSD was that the education community was not engaged. That cannot be said about this process. They have been engaged from the beginning and I appreciate their input . . . [O]n your desk you have PAGE and the GAEL—their statement that they are neutral on this legislation. If you've worked in education policy to be able

29. Jimmy Stokes, *Please Speak Out in Your Community About OSD*, GA. ASS'N OF EDUC. LEADERS (Aug 16, 2016, 12:00 AM), <http://www.gael.org/post/2016-08-16/please-speak-out-in-your-community-about-osd>.

30. Magill, *supra* note 28.

31. GA. ASS'N EDUCATORS, *The Zero Sum Game Being Played with Georgia's Education: How Opportunity School District Will Commoditize the Future of the Most Vulnerable Students*, 13 KNOW 14, 15 (2015).

32. Ana Santos, *Georgia Election Results: Voters Embrace Trump and Isakson, Reject Amendment I*, ATLANTA J.-CONST. (Nov. 9, 2016, 5:48 AM), <http://www.ajc.com/news/local-govt-politics/georgia-election-results-voters-embrace-trump-and-isakson-reject-amendment/1x7Z2vzAOwmN7CicKlj0aN/>.

33. Greg Bluestein, *'Plan B' in Works After Defeat of School Takeover Plan in Georgia*, ATLANTA J.-CONST. (Dec. 7, 2016, 4:11 PM), <http://www.myajc.com/news/state-regional-govt-politics/plan-works-after-defeat-school-takeover-plan-georgia/SDNRpzELWktPALlrafEzml>.

34. *Id.*

to get those organizations [to] take a neutral stance is a victory within itself.³⁵

Policymakers' joint efforts paid off, and Governor Deal signed the First Priority Act into law on April 27, 2017.³⁶

Bill Tracking of HB 338

Consideration and Passage by the House

Representative Kevin Tanner (R-9th) sponsored HB 338 in the House.³⁷ Representatives Brooks Coleman (R-97th), Jan Jones (R-47th), Jon Burns (R-159th), Christian Coomer (R-14th), and Matt Hatchett (R-150th) were additional co-sponsors in the House.³⁸ The House read the bill for the first time on February 10, 2017, and committed it to the House Education Committee.³⁹ The House read the bill for the second time on February 14, 2017.⁴⁰ On February 24, 2017, the House Education Committee amended the bill in part and favorably reported the bill by substitute.⁴¹

The Committee substitute included substantially all of the introduced bill's text but added significant portions and changed key phrases.⁴² The Committee replaced the phrase "low performing schools" with "lowest performing schools."⁴³ Additionally, the Committee created Code section 20-14-49 that establishes the Joint Study Committee on the Establishment of a Leadership Academy.⁴⁴ Through their amendment, the legislators sought to create a program for "principals and other school leaders to update and expand their

35. House Recording 1, *supra* note 5, at 1 hr., 12 min., 55 sec. (remarks by Rep. Kevin Tanner (R-9th)).

36. State of Georgia Final Composite Status Sheet, HB 338, May 11, 2017.

37. Georgia General Assembly, HB 338, Bill Tracking, <http://www.legis.ga.gov/Legislation/en-US/display/20172018/HB/338>.

38. *Id.*

39. State of Georgia Final Composite Status Sheet, HB 338, May 11, 2017.

40. *Id.*

41. *Id.*

42. *Compare* HB 338, as introduced, 2017 Ga. Gen. Assemb., *with* HB 338 (HCS), 2017 Ga. Gen. Assemb.

43. *Compare, e.g.*, HB 338 (HCS), p. 1, l. 2, 2017 Ga. Gen. Assemb., *with* HB 338, as introduced, p. 1, l. 2, 2017 Ga. Gen. Assemb.

44. *Id.* § 1-1, p. 9, l. 302-03.

leadership knowledge and skills.”⁴⁵ The Committee substitute provided that the Joint Study Committee on the Establishment of a Leadership Academy shall be composed of members of both the House and the Senate, the Commissioner of the Technical College System of Georgia, the Chancellor of the University System of Georgia, the Executive Director of the Professional Standards Commission, and members appointed by the Governor.⁴⁶

The Committee also modified Section 44 of the bill relating to the Chief Turnaround Officer (CTO).⁴⁷ The Committee required that the CTO shall “consult[] with the State School Superintendent.”⁴⁸ The Committee made this change after the State School Superintendent, Richard Woods, offered testimony at the committee hearing stressing the importance of cooperation between the CTO, the DOE, and the State School Superintendent.⁴⁹ Similar additions were made throughout the bill.⁵⁰

In Section 45, the Committee changed the procedure by which the CTO identifies the lowest performing schools by adding that “special considerations” may be given to schools that meet a certain set of additional criteria.⁵¹ Further, in Section 45, the Committee inserted language stating that if a local board is offered the opportunity to amend its contract or charter but “does not sign an amendment within 60 days of being offered the amendment or that declines [to amend],” the State Board of Education (BOE) shall intervene consistent with the bill’s provisions.⁵² In Section 47, the Committee provided that the Executive Director of GAEL shall be included in the composition of the Education Turnaround Advisory Council.⁵³ Further, in Section

45. *Id.* § 1-1, p. 9, ll. 305–06.

46. *Id.* § 1-1, p. 10, ll. 313–29.

47. *Id.* § 1-1, pp. 2–5, ll. 46–132.

48. *Id.* § 1-1, p. 2, l. 46.

49. Video Recording of House Education Committee Meeting at 1 hr., 31 min., 19 sec. (Feb. 16, 2017) (remarks by Richard Woods), <https://livestream.com/accounts/19771805/events/6811883/videos/149590985>.

50. *See, e.g.*, HB 338 (HCS), § 1-1, p. 4, ll. 109–11, 2017 Ga. Gen. Assemb.

51. HB 338 (HCS), § 1-1, p. 4, ll. 96–107, 2017 Ga. Gen. Assemb. (“[S]pecial consideration may be given to other lowest-performing schools: (1) [t]hat are in close proximity to a school in greatest need of assistance; (2) [t]hat are in local school systems in which one-half or more of the schools in such local school system are deemed lowest-performing; and (3) [f]or which the local board of education has specifically requested assistance from the state.”).

52. *Id.* § 1-1, p. 4, ll. 117–23.

53. *Id.* § 1-1, p. 8, ll. 239–40.

48, the Committee added the Chairperson of the BOE and the Director of the State Charter Schools Commission to the Joint Study Committee on the Establishment of a State Accreditation Process.⁵⁴

In Section 2-1, the Committee also increased the qualifications necessary to be considered an “eligible member of a local board of education” by requiring that the member “was serving on the local board at the time the local school system received an unacceptable rating . . . and had served on the local board for at least the immediately preceding two years.”⁵⁵ Additional superficial changes were made throughout that did not alter the substance or effect of the bill.⁵⁶

The House read the bill for the third time on March 1, 2017.⁵⁷ The House passed the Committee substitute to HB 338 on March 1, 2017, by a vote of 138 to 37.⁵⁸

Consideration and Deliberations by the Senate

Senator Lindsey Tippins (R-37th) sponsored HB 338 in the Senate.⁵⁹ The Senate first read HB 338 on March 3, 2017.⁶⁰ The Senate Committee on Education and Youth received HB 338 and subsequently made several changes.⁶¹ First, in Section 1-1, the Senate Committee titled the bill as the “First Priority Act – Helping Turnaround Schools Put Students First.”⁶²

In Section 2-1, the Committee also created additional qualification criteria for the CTO.⁶³ Specifically, the Committee inserted language requiring the CTO have “[e]xtensive personal experience in turning around low-performing schools” and “expertise in turnaround strategies,” as well as a background in management, budget, and

54. *Id.* § 1-1, p. 8, ll. 260–61.

55. *Id.* § 2-1, p. 13, ll. 432–35.

56. *See, e.g., id.* § 2-1, p. 13, l. 429 (numbering the subsection and capitalizing “was”).

57. State of Georgia Final Composite Status Sheet, HB 338, May 11, 2017.

58. Georgia House of Representatives Voting Record, HB 338, #151 (Mar. 1, 2017); State of Georgia Final Composite Status Sheet, HB 338, May 11, 2017.

59. Georgia General Assembly, HB 338, Bill Tracking, <http://www.legis.ga.gov/Legislation/en-US/display/20172018/HB/338>.

60. State of Georgia Final Composite Status Sheet, HB 338, May 11, 2017.

61. *Compare* HB 338 (HCS), 2017 Ga. Gen. Assemb., *with* HB 338 (SCS), 2017 Ga. Gen. Assemb.

62. HB 338 (SCS), § 1-1, p. 2, ll. 26–27, 2017 Ga. Gen. Assemb.

63. *Id.* § 2-1, p. 2, ll. 41–50.

program administration.⁶⁴ The Committee further expanded the CTO's job responsibilities by including additional managerial responsibilities and performance assessments of low-performing schools.⁶⁵

The Committee defined "turnaround eligible" schools to mean "the schools that have performed in the lowest 5 percent of schools in this state identified in accordance with the statewide accountability system established in the state plan pursuant to the federal Every Student Succeeds Act."⁶⁶ Significantly, the Committee also added language to that clarified the selection criteria to be used by the CTO in the event that resources would not support turnaround efforts at all of the eligible lowest performing schools.⁶⁷ The CTO may select schools based on the following: a review of the school's past three annual ratings; whether the school's contract or charter "adequately addresses the school's deficiencies"; whether the school's district accreditation report shows system level governance deficiencies or school level deficiencies in leadership or academic attainment—including in math and reading; whether the school is in a district where the majority of other schools are also turnaround-eligible; and any other factors deemed appropriate by the CTO.⁶⁸ If an eligible school is not selected after a weighing of these relevant factors, the DOE's school improvement division must offer focused support and review to that school using all relevant data.⁶⁹

The Committee continued to make significant changes in Section 2-1. It inserted language that would require the local board of education, in cooperation with the turnaround coach, to work with an approved third-party specialist; together, they would be required to conduct an extensive on-site review of the school, including a leadership assessment, to identify causes of low-performance.⁷⁰ Next, the Committee provided that absent a showing of financial need, the

64. *Id.* § 2-1, p. 2, ll. 42–48.

65. *See, e.g., id.* § 2-1, pp. 2–3, ll. 51–85; *id.* § 2-1, pp. 2–3, ll. 58–66.

66. *Id.* § 45, p. 4, ll. 99–102.

67. HB 338 (SCS), § 2-1, p. 4, ll. 106–25.

68. *Id.* § 2-1, p. 4, ll. 112–25.

69. *Id.* § 2-1, p. 5, ll. 146–54.

70. *Id.* § 2-1, pp. 5–6, ll. 156–61, 178–79.

local board of education cannot receive additional or supplemental funds to implement its improvement plan.⁷¹

The Committee created new language requiring turnaround coaches to conduct individual assessments of low-performing students in the turnaround school and to provide those students with enrichment opportunities and additional resources on an individual level.⁷² The Committee further specified that the BOE shall support turnaround schools to the fullest extent possible through prompt access to available funds and resource priority.⁷³

The Committee specified that in addition to the parties already listed, the executive director of Educators First as well as other stakeholders shall be added to the Education Turnaround Advisory Council, further demonstrating the collaborative nature of this bill.⁷⁴ Also, the Committee enumerated specific administrative reporting requirements and authorizations for the CTO.⁷⁵ The Senate Committee on Education and Youth favorably reported the amended bill by substitute on March 22, 2017, and the bill was read for the second time that same day.⁷⁶

Passage by the Senate

The Senate read the bill for the third time on March 24, 2017.⁷⁷ Senators Steve Henson (D-41st) and Horacena Tate (D-38th) jointly offered a floor amendment to strike lines 35 through 40 and replace them with alternate text.⁷⁸ This amendment would have changed the definition of “Chief Turnaround Officer” to make the position report

71. *Id.* § 2-1, p. 6, ll. 196–98.

72. *Compare* HB 338 (HCS), 2017 Ga. Gen. Assemb., with HB 338 (SCS), 2017 Ga. Gen. Assemb.; HB 338 (SCS), § 2-1, pp. 7–8, ll. 207–38, 2017 Ga. Gen. Assemb.

73. HB 338 (SCS), § 2-1, pp. 8–9, ll. 239–75.

74. *Id.* § 2-1, pp. 10–11, ll. 341–46. Other stakeholders include “[e]ducation leaders representing local school superintendents, local boards of education, teachers, business leaders, or other appropriate individuals with interest in public education.” *Id.* § 2-1, p. 11, ll. 342–44.

75. *Id.* § 2-1, pp. 11–12, ll. 347–80.

76. State of Georgia Final Composite Status Sheet, HB 338, May 11, 2017.

77. *Id.*

78. Failed Senate Floor Amendment to HB 338 (AM 33 1708), introduced by Sens. Steve Henson (D-41st) and Horacena Tate (D-38th), Mar. 24, 2017.

to the State School Superintendent in lieu of the BOE.⁷⁹ The amendment was not adopted after losing by a vote of 20 to 34.⁸⁰

Senators Hunter Hill (R-6th), Burt Jones (R-25th), Jesse Stone (R-23rd), Michael Williams (R-27th), and Chuck Payne (R-54th) offered another floor amendment.⁸¹ The proposed amendment would have inserted the word “reports” after the text on line 21, inserted the heading and subheading “Part IV, Section 4-1” between lines 634 and 635, and added an additional article to the bill.⁸² The proposed additional article would have been called the “Individual Student Education Account Act” and would have established consumer-driven savings accounts for eligible students.⁸³ The funds accrued in these accounts would be spent on “qualifying educational expenses.”⁸⁴ This floor amendment likewise failed by a vote of 14 to 38.⁸⁵

A final Senate floor amendment was offered by Senator David Lucas (D-26th).⁸⁶ The amendment would have inserted text after line 95 that would give the turnaround coach the authority to file an action in superior court seeking an order to “compel a parent that has consistently failed to enable their children to attend or otherwise take advantage of the services provided under this Part to take all reasonable measures to enable his or her child to receive such services.”⁸⁷ The amendment did not pass.⁸⁸ On March 24, 2017, the Senate passed the Senate Committee substitute of HB 338 by a vote of 37 to 18.⁸⁹

The Senate transmitted the bill to the House on March 28, 2017.⁹⁰ The House agreed to the Senate Committee substitute, as amended,

79. *Id.*

80. Georgia Senate Voting Record, HB 338, Vote #229 (Mar. 24, 2017).

81. Failed Senate Floor Amendment to HB 338 (AM 33 1705), introduced by Sens. Hunter Hill (R-6th), Burt Jones (R-25th), Jesse Stone (R-23rd), Michael Williams (R-27), and Chuck Payne (R-54th), Mar. 24, 2017.

82. *Id.*

83. *Id.*

84. *Id.*

85. Georgia Senate Voting Record, HB 338, Vote #230 (Mar. 24, 2017).

86. Failed Senate Floor Amendment to HB 338 (Senate floor amend 3), introduced by Sen. David Lucas (D-26th), Mar. 24, 2017.

87. *Id.*

88. *Id.*

89. Georgia Senate Voting Record, HB 338, Vote #231 (Mar. 24, 2017).

90. Georgia General Assembly, HB 338, Bill Tracking, <http://www.legis.ga.gov/Legislation/en->

on the same day by a vote of 133 to 36.⁹¹ The House sent the bill to Governor Deal on April 7, 2017.⁹² The Governor signed the bill into law on April 27, 2017,⁹³ and the bill became effective on July 1, 2017.⁹⁴

The Act

The Act amends the following portions of the Official Code of Georgia Annotated: Article 3 of Chapter 2 of Title 20, relating to local boards of education; Article 4 of Chapter 2 of Title 20, relating to increased flexibility for local school systems; and Article 31 of Chapter 2 of Title 20, relating to the Charter Schools Act of 1998.⁹⁵ The Act amends and adds new parts to Article 2 of Chapter 14 of Title 20, relating to education accountability assessment programs.⁹⁶ The overall purpose of the Act is to implement a system by which to identify, assess, support, and improve the lowest-performing schools within the state.⁹⁷

Section 1

Section 1 of the Act provides the Act's official name: "First Priority Act – Helping Turnaround Schools Put Students First."⁹⁸

Section 2

Section 2 of the Act amends Title 20 by adding new parts to Article 2 of Chapter 14, which relates to education accountability assessment programs.⁹⁹ First, the Act creates the positions of CTO¹⁰⁰

US/display/20172018/HB/338.

91. Georgia House of Representatives Voting Record, HB 338, Vote #342 (Mar. 28, 2017).

92. State of Georgia Final Composite Status Sheet, HB 338, May 11, 2017.

93. *Id.*

94. See O.C.G.A. § 1-3-4.

95. 2017 Ga. Laws 75, at 75–76.

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

100. O.C.G.A. § 20-14-43(a) (Supp. 2017).

and turnaround coaches;¹⁰¹ sets forth the requisite qualifications of CTO candidates;¹⁰² defines the term “turnaround eligible schools”;¹⁰³ sets forth the procedures by which the CTO shall identify such schools;¹⁰⁴ and identifies specific duties to which the CTO must attend on an annual or biannual basis.¹⁰⁵ Next, the Act details the procedures to develop intensive school improvement plans and identifies benchmarks at which to assess progress made under these plans.¹⁰⁶ Finally, the Act creates the Education Turnaround Advisory Council,¹⁰⁷ the Joint Study Committee on the Establishment of a State Accreditation Process,¹⁰⁸ and the Joint Study Committee on the Establishment of a Leadership Academy.¹⁰⁹

New Code section 20-14-43 creates the position of CTO and outlines the procedure by which the CTO shall be appointed.¹¹⁰ The CTO is an employee of the DOE but is appointed by and serves at the pleasure of the BOE.¹¹¹ Prior to appointing a CTO, the BOE must conduct a national search and consult with both the State School Superintendent and the Turnaround Advisory Council.¹¹² This Code section identifies a limited number of qualifications that a CTO must possess, all of which are related to prior experience; the BOE is free to identify additional qualifications.¹¹³ Next, the Code section lists seven duties bestowed upon the CTO.¹¹⁴ These duties include management of the support program for the lowest-performing schools, identification of potential resources to assist with the turnaround program, appointment of turnaround coaches, and determination of the best methods for affecting school turnaround.¹¹⁵

101. O.C.G.A. § 20-14-44 (Supp. 2017).

102. O.C.G.A. § 20-14-43(b) (Supp. 2017).

103. O.C.G.A. § 20-14-45(a) (Supp. 2017).

104. O.C.G.A. § 20-14-45(b) (Supp. 2017).

105. O.C.G.A. § 20-14-49.2 (Supp. 2017).

106. O.C.G.A. §§ 20-14-46 to -49 (Supp. 2017).

107. O.C.G.A. § 20-14-49.1 (Supp. 2017).

108. O.C.G.A. § 20-14-49.3 (Supp. 2017).

109. O.C.G.A. § 20-14-49.4 (Supp. 2017).

110. O.C.G.A. § 20-14-43(a) (Supp. 2017).

111. *Id.*

112. *Id.*

113. O.C.G.A. § 20-14-43(b) (Supp. 2017). The qualifications include “extensive personal experience in turning around low-performing schools” and prior employment as a “principal or a higher administrative position in a public school system for a minimum of five years.” *Id.*

114. O.C.G.A. § 20-14-43(c) (Supp. 2017).

115. O.C.G.A. § 20-14-43(c) (Supp. 2017).

Finally, this Code section directs the CTO, the State School Superintendent, and the DOE to collaborate in their efforts to fulfill the requirements of Code section 20-14-43.¹¹⁶ The Act directs the DOE to establish the turnaround plan in accordance with the federal “Every Student Succeeds Act.”¹¹⁷

The Act, in new Code section 20-14-44, also details the procedures by which turnaround coaches shall be appointed.¹¹⁸ As with the CTO, turnaround coaches require the approval of the BOE prior to appointment, although the CTO retains the power to identify and recommend persons suitable for the position.¹¹⁹ The needs of schools identified as turnaround-eligible determine the necessary qualifications of the turnaround coaches, and again, prior experience is the only statutorily-required qualification.¹²⁰ Turnaround coaches may serve one or more schools, as directed by the CTO.¹²¹

Turnaround-eligible schools, as defined by new Code section 20-14-44, are those schools that performed in the lowest five percent of Georgia schools, assessed pursuant to Georgia’s accountability standards and identified by the Office of Student Achievement (OSA).¹²² From this list of schools, the CTO, with input from the DOE and the OSA, must identify the lowest-performing schools in need of the most assistance.¹²³ Although the Act implies that all schools deemed turnaround-eligible should receive assistance from the CTO, the Act also anticipates that lack of funding and resources may impede that goal.¹²⁴ As such, the Act provides that the CTO may select, from the list of turnaround-eligible schools, a subset of schools on which to focus its attention based on five statutory factors and the CTO’s personal judgment.¹²⁵ Upon identifying a school as in

116. O.C.G.A. § 20-14-43(d) (Supp. 2017).

117. *Id.*

118. O.C.G.A. § 20-14-44 (Supp. 2017)

119. O.C.G.A. § 20-14-44(a) (Supp. 2017). The CTO must consult with the State Superintendent prior to making any such recommendations. *Id.*

120. O.C.G.A. § 20-14-44(b) (Supp. 2017).

121. *Id.*

122. O.C.G.A. § 20-14-45(a) (Supp. 2017).

123. O.C.G.A. § 20-14-45(b) (Supp. 2017).

124. *See id.*

125. O.C.G.A. § 20-14-45(b) (Supp. 2017). These factors include the school’s rating during the previous three years, the school’s district accreditation report, the school’s proximity to other turnaround-eligible schools, and the number of schools within the subject school’s district that have appeared on the turnaround-eligible list for the previous five years. *Id.* Those schools that do not make

need of the CTO's services, the CTO's first point of contact is the local board of education for the subject school.¹²⁶ The Act incentivizes local boards to cooperate with the CTO, depending upon which category of school system the subject school belongs: systems that have entered into a contract with the state for strategic waivers, systems that have not entered into such a contract, and charter systems.¹²⁷ If a charter system or a system which previously entered into an aforementioned contract refuses to voluntarily cooperate with the CTO, then the BOE, within sixty days, must implement at least one of the interventions listed in Code section 20-14-41(a)(6) or terminate the school system's contract or charter.¹²⁸ For those schools that have not entered into such a contract, the BOE must immediately implement at least one of the interventions listed in Code section 20-14-41(a)(6).¹²⁹ School systems that choose to cooperate will either amend their contract or charter to indicate their acquiescence to receiving assistance from the CTO or, if the system has no existing contract or charter, enter into an intervention contract with the BOE.¹³⁰

New Code section 20-14-46 outlines the first steps to be taken by a local school board, the CTO, and the turnaround coach assigned to the school.¹³¹ First, within thirty days of entering into the contract amendment or intervention contract, the local board must hire a third party to conduct an assessment of the turnaround-eligible school to identify factors causing the school's poor performance.¹³² An on-site assessment must be completed within ninety days of entering into the contract amendment or intervention contract.¹³³ The turnaround

the cut must undergo review by the DOE. O.C.G.A. § 20-14-45(e) (Supp. 2017).

126. O.C.G.A. § 20-14-45(c) (Supp. 2017).

127. O.C.G.A. § 20-14-45(c)-(d) (Supp. 2017). Code section 20-2-80 permits local school systems to contract with the BOE for "increased flexibility from certain state laws, rules, and regulations in exchange for increased accountability and defined consequences." O.C.G.A. § 20-2-80(a) (2008).

128. O.C.G.A. § 20-14-45(c) (Supp. 2017).

129. O.C.G.A. § 20-14-45(d) (Supp. 2017).

130. O.C.G.A. §§ 20-14-45(c)-(d) (Supp. 2017).

131. O.C.G.A. § 20-14-46 (Supp. 2017).

132. O.C.G.A. § 20-14-46(a) (Supp. 2017). The board has the option of selecting the third-party assessor from the list of resources prepared by the CTO pursuant to Code section § 20-14-43(c)(2), whose assessment the state will fund, or the board may identify its own assessor, but the CTO must approve the selection and the local school system will be responsible for all expenses related to the assessment. *Id.*

133. O.C.G.A. § 20-14-46(b) (Supp. 2017). This on-site assessment must include an analysis of the

coach's plan of action will be largely based on the results of the on-site assessment, and the Act identifies a wide range of remedies the turnaround coach may recommend.¹³⁴ Finally, the school must develop an "intensive school improvement plan" approved by the CTO and based on the third-party evaluation, the turnaround coach's recommendations, and public input from parents and the community.¹³⁵ Notably, the Act specifically provides that the local board will not receive additional funding to put the improvement plan into action unless it can demonstrate financial need.¹³⁶

The Act also addresses low-performing students.¹³⁷ The turnaround coach must, within a school year's first sixty instructional days, individually assess each student identified as "low-performing."¹³⁸ The turnaround coach is then authorized to implement certain interventions focused on these low-performing students, subject to the school's agreement and resource availability.¹³⁹ Local boards of education are also directed to identify and address conditions endemic to the local community that have contributed to the school's low performance.¹⁴⁰

The Act directs the BOE to prioritize schools that have entered into an intervention contract or contract amendment in the allocation

school leader's ability to lead the turnaround efforts, "as well as a review of system level support and interventions, including central office policies and supports, technical assistance and guidance, financial management, and appropriate use of resources . . ." *Id.*

134. O.C.G.A. § 20-14-46(c) (Supp. 2017). These remedies include:

[R]eallocation of resources and technical assistance, changes in school procedures or operations, professional learning focused on student achievement for instructional and administrative staff, intervention for individual administrators or teachers, instructional strategies based on scientifically based research, additional waivers from state statutes or rules, adoption of policies and practices to ensure all groups of students meet the state's proficiency level, extended instruction time for low-performing students, strategies for parental involvement, incorporation of a teacher mentoring program, [and] smaller class size for low-performing students. . . .

Id.

135. O.C.G.A. § 20-14-46(d) (Supp. 2017).

136. *Id.*

137. O.C.G.A. § 20-14-47 (Supp. 2017).

138. O.C.G.A. § 20-14-47(a) (Supp. 2017).

139. *Id.* Such interventions include the screening of all students to identify factors for lower performance and providing low-performing students access to myriad academic support and enrichment programs. O.C.G.A. § 20-14-47(a)(1)–(2) (Supp. 2017).

140. O.C.G.A. § 20-14-47(b) (Supp. 2017).

of both state and federal funds.¹⁴¹ In the same manner, the Act directs the OSA to prioritize such schools when awarding grants and authorizes the OSA to provide grants for implementing the requirements of Code sections 20-14-45 and -46.¹⁴²

New Code section 20-14-49 sets a three-year deadline for assessing a school's progress under its intensive school improvement plan.¹⁴³ If the CTO determines a school is not improving satisfactorily and the school has not complied and cooperated with the implementation of the improvement plan, then the CTO is required to intervene in at least one of eight named methods, or in such manner as the CTO or the BOE sees fit.¹⁴⁴ Before the implementation of any of these interventions, the Act allows the local board of education to request a hearing before the BOE where the local board of education must "show cause as to why an intervention or interventions imposed by the [CTO] for a school should not be required or that alternative interventions would be more appropriate."¹⁴⁵

In addition to the previously expounded duties, the Act requires the CTO to prepare a written update twice per year for each school that has entered a contract amendment or intervention contract.¹⁴⁶ Once per year, the CTO must present its findings to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, the Chairpersons of the House Committee on Education and the Senate Education and Youth Committee, the State School Superintendent, and the Education Turnaround Advisory Council.¹⁴⁷

141. O.C.G.A. § 20-14-48(a) (Supp. 2017).

142. O.C.G.A. §§ 20-14-48(b)–(c) (Supp. 2017).

143. O.C.G.A. § 20-14-49(a) (Supp. 2017).

144. *Id.* The CTO can choose to simply continue the implementation of the school improvement plan, or it can choose a more drastic remedy. O.C.G.A. § 20-14-49(a)(1)–(9) (Supp. 2017). These drastic measures include removal of some school personnel, including the principal; conversion of the school to a state charter school; removal of all school personnel and hiring of all new staff; transferring operation to a private nonprofit third-party chosen by the local board of education or to a different successful school system; or requiring the local board of education to give parents the option to transfer their children to another public school that does not have an unacceptable rating within the same school system. O.C.G.A. § 20-14-49(a)(2)–(8) (Supp. 2017).

145. O.C.G.A. § 20-14-49(b). The BOE's decision on the matter is final. *Id.*

146. O.C.G.A. § 20-14-49.2(a) (Supp. 2017). The reports are due no later than February 1 and August 1 of each year. *Id.*

147. O.C.G.A. § 20-14-49.2(b) (Supp. 2017).

Finally, Part II of the Act creates the Education Turnaround Advisory Council,¹⁴⁸ the Joint Study Committee on the Establishment of a State Accreditation Process,¹⁴⁹ and the Joint Study Committee on the Establishment of a Leadership Academy.¹⁵⁰ The Act provides that the Education Turnaround Advisory Council is advisory in nature and has no authority.¹⁵¹ Its advisory responsibilities include recommending candidates for CTO, recommending turnaround resources and experts, and advising the State School Superintendent and the CTO.¹⁵² Both Joint Study Committees were created for specific, limited purposes, and both Committees will be abolished on December 31, 2017.¹⁵³ The Joint Study Committee on the Establishment of a State Accreditation Process is tasked with studying “the potential establishment of a state accreditation process for public schools and school systems in [Georgia]” which would include “the resources and structure that would be necessary, any impediments that would need to be addressed, and the interaction with existing private accreditation agencies.”¹⁵⁴ The responsibility of the Joint Study Committee on the

148. O.C.G.A. § 20-14-49.1 (Supp. 2017). Education Turnaround Advisory Council members include:

The executive director of the Georgia School Boards Association or his or her designee; [t]he executive director of the Georgia School Superintendents Association or his or her designee; [t]he executive director of the Professional Association of Georgia Educators or his or her designee; [t]he executive director of the Georgia Association of Educators or his or designee; [t]he executive director of the Georgia Association of Educational Leaders or his or her designee; [t]he president of the Georgia Parent Teacher Association; [t]he executive director of Educators First or his or her designee . . . ; [t]wo education leaders appointed by the Lieutenant Governor; and [t]wo education leaders appointed by the Speaker of the House of Representatives.

O.C.G.A. § 20-14-49.1(a) (Supp. 2017). The Education Turnaround Advisory Council selects a chairperson from among its membership.

O.C.G.A. § 20-14-49.1(b) (Supp. 2017).

149. O.C.G.A. § 20-14-49.3 (Supp. 2017).

150. O.C.G.A. § 20-14-49.4 (Supp. 2017).

151. O.C.G.A. § 20-14-49.1(d) (Supp. 2017).

152. O.C.G.A. § 20-14-49.1(c) (Supp. 2017).

153. O.C.G.A. §§ 20-14-49.3(f), 20-14-49.4(f) (Supp. 2017).

154. O.C.G.A. § 20-14-49.3(a) (Supp. 2017). Committee members include:

[T]hree members of the House of Representatives, appointed by the Speaker of the House of Representatives . . . ; [t]hree members of the Senate, appointed by the President of the Senate [i.e., the Lieutenant Governor] . . . ; [t]he State School Superintendent . . . ; the chairperson of the [BOE] or his or her designee; the director of the State Charter Schools

Establishment of a Leadership Academy is to “study the possibility of establishing a leadership academy to provide opportunities for principals and other school leaders to update and expand their leadership knowledge and skills.”¹⁵⁵

Section 3

Section 3-1 amends Code section 20-2-73, which relates to suspension and removal of local school board members upon potential loss of accreditation.¹⁵⁶ The Act amends subsection (a) to allow the suspension of a local school board for “any reason or reasons” identified by an accreditation agency as cause for loss of accreditation.¹⁵⁷ This language significantly expands the power of the Governor to suspend a local board.¹⁵⁸ Additionally, the Act adds new subsection (a)(1)(B), which allows for the suspension of a local school board if one-half or more of the schools within the local

Commission or his or her designee; the director of the [OSA] or his or her designee; [and] the chancellor of the University System of Georgia or his or her designee.

O.C.G.A. § 20-14-49.3(b)(1)–(7) (Supp. 2017). Additionally, the Governor has the authority to appoint the following members: “[a] local board of education member, [a] local school superintendent, [a] principal, [a] teacher, and [a] parent.” O.C.G.A. § 20-14-49.3(b)(8) (Supp. 2017). The Speaker of the House has the power to designate as co-chairperson one of the three appointees from the House of Representatives, and the President of the Senate has the power to designate as co-chairperson one of the three appointees from the Senate. O.C.G.A. § 20-14-49.3(b)(1)–(2) (Supp. 2017).

155. O.C.G.A. § 20-14-49.4(a) (Supp. 2017). Committee members include:

Two members of the House of Representatives, appointed by the Speaker of the House of Representatives, one of whom must be from the minority party; [t]wo members of the Senate, appointed by the President of the Senate, one of whom shall be from the minority party; [t]he commissioner of the Technical College System of Georgia or his or her designee; [t]he chancellor of the University System of Georgia or his or her designee; [t]he executive director of the Professional Standards Commission or his or her designee.

O.C.G.A. § 20-14-49.4(b)(1)–(5) (Supp. 2017). Again, the Governor has the authority to appoint the following members: “Two local school superintendents, [t]wo principals, [o]ne member of the [BOE], [o]ne local board of education member, [o]ne staff member from the [DOE], and one member of the Governor’s policy staff.” O.C.G.A. § 20-14-49.4(b)(6)(A)–(E) (Supp. 2017). The Governor also has the authority to designate one member of the committee as chairperson. O.C.G.A. § 20-14-49.4(b) (Supp. 2017).

156. 2017 Ga. Laws 75, § 3-1, at 88–100.

157. O.C.G.A. § 20-2-73(a)(1)(A) (Supp. 2017).

158. 2017 Ga. Laws 75, § 3-1, at 88. Previously, these powers were limited to suspension based on “school board governance related” reasons. O.C.G.A. § 20-2-73(a) (2017).

school system are identified as turnaround-eligible for five or more consecutive years.¹⁵⁹

Subsection (c) concerns hearings to reinstate suspended board members.¹⁶⁰ The Act amends this subsection to allow the suspended member to introduce evidence demonstrating his or her potential to improve the ratings of the schools within the school system to reduce the number of turnaround-eligible schools within the district to less than half the total number of schools.¹⁶¹ The Act adds new subsection (e)(2), which provides that board members are eligible for suspension pursuant to this Code section if those members severed on the local board at the time one-half or more schools within the system were deemed turnaround-eligible for the fifth or more consecutive year and sat on the board for at least the two years immediately preceding such an event.¹⁶²

Section 3-2 of the Act amends Code section 20-2-83, which relates to state board approval of local school board flexibility contracts.¹⁶³ The amendment provides that a flexibility contract has effect for six years, rather than five years,¹⁶⁴ and provides for amendment of the contract terms only upon approval by the BOE and the local board of education, omitting the requirement that the amendment be necessary due to unforeseen circumstances.¹⁶⁵

Section 3-3 of the Act amends Code section 20-2-2063.2, which relates to charter school systems.¹⁶⁶ New language provides that “a charter for a charter system shall include the interventions, sanctions, and loss of governance consequences contained in Code section 20-14-41.”¹⁶⁷

159. O.C.G.A. § 20-2-73(a)(1)(B) (Supp. 2017).

160. O.C.G.A. § 20-2-73(c) (Supp. 2017).

161. *Id.* Previously, the members were limited to introducing evidence showing a member’s continued participation on the board was “more likely than not to improve the ability of the local school system or school to retain or regain its accreditation.” O.C.G.A. § 20-2-73(c) (2016).

162. O.C.G.A. § 20-2-73(e)(2) The Code section maintains the language allowing the suspension of local board members who served “at the time the accrediting agency placed the local school system or school on the level of accreditation immediately preceding loss of accreditation.” *Id.*

163. 2017 Ga. Laws 75, § 3-2, at 90.

164. O.C.G.A. § 20-2-83(c) (Supp. 2017).

165. O.C.G.A. § 20-2-83(d) (Supp. 2017).

166. 2017 Ga. Laws 75, § 3-3, at 90-91.

167. O.C.G.A. § 20-2-2063.2 (Supp. 2017). Code section § 20-14-41 lists the appropriate levels of intervention for failing schools. O.C.G.A. § 20-14-41 (Supp. 2017). These levels of intervention include:

Issuing [a] public notice . . . [,] ordering a hearing . . . [,] ordering the

Section 3-4 of the Act amends Code section 20-2-2067.1, which relates to the amendment of the terms of a charter school's charter.¹⁶⁸ The amendment maintains all of the original language of the Code section and simply allows the initial term of a charter for a charter system to last for six years rather than five years.¹⁶⁹

Section 3-5 of the Act amends Code section 20-14-41 by adding new subsections, (h)(1) and (h)(2).¹⁷⁰ New subsection (h)(1) requires the BOE to prepare an annual report identifying each school receiving “an unacceptable rating for one or more consecutive years,” as well as “the interventions applied to each such school pursuant to Code Section 20-14-41.”¹⁷¹ The Act provides that the BOE submit the report to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, the Chairpersons of the House Committee on Education and Senate Education and Youth Committee, and the Education Turnaround Advisory Committee on or before December 31 for the previous academic year.¹⁷²

Analysis

HB 237 and Funding the First Priority Act

For such a large piece of legislation with so many lofty goals, the First Priority Act noticeably lacks any mention of program funding.¹⁷³ This important question has exposed the bill to significant criticism, particularly given its expensive mandates to already

preparation of an intensive student achievement improvement plan . . . [,] appointing a [DOE] school improvement team . . . [,] appointing a school master or management team . . . [,] remov[ing] school personnel . . . [,] implement[ing] a state charter school . . . [,] mandat[ing] the complete reconstitution of the school . . . [,] mandati[ng] that the parents have the option to relocate the student to other public schools . . . [, and] mandat[ing] a complete restructuring of the school's governance arrangement

Id.

168. 2017 Ga. Laws 75, § 3-4, at 90.

169. O.C.G.A. § 20-2-2067.1 (Supp. 2017).

170. 2017 Ga. Laws 75, § 3-5, at 90.

171. O.C.G.A. § 20-14-41(h)(1) (Supp. 2017).

172. O.C.G.A. § 20-14-41(h)(2) (Supp. 2017).

173. Ty Tagami, ‘Chronically Failing’ Schools Now Georgia’s ‘First Priority,’ ATLANTA J.-CONST. (Mar. 24, 2017, 7:28 PM), <http://www.myajc.com/news/local-education/chronically-failing-schools-now-georgia-first-priority/avqDUM3mi6XLpPu7A8WUVL/> (noting that a lack of funding is “[a] major criticism of the bill”).

underfunded schools.¹⁷⁴ However, HB 237, crafted as a companion bill to the First Priority Act, may provide the answer.¹⁷⁵ HB 237 creates a tax credit program designed to funnel \$5 million annually into the Public Education Innovation Fund Foundation (Innovation Fund).¹⁷⁶

However, despite overwhelming support in the House, HB 237 met resistance in the Senate¹⁷⁷ before finally being passed and signed by the Governor on April 27, 2017.¹⁷⁸ Senate opponents to HB 237 expressed hesitation due to the dubious constitutionality of using tax credits as contributions to the Innovation Fund.¹⁷⁹ And, as Senator Bill Heath (R-31st) pointed out, HB 237 is not the first tax incentive program aimed at funding educational policy initiatives to evoke constitutional concern.¹⁸⁰

Indeed, the Supreme Court of Georgia recently addressed a strikingly similar issue in *Gaddy v. Georgia Department of Revenue*.¹⁸¹ In *Gaddy*, taxpayers challenged Georgia's Qualified Education Tax Credit, a tax credit program that allowed individual donors and businesses to receive a dollar-for-dollar state income tax credit in exchange for their donations to certain non-profit scholarships.¹⁸² The scholarship programs were created and approved

174. Maureen Downey, *Governor Applauds House for Passing Milder Version of His Opportunity School District*, ATLANTA J.-CONST. (Mar. 1, 2017), <http://getschooled.blog.myajc.com/2017/03/01/governor-applauds-house-for-passing-milder-version-of-his-opportunity-school-district/>.

175. Video Recording of House Proceedings at 1hr., 29 min. (Feb 24, 2017) (remarks by Rep. Brooks Coleman (R-97th)), <http://www.gpb.org/lawmakers/2017/day-24> [hereinafter House Recording 2] (“This is a very important piece of legislation because it’s a companion bill for . . . House Bill 338, the education bill to help students that are in low performing schools . . .”).

176. Ty Tagami, *Lawmakers Debate Tax Credit for School “Innovation” Fund*, ATLANTA J.-CONST. (Mar. 9, 2017, 12:10 PM), <http://www.ajc.com/news/state—regional-education/lawmakers-debate-tax-credit-for-school-innovation-fund/0xuUPUvO8bv64uxrrVPbPN/>. As passed, HB 237’s innovation fund will redirect \$5 million instead of the original \$7 million. *Id.*; O.C.G.A. § 48-7-29.21 (Supp. 2017). (“In no event shall the aggregate amount of tax credits allowed under this Code section exceed \$5 million per tax year . . .”).

177. *Compare* HB 237 (HCS), § 2, p. 4, ll. 130 – 33, 2017 Ga. Gen. Assemb., *with* HB 237 (SCS), § 2, p. 4, ll. 132–33, 2017 Ga. Gen. Assemb. The Senate committee capped the aggregate amount of tax credits at \$5 million as opposed to the House proposal which initially provided \$7 million. *Compare* HB 237 (HCS), § 2, p. 4, ll. 130 – 33, 2017 Ga. Gen. Assemb., *with* HB 237 (SCS), § 2, p. 4, ll. 132–33, 2017 Ga. Gen. Assemb.

178. State of Georgia Final Composite Status Sheet, HB 237, May 11, 2017.

179. Tagami, *supra* note 176.

180. *Id.*

181. *Gaddy v. Ga. Dep’t of Revenue*, 301 Ga. 552, 80 S.E.2d 225, 227 (2017).

182. *Id.* at 227; *see also* O.C.G.A. § 48-7-29.16 (2013).

pursuant to guidelines also included in the tax credit legislation.¹⁸³ Likewise, under HB 237, individuals and businesses will receive dollar-for-dollar tax credits for any donation made to the Innovation Fund.¹⁸⁴ The Innovation Fund in turn awards competitive grants to public schools giving priority to the lowest achieving schools—a group which coincidentally will be predominantly comprised of Priority Act turnaround schools.¹⁸⁵

In *Gaddy*, the taxpayers alleged the tax credit legislation violated three provisions of the Georgia Constitution: the Educational Assistance section, the Gratuities Clause, and the Establishment Clause.¹⁸⁶ However, the Georgia Supreme Court declined to rule on the merits of the taxpayers' constitutional claims, instead affirming the trial court's order dismissing all three claims for lack of standing.¹⁸⁷ The Court reasoned that the plaintiffs lacked standing because they were unable to show that they suffered a particularized injury as a result of the tax credit program.¹⁸⁸ The court said this was because the credits were not the equivalent of public funds, and they could not demonstrate an increased burden on taxpayers as a result of the credits.¹⁸⁹

The Qualified Education Tax Credit's survival was critical to the First Priority Act's own future.¹⁹⁰ Since *Gaddy* was only decided on standing grounds, it leaves the First Priority Act's funding companion, HB 237, potentially open to constitutional challenge.

183. O.C.G.A. §§ 20-2A-1 to -7 (2013).

184. O.C.G.A. § 48-7-29.21 (2017).

185. *Id.*

186. *Gaddy*, 802 S.E.2d at 228. Plaintiffs alleged that because the scholarship program funded by the tax credit donations authorized non-profit scholarship organizations to administer the program, and because the donations were treated as tax credits versus tax deductions, the tax credit program violated the Educational Assistance section of the Georgia Constitution. *Id.* Further, because the donations could be directed to private or religious-based school students, these scholarships constituted unconstitutional gratuities and were a violation of the Establishment Clause. *Id.* Finally, plaintiffs argued that because donors were given a tax credit under the program, it further violated the Gratuities Clause, which provides that "the General Assembly shall not have the power to grant any donation or gratuity or to forgive any debt or obligation owing to the public . . ." *Id.* (quoting GA. CONST. art. 3, § 6, para. 6).

187. *Id.* at 232.

188. *Id.* At 229–30.

189. *Id.* at 229–31 ("Because each of the constitutional provisions relied upon by plaintiffs involve the expenditure of public funds, and the statutes that establish the Program demonstrate that no public funds are used in the Program, plaintiffs lack standing as taxpayers to assert these claims.").

190. See Tagami, *supra* note 176 (noting that "[t]he constitutional issue [of tax credit scholarships] could influence the success of the school turnaround legislation should it become law").

However, because of the structural similarities between HB 237 and the Qualified Education Tax Credit, the Supreme Court's opinion in *Gaddy* will likely fend off numerous constitutional challenges to HB 237 that could have significantly hampered the implementation and efficacy of the First Priority Act.

Revisiting Tennessee—Lessons for Georgia

Ironically, the Georgia legislature passed the First Priority Act at a time when controversy and conflict surround its predecessor in Tennessee.¹⁹¹ The First Priority Act's inspiration, the OSD, was itself patterned after Tennessee's ASD, suggesting that many of the problems faced by Tennessee may be relevant to Georgia's new turnaround program.¹⁹² Unrest has been bubbling under the surface in Tennessee since Vanderbilt University released a report on the effectiveness of ASD in 2015.¹⁹³ The report showed no statistically significant improvement in performance in the ASD schools.¹⁹⁴ The unrest came to a head in June 2017 when the Shelby County School Board issued a resolution authorizing its attorneys to pursue legal action against ASD for the unauthorized expansion of grade levels at one of the Shelby County Schools being operated by ASD.¹⁹⁵

Shelby County's action symbolizes a broader struggle for resources and control between local boards and ASD administrators.¹⁹⁶ After several successful ASD schools planned to add additional grade levels, Tennessee lawmakers added the

191. See Jennifer Pignolet, *AG Opinions Put Memphis ASD Students in Limbo*, USA TODAY (Apr. 5, 2017, 8:39 PM), <https://www.usatoday.com/story/news/education/2017/04/05/ag-opinions-put-memphis-asd-students-limbo/100039928/>.

192. Tagami, *supra* note 7.

193. Blake Farmer, *Researchers Deem Tennessee's Achievement School District Ineffective So Far*, NASHVILLE PUB. RADIO (Dec. 8, 2015), <http://nashvillepublicradio.org/post/researchers-deem-tennessee-s-achievement-school-district-ineffective-so-far#stream/0>.

194. *Id.*; see also Grace Tatter, *Tennessee's School Turnaround District Might Lose Some Power. Here's Why*, CHALKBEAT (Dec. 12, 2016), <http://www.chalkbeat.org/posts/tn/2016/12/12/tennessees-school-turnaround-district-might-lose-some-power-heres-why>.

195. SHELBY CTY. SCS., RESOLUTION TO AUTHORIZE GENERAL COUNSEL TO PURSUE LEGAL REMEDIES AGAINST THE ACHIEVEMENT SCHOOL DISTRICT, THE TENNESSEE DEPARTMENT OF EDUCATION, THEIR RESPECTIVE OFFICERS, EMPLOYEES AND ASSIGNEES AND ASPIRE PUBLIC SCHOOLS 1 (2017), <http://www.boarddocs.com/tn/scsk12/Board.nsf/files/ANQUJ37B67AB/%24file/ASD%20Resolution%203.pdf>.

196. Pignolet, *supra* note 191.

following language to ASD's implementing legislation: "[s]chools placed in the ASD after June 1, 2017, shall only serve grades that the school served at the time the commissioner assigned the school to the ASD."¹⁹⁷ On one hand, proponents of ASD, specifically parents with children in successful programs, do not want to see children age out of success story charter schools due to bureaucratic posturing.¹⁹⁸ On the other hand, local school boards view the amendment as a measure to prevent ASD overreach into local school operations.¹⁹⁹ Meanwhile, Tennessee's children appear to be caught in the middle of a political turf war, uncertain whether they will be able to stay in their current institutions or will be forced to transfer once the legal challenges to ASD's expansion have percolated through the judicial system.²⁰⁰

Especially considering the contentious road to the First Priority Act by way of the failed OSD constitutional amendment, it is important that Georgia pay attention to the progression of Tennessee's program over the five years after its inception. One lesson that Georgia can take away from the current state of affairs in Tennessee is that the battle between state control of K-12 institutions and local autonomy will not dissolve with the successful passage of the First Priority Act. Local school boards will likely continue to resist the turnaround district's control over schools in Georgia, just like they have in Tennessee. Importantly, the collaboration between interest groups, school boards, and the State that brought the First Priority Act into existence²⁰¹ must continue so that Georgia's children do not become casualties of a political power struggle.

Legal Challenges to the Act's Intervention Process

The Act attempts to galvanize school improvement partially by employing a "carrot and stick" approach. Initially, the Act includes existing school faculty and staff in the intervention process.²⁰² The

197. TENN. CODE. ANN. § 49-1-614(c)(2) (2017); Pignolet, *supra* note 191.

198. *See, e.g.*, Pignolet, *supra* note 191 (describing a parent's view that refusal to add additional grades to their ASD charter school would be "devastating" for her children).

199. *Id.*

200. *Id.*

201. *See* House Recording 1, *supra* note 5, at 1 hr., 12 min., 55 sec.

202. *See* O.C.G.A. § 20-14-46(b)-(c) (Supp. 2017).

Act identifies many actions a turnaround coach may recommend as part of its intensive school improvement program, including “professional learning focused on student achievement for instructional and administrative staff, intervention for individual administrators or teachers, instructional strategies based on scientifically based research . . . [and] incorporation of a teacher mentoring program.”²⁰³ This cooperative model is employed for the first three years of the intervention process in any one school.²⁰⁴ However, if after three years, a school fails to show improvement, the Act requires the CTO to bring out the “stick” to induce improvement. Code section 20-14-49 directs the CTO to implement one or more drastic interventions, including complete school reconstitution, conversion of the school to a state charter school or special school, or transferring control of school operations to a private nonprofit third party or to a successful school system.²⁰⁵

If and when such harsh measures are implemented, affected parties, such as terminated staff or an ousted local school board, will likely appeal such a decision. However, such challenges are likely to be unsuccessful, considering the extreme deference Georgia’s appellate courts afford administrative decisions.²⁰⁶ The CTO is employed by the DOE, an administrative agency.²⁰⁷ Georgia courts recognize that although “[a]dministrative agencies usually are a part of the Executive Branch, and so, many agency determinations unsurprisingly are quintessentially executive in nature . . . administrative agencies also frequently have occasion to make determinations that are not purely executive in nature.”²⁰⁸ The Georgia Supreme Court recently attempted to delineate between agency determinations deemed quasi-legislative and those deemed quasi-judicial.²⁰⁹ The Court explained that those of a legislative nature are “prospective in application, general in application, and

203. O.C.G.A. § 20-14-46(c) (Supp. 2017).

204. *See* O.C.G.A. § 20-14-49(a) (Supp. 2017).

205. *Id.*

206. *See* *Pruit Corp., v. Ga. Dep’t of Cmty. Health*, 284 Ga. 158, 159–60, 684 S.E.2d 223, 225 (2008).

207. O.C.G.A. § 20-14-43(a) (Supp. 2017). *See* *Georgia v. Int’l Keystone Knights of the Ku Klux Klan*, 299 Ga. 392, 399 n.20, 788 S.E.2d 455, 462 n.20 (2016).

208. *Int’l Keystone Knights*, 299 Ga. at 400–01, 788 S.E.2d at 463.

209. *See id.*

often marked by a general factual inquiry that is not specific to the unique character, activities or circumstances of any particular person.”²¹⁰ Those of a judicial nature are “immediate in application, specific in application, and commonly involve an assessment of facts about the parties and their activities, businesses, and properties.”²¹¹ In summary, “[g]enerally speaking, an administrative determination is adjudicative in character if it is particular and immediate, rather than, as in the case of legislative or rule making action, general and future in effect.”²¹²

In the context of the Act, the CTO’s determination as to whether a school is “improving” pursuant to the Act, as well as the subsequent remedial measures the CTO chooses to impose based on such determination, constitutes an adjudicatory determination. Such a distinction is relevant in this context because a plaintiff must apply for discretionary appeal and be granted certiorari to appeal an agency’s adjudicatory determination.²¹³

When reviewing an agency’s adjudicatory determination, Georgia courts engage in a two-step process. First, the court must determine whether evidence exists to support the agency’s factual findings; courts are bound to accept the agency’s findings if any evidence exists to support those findings.²¹⁴ Second, the court must “examine the soundness of the conclusions of law drawn from the findings of fact supported by any evidence.”²¹⁵ The court may reverse or modify the agency’s decision only if:

210. *Id.* at 401 (citations omitted).

211. *Id.* (citations omitted) (punctuation omitted).

212. *Id.* (punctuation omitted).

213. *See Id.* at 403, 788 S.E.2d at 464. In 2017, the Georgia Supreme Court engaged in protracted analyses of the procedural differences implicated in the characterization of an administrative decision as quasi-judicial or quasi-legislative. *City of Cumming v. Flowers*, 300 Ga. 820, 823, 797 S.E.2d 846, 850 (2017). Georgia’s appellate courts have jurisdiction to review quasi-judicial determinations only where a party applies for discretionary appeal and is granted certiorari. *Id.*; *Int’l Keystone Knights*, 299 Ga. at 401, 788 S.E.2d at 463. Quasi-legislative decisions, however, do not require applications for discretionary review. *Int’l Keystone Knights*, 299 Ga. at 403–04, 788 S.E.2d at 463.

214. *Handel v. Powell*, 284 Ga. 550, 553, 670 S.E.2d 62, 65 (2008); *Pruitt Corp. v. Ga. Dep’t of Cmty. Health*, 284 Ga. 158, 161, 664 S.E.2d 223, 226 (2008); *Bentley v. Chastain*, 242 Ga. 348, 350–51, 249 S.E.2d 38, 40 (1978) (“[A]gencies provide a high level of expertise and an opportunity for specialization unavailable in the judicial or legislative branches. They are able to use these skills, along with the policy mandate and discretion entrusted to them by the legislature, to make rules and enforce them in fashioning solutions to very complex problems. Thus, their decisions are not to be taken lightly or minimized by the judiciary.”).

215. *Handel*, 294 Ga. at 552, 670 S.E.2d at 65; *Pruitt Corp.*, 284 Ga. at 160, 664 S.E.2d at 225

substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (1) In violation of constitutional or statutory provisions; (2) In excess of the statutory authority of the agency; (3) Made upon unlawful procedure; (4) Affected by other error of law; (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.²¹⁶

Considering this high degree of deference, plaintiffs will likely fail if they appeal the merits of the CTO's decision. A shrewd plaintiff would, instead, contest the validity of the statute at issue, especially in light of the numerous constitutional implications within the Act.

Constitutionality of the Act and Statutes Implicated by the Act

The new legislation, as well as amendments to existing legislation contained within the Act, present obvious questions of constitutionality that are worth addressing. As discussed above, Code section 20-14-49 requires the CTO to employ interventions beyond the intensive school improvement plan if, after three school years of implementing the plan, the school is not improving.²¹⁷ Most importantly, neither this Code section nor the Act itself defines exactly what constitutes "improving." Instead, the Act delegates to

(explaining that this two-step process "prevents a de novo determination of evidentiary questions leaving only a determination of whether the facts found by the [agency] are supported by any evidence") (punctuation omitted).

216. O.C.G.A. § 50-13-19(h) (2016).

217. O.C.G.A. § 20-14-49(a) (Supp. 2017). Specifically, this Code section provides:

If after three years of implementing the intensive school improvement plan developed pursuant to Code Section 20-14-46, the school is not improving, as determined by the Chief Turnaround Officer based on the terms of the amended contract, amended charter, or the intervention contract and on other applicable factors, the Chief Turnaround Officers shall require that one or more of the following interventions be implemented at the school, unless the school is in substantial compliance with the implementation of the intensive school improvement plan and has exhibited ongoing cooperation and collaboration.

Id. (emphasis provided).

the CTO the responsibility of determining what constitutes improvement and then assessing the school's progress to determine whether such progress comports with the CTO's definition of improvement. The Act indicates that this definition should be "based on the terms of the amended contract, amended charter, or the intervention contract and on other applicable factors."²¹⁸ However, the Act likewise fails to specify necessary terms of an amended contract, amended charter, or intervention contract.²¹⁹ The sole direction in the Act in regard to the amended contract, amended charter, or intervention contract indicates that such agreement "shall be for the purposes of agreeing to receive assistance"²²⁰

Notably, in states that have implemented similar legislation, "[a] primary challenge . . . is developing a common definition for success."²²¹ The Act fails to define success and, likewise, fails to specify what constitutes improvement. Rather, the Act imbues the CTO with the responsibility of determining whether a school is improving.²²² This omission raises obvious questions of delegation, that is, whether the legislature has unconstitutionally delegated to the CTO the task of legislating.²²³ Additionally, the omission leaves the door open for challenges on the basis that the statute is unconstitutionally vague.

The Georgia Constitution provides that "[t]he legislative, judicial, and executive powers shall forever remain separate and distinct; and no person discharging the duties of one shall at the same time exercise the functions of either of the others except as herein provided."²²⁴ Essentially, this provision means that the responsibility of making the law falls to the legislature, not to the CTO.²²⁵ On the other hand, "it has long been recognized that the General Assembly is empowered to enact laws of general application and then delegate to

218. *Id.*

219. See O.C.G.A. § 20-14-45(c)-(d) (Supp. 2017).

220. *Id.*

221. Daniel Kiel, *The Endangered School District: The Promise and Challenge of Redistributing Control of Public Education*, 22 B.U. PUB. INT. L.J. 341, 383 (2013).

222. O.C.G.A. § 20-14-49(a) (Supp. 2017).

223. Notably, the Act is void of legislative authorization for the DOE to promulgate rules or regulations setting forth criteria to evaluate whether a school is "improving." 2017 Ga. Laws 75.

224. GA. CONST. art. I, § 2, para. 3.

225. *Northside Manor, Inc. v. Vann*, 219 Ga. 298, 299, 133 S.E.2d 32, 34 (1963) ("[T]he legislature declares what the law *shall* be.").

administrative officers or agencies the authority to make rules and regulations necessary to effectuate such laws.”²²⁶ Given this recognition, a claimant will likely not succeed should he argue that Code section 20-14-49 unconstitutionally delegates legislative authority to the CTO or to the DOE. However, plaintiffs may find success in reframing what appears to be issues of delegation as issues of unconstitutional vagueness within the statute.

Under Georgia law, a civil statute “must provide fair notice to those to whom the statute is directed and its provisions must enable them to determine the legislative intent” to overcome a challenge of unconstitutional vagueness.²²⁷ However, where a statute does not involve “a substantial amount of constitutionally protected conduct, a facial vagueness” claim will succeed only if no circumstance exists in which the statute may be applied constitutionally.²²⁸ Most importantly, the Georgia Supreme Court has held unconstitutional statutes or regulations that afford an agency unfettered discretion in applying the statute or regulation.²²⁹ The Court’s primary concern in

226. *Dep’t of Transp. v. Del-Cook Timber Co.*, 248 Ga. 734, 737, 285 S.E.2d 913, 916 (1982); *see also, e.g.*, *State v. Moore*, 259 Ga. 139, 142, 376 S.E.2d 877, 880 (1989) (holding constitutional delegation of authority to the Department of Transportation (DOT) to determine exceptions for oversized vehicles where statute at issue required DOT to consider “the operational and safety characteristics of such vehicles and of the roadways, provided that the department may rescind any roadway designation if it is determined by the department that the public safety has been diminished or that operational problems have been increased by the actual operation of such vehicles”); *Scoggins v. Whitfield Fin. Co.*, 242 Ga. 416, 417, 249 S.E.2d 222, 223 (1978) (holding constitutional delegation of authority where the legislature enacted a statute giving the Georgia Industrial Loan Commissioner “power to make rules and regulations to accomplish the purpose and objectives” of the Georgia Industrial Loan Act because the Commissioner was not given unlimited authority to do so, and was restricted to implementing only “necessary and appropriate” rules consistent with the Act); *Alverson v. Emps.’ Ret. Sys.*, 272 Ga. App. 389, 396, 613 S.E.2d 119, 124–25 (2005) (finding constitutional delegation of authority to the Board of Trustee of the Employees’ Retirement System of Georgia to establish a method for calculating service retirement benefits where statutes granted the Board such authority and provided significant guidelines to do so).

227. *Bell v. Austin*, 278 Ga. 844, 847, 607 S.E.2d 569, 574 (2005).

228. *JIG Real Estate, LLC v. Countrywide Home Loans, Inc.*, 289 Ga. 488, 491, 712 S.E.2d 820, 823 (2011).

229. *See, e.g.*, *Thelen v. State*, 272 Ga. 81, 82–83, 526 S.E.2d 60, 62 (2000) (finding ordinance prohibiting sounds or noise which “annoys” others to be unconstitutionally vague not because “it requires a person to conform his conduct to an imprecise but comprehensible normative standard, but rather [because] no standard of conduct is specified at all,” noting that not all people are annoyed by the same conduct); *Davidson Mineral Props. v. Monroe Cty.*, 257 Ga. 215, 216–17, 357 S.E.2d 95, 96 (1987) (finding county commissioners’ resolutions void where they afforded the commissioners absolute discretion in granting or denying permits without detailing standards by which to control such discretion or provide notice to applicants of the requirements to obtain permits); *Arras v. Herrin*, 255 Ga. 11, 12, 334 S.E.2d 677, 678–79 (1985) (holding unconstitutionally vague a county ordinance that

such cases is the lack of standards set forth within the statute or regulation. Without such standards, the agency has no guidance upon which to base its opinion, and citizens affected by the statute or regulation have no criteria by which to judge their own conduct.

The Act contains no standards by which to judge whether a school is improving. Schools are deemed “turnaround eligible” if they perform within the lowest five percent of schools in the state, as assessed pursuant to the state’s accountability system.²³⁰ However, as discussed above, nowhere does the Act iterate what exactly constitutes success or improvement. Instead, improvement is determined by the CTO. The Act does not require the CTO or the DOE to provide local school districts with any information regarding their progress toward improvement.²³¹ Improvement can be defined in many different ways, and its definition is likely to vary from person to person. Because the Act fails to provide any definite standards by which to measure improvement and instead leaves the determination solely to the CTO, plaintiffs may find success in challenging this Code section as unconstitutionally vague.

Overall, while the First Priority Act seems to address many of the initial concerns with Governor Nathan Deal’s (R) original 2015 OSD proposal, the coast is not clear yet. Implementing these changes may create its own set of challenges. Further, only time will tell whether the Act will lead to the desired school improvement and withstand constitutional challenges.

Eleanor F. Miller & Heather E. Obelgoner

afforded county commissioners “absolute discretion” in issuing liquor licenses).

230. O.C.G.A. § 20-14-45(a) (Supp. 2017).

231. *See generally* 2017 Ga. Laws 75. Code section 20-14-49.2 requires the CTO to prepare biannual updates on the status of each school in which the CTO has implemented an intervention plan. O.C.G.A. § 20-14-49.2(a) (Supp. 2017). The CTO is required to present such updates to the House and Senate Education Committees twice per year. *Id.* Additionally, the CTO is required to meet with the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, the chairpersons of the House Committee on Education and the Senate Education and Youth Committee, the State School Superintendent, and the Education Turnaround Advisory Council. O.C.G.A. § 20-14-49.2(b) (Supp. 2017). Conspicuously absent from this list are members of local school boards with authority over the schools subject to the turnaround plan.