

Educational Assistance Authority and Community Schools Act of 2012

In 2011, the Supreme Court of Georgia ruled that it had been unconstitutional for the Georgia General Assembly to create by legislation a Georgia Charter Schools Commission, the purpose of which had been to award charters to qualified petitioners for the creation and management of public charter schools. The Court decided that, under the Constitution of Georgia, the local public school districts had the exclusive authority to control and manage local public schools. Thus, in the Court's opinion, if local school districts were failing to adequately education children, the State of Georgia, which is responsible for providing an adequate public education to its citizens, would not be able to provide an alternative for educating children.

During the 2012 Session of the Georgia General Assembly, a debate was taking place over the possible passage of an amendment to the Constitution of Georgia that would permit the State to create a Charter Schools Commission that would be able to award charters for the creation and operation of public charter schools. During the session, as it became apparent that a constitutional amendment proposal might not pass, several Republican leaders and the Georgia Public Policy Foundation ("GPPF") asked GPPF Senior Fellows Jim Kelly and Ben Scafidi to write a "white paper" examining the correctness of the Court's decision and providing some alternative options.

In researching the issue, Jim Kelly learned that, during the late 1960s and early 1970s, there had been a push for "community schools" in urban areas. Like charter schools, these community schools would be operated independent of the local school district, would provide innovative learning methods designed to meet the unique needs of a community, and would provide after-school social and medical services that would improve the lives and outcomes of the children and families served by the schools. Some community school supporters proposed that parents be provided with public funds, or "vouchers," to attend the community schools of their choice.

In the resulting white paper, which follows, Jim and Ben Scafidi updated the original community schools concept and applied it to the Georgia context. Under the Georgia Constitution, the state may award education assistance grants to students to use for K-12 educational purposes. In their paper, and in their draft legislation, Jim and Ben

proposed that the legislature create an Educational Assistance Authority that could award parents educational assistance grants to use at the community schools of their choice. To qualify for receipt of the educational assistance grants from parents, although operating independent from the control and management of the local school district, the community schools would be required to operate with a higher degree of transparency and accountability to the State than is required by private schools.

Although the Georgia General Assembly never voted on the Educational Assistance Authority and Community Schools Act of 2012, negotiations over the possible adoption of the Act prompted concerned moderate Republicans and Democrats (who were concerned about the approval of vouchers even in the context of state charter schools) to support a proposed amendment to the Georgia Constitution that would allow the Georgia voters to consider whether to permit a state Charter Schools Commission to award charters to independent public charter schools. The proposed constitutional amendment passed, was placed on the November 2012 state-wide ballot, and was overwhelmingly approved by Georgia voters.

Educational Assistance and Independent Community Schools

Why Georgia Is Uniquely Positioned to
Realize the Vision of Civil Rights Leaders Who Sought
Community Control Over K-12 Education in America

James P. Kelly, III and Benjamin Scafidi*

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Abstract

By 1970, civil rights leaders and social scientists had recognized that top-down, centralized, and bureaucratic public school systems in large cities across America were failing to adequately educate children, primarily minority children. As a solution to this educational deficiency, and to address the need for the delivery of education and other social services in a holistic manner in which parents and other members of a community could participate, concerned parties called for the public funding of independent community schools.

Although there was no long-term sustainable response to this call to action, shortly thereafter, the people of Georgia amended the Georgia Constitution to permit the state to award educational assistance grants to students and parents of students to use for educational purposes. Now that the Georgia Supreme Court has decided that local public school systems have *exclusive* control over public education in Georgia, it is critical for the state to explore all available options for discharging its obligation to provide for the adequate public education of its citizens.

Absent a corrective constitutional amendment vesting the state with at least shared authority to deliver public K-12 education in Georgia, many state mandates that have long been staples of Georgia's public education system are constitutionally suspect, including requirements for small class sizes; minimum teacher salaries; fair dismissal rights for teachers; curriculum, testing and accountability requirements; financial transparency requirements; and local school board governance requirements.

Unless and until the state of Georgia amends its constitution, the state must (a) rely on local public school boards and the voters who elect them to embrace meaningful education reforms and accountability measures; (b) increase the annual cap on Georgia Education Expense Credits that grant taxpayers a state income tax credit for their contributions to qualified student scholarship organizations that provide scholarships to students who desire to transfer to the private K-12 schools of their parents choice; (c) amend the Georgia Constitution to authorize the state to create state-funded special schools beyond the narrow categories established by the Court's decision (i.e., schools

for blind or deaf students) and to grant the state shared authority with local public school boards over public education in Georgia ; or (d) find a creative legislative solution.

In this paper, the authors propose that the state exercise its constitutional authority to award educational assistance grants to parents to use for educational purposes to educate their children at qualified community schools that operate in a manner that is more transparent, with greater public accountability, than is the case with traditional private schools.

I. 1970: Civil Rights Leaders Recognized the Need for Publicly Funded Community Control in Urban K-12 Education

“Community Control” is to be understood as a demand for school accountability by parents to whom the schools have never accounted. It is a demand that their children be respected as human beings with the potential all normal children have and that they be taught by those hired for the purpose of teaching. It is a demand that the schools cease finding scapegoats and stop making excuses for their failure by claiming that these children are uneducable or too “disruptive” or too “culturally deprived” to respond.

Kenneth B. Clark¹
Community Control and the Urban School (Forward) (1970)

In their classic treatise *Community Control and the Urban School* (1970), Mario Fantini, Marilyn Gittell, and Richard Magat, described the failure of urban public school districts to adequately educate many minority children and offered the “community-control” concept as an alternative K-12 education delivery model. Fantini and Magat had worked together at the Ford Foundation in New York City, which had played a role in the first phase of the events that brought public school decentralization and community control to prominence. The two of them met Marilyn Gittell when the three served together as advisers or staff members on New York City Mayor John Lindsay’s Advisory Panel on Decentralization of the New York City Schools.

In explaining the brief history behind the call for community control in K-12 education, Fantini, Magat, and Gittell explained how the Federal 1964 Economic Opportunity Act declared that community-action programs should be “developed, conducted and administered with the maximum feasible participation of residents of the area and members of the groups served.” (p. 10) They further observed that, even before the Economic Opportunity Act, civil rights organizations had started to protest urban renewal and other “improvements” designed by external forces in which the people played no part. (p. 12) Instead of top-down reforms mandated by centralized poverty-

¹ The research of Dr. Kenneth Clark and his wife, Dr. Mamie Clark, influenced the United States Supreme Court to hold school segregation to be unconstitutional in the 1954 U.S. Supreme Court case *Brown v. Board of Education*.

relief agencies, there was an appreciation at the grassroots level for the fruits of “functional participation”—the benefits derived by having those affected by the programs directly and meaningfully involved in the impacted communities. When functional participation occurred, “the poor generally gained experience in documenting and voicing their complaints and in selecting their representatives for community bodies.” (p. 12)

But, as the authors explained, the desire for power was intertwined with the need for a decentralization of services:

Coinciding with an awakening desire among the urban poor for power is a trend toward decentralization of services. This impetus, however, is more a matter of administrative efficiency than of responsiveness to community desire. It recognizes the difficulty of prescribing at the center uniform rules and procedures that can apply equally effectively across the whole of a large and diverse city. It acknowledges, furthermore, the deadening effect on the initiative and creativity of personnel, to say nothing of morale, in centralized decision-making on all matters. (p. 13)

In later chapters, the authors explained how increased stakeholder participation in a community school enhances their self-esteem and is “the paramount way of preserving the democratic process in the schools as in other public institutions.” (p. 174) They argued that the basic reform of a public institution does not simply consist of apparent improvements in the quality of its professional functions; but, also, on the strength of the political process through which the institution is governed. “The improvement of professional function without democratic process is technocracy.” (p. 175) In their opinions, the failure of many purely pedagogical reform movements in public education “may be traced to the absence of participation by parents and the community.” (Id.)

The authors explained that parents and others in the school community serve an important role as a “fresh pair of eyes.” Though they may lack backgrounds in educational theory and practice, “this does not prevent them from driving relentlessly to the core of fundamental issues in school policy.” In fact, “their freedom from some of the ponderous baggage with which professionals are burdened enables them to point to

the emperor's nakedness more readily than many career specialists in education or child development." (p. 231)

One of the solutions offered by the authors was the independent community school.

Mounting frustration with efforts to reform the urban school structure in many of the large cities has stimulated development of an alternative or parallel system of private schools based on the community-control concept. *These schools, generally located in ghetto areas, are established apart from the public system but often rely on public funding, either from state day-care or federal Head Start or Follow-Through programs; several have also received foundation support.* (p. 229-230) (emphasis added)

Thus, in 1970, these three social scientists, foundation leaders, and education reformers explained the civil rights origins of the community school movement and suggested that the government could publicly fund the choices of parents to educate their children at private community schools—schools that were willing to operate in a transparent manner, with accountability to parents and the broader community.

Because of 1) a recent decision of the Supreme Court of Georgia that undermines the state's involvement in public education, and 2) an express provision in the Georgia Constitution permitting the state to provide educational assistance grants to students for K-12 education, the Georgia legislature has a reason and opportunity to revive the 40-year old proposal for independent community schools.

II. 1976 and 1983: The Georgia Constitution is Amended to Permit the State to Award Educational Assistance Grants to Students and Parents of Students for Educational Purposes

An education established and controlled by the State should only exist, if at all, as one among many competing experiments, carried on for the purpose of example and stimulus to keep the others up to a certain standard of excellence.

John Stuart Mill
On Liberty (1859)

In 1976, the Georgia Constitution was amended to include the following Article X (Retirement Systems and Educational Scholarships), Section II, Paragraph II:

Grants for Education. Notwithstanding any other provision of this Constitution, the General Assembly may by law provide for grants of State, county or municipal funds to citizens of the State for educational purposes, in discharge of all obligation of the State to provide adequate education for its citizens.

Obviously, this provision contemplated the possibility that, in the future, instead of relying exclusively on local school systems to deliver an adequate public education to the children of Georgia, the state could discharge this obligation by providing publicly funded grants to parents for the education of their children.

In 1983, the people of Georgia amended the Georgia Constitution by transferring the above provision to Article VIII (Education), Section VI, Paragraph I, and amending it (in pertinent part) to read as follows:

Grants for Education. Pursuant to laws now or hereafter enacted by the General Assembly, public funds may be expended for any of the following purposes:

(1) To provide grants, scholarships, loans, or other assistance to students and to parents of students for educational purposes.

Thus, the educational assistance grant provision was amended in the following critical ways:

1. The amendment makes it possible for the state to use any source of public funds for the provision of educational assistance grants;
2. The permitted type of educational assistance was expanded from grants to include scholarships and loans;
3. The provision specifically names students and parents of students as possible recipients of educational assistance grants;
4. The provision eliminated the requirement that educational assistance be used for the discharge of *all* obligation of the state to provide adequate education for its citizens; thereby contemplating that the state could provide financial assistance to local school systems, while at the same time, provide educational assistance

grants to students and parents of students to use for educational purposes at the public or private schools of their choice.

The 1983 amendment makes it abundantly clear that the Georgia General Assembly and citizens of Georgia contemplated the possible use of public funds in support of choices made by parents for the K-12 education of their children at the public or non-public schools of their choice. Thus, the 1976 and 1983 educational assistance grant provisions recognized the growing inability of large urban public school systems to adequately educate their students; the growing demand by civil rights leaders to receive public funds for the education of minority children in independent community schools; and the hesitancy of state officials to rely exclusively on local public school systems for the delivery of public education.

The 1976 and 1983 education assistant grant provisions, and the possibilities they provide for replacing, or serving as an alternative to, continued state funding of inefficient and ineffective local public school systems, evidenced political awareness of the national problem articulated by the National Commission on Excellence in Education in *A Nation at Risk*, published in 1983:

If an unfriendly foreign power had attempted to impose on America the mediocre educational performance that exists today, we might well have viewed it as an act of war.

As America approaches the 30-year anniversary of the publication of *A Nation at Risk*, have large, centralized urban public school systems improved or gotten worse? Will Georgia choose to implement the education assistance grant provisions adopted in the 1976 and 1983 Georgia Constitutions and empower local communities; or, will it “double down” on the funding of local public school systems which, due to a recent decision of the Georgia Supreme Court, the state can no longer directly or indirectly control or hold accountable?

III. 2011: The Georgia Supreme Court Decided that the State of Georgia Has no Authority Over K-12 Public Education

The constitutional history of Georgia could not be more clear that, as to general K-12 public education, local boards of education have the exclusive authority to fulfill one of the "primary obligation[s] of the State of Georgia," namely, "[t]he provision of an adequate public education for the citizens."

Chief Justice Carol Hunstein
Supreme Court of Georgia
Gwinnett County School District et al. v. Cox (2011)

Unless and until the Georgia Constitution is amended, the era of direct or indirect state control over public K-12 education is over.

For decades, the state has invested billions of dollars in local public schools. In doing so, the state assumed that the State Board of Education and local public school boards were partners under the Georgia Constitution for providing the adequate public education to citizens required under the Constitution. To render that partnership an effective one, through the years, the legislature has enacted laws and the state school board has promulgated rulings and regulations that mandated certain programs and policies at the local school district level.

Along the way, the legislature passed laws permitting local school boards to approve public charter schools to add some innovation, parental and community involvement, and competition in public education. When local school boards started rejecting qualified charter school applicants, the legislature authorized a state charter schools commission to award charters to state-chartered schools that would receive state funding, which would be offset against funds that are normally awarded to local public school districts.

In May 2011, the Supreme Court of Georgia decided that the Georgia Charter Schools Commission Act of 2008 was unconstitutional. In doing so, the Court decided that, since 1877, each Georgia Constitution has granted local boards of education the exclusive right to establish and maintain, i.e., the exclusive control over, general K-12 public education. The Court determined that state-chartered public schools are not "special schools" and, if treated as such, would enable the state to create a system of

public schools that would unlawfully compete with local public schools in contravention of the Georgia Constitution.

Because, under the Georgia Constitution as interpreted by the Georgia Supreme Court, local boards of education have *exclusive* control over K-12 public education in Georgia, the state has no constitutional authority to control, manage, or regulate public education in Georgia. The state-local partnership in K-12 education is officially a one-way street, with state money flowing to local public schools with no strings able to be attached.

By virtue of the Court's decision, as only a short list of examples, the following state mandates and interventions in local public education would appear to be *prima facie* unconstitutional:

- Mandating that local public schools teach the nationally recognized Georgia curriculum²
- Mandating that local public schools administer any exams, including state-created exams based on the Georgia curriculum such as CRCTs, EOCTs, etc.
- Requiring that public schools report financial and academic data to the state
- State interventions or sanctions for low academic achievement, educator cheating on state exams, or financial mismanagement
- The 2010 school board governance bill, SB 84, that among other things standardizes board ethics policies and board training, clarifies the law regarding the roles and responsibilities of superintendents and board members, creates minimum qualifications for school board candidates, and gives the state the ability to appoint responsible citizens to serve on school boards when existing members put school district accreditation in jeopardy
- SB 184 which bans last-in first-out (LIFO) and has passed both legislative bodies and awaits the Governor's signature—the prohibition against using seniority as the sole determinant when there are teacher layoffs
- Requiring that Georgia teachers receive fair dismissal rights (tenure)
- Requiring that local public schools have small class sizes

² In 2006, the Thomas B. Fordham Institute ranked the state of Georgia's curriculum (the Georgia Performance Standards) as tied for 5th best in the United States.

- Requiring that teachers be paid at least as much as the state salary schedule
- Requiring that local public schools hire only certified teachers
- Requiring that state taxpayer funds appropriated for media centers be spent on media centers, that state funds appropriated for counselors and social workers be spent on counselors and social workers, that state funds appropriated for technology be spent on technology, etc.

On the surface, the Court's decision is, philosophically, a conservative one, in that it limits the power of a higher level of government in order to preserve the power of a lower level of government. In theory, if not in practice, a local school board elected by the voters of a community should be more responsive and accountable to those voters than a state school board, the members of which are appointed by the Governor.

Yet, following the conservative line of thought, most voters expect their state government to conduct its core functions in an efficient and effective manner, with scarce taxpayer dollars being used to achieve a maximum "return on investment." Now that the state has no authority to ensure that local school systems are doing their best to help the state satisfy its constitutional obligation to adequately educate its citizens, prudent legislators must consider other options.

Thus, the state is subject to two opposing litigation possibilities: 1) the possibility of lawsuits from teacher groups and local school systems to eliminate unconstitutional state mandates pertaining to local public schools and 2) the possibility of taxpayer and parent lawsuits arguing that, by failing to hold local school districts accountable for results, the state is failing to adequately educate its citizens.

To avoid these actions, and to fulfill its legal and moral obligation to make every effort to adequately educate its citizens, the state must employ whatever means are available to it. The alternatives include:

1. Continuing to rely on local public school systems, with the hope that the Georgia Supreme Court's confirmation of their exclusive authority over public education in Georgia will focus and improve their efforts, and will motivate voters to hold local school boards accountable for results.

2. Increasing the annual allotment of Georgia Education Expense Credits (i.e., tuition tax credits) made available to taxpayers for their contributions to qualified student scholarship organizations for the education of children at the pre-K-12 private schools of their parents' choice. As a result of an automatic annual increase tied to the Consumer Price Index, the annual cap on Education Expense Credits, originally set at \$50 million, will be approximately \$51.5 million in 2012. By way of comparison, legislation has been introduced in Florida that would raise the annual cap on state corporate income tax credits under the Florida pre-K-12 tuition tax credit program from \$140 million to \$250 million.
3. Amending the Georgia Constitution to authorize the state to create state-funded special schools beyond the narrow categories established by the Court's decision (i.e., schools for blind or deaf students) and to grant the state shared authority with local public school boards over public education in Georgia.
4. Passing a law that would establish a Georgia Educational Assistance Authority that would provide educational assistance grants to parents to use for educational purposes at the qualified K-12 independent community schools of their choice. To qualify for the use by parents of their educational assistance grants, these private, non-profit community schools would be required to adhere to state requirements for transparency and information reporting that would enable parents to make informed decisions regarding the programs, policies, and effectiveness of the community schools. In essence, independent community schools, at which parents could use their publicly funded educational assistance, represent a "third way"—a new education model unique to Georgia that could become a national model for community-based schools.

IV. 2012: Georgia Is Uniquely Positioned to Realize the Vision of Civil Rights Leaders by Providing Educational Assistance Grants to Parents to Educate Their Children at Community Schools That Operate in a Transparent Manner That Facilitates Accountability to Parents and the Public

The Americans make associations to give entertainments, to found seminaries, to build inns, to construct churches, to diffuse books, to send missionaries to the antipodes; in this manner they found hospitals, prisons, and schools. If it is proposed to inculcate some truth or to foster some feeling by the encouragement of a great example, they form a society. Wherever at the head of some new undertaking you see the government in France, or a man of rank in England, in the United States you will be sure to find an association.

Alexis de Tocqueville

Democracy in America, Volume II (1840)

For the following reasons, unlike any other state in the Nation, Georgia is uniquely positioned to lead the effort to realize the 40-year old vision of civil rights leaders to promote community control over K-12 education:

1. Atlanta, Georgia is internationally recognized as the epicenter of the U.S. civil rights movement and will be the site of the new National Center for Civil and Human Rights.
2. Yet, recent challenges and disappointments relating to the management of the Atlanta Public Schools system highlight the sad fact that, since the concept of independent community schools was raised in 1970 and ignored thereafter, many local public school systems are failing to adequately educate their students and, just as importantly, help build strong communities.
3. During the past few years, the state was making progress in identifying, and granting charters to, community-based public charter schools that local public school boards had rejected.
4. The Supreme Court of Georgia has forced the state to contemplate alternatives for financing the K-12 education of its citizens outside of local public schools, which it can no longer directly or indirectly control or manage.
5. The state has the ability to implement an educational assistance grant program, which was added to the Georgia Constitution at the height of the debate over the failings of a centralized, bureaucratic approach to public education and proposals for publicly-financed community control over K-12 education.

The provision of educational assistance grants to parents who choose to use them at qualified independent community schools would serve two purposes. First, it would eliminate the state's complete dependence on centralized local public school systems to deliver an adequate public education to children in Georgia. Second, it would empower parents, educators, business leaders, non-profit foundations, and others to examine the education and social service needs of their communities and build holistic community schools that would be responsive to the learning and other needs of families.

The Georgia Supreme Court's decision has caused a lot of people to think hard about the respective responsibilities of state and local school boards and parents in the education of children. The Court's decision has created an incentive and opportunity for officials to "think outside the box" about how, without creating and operating public schools that compete with local public schools, the state can fulfill its primary obligation to provide its citizens with an adequate public education. The result is the use of educational assistance grants to empower parents to choose a new option for the education of their children, which, because it originates in the independent actions of parents, educators, and their communities (and not with state officials or local school boards), is called a "community school."

V. The Georgia Educational Assistance Authority and Community Schools Act of 2012

The working title of a proposed law to effectuate this new model for K-12 education is the Georgia Educational Assistance Authority and Community Schools Act of 2012 (the "Act").

Under such a law, educational assistance grants could only be used at nonsectarian schools that agree to operate in a manner that is more transparent and accountable to the public than is the case with traditional private schools. It would be the responsibility of a new Georgia Educational Assistance Authority (the "Authority"), as expressly provided for in the Georgia Constitution, to develop guidelines pertaining to the qualification of community schools.

Community schools would be created and operated by public corporations, not by a state or local school board or agency. A "public corporation" (a term expressly used in

the Constitution in contemplation of the awarding of educational assistance grants to students or parents) could be defined in law to mean “a nonprofit corporation duly created under the laws of the State of Georgia; exempt from Federal income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended; authorized under Article VIII, Section VII, Paragraph III of the Constitution of Georgia to administer educational assistance; and, which, in the opinion of the Authority, is qualified to use educational assistance received from students or parents of students to build, maintain, or operate a community school.”

A “community school” could be defined to mean “a school established and maintained by, and under the control and management of, a public corporation and the capital costs and operations of which are funded, in whole or in part, by students or parents of students who decide to use educational assistance to attend the school.” The term “community school” would not include home study programs or schools, sectarian schools, religious schools, private for-profit schools, a state special school or any other school established and maintained by the state, or a public school that is part of a local school system.

By creating a state authority to award educational assistance grants to parents, the State would merely be using one of the tools available to it under the Constitution to meet its primary obligation to provide an adequate public education to its citizens. Under the Act, the Authority would not create, fund, manage, or control public schools; it would merely be setting forth the conditions to which a public corporation must agree in order to qualify a community school for the receipt of educational assistance grants from parents. It is a public corporation that would decide whether to create and operate a community school and to apply to the Authority to have the community school it operates become qualified to receive educational assistance from parents. It is parents who would decide whether to use their educational assistance grants at a qualified community school. Since it is up to parents to independently decide whether to use state educational assistance grants at a community school, the State would not be deemed to be supporting the community school (which would also be created as a result of the independent decision of the organizers of a public corporation to operate a school). The decisions of the Supreme Court of the United States in the cases of *Zelman v. Simmons-Harris* 536

U.S. 639 (2002) and *Mitchell v. Helms* 530 U.S. 793 (2000) support this analysis and conclusion.

Although the state could not control or manage community schools, they would be held to higher standards of transparency and public accountability than is the case with respect to traditional private schools. In order to become eligible for the receipt of educational assistance grants from parents, community schools would have to provide information to the state regarding the degree to which they are meeting voluntary education policy and performance goals established by the state. This provision of this information will empower parents to determine whether they wish to use their educational assistance grants at a particular community school. Although a qualified community school would be managed and controlled by a private, nonprofit, tax-exempt corporation, among other things, the Act would provide that the school must be 1) nonsectarian and nonreligious; 2) subject to all federal, state, and local rules, regulations, court orders, and statutes relating to civil rights; 3) accredited (or pursuing accreditation) by a state-recognized accrediting agency; and 4) subject to an annual financial audit conducted by an independent certified public accountant licensed in Georgia.

The law would require that these public corporations be incorporated as non-profit corporations under Georgia law and qualify as 501(c)(3) tax-exempt organizations. These two steps alone will require: the appointment of a Board of Directors; a publicly-disclosed educational mission and bylaws; the filing and disclosure of annual returns with the Georgia Secretary of State and Internal Revenue Service; the disclosure of financial results; and the dedication of funds for exempt purposes. In addition, as a condition of becoming eligible for the receipt of educational assistance grants awarded to parents, the Authority could impose additional conditions designed to enhance the public transparency and accountability of the public corporations.

The duties of the Authority would include, but not be limited to, 1) the duty to develop and promote voluntary high standards of accountability for community schools; 2) the duty to develop, promote, and disseminate voluntary best practices for community schools; 3) the duty to monitor and annually review and evaluate the financial performance, including revenues and expenditures, of qualified community schools; and 4) the duty to publish such information regarding education policy and performance goals

that would enable parents, through decisions regarding the use of educational assistance grants, to hold the schools accountable for their performance. Each year, each qualified community school would have to information to the Authority that, when published, would enable parents and others in the general community to determine the degree to which the school is meeting state-recommended education policy and performance goals. It is based on the information contained in these public reports that parents could make informed decisions about whether to enroll their children at a community school and foundations and businesses could determine whether and to what extent they desire to support a community school.

Community schools would not be public schools, as they would not be established (through a charter or otherwise) or controlled by the state or local government. That said, once the state awards educational assistance to students or parents of students to use for educational purposes (as permitted by the Constitution), it is necessary for the state to take steps to ensure that the educational assistance is being used for educational purposes and is helping fulfill the state's primary obligation to provide for the adequate education of its citizens. The most effective way for doing so is to provide parents with detailed information regarding the degree to which the community schools are meeting voluntary education policy and performance goals established by law and by the Authority. Frankly, it would be irresponsible for the state to award educational assistance to students and their parents to use for educational purposes without implementing some safeguards to promote transparency and accountability on the part of the community schools chosen by them.

Parents could not use their educational assistance grants at traditional private schools. Thus, the educational assistance grants awarded under the Amendment would not be so-called "vouchers" that parents could use to send their children to private schools. Community schools would be subject to higher levels of public transparency and accountability than private schools.

The amount of each educational assistance grant awarded to a student or parents of a student in any given year for use at a community school would be equal to the average state and local expenditures per student in fall enrollment in public elementary and secondary education *for the local school system to which the student would otherwise*

be assigned by virtue of the permanent residence address of the custodial parent of the student. The Department of Education would determine and publish (relative to each local public school system) this amount annually, no later than January 1. Community schools would not be permitted to charge per pupil tuition and fees in an amount that exceeds the educational assistance grant available to individual students.

The total allotment of state funds for the local school system in which a student attending a community school resides would be reduced by the amount of the educational assistance provided to the student who would have otherwise attended a local public school. Based on evidence from over a dozen studies of a variety of school choice programs, the academic achievement of students who remain in local public schools is either enhanced or unaffected by school choice programs where the money follows the child to the school of his or her family's choice.

Local public school systems would still be able to convert existing public schools into public charter schools or award charters to public charter schools operated by independent groups.

The reality is that it is critical for the State to do all that it can to increase parental choices in education. Georgia has long lagged in national rankings of educational outcomes. The creation of a strong charter school law in Georgia was an important step in rectifying this situation. The creation of the Georgia Charter Schools Commission, with its ability to authorize and fund charter schools throughout the state, was an important development. However, the Court's decision was a major step backward in the state's effort to fulfill its primary obligation under the Constitution to provide for the adequate public education of its citizens. The children of Georgia deserve a legislative solution as quickly as possible and the Georgia Educational Assistance Authority and Community Schools Act of 2012 is a reasonable one that, while respecting the Court's decision, offers an innovative approach.

VI. Possible Supporters of this Idea

The creation of a Georgia Educational Assistance Authority to award educational assistance grants to parents to use at community schools for the education of their children would be a bold and decisive step forward by the state in realizing greater

community control over K-12 education in Georgia. Fortunately, there are competent and credentialed individuals who might be willing to speak to the members of the Georgia General Assembly regarding this exciting proposal. These could include representatives from:

1. The Black Alliance for Educational Options, who could speak to the history behind the community schools movement and the importance of community-based schools to minority families.
2. Ivy Preparatory Academy, who could provide inspiring stories about the successes at this high performing state-chartered school that is at risk of losing its public funding.
3. Georgia Public Policy Foundation, who could explain that the Foundation could produce annual report cards on community school performance.
4. The former Georgia Charter Schools Commission, who could testify as the manner in which the Authority could hold community schools accountable via transparency and information reported on a public website.
5. Georgia Charter School Association, who could explain how the work of the Association could be expanded to develop, implement, and evaluate best practices for community schools, encourage community schools to take corrective action when necessary, and inform parents about the best practices and status of Georgia's community schools.
6. Georgia Chamber of Commerce, who, in addition to explaining the vital link between education and economic development, could testify about how business leaders, so long hesitant to become involved in top-down, complex public education systems, would welcome the opportunity to become valued members of community school boards and provide helpful advice regarding governance, financial, marketing, fundraising, and public disclosure issues.

In addition to the possibility of representatives from these well-regarded groups, an education law attorney could be made available to discuss the implications of the Georgia Supreme Court ruling, the educational assistance grant provisions of the Georgia Constitution, and the possible provisions of the Act.

VII. Conclusion

We must always help time and realize that the time is always right to do right.

Martin Luther King, Jr.

Speech at Western Michigan University (1963)

There is a silver lining in the Georgia Supreme Court’s 2011 decision—Georgia lawmakers have a unique opportunity to revive and implement the visionary idea that civil rights leaders and social scientists had in the late 1960s of community control over K-12 education. It is rare to have a chance to take advantage of a missed opportunity; however, a confluence of events has Georgia positioned to “make lemonade out of lemons.”

Unless remedied through legislation or a constitutional amendment, the Court’s decision makes it impossible for the state to hold local public school systems accountable for results from the state’s investment of millions of dollars in local public schools. In response, Georgia should explore all available options.

Specifically, the Georgia General Assembly should:

- Amend the Georgia Constitution to restore a meaningful role for the state in K-12 public education;
- Pass legislation that provides state funded educational assistance grants to parents for use at qualified community schools; and
- Increase the annual cap on Georgia Education Expense Credits, which was reached in 2011, to at least \$62.5 million, with an annual upward adjustment of 25% in any year following a year in which the cap was reached.

By taking all of these actions, the Georgia General Assembly would send a clear signal to its citizens that the state takes seriously its constitutional and moral obligation to adequately educate the children of Georgia. Legislators would also be providing parents with greater opportunities to make informed choices about what they determine to be the best approach for the education of their children.

As Georgia legislators work on these critical issues, they can do so in the knowledge that there is broad expert and well-organized grassroots support in Georgia, and nationally, for all of the above-solutions.

About the Authors

James P. Kelly III

Jim Kelly is an education law and international human rights attorney with Solidarity Center for Law and Justice, P.C., an Atlanta-based public interest civil and human rights law firm. He was the primary author of the Georgia Charter Schools Act of 1998 and Founder of Georgia GOAL Scholarship Program, Inc. Jim has authored three *amicus curiae* briefs, which were filed in the Supreme Court of the United States with respect to educational and religious liberty cases. In 2005, President George W. Bush appointed Jim to serve as a representative on the United States National Commission for the United Nations Educational, Scientific and Cultural Organization (“UNESCO”). In that capacity, he was appointed by the U.S. State Department to serve for four years as the Chairman of the National Commission’s Social and Human Sciences Committee. Jim is a Senior Fellow at the Georgia Public Policy Foundation and serves as a member of the Georgia Board of Juvenile Justice. He serves as Director of International Affairs for the Washington, D.C.-based Federalist Society for Law and Public Policy Studies. He earned a BBA and law degree from the University of Georgia and has earned three Masters degrees in taxation, non-profit management, and international relations. Jim is married to Lisa Kelly, has two adult daughters, and resides in Alpharetta, Georgia.

Benjamin Scafidi

Ben Scafidi is professor of economics and director of the Economics of Education Policy Center at Georgia College & State University. He is also the Director of Education Policy for the Georgia GOAL Scholarship Program, a Senior Fellow with the Georgia Public Policy Foundation, and a fellow with the Friedman Foundation for Educational Choice. Previously, he served as the first chair of the state of Georgia’s Charter Schools Commission, the Education Policy Advisor to Governor Sonny Perdue, on the staff of both of Governor Roy Barnes’ Education Reform Study Commissions, and as an expert witness for the state of Georgia in school funding litigation. He received his Ph.D. in Economics from the University of Virginia and his bachelor’s degree in Economics from

the University of Notre Dame. Ben and Lori Scafidi and their four children reside in Milledgeville, Georgia.

Explanation of the Educational Assistance Authority and Community Schools Act of 2012

Q. What is the Educational Assistance Authority and Community Schools Act of 2012 (“EAACSA”)?

A. The EAACSA is a proposed amendment to the Charter Schools Commission Act, which amends Title 20, Chapter 2, Article 31A of the Official Code of Georgia Annotated and renames it the “Educational Assistance Authority and Community Schools Act of 2012.” The EAACSA creates the Georgia Educational Assistance Authority, a state authority (the “Authority”). Pursuant to an express provision in the Constitution of Georgia, under the EAACSA, the Authority is authorized to award educational assistance grants to students or parents of students to use for educational purposes at community schools created and operated by non-profit, tax-exempt public corporations. To become qualified to receive educational assistance from parents, a public corporation must apply to the Authority and agree to meet certain conditions regarding the governance, operations, and results of the community school. A copy of the most recent draft of the EAACSA is attached hereto as Exhibit “A.” A “marked up” version of the amendments made to the Charter Schools Commission Act is attached hereto as Exhibit “B.”

Q. Why is the EAACSA necessary?

A. In 2011, the Supreme Court of Georgia decided that it was unconstitutional for the Georgia Charter Schools Commission to authorize and fund state-chartered special schools that would compete with public schools operated by local school districts. In reaching its decision, the majority determined that the charter schools authorized by the Commission and funded by the State were not "special schools," which the State is authorized to create and fund under the Constitution of Georgia (the “Constitution”). Unless remedied through legislation or a constitutional amendment, the Court’s decision significantly interferes with the ability of parents to decide where to secure an adequate public education for their children, an outcome that negatively impacts the State’s ability to meet its constitutional obligation to provide an adequate public education to its citizens.

Q. What is an “educational assistance grant?”

A. Article VIII, Section VII, Paragraph I (a) of the Constitution provides that, pursuant to laws enacted by the General Assembly, public funds may be expended to provide grants, scholarships, loans, or other assistance to students or parents of students for educational purposes. Article VIII, Section VII, Paragraph III provides that public authorities or public corporations created for the purpose of administering educational assistance may exercise such powers as may be provided by law.

The EAACSA authorizes the Authority to award educational assistance grants to parents to use for educational purposes at community schools operated by public corporations that agree to comply with certain conditions relating to their governance, operations, and results.

The awarding of educational assistance grants directly to parents who choose to use them at a qualified community school operated by a public corporation eliminates the practice of the Georgia Charter Schools Commission to authorize and fund charter schools as "special schools," a practice precluded by the Court's decision. In essence, the EAACSA is designed to provide parents with the opportunity to choose to send their children to traditional public schools, local public charter schools, or "community" schools operated by non-profit, tax-exempt public corporations that agree to operate their schools in accordance with conditions that are designed to provide a greater level of transparency and accountability to the public than is required of private schools in Georgia.

Q. Is the EAACSA an attempt to “get around” the decision of the Court?

A. Not at all. In fact, the Court’s decision has caused a lot of people to think hard about the respective responsibilities of state and local school boards and parents in the education of children. The Court’s decision has created an incentive and opportunity for officials to “think outside the box” about how, without creating and operating public schools that compete with local public schools, the state can fulfill its primary obligation to provide its citizens with an adequate public education. The result is the use of educational assistance grants to empower parents to choose a new option for the

education of their children, which, because it originates in the independent actions of parents, educators, and their communities (and not with state officials or local school boards), is called a “community school.”

Q. Are educational assistance grants to parents for use at independent community schools the same thing as granting vouchers to parents to use at any private school?

A. No. Under the EAACSA, educational assistance grants can only be used at nonsectarian schools that agree to operate in a manner that is more transparent and accountable to the public than is the case with traditional private schools.

Q. Are educational assistance grants a new idea?

A. No. The provision of educational assistance grants to parents for the education of children at the schools of their choice is a policy that has been advocated by civil rights leaders, education reformers, and social scientists for more 40 years. They reflect two different concerns regarding the delivery of k-12 education in America: the importance of community and the need to stimulate creative learning through technology and social networks.

Community. In 1970, Marilyn Gittell and other education reformers at the Institute for Community Studies at Queens College in New York City advocated for the use of educational assistance grants to parents for use at private, independent community schools that, in exchange for having the freedom to address educational and social needs at the community level, agreed to operate in a more transparent and accountable manner than traditional private schools.

Creativity. In 1971, education philosopher Ivan Illich published *Deschooling Society*, in which he proposed that educational assistance grants be used to provide parents with the choice to educate their children outside of a centralized bureaucracy that institutionalized conformist thinking and stifled the creative expression and learning of children with the assistance of advanced technology that supports networked “learning webs.”

Q. What impact did the national debate about educational assistance grants have on Georgia?

A. During the national dialogue supporting use of educational assistance grants to provide parents with greater choices for the education of their children, in 1976, Georgia voters approved the following Article X, Section II, Paragraph II of the new Constitution of Georgia:

“Grants for Education. Notwithstanding any other provision of this Constitution, the General Assembly may provide by law for grants of State, county or municipal funds to citizens of the State for educational purposes, in discharge of all obligation of the State to provide adequate education for its citizens.”

In 1983, the voters of Georgia approved an amendment to the Constitution that moved the educational assistance grant provision to Education Article VIII, Section VII, Paragraph I, eliminated the requirement that it only be used to discharge all of the obligation of the State to provide adequate education for its citizens, and specifically named students and their parents as potential recipients of educational assistance:

“Educational assistance programs authorized. (a) Pursuant to laws now or hereafter enacted by the General Assembly, public funds may be expended for any of the following purposes:

(1) To provide grants, scholarships, loans, or other assistance to students and to parents of students for educational purposes.”

Q: Under the EAACSA, who would operate a community school?

A. Community schools would be operated by public corporations, not by a state or local school board or agency. A “public corporation” (a term expressly used in the Constitution in contemplation of the awarding of educational assistance grants to students or parents) is defined in the EAACSA to mean “a nonprofit corporation duly created under the laws of the State of Georgia; exempt from Federal income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended; authorized under Article VIII, Section VII, Paragraph III of the Constitution of Georgia to administer educational assistance; and, which, in the opinion of the Authority, is qualified to use educational assistance

received from students or parents of students to build, maintain, or operate a community school.”

Q. What is a “community school” as contemplated by the EAACSA?

A. The EAACSA defines a “community school” to mean “a school established and maintained by, and under the control and management of, a public corporation and the capital costs and operations of which are funded, in whole or in part, by students or parents of students who decide to use educational assistance to attend the school.” The term “community school” does not include home study programs or schools, sectarian schools, religious schools, private for profit schools, a state special school or any other school established and maintained by the state, or a public school that is part of a local school system.

Q. By creating the Authority to provide educational assistance grants to parents who use them to have their children enroll in community schools, is the state creating special schools that will compete with public schools created and managed by local school systems?

A. No. By creating a state authority to award educational assistance grants to parents, the State is merely using one of the tools available to it under the Constitution to meet its primary obligation to provide an adequate public education to its citizens. Under the EAACSA, the Authority will not create, fund, manage, or control public schools; it is merely setting forth the conditions to which a public corporation must agree in order to qualify a community school for the receipt of educational assistance grants from parents. It is a public corporation that decides whether to create and operate a community school and to apply to the Authority to have the community school it operates become qualified to receive educational assistance from parents. It is parents who decide whether to use their educational assistance grants at a qualified community school. Since it is up to parents to independently decide whether to use state educational assistance grants at a community school, the State is not deemed to be supporting the community school (which is also created as a result of the independent decision of the organizers of a public corporation to operate a school). The decisions of the Supreme Court of the United

States in the cases of *Zelman v. Simmons-Harris* 536 U.S. 639 (2002) and *Mitchell v. Helms* 530 U.S. 793 (2000) support this analysis and conclusion.

Q. Will the community schools contemplated by the EAACSA be private schools?

A. No. By definition, a community school is one at which parents can use their state educational assistance grants. In order to become eligible for the receipt of educational assistance grants from parents, community schools will have to meet certain conditions on their governance, operations, and results to which the public corporation and Authority agree. Although a qualified community school will be managed and controlled by a nonprofit, tax-exempt corporation, the EAACSA provides that, among other requirements, the school must be nonsectarian and nonreligious; shall be subject to all federal, state, and local rules, regulations, court orders, and statutes relating to civil rights; and shall be subject to an annual financial audit conducted by an independent certified public accountant licensed in Georgia.

Q. Will the public corporations contemplated by the EAACSA be private entities, the governance and operations of which are non-transparent and unaccountable to the public?

A. No. Although the Constitution does not set forth the specific nature and requirements for what constitutes a “public corporation,” because parents will be using their educational assistance at community schools operated by public corporations, these entities should be required to be governed and operated in a manner that is transparent and accountable to the public. Thus, the EAACSA requires that these public corporations be incorporated as non-profit corporations under Georgia law and qualify as 501(c)(3) tax-exempt organizations. These two steps alone will require: the appointment of a Board of Directors; a publicly-disclosed educational mission and bylaws; the filing and disclosure of annual returns with the Georgia Secretary of State and Internal Revenue Service; the disclosure of financial results; and the dedication of funds for exempt purposes. In addition, as a condition of becoming eligible for the receipt of educational assistance grants awarded to parents, the Authority can (and will) impose additional

conditions designed to enhance the public transparency and accountability of the public corporations.

Q. How will the Authority ensure that public corporations and the community schools they operate are meeting the conditions of the agreement between the public corporation and the Authority?

A. The duties of the Authority include, but are not limited to, 1) the duty to develop and promote high standards of accountability for community schools; 2) the duty to monitor and annually review and evaluate the financial performance, including revenues and expenditures, of qualified community schools; and 3) the duty to publish such information regarding academic and financial performance that will enable parents, through decisions regarding the use of educational assistance grants, to hold the schools accountable for their performance. Each year, each qualified community school must submit an annual report outlining the previous year's progress to the Authority and to parents and guardians of students enrolled in the school.

Q. Does requiring community schools to satisfy certain conditions regarding their governance, operations, and results make them public schools?

A. No. Community schools are not established (through a charter or otherwise) and maintained by the state or local government; therefore, they are not public schools. They are established by the organizers of public corporations that will operate the school and are maintained by the independent decisions of parents to use educational assistance grants at the community schools of their choice. That said, once the state awards educational assistance to students or parents of students to use for educational purposes (as permitted by the Constitution), it is necessary for the state to take steps to ensure that the educational assistance is being used for educational purposes and is helping fulfill the state's primary obligation to provide for the adequate education of its citizens. The most efficient way for doing so is to have the public corporations agree that, to qualify for the use of educational assistance at their schools, their schools must meet certain conditions on their governance, operations, and results that exceed the level of public transparency and accountability required of private schools. Frankly, it would be irresponsible for the

state to award educational assistance to students and their parents to use for educational purposes without implementing some safeguards to promote transparency and accountability on the part of the community schools chosen by them.

Q. Can parents use their educational assistance grants at private schools?

A. No. The educational assistance grants awarded under the Amendment are not so-called “vouchers” that parents can use to send their children to private schools.

Q. What would be the amount of each educational assistance grant that would be awarded to parents?

A. The amount of each educational assistance grant awarded to a student or parents of a student in any given year for use at a community school would be equal to the average state and local expenditures per student in fall enrollment in public elementary and secondary education *for the local school system to which the student would otherwise be assigned by virtue of the permanent residence address of the custodial parent of the student*. The Department of Education would determine and publish this amount annually, no later than January 1. Community schools would not be permitted to charge per pupil tuition and fees in amount that exceeds the educational assistance grant available to students residing in the county in which the school is located.

Q. What impact would the awarding of educational assistance grants to parents for use at eligible community schools have on local schools?

A. The total allotment of state and local funds for the local school system in which a student attending a community school resides would be reduced by the amount of the educational assistance provided to the student.

Q. Instead of providing educational assistance to parents that they can use to send their children to the community schools of their choice, why not rely on local school boards to contract with and fund charter schools that they control?

A. Nothing in the EAACSA prohibits local school districts from converting existing public schools into public charter schools or from awarding charters to public charter

schools operated by independent groups. The reality is that it is critical for the State to do all that it can to increase parental choices in education. Georgia has long lagged in national rankings of educational outcomes. The creation of a strong charter school law in Georgia was an important step in rectifying this situation. The creation of the Commission, with its ability to authorize and fund charter schools throughout the state, was an important development. However, the Court's decision was a major step backward in the state's effort to fulfill its primary obligation under the Constitution to provide for the adequate public education of its citizens. The children of Georgia deserve a legislative solution as quickly as possible and the Georgia Educational Assistance Authority and Community Schools Act of 2012 is a reasonable one that, while respecting the Court's decision, offers an innovative approach.

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James P. Kelly, III, Esq.
James P. Kelly, III, P.C.
Atlanta, Georgia
Senior Fellow, Georgia Public Policy Foundation

Ben Scafidi, Ph.D.
Economics of Education Policy Center
Georgia College and State University
Milledgeville, Georgia
Senior Fellow, Georgia Public Policy Foundation

Based on a draft submitted by Jim Kelly, the Office of Legislative Counsel for the Georgia General Assembly prepared the following draft of the Georgia Educational Assistance Authority and Community Schools Act of 2012:

A BILL TO BE ENTITLED AN ACT

To amend Title 20 of the Official Code of Georgia Annotated, relating to education, so as to repeal an article relating to the Georgia Charter Schools Commission; to provide for legislative findings and intent; to provide for definitions; to establish the Georgia Educational Assistance Authority; to provide for its powers and duties; to provide for educational assistance for children to attend community schools; to provide requirements for qualified community schools; to provide for educational, legal, and financial transparency and accountability of qualified community schools; to provide for applications and review; to provide for access to information for parents; to provide for an annual report; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 20 of the Official Code of Georgia Annotated, relating to education, is amended by repealing Article 31A of Chapter 2, relating to the Georgia Charter Schools Commission, and enacting a new article to read as follows:

ARTICLE 31A

20-2-2080. This article shall be known and may be cited as the 'Georgia Educational Assistance Authority and Community Schools Act of 2012.'

20-2-2081.(a) The General Assembly finds that:

(1) Under Article VIII, Section I, Paragraph I of the Constitution of Georgia, the provision of an adequate public education for the citizens is a primary obligation of the State of Georgia;

(2) In fulfilling its primary obligation to provide an adequate public education for its citizens, the state engages in a variety of activities, including, but not limited to, providing financial assistance, training, and advice to local school systems for the operation of traditional public schools and public charter schools; creating special

schools; and providing Georgia income tax credits to taxpayers who make private contributions to qualified student scholarship organizations that award scholarships to eligible 'students who desire to attend qualified private schools;

(3) Under Article VIII, Section VII, Paragraph I of the Constitution of Georgia, the General Assembly may enact laws pursuant to which funds may be expended to provide grants, scholarships, loans, or other assistance to students or parents of students for educational purposes;

(4) Under Article VIII, Section VII, Paragraph III of the Constitution of Georgia, public authorities or public corporations may be authorized to administer educational assistance programs;

(5) Community schools chosen by parents for the education of their children are a critical component in this state's efforts to provide access to an array of efficient and high-quality choices for the education of its citizens;

(6) Community schools organized by nonprofit, tax-exempt corporations that are willing to operate in a manner that is more transparent and accountable to the public than is required of traditional private schools can provide valuable educational options and learning opportunities that best fit the individual needs of children; and

(7) The ability of the General Assembly to authorize a public authority to provide grants or other assistance to students or parents of students to use for educational purposes at qualified community-based schools enhances the State of Georgia's ability to fulfill its primary obligation to provide an adequate public education for its citizens.

(b) It is the intent of the General Assembly that:

(1) In order to help the State of Georgia fulfill its primary obligation to provide for the adequate public education of its citizens, there be established a state-level public authority whose primary focus is to award and administer educational assistance grants to students or parents of students who choose to use those grants for educational purposes at qualified community schools; and

(2) The state-level public authority cooperate with nonprofit corporations who are interested in creating and operating community schools in a transparent and accountable manner, with the goal of maximizing access to a wide variety of high-quality educational options for all students regardless of disability, race, or socioeconomic status, including

those students who have struggled in a traditional public school setting.

20-2-2082.

As used in this article, the term:

(1) 'Agreement' means the agreement entered into between the authority and the nonprofit corporation that sets forth the conditions that a community school must satisfy in order to qualify for the use at the school of educational assistance received from the state by students or parents of students.

(2) 'Authority' means the Georgia Educational Assistance Authority established pursuant to Code Section 20-2-2083.

(3) 'Community school' means a school established and maintained by, and under the control and management of, a nonprofit corporation, which is accredited or in the process of becoming accredited by one or more entities listed in subparagraph (A) of paragraph (6) of Code Section 20-3-519, and the capital costs and operations of which are funded, in whole or in part, by educational assistance grants pursuant to this article. The term 'community school' does not include home study programs or schools, sectarian schools, religious schools, private for profit schools, state special schools or any other schools established and maintained by the state, or public schools that are part of a local school system.

(4) 'Department' means the state Department of Education.

(5) 'Educational assistance' means grants or other assistance provided for educational purposes to students or parents of students by the State of Georgia pursuant to Article VIII, Section VII, Paragraph I of the Constitution of Georgia, the laws of this state, and the applicable rules, regulations, policies, and procedures established by the authority.

(6) 'Nonprofit corporation' means a nonprofit corporation duly created under the laws of the State of Georgia and exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

(7) 'Qualified community school' means a community school that the authority has determined meets the requirements established by the authority pursuant to this article.

(8) 'State board' means the State Board of Education.

20-2-2083.

(a) The Georgia Educational Assistance Authority is established as a state authority.

Startup funds necessary to establish and operate the authority may be appropriated by the General Assembly for the operation of the creation and operation of the authority and the granting of educational assistance by the authority.

(b) The authority shall be appointed by the Governor and shall be composed of a total of seven members. The appointments shall be made as soon as feasible but no later than September 1, 2012. Each member shall serve a term of two years; however, for the purpose of providing staggered terms, of the initial appointments, three members shall be appointed to one-year terms and four members shall be appointed to two-year terms as determined by the Governor. Thereafter, each appointee shall serve a two-year term unless the Governor extends the appointment. If a vacancy occurs on the authority, the Governor shall fill it. The Governor shall appoint the initial chairperson and vice chairperson of the authority to serve for an initial term of two years. Thereafter, the members of the authority shall annually vote to appoint a chairperson and a vice chairperson from among its membership. Each member of the authority shall hold a bachelor's degree or higher, and the authority should include a group of diverse individuals representative of Georgia's school population who have experience in finance, administration, law, education, public school teaching, grant administration and solicitation, and school governance.

(c) The authority is encouraged to convene its first meeting no later than October 1, 2012, and thereafter shall meet at least quarterly at the call of the chairperson or upon the request of four members of the authority. Four members of the authority shall constitute a quorum.

(d) The authority shall determine the manner in which it reviews whether a school is a qualified community school.

(e) The members of the authority shall not be compensated for their services on the authority but may be reimbursed for per diem and travel expenses in the same manner as provided for in Code Section 45-7-21.

20-2-2084.

(a) The authority shall have the power to, on a case-by-case basis, upon application by a community school, determine whether such school meets the requirements under this article in order to become a qualified community school.

(b) The authority shall have the following duties:

(1) Establish rules, regulations, policies, and procedures to provide educational assistance to students or parents of students for use at the qualified community school of their choice. Any child who is a resident of Georgia and otherwise eligible to enroll in a public school system in this state shall be eligible to receive an educational assistance grant pursuant to this article. The amount of each educational assistance grant awarded to a student or parent of a student in any given year for use at a qualified community school shall be equal to the average state and local expenditures per student in fall enrollment in public elementary and secondary education for the local school system to which the student would otherwise be assigned by virtue of the permanent residence address of the custodial parent of the student. The department shall determine and publish such amount annually, no later than January 1. Anything to the contrary contained in this paragraph notwithstanding, in the case of a student who has one or more of the disabilities listed in paragraph (2) of subsection (a) of Code Section 20-2-2114, the amount of the educational assistance grant shall not be less than the scholarship amount to which the student would be entitled under Article 33 of this chapter. In the case of a community school that plans to offer virtual instruction, the authority may reduce the amount published pursuant to this paragraph based on such factors as the state board determines accurately reflect the reduced costs associated with such offering; provided, however, that in no event shall such amount be less than 65 percent of the amount published by the department pursuant to this paragraph. The total allotment of state and federal funds to the local school system in which a student attending a community school resides shall be calculated as otherwise provided in Article 6 of this chapter with an ensuing reduction equivalent to the amount of the educational assistance provided to such student pursuant to this paragraph;

(2) Develop, promote, and disseminate voluntary best practices for community schools in order to ensure that parents to whom educational assistance grants are provided have access to an array of high-quality qualified community schools. At a minimum, the best practices shall encourage the development and replication of academically and financially proven community school programs;

(3) Develop and promote voluntary high standards of accountability for community schools;

(4) Publish goals and annually collect, review, evaluate, and publish the information required pursuant to Code Section 20-2-2086;

(5) Encourage qualified community schools to cooperate with local boards of education that may choose to allow community schools to utilize excess space within school facilities;

(6) Facilitate negotiations between qualified community schools and local boards of education that are willing to provide certain administrative or transportation services to the community schools on a contractual basis; and

(7) Publish information about industry standards and best practices for education management organizations and other entities providing educational consulting and management services and products to community and other schools and publish a list of such organizations that, in the opinion of the authority based on information provided to it by such organizations, meet or exceed those industry standards and best practices.

20-2-2085.

(a) No later than January 31, 2013, the authority shall establish its procedures for awarding educational assistance to students or parents of students and begin accepting applications from community schools to be designated as qualified community schools. The authority shall review and evaluate all applications in accordance with authority rules and regulations established pursuant to this article.

(b) A community school seeking designation as a qualified community school must submit an application to the authority. Unless the applicant requests an extension, the authority must, by a majority vote, approve or deny the application no later than 60 days after its submission.

(c) Upon approval of an application, the authority and the community school shall enter into an agreement that sets forth the conditions under this article for designation as a qualified community school. Upon execution of the agreement, the authority will ensure that the names and contact information of the qualified community schools are listed on the authority website so that parents can consider such schools as an option for the education of their children and the use of educational assistance at the school.

20-2-2086.

(a) A qualified community school shall not be subject to the provisions of this title or any

state or local rule, regulation, policy, or procedure relating to schools within an applicable school system, regardless of whether such rule, regulation, policy, or procedure is established by the local board, the state board, or the department; provided, however, that the authority, as a means of holding the school accountable by providing information to parents of students upon which they can rely in making informed choices for the education of their children, shall provide to a community school goals for the following measures of school and student performance that equal or exceed the averages for local public schools in Georgia:

- (1) Pupil-teacher ratio;
- (2) Percent of teachers holding a bachelor's degree, master's degree, and other advanced degree;
- (3) Student attendance;
- (4) High school graduation rate;
- (5) Average performance on standardized exams taken by students; and
- (6) Any other measures of school and student performance, comparable to those applicable to local public schools, which the authority deems relevant.

(b) The authority shall publish the goal it sets for each measure of school and student performance. Each year, on or before a date determined by the authority, each qualified community school shall report to the authority such information as will enable the authority to compile and publish information regarding the degree to which the school is achieving the applicable goals. Each year, on an individual school basis, the authority shall publish the results for all qualified community schools relating to the applicable goals, including any information regarding the failure of a school to provide, on a timely basis, the required information with respect to any goal. At its discretion, the authority may change the goals for any applicable measures of school and student performance; provided, however, that each goal must equal or exceed the average for local public schools in Georgia. The information published by the authority pursuant to this subsection is intended to be used by parents for informational and decision-making purposes only and the authority shall not take any punitive or other actions with respect to a community school that fails to meet one or more of the applicable goals. Anything to the contrary contained in this subsection notwithstanding, at the request of a community

school and without any obligation on the part of the school, the authority may provide, or direct the school to experts who may provide, school officials with advice on best practices regarding methods for improving school and student performance.

20-2-2087.

(a) A community school shall enroll any student who resides in the attendance zone specified in the agreement and who submits a timely application as specified in the agreement. The period of time during which an application for enrollment may be submitted shall be specified in the agreement. If the number of applications exceeds the capacity of a program, class, grade level, or building, the community school shall determine the admission criteria by which it will choose its student population, in which case the community school shall provide for publication by the authority information regarding the racial and ethnic makeup of its student population. Upon application to the authority for designation as a qualified community school, such school must submit to the authority evidence, in the form of verifiable signatures of parents or guardians of potential students, that there are at least 100 students from the designated attendance zone who are interested in attending the community school in its initial year of operation. In order to maintain its designation as a qualified community school, such school shall have an enrollment in the second year of operation of at least 250 full-time students and in each year thereafter.

(b) A community school shall not discriminate on any basis that would be illegal if used by a local school system.

(c) A student may withdraw without penalty from a community school at any time and enroll in a local school in the school system in which such student resides as may be provided for by the policies of the local board. A student who is suspended or expelled from a community school as a result of a disciplinary action taken by a community school shall be entitled to enroll in a local school within the local school system in which the student resides, if, under the disciplinary policy of the local school system, such student would not have been subject to suspension or expulsion for the conduct which gave rise to the suspension or expulsion. In such instances, the local board shall not be required to independently verify the nature or occurrence of the applicable conduct or any evidence relating thereto.

20-2-2088.

(a) The terms of an agreement for a community school may be amended during the term of the agreement upon the approval of the authority and the community school.

(b) For so long as it complies with the provisions of this article, a community school shall remain qualified under this article.

(c) Each year, a qualified community school shall submit the following information to the authority:

(1) The information required by Code Section 20-2-2086;

(2) Unaudited financial statements for the fiscal year ending on June 30, provided that audited statements will be forwarded to the authority upon completion;

(3) Updated contact information for the community school;

(4) Proof of current nonprofit and tax-exempt status;

(5) A copy of any agreement between the community school and an education management organization or other entity providing education management or consulting services or products to the community school and the details of all services and products provided, and compensation paid, thereunder;

(6) A copy of any contract or other agreement to which the community school is a party and which involves the payments for services and products which total in excess of \$100,000 for that year;

(7) The names and information about the backgrounds and qualifications of all board members of the community school, including, but not limited to, information regarding the payment of any compensation by the community school to a board member, the employment by the community school of a board member, and the existence of any potential conflicts of interest between a board member and the community school; and

(8) Any other supplemental information that the community school chooses to provide to the authority.

20-2-2089.

The authority may terminate an agreement with a community school and disqualify such school from being eligible to receive educational assistance from students or parents of students if, after providing reasonable notice to the community school and an opportunity for a hearing, the authority finds:

- (1) A failure to adhere to any material terms of the agreement or the requirements of this article;
- (2) A failure to meet generally accepted standards of fiscal management, including, but not limited to, the payment of excessive compensation, as determined by the authority, to community school officers, employees, or board members;
- (3) A violation of applicable federal, state, or local laws or court orders;
- (4) The financial terms of any agreement between a community school and an education management organization or other entity providing education management or consulting services or products to the community school are inconsistent with reasonable industry standards and practices, including, but not limited to, the payment of excessive compensation, as determined by the authority, or prices to such organization, the payment of compensation or other amounts by such organization to community school employees or board members, or the existence of financial conflicts of interest between such organization and any board member of the community school; or
- (5) The existence of competent substantial evidence that the continued qualification of the community school to receive educational assistance from students or parents of students would be contrary to the best interests of the students or the community.

20-2-2090.

The authority shall make information regarding access to educational assistance and qualified community schools available to all parents in this state. It shall maintain information systems, including, but not limited to, a user-friendly Internet website, that will provide information and data necessary for parents to access educational assistance and make informed decisions about using educational assistance at the community schools of their choice.

20-2-2091.

If the authority determines that a community school is no longer a qualified community school which is eligible to receive educational assistance pursuant to this article, the community school shall be responsible for all debts of such community school.

20-2-2092.

- (a) The authority shall be assigned to the Office of Planning and Budget for administrative purposes only, as prescribed in Code Section 50-4-3.

(b) In order to fund the costs associated with the creation and administration of the educational assistance grant program, the review, monitoring, and assessment of community schools, and the reporting required under this article, the authority may charge a fee of up to 3 percent of all educational assistance grant disbursements to parents and students. The authority may contract with an outside firm for the administration of the educational assistance grant program.

20-2-2093.

The authority and, where applicable, the state board, shall adopt rules and regulations necessary to facilitate the implementation of this article.

SECTION 2.

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