

2022 Regular Session

HOUSE BILL NO. 452

BY REPRESENTATIVES FREIBERG, AMEDEE, BUTLER, DAVIS, DEVILLIER,  
EMERSON, GAROFALO, IVEY, MCFARLAND, MCKNIGHT, ROMERO, AND  
SCHLEGEL

SCHOOLS/CHOICE: Creates and provides for a program to provide state funding for the education of certain students who have been victims of bullying and are not enrolled in public school

1 AN ACT

2 To amend and reenact R.S. 17:236(A) and 416.13(D)(3)(f)(i) and (v) and to enact Chapter  
3 43-C of Title 17 of the Louisiana Revised Statutes of 1950, to be comprised of R.S.  
4 17:4037.1 through 4037.8, relative to elementary and secondary education; to  
5 provide relative to parental options under certain circumstances related to bullying  
6 in public schools; to create and provide for the administration of a program to  
7 provide state funding for the education of certain students who have been victims of  
8 bullying and who are not enrolled in public school; to provide relative to the  
9 eligibility of students, schools, and service providers participating in the program;  
10 to provide relative to program funds; to provide relative to the testing of students  
11 participating in the program; to require the state Department of Education to submit  
12 annual reports to the legislature relative to the program; to provide relative to rules;  
13 to provide relative to definitions; to provide for an effective date; and to provide for  
14 related matters.

15 Be it enacted by the Legislature of Louisiana:

16 Section 1. R.S. 17:236(A) and 416.13(D)(3)(f)(i) and (v) are hereby amended and  
17 reenacted and Chapter 43-C of Title 17 of the Louisiana Revised Statutes of 1950, comprised  
18 of R.S. 17:4037.1 through 4037.8, is hereby enacted to read as follows:

1 §236. Definition of a school

2 A. For the purposes of this Chapter, a school is defined as an institution for  
3 the teaching of children, consisting of an adequate physical plant, whether owned or  
4 leased, instructional staff members, and students. For such an institution to be  
5 classified as a school, within the meaning of this Chapter, instructional staff  
6 members shall meet the following requirements: if a public day school or a  
7 nonpublic school which receives local, state, or federal funds or support, directly or  
8 indirectly, they shall be certified in accordance with rules established by the State  
9 Board of Elementary and Secondary Education; if a nonpublic school which receives  
10 no local, state, or federal funds or support, directly or indirectly, they shall meet such  
11 requirements as may be prescribed by the school or the church. In addition, except  
12 as otherwise provided in Subsection B of this Section, any such institution, to be  
13 classified as a school, shall operate a minimum session of not less than one hundred  
14 eighty days. Solely for purposes of compulsory attendance in a nonpublic school,  
15 a child who participates in a home study program approved by the State Board of  
16 Elementary and Secondary Education shall be considered in attendance at a day  
17 school; a home study program shall be approved if it offers a sustained curriculum  
18 of a quality at least equal to that offered by public schools at the same grade level.  
19 Solely for purposes of compulsory attendance in a nonpublic school, a child shall be  
20 considered in attendance at a day school if the child is eligible to participate in the  
21 Education Savings Account Program pursuant to R.S. 17:4037.4 and the child's  
22 parent has signed an agreement pursuant to R.S. 17:4037.4(A)(3).

23 \* \* \*

24 §416.13. Student code of conduct; requirement; bullying; prohibition; notice;  
25 reporting; accountability

26 \* \* \*

27 D. The State Board of Elementary and Secondary Education, in collaboration  
28 with the state Department of Education, shall develop and adopt rules and  
29 regulations to implement the provisions of this Section relative to the procedures and

1 processes to be used to report and investigate bullying and which shall include but  
2 not be limited to:

3 \* \* \*

4 (3) Investigation Procedure. The State Board of Elementary and Secondary  
5 Education shall develop and adopt a procedure for the investigation of reports of  
6 bullying of a student by another student. The procedure shall include the following:

7 \* \* \*

8 (f) Parental Relief. (i) If a parent, legal guardian, teacher, or other school  
9 official has made ~~four~~ two or more reports of separate instances of bullying, as  
10 provided in Paragraph (2) of this Subsection, and either no investigation pursuant to  
11 Paragraph (3) of this Subsection has occurred or no resolution that is acceptable to  
12 the parent or legal guardian has been reached, the parent or legal guardian with  
13 responsibility for decisions regarding the education of the victim about whom the  
14 ~~report or reports~~ have been made may exercise an option to apply for an education  
15 savings account as provided in Chapter 43-C of this Title or to have the student  
16 enroll in or attend another school operated by the governing authority of the public  
17 elementary or secondary school in which the student was enrolled on the dates when  
18 at least ~~three~~ one of the reports ~~were~~ was submitted as provided in Items (ii) through  
19 (v) of this Subparagraph. Any student who has been the victim of bullying that  
20 involved sexual assault as defined in R.S. 46:2184 where the perpetrator is a student  
21 at the victim's school may exercise an option after the first such incident of sexual  
22 assault to apply for an education savings account as provided in Chapter 43-C of this  
23 Title or to have the student enroll in or attend another school operated by the  
24 governing authority of the public elementary or secondary school in which the  
25 student was enrolled.

26 \* \* \*

27 (v) At the end of any school year, the parent or legal guardian may make a  
28 request to the governing authority of the school at which the student was enrolled  
29 when at least ~~three~~ one of the reports ~~were~~ was filed to transfer the student back to

1 the school. The governing authority shall make a seat available at the school at  
2 which the student was originally enrolled. No other schools shall qualify for transfer  
3 under this Subparagraph.

4 \* \* \*

5 CHAPTER 43-C. EDUCATION SAVINGS ACCOUNT PROGRAM

6 §4037.1. Definitions

7 As used in this Chapter the following terms have the following meanings,  
8 unless the context clearly indicates otherwise:

9 (1) "Account" means an education account established pursuant to this  
10 Chapter and composed of state funds deposited on behalf of a student eligible to  
11 participate in the program.

12 (2) "Account funds" means the funds deposited into an account on behalf of  
13 a participating student.

14 (3) "Department" means the state Department of Education.

15 (4) "Parent" means a parent, legal guardian, custodian, or other person or  
16 entity with legal authority to act on behalf of a student.

17 (5) "Participating school" means a nonpublic school participating in the  
18 program pursuant to the requirements of this Chapter.

19 (6) "Participating student" means a student who has been determined to be  
20 eligible to participate in the program and for whom an account has been established  
21 pursuant to this Chapter.

22 (7) "Program" means the program created by this Chapter.

23 (8) "Qualified education expenses" means any of the following:

24 (a) Tuition, fees, and textbooks required by a participating school or service  
25 provider.

26 (b) Instructional or tutoring services.

27 (c) Supplemental materials required by a course of study for a particular  
28 content area.

1           (d) Technological devices used to meet the student's educational needs,  
2           subject to approval by the department or a licensed physician.

3           (9) "Resident school system" means the public school system in which the  
4           student would be enrolled based on his residence.

5           (10) "Service provider" means a person or an entity other than a participating  
6           school that provides services that are covered as qualified education expenses.

7           (11) "State board" means the State Board of Elementary and Secondary  
8           Education.

9           §4037.2. Program creation and administration; powers and duties of the State Board  
10           of Elementary and Secondary Education and state Department of Education;  
11           rules

12           The Education Savings Account Program is hereby created. The department  
13           shall administer the program, and the state board shall adopt rules and regulations  
14           for the administration of the program which shall, at minimum, provide for the  
15           following:

16           (1) Determination of the eligibility of students, participating schools, and  
17           service providers, including standards that schools and service providers shall meet  
18           as conditions of participation in the program.

19           (2) Audits of the program and accounts.

20           (3) The authority of the department to deem any participating student  
21           ineligible for the program and to refer a case involving the misuse of account funds  
22           to the attorney general for investigation.

23           (4) The authority of the department to contract with a vendor or provider for  
24           the administration of the program or parts of the program.

25           (5) A requirement that the program shall begin enrolling participating  
26           students not later than the beginning of the 2023-2024 school year.

27           §4037.3. Account funds

28           A. The department shall allocate to each account annually, from funds  
29           appropriated or otherwise made available for the program, an amount equal to the

1 state's average per-pupil allocation as provided in the minimum foundation program  
2 formula, considering all student characteristics. The department may withhold up to  
3 five percent of funds allocated for each account annually for program administration.

4 B. The department shall develop a system for parents to direct account funds  
5 to participating schools and service providers by electronic funds transfer, automated  
6 clearing house transfer, or another system. The department may contract with a  
7 private financial management firm to manage the payment system.

8 C.(1) Account funds shall be used only for qualified education expenses for  
9 the participating student. Unused funds in an account, up to fifty percent of the total  
10 funds deposited into the account for the current school year, shall be retained in the  
11 student's account for the following school year.

12 (2) The account shall be closed and the funds in the account shall be returned  
13 to the state general fund if the student is determined to be no longer eligible, if an  
14 account has been inactive for two consecutive years, or if a parent fails to comply  
15 with the provisions of this Chapter or state board rules pertaining to the program.

16 §4037.4. Student eligibility; initial and continuing

17 A. A student is initially eligible for an account if he is eligible to enroll in  
18 kindergarten or was enrolled in a Louisiana public school during the previous school  
19 year and meets all of the following criteria:

20 (1) He has been the victim of bullying under the conditions provided in R.S.  
21 17:416.13(D)(3)(f)(i).

22 (2) The student's parent submits an application for an account to the  
23 department in accordance with program timelines.

24 (3) The student's parent signs an agreement promising all of the following:

25 (a) To provide an education for the participating student in at least the  
26 subjects of English language arts, mathematics, social studies, and science.

27 (b) Not to enroll the student in a public school while participating in the  
28 program.

1           (c) To use account funds only for qualified education expenses of the  
2           participating student.

3           (d) To comply with all program requirements.

4           B.(1) The signed agreement pursuant to Paragraph (A)(3) of this Section  
5           satisfies the compulsory school attendance requirements of R.S. 17:221.

6           (2) A participating student is eligible to continue to participate in the  
7           program until he enrolls in a public school, he receives a high school diploma or its  
8           equivalent, or his account is closed.

9           C. A participating student shall not participate in any of the following  
10          concurrently with this program: the Course Choice Program, the Student  
11          Scholarships for Educational Excellence Program, the School Choice Program for  
12          Certain Students with Exceptionalities, or the Tuition Donation Credit Program.

13          §4037.5. Schools and service providers; eligibility; participation

14          A. To be eligible to participate in the program, a school shall meet all of the  
15          following criteria:

16               (1) It has been approved, provisionally approved, or probationally approved  
17               by the state board pursuant to R.S. 17:11.

18               (2) It is in compliance with the criteria set forth in Brumfield, et al. v. Dodd,  
19               et al., 425 F. Supp. 528 (E.D. La. 1977).

20               (3) It meets any other eligibility criteria set by the state board in program  
21               rules.

22          B. The state board shall provide eligibility criteria for service providers in  
23          program rules in a way that maximizes provider participation.

24          C. To be eligible to participate in the program, a school or service provider  
25          shall apply to the department to participate in the program and, if determined to be  
26          eligible, accept account funds for providing services covered as qualified education  
27          expenses.

1        §4037.6. Student with exceptionalities

2                A. If a participating student enrolled in a participating school would have  
3        been entitled to receive special education services in the resident school system, his  
4        parent shall acknowledge in writing, as part of the program enrollment process, that  
5        the parent agrees to accept only such services as are available to all students enrolled  
6        in the participating school.

7                B. A parent may make a parental placement to receive special education and  
8        related services from a participating school that has demonstrated the capacity to  
9        offer such services.

10               C.(1) A participating school shall not discriminate against a child with  
11        special educational needs during the program admissions process. However, a  
12        participating school is required to offer only those services that it already provides  
13        or such services as necessary to assist students with special needs that it can provide  
14        with minor adjustments. A participating school may partner with the local school  
15        system to provide special education services.

16               (2) Information regarding the services a participating school can provide and  
17        the services the resident school system can provide to children with special needs  
18        who are enrolled in a participating school shall be made available by the department  
19        to parents prior to the enrollment process.

20               D. The department shall determine whether a participating school has a  
21        demonstrated capacity to offer special education services. A participating school  
22        that desires to offer special education services shall inform the department of the  
23        types of student exceptionalities as defined in R.S. 17:1942 that the school is able to  
24        serve. The department may authorize the school to provide such services only if the  
25        school has existed and provided educational services to students with exceptionalities  
26        as defined in R.S. 17:1942, excluding students deemed to be gifted or talented, for  
27        at least two years prior to participation in the program, and such provision of services  
28        is pursuant to an established program in place at the school that includes instruction  
29        by teachers holding appropriate certification in special education or other appropriate



1 education or training as defined by the department and that is in accordance with a  
2 student's Individual Education Plan.

3 §4037.7. Testing

4 A. The department shall develop a process for the annual administration of  
5 either of the following to participating students:

6 (1) Any examination required pursuant to the school and district  
7 accountability system at the prescribed grade level.

8 (2) A nationally norm-referenced test or statewide assessment.

9 B. The department shall develop a process for the collection and aggregate  
10 reporting of results and shall ensure that the results of such assessments are provided  
11 to parents of participating students.

12 §4037.8. Reports

13 Not later than April thirtieth of each year, the department shall submit a  
14 written report to the House Committee on Education, the Senate Committee on  
15 Education, and the Joint Legislative Committee on the Budget regarding the  
16 implementation of the program. The report, at a minimum, shall include the  
17 following information:

18 (1) The total number of students participating in the program.

19 (2) A list of all participating schools and service providers.

20 (3) The total student enrollment of each participating school, the number of  
21 participating students enrolled in each school, and the percentage of the total  
22 enrollment of each school represented by program participants.

23 (4) Aggregate test result data for participating students.

24 (5) The percentage of funds used for each type of qualified education  
25 expense.

26 (6) An analysis of the program's fiscal impact on the state and on local public  
27 school systems.

28 (7) The results of a parental satisfaction survey.

1 Section 2. This Act shall become effective upon signature by the governor or, if not  
 2 signed by the governor, upon expiration of the time for bills to become law without signature  
 3 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
 4 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
 5 effective on the day following such approval.

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#### DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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HB 452 Re-Reengrossed

2022 Regular Session

Freiberg

**Abstract:**

Creates and provides for the administration of a program for the purpose of providing state funding for qualified education expenses for certain students who have been victims of bullying and who are not enrolled in a public school.

**Bullying**

Present law provides specific protocols for reporting and investigating incidents of bullying in public schools. Grants a parent the option to have a student moved to another school if there have been at least four reports of separate instances of bullying and no investigation has occurred. Proposed law broadens the terms under which parents are granted this option as follows:

- (1) Lowers the threshold from four reports of bullying to two reports of bullying.
- (2) For a student who has been the victim of bullying in which the bullying involves sexual assault and the perpetrator attends the victim's school, lowers the threshold from four reports of bullying to one incident of sexual assault; defines sexual assault as defined in present law (R.S. 46:2184).
- (3) Provides that the lack of an acceptable resolution is a trigger for this option in addition to the lack of an investigation.

Proposed law, under the conditions provided in (1) through (3) above, provides the additional option of applying for an education savings account as provided in proposed law below.

**Education Savings Account (ESA) Program; creation and administration**

Proposed law creates the Education Savings Account (ESA) Program for certain students who have been victims of bullying and provides for program administration by the state Dept. of Education (DOE) in accordance with State Board of Elementary and Secondary Education (BESE) rules which shall, at minimum, provide for:

- (1) Determination of eligibility of students, participating schools, and service providers.
- (2) Audits of the program and accounts.
- (3) DOE's authority to:

- (a) Deem any participating student ineligible for the program and to refer cases of misuse of account funds to the attorney general for investigation.
  - (b) Contract with a vendor or provider for the administration of the program or parts of the program.
- (4) A requirement that the program begin enrolling participating students by the beginning of the 2023-2024 school year.

### **Funds**

Proposed law requires DOE to:

- (1) Allocate to each account annually, from funds appropriated or otherwise made available for the program, an amount equal to the state's average per-pupil allocation as provided in the minimum foundation program (MFP) formula, considering all student characteristics.
- (2) Develop a system for parents to direct account funds to participating schools and service providers by electronic funds transfer, automated clearing house transfer, or another system.

Proposed law authorizes DOE to withhold up to 5% of funds allocated for each account annually for program administration.

Proposed law further provides as follows:

- (1) Limits authorized use of funds to qualified education expenses.
- (2) Unused funds in an account, up to 50% of the total funds deposited into the account for the current school year, shall remain in the account for the following school year.
- (3) The account shall be closed and the funds in the account shall be returned to the state general fund if a student is no longer eligible, if an account has been inactive for two consecutive years, or if a parent fails to comply with program requirements.

### **Eligibility; students**

Proposed law provides that a student shall be initially eligible for an account if he is eligible to enroll in kindergarten or was enrolled in a La. public school during the previous school year and meets all of the following criteria:

- (1) The student has been the victim of bullying, at least two separate reports have been made of separate instances of bullying, and either there has been no investigation or no resolution acceptable to the parents has been reached.
- (2) The student's parent submits a timely application.
- (3) The student's parent signs an agreement promising all of the following:
  - (a) To provide an education for the participating student in at least the subjects of English language arts, math, social studies, and science.
  - (b) Not to enroll the student in a public school while participating in the program.
  - (c) To use account funds only for qualified education expenses of the participating student.

- (d) To comply with all program requirements.

Proposed law further provides that a participating student:

- (1) Is eligible until he enrolls in a public school, he receives a high school diploma or its equivalent, or his account is closed.
- (2) Is prohibited from participating concurrently in the ESA program and the Course Choice Program, the Student Scholarships for Educational Excellence Program, the School Choice Program for Certain Students with Exceptionalities, or the Tuition Donation Credit Program.
- (3) Shall be considered in attendance at a day school for purposes of compulsory attendance.

#### **Students with exceptionalities**

Proposed law requires, if a student would have been entitled to special education services in his resident school system, his parent to acknowledge in writing that he agrees to accept only such services as are available to all students enrolled in the participating school. Requires participating schools to meet certain criteria to be eligible to offer such services.

#### **Eligibility; schools and service providers**

Proposed law provides that a school shall meet all of the following criteria to be eligible to participate:

- (1) Be approved, provisionally approved, or probationally approved by BESE.
- (2) Comply with criteria set forth in federal nondiscrimination requirements.
- (3) Any other criteria set by BESE.

Proposed law requires BESE to set eligibility criteria for service providers in a way that maximizes provider participation. Provides that to be eligible to participate in the program, both schools and service providers shall apply to DOE and, if determined to be eligible, accept ESA funds for providing services covered as qualified education expenses.

#### **Testing**

Proposed law requires the department to develop a process for the annual administration of either of the following assessments to participating students:

- (1) Any examinations required pursuant to the school and district accountability system at the prescribed grade level.
- (2) A nationally norm-referenced test or statewide assessment.

Also requires the department to develop a process for the collection and aggregate reporting of results and to ensure that the results of such assessments are provided to parents of participating students.

#### **Reporting**

Proposed law requires DOE, by April 30th annually, to submit a report to the House and Senate education committees and the Jt. Legislative Committee on the Budget regarding program implementation. Specifies content for report, including the results of a parental satisfaction survey.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 17:236(A) and 416.13(D)(3)(f)(I) and (v); Adds R.S. 17:4037.1 - 4037.8)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Education to the original bill:

1. Add that an eligible student shall be considered in attendance at a day school for purposes of compulsory attendance.
2. Expand options for bullied students in instances involving sexual assault.
3. Remove requirement that the entity contracted with for program administration be a nonprofit organization.
4. Add that BESE rules shall include a requirement that the program begin enrolling students by the beginning of the 2023-2024 school year.
5. Change funding amount from the state's per-pupil amount allocated to the student's resident school system to the state's average per-pupil allocation.
6. Add that DOE may withhold funds allocated for program administration.
7. Delete use of a debit card from list of examples of funds transfer methods.
8. Relative to eligibility criteria for service providers, requires BESE to set these in a way that maximizes provider participation.
9. Add results of parental satisfaction survey to content required in annual DOE report.

The Committee Amendments Proposed by House Committee on Appropriations to the engrossed bill:

1. Remove provision that specifies that funds in the account are not taxable income of the parent.
2. Remove prohibition that account funds not be claimed as a credit, deduction, exemption, or rebate under present law.

The House Floor Amendments to the reengrossed bill:

1. Add definition for "sexual assault" to provisions regarding bullying.