



1 Section 1. R.S. 17:236(A) and 4035.1(A) and (F)(2)(introductory paragraph) and (b)  
2 are hereby amended and reenacted and R.S. 17:4035.1(I) and Chapter 43-C of Title 17 of the  
3 Louisiana Revised Statutes of 1950, comprised of R.S. 17:4037.1 through 4037.9, are hereby  
4 enacted to read as follows:

5 §236. Definition of a school

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

26 \* \* \*

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 §4035.1. Public school choice

2 A. The parent or other legal guardian of any student may enroll his child in  
3 the public school of his choice, without regard to residence, school system  
4 geographic boundaries, or attendance zones, ~~provided both of the following apply:~~

5 ~~(1) The public school in which the student was most recently enrolled, or~~  
6 ~~would otherwise attend, received a school performance letter grade of "D" or "F" for~~  
7 ~~the most recent school year, pursuant to the state's school and district accountability~~  
8 ~~system.~~

9 ~~(2) The school in which the student seeks to enroll received a school~~  
10 ~~performance letter grade of "A", "B", or "C" for the most recent school year,~~  
11 ~~pursuant to the state's school and district accountability system, and if the school has~~  
12 ~~sufficient capacity at the appropriate grade level.~~

13 \* \* \*

14 F.

15 \* \* \*

16 (2) Prior to the transfer request period, the public school governing authority  
17 shall notify parents and legal guardians of students enrolled in a each school ~~that~~  
18 ~~received a "D" or "F" school performance letter grade pursuant to the state's school~~  
19 ~~and district accountability system for the most recent school year under its~~  
20 ~~jurisdiction~~ of the following:

21 \* \* \*

22 (b) The ~~schools~~ school performance letter grade assigned to each school  
23 ~~under the jurisdiction of the governing authority that received an "A", "B", or "C"~~  
24 ~~school performance letter grade, if any.~~

25 \* \* \*

26 I. The State Board of Elementary and Secondary Education shall adopt rules  
27 in accordance with the Administrative Procedure Act for the implementation of this  
28 Section.

29 \* \* \*

1                    CHAPTER 43-C. SUNSHINE SCHOLARSHIP PROGRAM2                    §4037.1. Definitions

3                    As used in this Chapter, the following terms have the following meanings,  
4                    unless otherwise clearly indicated:

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

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

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

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

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

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

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

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

20                  (a) Tuition, fees, and textbooks required for either in-person or virtual  
21                  instruction by a participating school or service provider.

22                  (b) Instructional or tutoring services.

23                  (c) Curricula.

24                  (d) Supplemental materials and supplies required by a course of study for a  
25                  particular content area.

26                  (e) Fees for Louisiana Educational Assessment Program tests, national norm-  
27                  referenced examinations, Advanced Placement courses or examinations or similar  
28                  courses or examinations, and any examinations related to postsecondary education  
29                  institution admission.

1           (f) Educational services for students with disabilities from a licensed or  
2           accredited practitioner or provider.

3           (g) Fees for account management by vendors or providers approved by the  
4           department.

5           (h) Technological devices that are required to meet a participating student's  
6           educational needs, subject to the approval of the department or a licensed physician,  
7           and that shall not include a television, a video game console or accessory, or home  
8           theater or audio equipment.

9           (i) Any other expenses incurred in the education of the student.

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

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

14          (11) "State board" means the State Board of Elementary and Secondary  
15          Education.

16          §4037.2. Program creation and administration; powers and duties of the State Board  
17          of Elementary and Secondary Education and state Department of Education;  
18          rules

19          The Sunshine Scholarship Program, a universal education freedom account  
20          program, is hereby created. The department shall administer the program, and the  
21          state board shall adopt rules and regulations for the administration of the program  
22          which shall, at minimum, provide for the following:

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

26                 (2) Audits of the program and accounts.

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

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

3           (5) A requirement that the program shall begin enrolling participating  
4           students not later than the beginning of the 2024-2025 school year.

5           §4037.3. Account funds

6           A. The department shall annually allocate to each account, from funds  
7           appropriated or otherwise made available for the program, an amount equal to the  
8           average state per-pupil allocation as provided in the minimum foundation program  
9           formula, which includes all weighted funds based on student characteristics. The  
10           department may withhold up to five percent of funds allocated for each account  
11           annually for program administration. The amount allocated to an account shall be  
12           appropriately prorated if a student transfers into the program after the beginning of  
13           a school year.

14           B. The department shall develop a system for parents to direct account funds  
15           to participating schools and service providers by electronic funds transfer, automated  
16           clearing house transfer, or another system. The department may contract with a  
17           vendor or provider to manage the payment system.

18           C.(1) Account funds shall be used only for qualified education expenses for  
19           the participating student. Unused funds in an account shall be retained in the  
20           student's account for the following school year.

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

25           D. Account funds do not constitute taxable income of the parent of the  
26           participating student and shall not be claimed as a credit, deduction, exemption, or  
27           rebate under Title 47 of the Louisiana Revised Statutes of 1950.

1           E. No participating school or service provider shall share funds paid from an  
2           account with a parent or student in any manner, including but not limited to a refund  
3           or rebate.

4           §4037.4. Student eligibility; initial and continuing

5           A.(1) A student is initially eligible for an account if he is eligible to enroll  
6           in kindergarten or meets the requirements of Paragraph (2) of this Subsection and  
7           meets both of the following criteria:

8           (a) The student's parent submits an application for an account to the  
9           department in accordance with program timelines.

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

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

13          (ii) Not to enroll the student in a public school while participating in the  
14          program.

15          (iii) To use account funds only for qualified education expenses of the  
16          participating student.

17          (iv) To comply with all program requirements.

18          (2)(a) In the first school year of the program, to be initially eligible a student  
19          enrolling in grades one through twelve shall have been enrolled in a Louisiana public  
20          school during the previous school year.

21          (b) In the second school year of the program, to be initially eligible a student  
22          enrolling in grades one through eight shall have been enrolled in a Louisiana public  
23          school during the previous school year.

24          (c) In the third school year of the program, to be initially eligible a student  
25          enrolling in grades one through five shall have been enrolled in a Louisiana public  
26          school during the previous school year.

27          (d) In the fourth year of the program and thereafter, the school the student  
28          attended in the previous year is not an initial eligibility criteria for any student.

1           B.(1) The signed agreement pursuant to Paragraph (A)(2) of this Section  
2           satisfies the compulsory school attendance requirements of R.S. 17:221. However,  
3           the parent of a participating student shall ensure the student is complying with the  
4           attendance requirements of the participating school or service provider. Each  
5           participating student who fails to comply with the attendance requirements shall be  
6           reported to the state director of child welfare and attendance by the participating  
7           school or service provider and shall be subject to the provisions of R.S. 17:233.

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

11          (3) A participating student is eligible to participate in the program through  
12          in-person education, virtual education, or a hybrid approach that combines both  
13          methods.

14          C. A participating student is eligible to participate in this program  
15          concurrently with the Course Choice Program, the Student Scholarships for  
16          Educational Excellence Program, the School Choice Program for Certain Students  
17          with Exceptionalities, and the Tuition Donation Credit Program; however, the total  
18          amount applied toward the student shall not exceed the statewide average of the state  
19          and local per pupil amount as provided in the approved minimum foundation  
20          program formula.

21          §4037.5. Schools and service providers; eligibility; participation

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

24                         (1) It has been approved by the state board pursuant to R.S. 17:11.

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

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



1           B. The state board shall provide eligibility criteria for both schools and  
2           service providers in program rules in a way that maximizes school and provider  
3           participation.

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

8           D. If the department finds that a participating school or service provider has  
9           failed to maintain continuing eligibility criteria or has demonstrated gross or a  
10           persistent lack of academic competence, the department shall restrict the school's  
11           ability to serve additional students and may terminate the school's participation in the  
12           program. The department shall report any such action to the state board within three  
13           business days.

14           E.(1) Nothing in this Chapter shall be deemed to limit the independence or  
15           autonomy of any participating school or service provider or to make the actions of  
16           a participating school or service provider the actions of the state government.

17           (2) Participating schools and service providers shall be given maximum  
18           freedom to provide for the educational needs of participating students without  
19           governmental control.

20           (3) Nothing in this Chapter shall be construed to expand the regulatory  
21           authority of the state, its officers, or any school district to impose any additional  
22           regulation of participating schools or service providers beyond those necessary to  
23           enforce the requirements of the program.

24           (4) A participating school or service provider that accepts funds pursuant to  
25           this Chapter is not an agent of the state or federal government.

26           (5) No participating school or service provider shall be required to alter its  
27           creed, practices, admissions policy, or curriculum in order to accept account funds.

1        §4037.6. Students 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) The department shall make information regarding the services  
17        participating schools and the resident school system can provide to children with  
18        special needs available to parents prior to the enrollment process.

19        §4037.7. Testing

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

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

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

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

1        §4037.8. Reports

2                Not later than April thirtieth of each year, the department shall submit a  
3        written report to the House Committee on Education, the Senate Committee on  
4        Education, and the Joint Legislative Committee on the Budget regarding the  
5        implementation of the program. The report, at a minimum, shall include the  
6        following information:

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

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

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

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

13                (5) The percentage of funds used for each type of qualified education  
14        expense.

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

17                (7) Results of a parental satisfaction survey.

18                (8) The amount withheld by the department for administration of the  
19        program, including the amount retained by the department, the amount paid to  
20        vendors for the administration of the program, and the amount paid to vendors for  
21        managing the payment system.

22        §4037.9. Public school participation; study and report

23                A. The state board shall study the feasibility and advisability of the full-time  
24        and part-time participation of students attending public schools, including both  
25        traditional public schools and charter schools, in the program and submit a written  
26        report of findings and conclusions, including but not limited to any recommendations  
27        for related legislation, funding considerations, best practices from other states, and  
28        a potential timeline for implementation, to the House Committee on Education and  
29        the Senate Committee on Education not later than December 31, 2023.

1           B. The state superintendent of education or his designee shall make a  
2           presentation on the report and any related matters he deems appropriate to the  
3           committees, meeting separately or jointly, not later than January 31, 2024.

4           Section 2. R.S. 17:4035.1(C)(2) is hereby repealed in its entirety.

5           Section 3. R.S. 17:4037.9 is hereby repealed in its entirety.

6           Section 4.(A) Sections 1 and 2 and this Section of this Act shall become effective  
7           upon signature of this Act by the governor or, if not signed by the governor, upon expiration  
8           of the time for bills to become law without signature by the governor, as provided by Article  
9           III, Section 18 of the Constitution of Louisiana. If this Act is vetoed by the governor and  
10          subsequently approved by the legislature, Sections 1 and 2 and this Section of this Act shall  
11          become effective on the day following such approval.

12          (B) Section 3 of this Act shall become effective on February 1, 2024.

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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 98 Engrossed

2023 Regular Session

Harris

**Abstract:** Creates and provides for the administration of a program for the purpose of providing state funding for qualified education expenses for students in grades kindergarten through 12 who are not enrolled in a public school and expands the ability of parents to enroll children in the public school of their choice by removing conditions relative to school performance.

#### **Sunshine Scholarship Program; Creation and Administration**

Proposed law creates the Sunshine Scholarship Program, a universal education freedom account program for students not enrolled in public school 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 students by the beginning of the 2024-2025 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 average state MFP per pupil allocation, which includes all applicable weighted funds based on student characteristics. Authorizes DOE to withhold up to 5% of funds allocated for each account annually for program administration. Requires that the amount allocated to an account be prorated if a student transfers into the program after the beginning of a school year.
- (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 further provides as follows:

- (1) Limits authorized use of funds to qualified education expenses.
- (2) Unused funds in an account 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.
- (4) Account funds do not constitute taxable income and shall not be claimed as a credit, deduction, exemption, or rebate.
- (5) Schools and service providers shall not share funds paid from an account with a parent or student in any manner, including but not limited to a refund or rebate.

### **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's parent submits a timely application.
- (2) 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 provides for a phased-in expansion of eligibility for students regardless of whether or not they attended a public school in the previous school year.

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 eligible to participate concurrently in this 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, but the total amount applied toward the student shall not exceed the statewide average of the state and local per pupil amount as provided by the minimum foundation program formula.
- (3) Shall be considered in attendance at a day school for purposes of compulsory attendance; proposed law requires parents to ensure students comply with attendance requirements and requires schools and service providers to report students who fail to comply to the state director of child welfare and 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 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 schools and service providers in a way that maximizes school and 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 program funds for providing services covered as qualified education expenses.

Proposed law provides for sanctions relative to admitting additional students and participation in the program if a school or service provider fails to meet continuing eligibility requirements.

Proposed law adds that nothing in proposed law shall be deemed to limit the independence or autonomy of any participating school or service provider.

### **Testing**

Proposed law requires:

- (1) DOE to develop a process for the annual administration of either of the following to participating students:

- (a) Any examination required pursuant to the school and district accountability system at the prescribed grade level.
  - (b) A nationally norm-referenced test or a statewide assessment.
- (2) DOE to develop a process for the collection and aggregate reporting of results and ensure results are provided to parents.

### **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. Provides for required report content, including the results of a parental satisfaction survey and certain financial information relative to the program.

### **Public School Participation in the Sunshine Scholarship Program; BESE Study**

Proposed law requires BESE to study the feasibility and advisability of the full-time and part-time participation of students attending public schools, including both traditional public schools and charter schools, in the Sunshine Scholarship Program and submit a written report of findings and conclusions, including but not limited to any recommendations for related legislation, funding considerations, best practices from other states, and a potential timeline for implementation, to the House and Senate education committees not later than Dec. 31, 2023. Requires the state superintendent or his designee to make a presentation on the report and any related matters he deems appropriate to the committees, meeting separately or jointly, not later than Jan. 31, 2024.

### **Public School Choice**

Present law allows parents to enroll children in the public school of their choice without regard to residence, school system geographic boundaries, or attendance zones if the following conditions are met:

- (1) The public school in which the student was most recently enrolled or would otherwise attend received a performance letter grade of "D" or "F" for the most recent school year.
- (2) The school in which the student seeks to enroll received a performance letter grade of "A", "B", or "C" for the most recent school year and has sufficient capacity at the appropriate grade level.

Proposed law retains the condition relative to sufficient capacity at the receiving school but removes all conditions pertaining to school letter grades.

Present law requires each public school governing authority to notify parents of students enrolled in a "D" or "F" school of the "A", "B", and "C" schools under its jurisdiction and the process for submitting students transfer requests. Proposed law requires each public school governing authority to notify the parents of all of its students of the letter grades of all schools under its jurisdiction and otherwise retains present law.

Proposed law requires BESE to adopt rules for the implementation of present law and proposed law and retains the following present law relative to public school choice:

- (1) That a student shall not be enrolled in a school if it would violate the order of a court of competent jurisdiction.
- (2) That parents may request that BESE review transfers that are denied.

- (3) That a school system shall not be required to provide transportation to any student enrolled in a public school that is located outside of the geographic boundaries of the school system in which the student resides if it would result in additional cost to the school system.
- (4) That student enrolled in a public school shall be counted by the local public school system in which he is enrolled for purposes of the minimum foundation program and formula and any other available state or federal funding for which the student is eligible.
- (5) That each public school governing authority shall work collaboratively and cooperatively to ensure compliance.
- (6) That BESE shall report to the House and Senate education committees annually regarding both interdistrict and intradistrict transfers.
- (7) That present law shall not be construed to require a selective admissions school to enroll a student who does not meet admissions requirements.

Effective upon signature of governor or lapse of time for gubernatorial action except for repeal of provisions relative to BESE's study and superintendent's presentation, which are effective Feb. 1, 2024.

(Amends R.S. 17:236(A) and 4035.1(A) and (F)(2)(intro. para.) and (b); Adds R.S. 17:4035.1(I) and 4037.1-4037.9; Repeals R.S. 17:4035.1(C)(2) and 4037.9)

#### Summary of Amendments Adopted by House

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

1. Add other expenses incurred in the education of the student to the list of qualified education expenses.
2. Revise the amount of the annual allocation to each account.
3. Allow all unspent funds, rather than up to 50% of the total funds deposited into the account for the current school year, to remain in the account.
4. Add that nothing in proposed law shall be deemed to limit the independence or autonomy of any participating school or service provider.
5. Remove certain criteria relative to the provision of special education services by participating nonpublic schools.
6. Specify that BESE study potential full-time and part-time participation of public school students in the proposed law scholarship program.