

2023 Regular Session

HOUSE BILL NO. 9

BY REPRESENTATIVE BUTLER

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

SCHOOLS/CHOICE: Creates and provides for a program to provide state funding for the education of students with exceptionalities not enrolled in public school

1 AN ACT

2 To amend and reenact R.S. 17:236(A) and to enact Chapter 43-C of Title 17 of the Louisiana
3 Revised Statutes of 1950, to be comprised of R.S. 17:4037.1 through 4037.7, relative
4 to elementary and secondary education; to create and provide for the administration
5 of a program to provide state funding for the education of certain students with
6 exceptionalities who are not enrolled in public school; to provide relative to the
7 eligibility of students, schools, and service providers participating in the program;
8 to provide relative to program funds; to provide relative to the testing of students
9 participating in the program; to require the state Department of Education to submit
10 annual reports to the legislature relative to the program; to provide relative to rules;
11 to provide relative to definitions; to provide for an effective date; and to provide for
12 related matters.

13 Be it enacted by the Legislature of Louisiana:

14 Section 1. R.S. 17:236(A) is hereby amended and reenacted and Chapter 43-C of
15 Title 17 of the Louisiana Revised Statutes of 1950, comprised of R.S. 17:4037.1 through
16 4037.7, is hereby enacted to read as follows:

17 §236. Definition of a school

18 A. For the purposes of this Chapter, a school is defined as an institution for
19 the teaching of children, consisting of an adequate physical plant, whether owned or
20 leased, instructional staff members, and students. For such an institution to be

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

* * *

CHAPTER 43-C. EDUCATION SCHOLARSHIP ACCOUNT PROGRAM

§4037.1. Definitions

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

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

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

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

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

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

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

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

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

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

12 (b) Instructional or tutoring services.

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

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

17 (e) Therapeutic services a student would receive at school if enrolled in a
18 public school.

19 (f) Any other expenses incurred in the education of the student.

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

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

24 (11) "State board" means the State Board of Elementary and Secondary
25 Education.

26 (12) "Student with an exceptionality" has the same meaning as that provided
27 by R.S. 17:1942 except that a student who meets that definition solely because he is
28 gifted or talented is not a student with an exceptionality for purposes of this Chapter.

1 §4037.2. Program creation and administration; powers and duties of the State Board
2 of Elementary and Secondary Education and state Department of Education;
3 rules

4 The Education Scholarship Account Program is hereby created. The
5 department shall administer the program, and the state board shall adopt rules and
6 regulations for the administration of the program which shall, at minimum, provide
7 for the following:

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

11 (2) Audits of the program and accounts.

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

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

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

19 §4037.3. Account funds

20 A. The department shall annually allocate to each account, from funds
21 appropriated or otherwise made available for the program, an amount equal to the
22 state's base per-pupil amount as provided in the minimum foundation program
23 formula, plus the special education weight as provided in the minimum foundation
24 program times the state's base per-pupil amount. The department may withhold up
25 to five percent of funds allocated for each account annually for program
26 administration. The amount allocated to an account shall be appropriately prorated
27 if a student transfers into the program after the beginning of a school year.

28 B. The department shall develop a system for parents to direct account funds
29 to participating schools and service providers by electronic funds transfer, automated

1 clearing house transfer, or another system. The department may contract with a
2 vendor or provider to manage the payment system.

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

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

11 (b) Notwithstanding any provision of Subparagraph (a) of this Paragraph, if
12 a participating student's account has been inactive for two consecutive years and the
13 legislature has failed to appropriate funds for the program for those two years, the
14 account of such participating student shall not be closed because of inactivity.

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

18 §4037.4. Student eligibility; initial and continuing

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

22 (1) He is a student with an exceptionality.

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

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

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

28 (b) Not to enroll the student in a public school while participating in the
29 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. However,
6 the parent of a participating student shall ensure the student is complying with the
7 attendance requirements of the participating school or service provider. Each
8 participating student who fails to comply with such attendance requirements shall be
9 reported to the state director of child welfare and attendance by the participating
10 school or service provider and shall be subject to the provisions of R.S. 17:233.

11 (2) A participating student is eligible to continue to participate in the
12 program until he enrolls in a public school; he receives a high school diploma or its
13 equivalent or reaches the age of twenty-one, whichever occurs first; or his account
14 is closed.

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

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

22 §4037.5. Schools and service providers; eligibility; participation

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

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

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

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

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

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

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

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

10 §4037.7. Reports

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

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

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

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

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

22 (5) The percentage of funds used for each type of qualified education
23 expense.

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

26 (7) Results of a parental satisfaction survey.

27 (8) The amount withheld by the department for administration of the
28 program, including the amount retained by the department, the amount paid to

1 vendors for the administration of the program, and the amount paid to vendors for
 2 managing the payment system.

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

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)]

HB 9 Reengrossed

2023 Regular Session

Butler

Abstract: Creates and provides for the administration of a program for the purpose of providing state funding for qualified education expenses for students with exceptionalities in grades kindergarten through 12 who are not enrolled in a public school.

Education Scholarship Account (ESA) Program; Creation and Administration

Proposed law creates the Education Scholarship Account (ESA) Program 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.

Proposed law provides that an eligible student may participate in the program through in-person education, virtual education, or a hybrid approach that combines both methods.

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 base per-pupil amount as provided in the minimum foundation program (MFP) formula, plus the special education weight as provided in the MFP times the state's base per pupil amount. 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. Further provides an exception that if the legislature has not appropriated funds for the program for two consecutive years, a participating student's account will not be closed due to inactivity.
- (4) Account funds do not constitute taxable income and shall not be claimed as a credit, deduction, exemption, or rebate.

Eligibility; Students

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

- (1) He is a student with an exceptionality as defined in present law – mental disability, hearing loss (including deafness), multiple disabilities, deaf-blindness, speech or language impairment, visual impairment (including blindness), emotional disturbance, orthopedic impairment, other health impairment, specific learning disability, traumatic brain injury, autism, or is deemed to be gifted or talented, and as a result requires special education and related services; a student with an exceptionality may include a student aged three through eight experiencing developmental delay. Proposed law provides that a student who is solely deemed to be gifted and talented is not eligible.
- (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 reaches the age of 21, whichever occurs first; 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; 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.

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 ESA 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 provides 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.

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

(Amends R.S. 17:236(A); Adds R.S. 17:4037.1-4037.7)

Summary of Amendments Adopted by House

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

1. Remove household income from the list of student eligibility criteria.
2. Add that nothing in proposed law shall be deemed to limit the independence or autonomy of any participating school or service provider.

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

1. Change initial school year start for the program from 2023-2024 to 2024-2025.
2. Add other expenses incurred in the education of the student to the definition of "qualified education expenses".
3. Change the amount that will be deposited into a participating student's account each year.
4. Remove cap on amount of unspent funds that may remain in the account from one school year to the next.
5. Provide that a participating student's account will not be closed due to inactivity if the legislature has failed to appropriate funds for the program for two consecutive years.
6. Provide that a participating student is eligible to participate in the program through in-person education, virtual education, or a hybrid approach that combines in-person and virtual.
7. Make technical changes.