

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.

18 \* \* \*

19 CHAPTER 43-C. EDUCATION SCHOLARSHIP ACCOUNT PROGRAM

20 §4037.1. Definitions

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

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

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

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

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

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

25           (12) "Student with an exceptionality" has the same meaning as that provided  
26           by R.S. 17:1942 except that a student who meets that definition solely because he is  
27           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 2023-2024 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 allocation as provided in the minimum foundation program  
23                   formula, plus any applicable weighted funds based on student characteristics. The  
24                   department may withhold up to five percent of funds allocated for each account  
25                   annually for program administration. The amount allocated to an account shall be  
26                   appropriately prorated if a student transfers into the program after the beginning of  
27                   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, up to fifty percent of the total  
5 funds deposited into the account for the current school year, shall be retained in the  
6 student's account for the following school year.

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

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

14 §4037.4. Student eligibility; initial and continuing

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

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

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

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

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

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

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

28 (d) To comply with all program requirements.

1           B.(1) The signed agreement pursuant to Paragraph (A)(3) 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 such 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 reaches the age of twenty-one, whichever occurs first; or his account  
11           is closed.

12           (3) A participating student is eligible to participate in the program through  
13           either in-person or virtual education.

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

18           §4037.5. Schools and service providers; eligibility; participation

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

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

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

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

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

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

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

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

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

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

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

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

25          §4037.6. Testing

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

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

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

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

5                   §4037.7. Reports

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

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

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

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

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

17                  (5) The percentage of funds used for each type of qualified education  
18                  expense.

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

21                  (7) Results of a parental satisfaction survey.

22                  (8) The amount withheld by the department for administration of the  
23                  program, including the amount retained by the department, the amount paid to  
24                  vendors for the administration of the program, and the amount paid to vendors for  
25                  managing the payment system.

26                  Section 2. This Act shall become effective upon signature by the governor or, if not  
27                  signed by the governor, upon expiration of the time for bills to become law without signature  
28                  by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If



- 1 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
 2 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 Engrossed

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 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 base per-pupil allocation as provided in the minimum foundation program (MFP) formula, plus any 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, 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.
- (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 talent 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.