

2022 Regular Session

HOUSE BILL NO. 194

BY REPRESENTATIVES BUTLER AND WRIGHT

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  
21 classified as a school, within the meaning of this Chapter, instructional staff  
22 members shall meet the following requirements: if a public day school or a

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

17 \* \* \*

18 CHAPTER 43-C. EDUCATION SAVINGS ACCOUNT PROGRAM

19 §4037.1. Definitions

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

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

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

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

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

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

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

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

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

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

10                  (b) Instructional or tutoring services.

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

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

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

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

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

21                  (11) "State board" means the State Board of Elementary and Secondary  
 22                  Education.

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

26                  §4037.2. Program creation and administration; powers and duties of the State Board  
 27                  of Elementary and Secondary Education and state Department of Education;  
 28                  rules

29                  The Education Savings Account Program is hereby created. The department  
 30                  shall administer the program, and the state board shall adopt rules and regulations

1 for the administration of the program which shall, at minimum, provide for the  
2 following:

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

6 (2) Audits of the program and accounts.

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

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

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

14 §4037.3. Account funds

15 A. The department shall allocate to each account annually, from funds  
16 appropriated or otherwise made available for the program, an amount equal to the  
17 state's base per-pupil allocation as provided in the minimum foundation program  
18 formula, plus any applicable weighted funds based on student characteristics. The  
19 department may withhold up to five percent of funds allocated for each account  
20 annually for program administration. The amount allocated to an account shall be  
21 appropriately prorated if a student transfers into the program after the beginning of  
22 a school year.

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

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

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

5           §4037.4. Student eligibility; initial and continuing

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

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

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

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

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

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

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

19                           (d) To comply with all program requirements.

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

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

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

3                   C. A participating student shall not participate in any of the following  
4                   concurrently with this program: any other education savings account program  
5                   provided in this Title, the Course Choice Program, the Student Scholarships for  
6                   Educational Excellence Program, the School Choice Program for Certain Students  
7                   with Exceptionalities, or the Tuition Donation Credit Program.

8                   §4037.5. Schools and service providers; eligibility; participation

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

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

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

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

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

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

23                  D. If the department finds that a participating school or service provider has  
24                  failed to maintain continuing eligibility criteria or has demonstrated gross or a  
25                  persistent lack of academic competence, the department shall restrict the school's  
26                  ability to serve additional students and may be terminated from the program. Such  
27                  action shall be reported to the state board within three business days.

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  
29           vendors for the administration of the program, and the amount paid to vendors for  
30           managing the payment system.

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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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_