

2022 Regular Session

HOUSE BILL NO. 194

BY REPRESENTATIVES BUTLER AND WRIGHT

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 Savings Account Program pursuant to R.S. 17:4037.4 and the child's
 18 parent has signed an agreement pursuant to R.S. 17:4037.4(A)(3).

19 * * *

20 CHAPTER 43-C. EDUCATION SAVINGS ACCOUNT PROGRAM

21 §4037.1. Definitions

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

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

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

29 (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 Savings Account Program is hereby created. The department
5 shall administer the program, and the state board shall adopt rules and regulations
6 for the administration of the program which shall, at minimum, provide for the
7 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 allocate to each account annually, 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.

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

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

5 (2) The account shall be closed and the funds in the account shall be returned
6 to the state general fund if the student is determined to be no longer eligible, if an
7 account has been inactive for two consecutive years, or if a parent fails to comply
8 with the provisions of this Chapter or state board rules pertaining to the program.
9 §4037.4. Student eligibility; initial and continuing

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

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

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

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

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

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

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

23 (d) To comply with all program requirements.

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

26 (2) A participating student is eligible to continue to participate in the
27 program until he enrolls in a public school; he receives a high school diploma or its
28 equivalent or reaches the age of twenty-one, whichever occurs first; or his account
29 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: the Course Choice Program, the Student
5 Scholarships for Educational Excellence Program, the School Choice Program for
6 Certain Students with Exceptionalities, or the Tuition Donation Credit Program.

7 §4037.5. Schools and service providers; eligibility; participation

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

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

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

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

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

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

22 §4037.6. Testing

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

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

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

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

4 §4037.7. Reports

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

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

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

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

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

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

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

20 (7) Results of a parental satisfaction survey.

21 Section 2. This Act shall become effective upon signature by the governor or, if not
22 signed by the governor, upon expiration of the time for bills to become law without signature
23 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
24 vetoed by the governor and subsequently approved by the legislature, this Act shall become
25 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 194 Reengrossed

2022 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 Savings Account (ESA) Program; creation and administration

Proposed law creates the Education Savings 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.
- (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.

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) 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.

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.

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.

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. Add that an eligible student shall be considered in attendance at a day school for purposes of compulsory attendance.
2. Remove requirement that the entity contracted with for program administration and for management of the payment system be a nonprofit organization.
3. Add that BESE rules shall include a requirement that the program begin enrolling participating students by the beginning of the 2023-2024 school year.
4. Change funding amount from the state's per pupil amount allocated to the student's resident school system, considering all student characteristics, to the state's base per-pupil allocation, plus any applicable weighted funds based on student characteristics.
5. Add that DOE may withhold funds allocated for program administration.
6. Delete use of a debit card from list of examples of funds transfer methods.
7. Relative to school eligibility:

- (a) Remove requirement that a school must have existed and been providing educational services to students with exceptionalities in an established program with appropriately certified teachers for at least two years prior to participation.
 - (b) Retain requirement that school be BESE-approved but remove requirement for approval for at least the prior school year.
8. Relative to eligibility criteria for schools and service providers, require BESE to set these in a way that maximizes school and provider participation.
 9. Revise testing requirements.
 10. Add results of parental satisfaction survey to content required in annual DOE report.

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

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