

2022 Regular Session

HOUSE BILL NO. 227

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

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. Chapter 43-C of Title 17 of the Louisiana Revised Statutes of 1950,
14 comprised of R.S. 17:4037.1 through 4037.7, is hereby enacted to read as follows:

15 CHAPTER 43-C. EDUCATION SAVINGS ACCOUNT PROGRAM

16 §4037.1. Definitions

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

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

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

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

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

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

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

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

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

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

18 (b) Tutoring services provided by an educator with a valid Louisiana
19 teaching certificate.

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

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

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

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

28 (11) "State board" means the State Board of Elementary and Secondary
29 Education.

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

4 §4037.2. Program creation and administration; powers and duties of the State Board
5 of Elementary and Secondary Education and state Department of Education;
6 rules

7 The Education Savings Account Program is hereby created. The department
8 shall administer the program, and the state board shall adopt rules and regulations
9 for the administration of the program which shall, at minimum, provide for the
10 following:

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

14 (2) Audits of the program and accounts.

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

18 (4) The authority of the department to contract with a nonprofit organization
19 for the administration of the program or parts of the program.

20 §4037.3. Account funds

21 A. The department shall allocate to each account annually, from funds
22 appropriated or otherwise made available for the program, an amount equal to the
23 state's per-pupil allocation to the resident school system as provided in the minimum
24 foundation program formula, considering all student characteristics.

25 B. The department shall develop a system for parents to direct account funds
26 to participating schools and service providers by electronic funds transfer, automated
27 clearing house transfer, the use of a debit card, or another system. The department
28 may contract with a private financial management firm to manage the payment
29 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 D. Account funds do not constitute taxable income of the parent of the
10 participating student and shall not be claimed as a credit, deduction, exemption, or
11 rebate under Title 47 of the Louisiana Revised Statutes of 1950.

12 §4037.4. Student eligibility; initial and continuing

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

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

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

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

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

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

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

26 (d) To comply with all program requirements.

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

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

4 C. A participating student shall not participate in any of the following
5 concurrently with this program: the Course Choice Program, the Student
6 Scholarships for Educational Excellence Program, the School Choice Program for
7 Certain Students 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 and has
12 been so approved for at least the school year prior to the school's participation in the
13 program.

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

16 (3) It has existed and provided educational services to students with
17 exceptionalities for at least two years prior to participation in the program pursuant
18 to an established program that includes instruction by teachers holding appropriate
19 certification in special education or other appropriate education or training.

20 (4) It meets any other eligibility criteria set by the state board in program
21 rules.

22 B. The state board shall provide eligibility criteria for service providers in
23 program rules.

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

1 §4037.6. Testing

2 A. A participating school shall ensure that each participating student is
3 administered all examinations required pursuant to the school and district
4 accountability system at the prescribed grade levels that the student would be
5 administered if enrolled in public school and that the results of such examinations
6 are provided to parents.

7 B. The department shall develop a process for the annual administration of
8 a nationally norm-referenced test or a statewide assessment and the collection of
9 results for a participating student not enrolled full time in a participating school if the
10 student would take such tests or assessments if enrolled in public school.

11 §4037.7. Reports

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

- 17 (1) The total number of students participating in the program.
- 18 (2) A list of all participating schools and service providers.
- 19 (3) The total student enrollment of each participating school, the number of
20 participating students enrolled in each school, and the percentage of the total
21 enrollment of each school represented by program participants.
- 22 (4) Aggregate test result data for participating students.
- 23 (5) The percentage of funds used for each type of qualified education
24 expense.
- 25 (6) An analysis of the program's fiscal impact on the state and on local public
26 school systems.

27 Section 2. This Act shall become effective upon signature by the governor or, if not
28 signed by the governor, upon expiration of the time for bills to become law without signature
29 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 227 Original

2022 Regular Session

Wright

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 nonprofit organization for the administration of the program or parts of the program.

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 per-pupil allocation as provided in the minimum foundation program (MFP) formula, considering all student characteristics.
- (2) Develop a system for parents to direct account funds to participating schools and service providers by electronic funds transfer, automated clearing house transfer, the use of a debit card, 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 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 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 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.

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 for at least one school year prior to participation.
- (2) Comply with criteria set forth in federal nondiscrimination requirements.

- (3) Have existed and been providing educational services to students with exceptionalities as defined in present law (not counting gifted and talented) in an established program with appropriately certified teachers for at least two years prior to participation.
- (4) Any other criteria set by BESE.

Proposed law requires BESE to set eligibility criteria for service providers and 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) Participating schools to ensure that participating students are administered all examinations that they would take if enrolled in public school and that the results of such examinations are provided to parents.
- (2) DOE to develop a process for the annual administration of a nationally norm-referenced test or a statewide assessment and the collection of results for participating students not enrolled full time in a participating school if students would take such tests or assessments if enrolled in public school.

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.

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

(Adds R.S. 17:4037.1-4037.7)