

2022 Regular Session

HOUSE BILL NO. 33

BY REPRESENTATIVES DEVILLIER AND ROMERO

SCHOOLS/CHOICE: Creates and provides for a program to provide state funding for the education of students 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 4037.8, 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 students not enrolled in  
6 public school; to provide relative to the eligibility of students, schools, and service  
7 providers participating in the program; to provide relative to program funds; to  
8 provide relative to the testing of students participating in the program; to require the  
9 state Department of Education to submit annual reports to the legislature relative to  
10 the program; to provide relative to rules; to provide relative to definitions; to provide  
11 for an effective date; and to provide for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. R.S. 17:236(A) is hereby amended and reenacted and Chapter 43-C of  
14 Title 17 of the Louisiana Revised Statutes of 1950, comprised of R.S. 17:4037.1 through  
15 4037.8, is hereby enacted to read as follows:

16 §236. Definition of a school

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

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

18 \* \* \*

19 CHAPTER 43-C. EDUCATION SAVINGS ACCOUNT PROGRAM

20 §4037.1. Definitions

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

23 (1) "Account" means an education account established pursuant to this  
24 Chapter and composed of state funds deposited on behalf of a student eligible to  
25 participate in the 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) Tutoring services provided by an educator with a valid Louisiana  
13           teaching certificate.

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

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

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

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

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

24           §4037.2. Program creation and administration; powers and duties of the State Board  
25           of Elementary and Secondary Education and state Department of Education;  
26           rules

27           The Education Savings Account Program is hereby created. The department  
28           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 for the  
11        administration of the program or parts of the program.

12        §4037.3. Account funds

13               A. The department shall allocate to each account annually, from funds  
14        appropriated or otherwise made available for the program, an amount equal to the  
15        state's average per-pupil allocation as provided in the minimum foundation program  
16        formula, considering all student characteristics.

17               B. The department shall develop a system for parents to direct account funds  
18        to participating schools and service providers by electronic funds transfer, automated  
19        clearing house transfer, or another system. The department may contract with a  
20        private financial management firm to manage the payment system.

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

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

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

4           §4037.4. Student eligibility; initial and continuing

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

8           (1) He meets at least one of the following criteria:

9           (a) He has a parent who is an active duty military service member.

10          (b) His parent submitted an enrollment request for an interdistrict or  
11          intradistrict transfer pursuant to R.S. 17:4035.1 during the most recent transfer  
12          request period and such request was denied.

13          (c) Pursuant to foster care placement through the Department of Children  
14          and Family Services, he is residing with a prospective permanent placement or has  
15          achieved permanency through adoption or permanent guardianship.

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

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

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

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

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

25          (d) To comply with all program requirements.

26          B.(1) The signed agreement pursuant to Paragraph (A)(3) of this Section  
27          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, provisionally approved, or probationally approved  
12          by the state board pursuant to R.S. 17:11.

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

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

17          B. The state board shall provide eligibility criteria for service providers in  
18          program rules.

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          §4037.6. Student with exceptionalities

24          A. If a participating student enrolled in a participating school would have  
25          been entitled to receive special education services in the resident school system, his  
26          parent shall acknowledge in writing, as part of the program enrollment process, that  
27          the parent agrees to accept only such services as are available to all students enrolled  
28          in the participating school.

1           B. A parent may make a parental placement to receive special education and  
2           related services from a participating school that has demonstrated the capacity to  
3           offer such services.

4           C.(1) A participating school shall not discriminate against a child with  
5           special educational needs during the program admissions process. However, a  
6           participating school is required to offer only those services that it already provides  
7           or such services as necessary to assist students with special needs that it can provide  
8           with minor adjustments. A participating school may partner with the local school  
9           system to provide special education services.

10           (2) Information regarding the services a participating school can provide and  
11           the services the resident school system can provide to children with special needs  
12           who are enrolled in a participating school shall be made available by the department  
13           to parents prior to the enrollment process.

14           D. The department shall determine whether a participating school has a  
15           demonstrated capacity to offer special education services. A participating school  
16           that desires to offer special education services shall inform the department of the  
17           types of student exceptionalities as defined in R.S. 17:1942 that the school is able to  
18           serve. The department may authorize the school to provide such services only if the  
19           school has existed and provided educational services to students with exceptionalities  
20           as defined in R.S. 17:1942, excluding students deemed to be gifted or talented, for  
21           at least two years prior to participation in the program, and such provision of services  
22           is pursuant to an established program in place at the school that includes instruction  
23           by teachers holding appropriate certification in special education or other appropriate  
24           education or training as defined by the department and that is in accordance with a  
25           student's Individual Education Plan.

26           §4037.7. Testing

27           A. A participating school shall ensure that participating students are  
28           administered a nationally norm-referenced test or a statewide assessment and that the  
29           results of such examinations are provided to parents.

1           B. The department shall develop a process for the annual administration of  
2           assessments and the collection of results for participating students not enrolled full  
3           time in a participating school.

4           §4037.8. 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           Section 2. This Act shall become effective upon signature by the governor or, if not  
21 signed by the governor, upon expiration of the time for bills to become law without signature  
22 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
23 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
24 effective on the day following such approval.



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**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)]

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HB 33 Engrossed

2022 Regular Session

DeVillier

**Abstract:** Creates and provides for the administration of a program for the purpose of providing state funding for qualified education expenses for students 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 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 average 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, 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 meets at least one of these criteria:
  - (a) He has a parent or legal guardian who is an active duty military service member.
  - (b) His parent or legal guardian submitted an enrollment request for a transfer pursuant to present law (R.S. 17:4035.1) during the most recent transfer request period and the request was denied.
  - (c) Pursuant to foster care placement through the Dept. of Children and Family Services, he is residing with a prospective permanent placement or has achieved permanency through adoption or permanent guardianship.
- (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.
- (3) Shall be considered in attendance at a day school for purposes of compulsory attendance.

**Students with exceptionalities**

Proposed law requires, if a student would have been entitled to special education services in his resident school system, his parent to acknowledge in writing that he agrees to accept only such services as are available to all students enrolled in the participating school. Requires participating schools to meet certain criteria to be eligible to offer such services.

**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, provisionally approved, or probationally 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 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 a nationally norm-referenced test or a statewide assessment and that the results of such examinations are provided to parents.
- (2) DOE to develop a process for the annual administration of assessments and the collection of results for participating students not enrolled full time in a participating 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.

(Amends R.S. 17:236(A); Adds R.S. 17:4037.1 - 4037.8)

### 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 be a nonprofit organization.
3. Change funding amount from the state's per pupil amount allocated to the student's resident school system to the state's average per-pupil allocation.
4. Delete use of a debit card from list of examples of funds transfer methods.
5. Revise testing requirements.