

Title 28
EDUCATION
Part CLV. Bulletin 134—Tuition Donation Rebate Program

Chapter 1. General Provisions

§101. Purpose, Scope, and Effect

A. The purpose of this policy rule is to set forth the rules and regulations necessary to implement the provisions of R.S. 47:6301, which allows rebates for donations a taxpayer makes to a school tuition organization which provides scholarships to qualified students that attend a qualified school.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:

§103. Definitions

A. The words defined in this Section shall have the meanings set forth below whenever they appear in this policy, unless:

1. the context in which they are used clearly requires a different meaning; or
2. a different definition is prescribed for a particular provision.

Administrative Costs - all costs and expenses associated with the operation of a school tuition organization, including promotional costs and the costs associated with administering state testing, other than scholarship awards. Administrative costs shall not exceed 5 percent of any donation.

Donor – a taxpayer who files a Louisiana income tax return, and who makes a donation to a school tuition organization.

Fiscal Year - the fiscal year for the State of Louisiana.

LDE - Louisiana Department of Education

MFP – Minimum Foundation Program

Parent - a parent, guardian, custodian, or other person with authority to act on behalf of the child.

Qualified School – a nonpublic elementary or secondary school in Louisiana which is approved by the Board of Elementary and Secondary Education (BESE) and which complies with the criteria set forth in *Brunfield, et al. v. Dodd, et al.*, 425 F. Supp 528.

Qualified Student – a child who is a member of a family that resides in Louisiana with a total household income that does not exceed an amount equal to 250 percent of the federal poverty level based on the federal poverty guidelines established by the Federal Office of Management and Budget and is a student who:

1. is entering kindergarten for the first time;
 2. was enrolled in a public school in Louisiana on October 1st and February of the most recent school year;
- or
3. received a scholarship from a school tuition organization for the previous school year.

School Tuition Organization – a tax exempt organization organized under Section 501(c)(3) of the Internal Revenue Code which provides scholarships to qualified students to attend a qualified school, in adherence with the provisions of this Rule and R.S. 47:6301.

Student with a disability – a student shall be considered to have a disability if such student has been evaluated by a local education agency (LEA) as defined in R.S. 17:1942, is deemed to have a mental disability, hearing impairment (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, dyslexia and related disorders, or autism, and as a result requires special education and related services according to an Individualized Education Program (IEP) or a services plan in accordance with Title 34 of the Code of Federal Regulations Part 300.37.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:

Chapter 3. School Tuition Organizations

§301. Establishment of a School Tuition Organization

A. Each school tuition organization shall notify the Louisiana Department of Education (LDE) of its intent to provide educational scholarships to qualified students attending qualified schools.

B. Each school tuition organization shall provide documentary evidence to the LDE that it has been granted an exemption from federal income tax and is established as an organization described in Section 501(c)(3) of the Internal Revenue Code.

C. No school tuition organization shall employ, or allow as a board member, any person who has been convicted of or has entered a plea of nolo contendere to a crime listed in R.S. 15:587.1.

D. Each school tuition organization shall develop and implement a written policy, consistent with the provisions of R.S. 15:587.1, through which the organization shall determine whether any applicant for employment, employee, or board member, has been arrested for or convicted of or pled nolo contendere to any criminal offense

1. The written policy shall include:

a. the requirement to perform criminal background checks on all applicants for employment, employees and board members according to the provisions of R.S. 15:587.1.;

b. a procedure for the submission of a person's fingerprints, in a form acceptable to the Louisiana Bureau of Criminal Identification and Information (Bureau), prior to employment of such person or the appointment of such person as a member of the Board.

2. Persons who have submitted fingerprints to the Bureau may be temporarily hired pending receipt of the reports from the Bureau.

3. Each school tuition organization shall maintain proof of such record checks for the duration of a person's employment and/or membership on the board, and shall be able to provide such records upon request of the LDE.

E. The LDE may bar a school tuition organization from participating in the rebate program if the school tuition organization fails to comply with the requirements of this section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:

§303. Awarding of Scholarships

A. No scholarship shall be designated, referred to, or in any way named after a private entity, nor shall any donation be earmarked by a donor to provide a scholarship for a particular qualified student or a particular qualified school or group of schools; however, this Paragraph shall not prohibit a donation being earmarked for a student with a disability, students with a particular type of disability, or students with any disability.

B. School tuition organizations shall only use applications approved by the LDE in awarding scholarships to qualified students.

C. School tuition organizations shall award scholarships to qualified students on a first-come, first-serve basis, with priority given to students who received a scholarship in the previous year.

D. School tuition organizations shall provide educational scholarships to students without limiting available scholarships to students of only one qualified school or group of schools.

E. School tuition organizations shall document the eligibility of each qualified student for each year that a qualified student receives a scholarship.

F. School tuition organizations shall provide certification to the LDE that scholarships have been issued within 30 days of issuing the scholarships. This certification shall include:

1. information pertaining to students whom the scholarships were awarded;
2. the nonpublic school these students will use the scholarship for;
3. a list of the taxpayers whose donations to the school tuition organization funded the scholarships; and
4. the amount of each taxpayer's donation used to fund a scholarship.

G. Scholarships granted to qualified students shall be portable during the school year and can be used at any qualifying school that accepts a qualified student. If the parent of a qualified student who is receiving a scholarship desires the student to move to a new qualified school during a school year, the scholarship amount may be prorated.

H. Any qualified student receiving a scholarship from a school tuition organization shall be prohibited from receiving any other publicly funded scholarship, voucher, or other form of financial assistance specific to that student for purposes of attending a nonpublic school.

I. A qualified student may receive scholarships from multiple school tuition organizations the total amount of which may not exceed the lesser of actual tuition or:

1. 80 percent of the state average MFP per pupil funding amount for the previous year in the case of a qualified student enrolled in kindergarten through eighth grade; or
2. 90 percent of the state average MFP per pupil funding amount for the previous year in the case of a qualified student enrolled in ninth through twelfth grade.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education LR 39:

§307. Prohibition on Claiming Scholarship Payments for Tax Purposes

A. Any parent who receives scholarship payments in accordance with the provisions of this Rule or R.S. 47:6301 shall not be allowed to claim the amount received as any other credit, deduction, exemption, or rebate under Title 47 of the Louisiana Revised Statutes of 1950.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:

§309. Amount of Scholarships

A. The amount of scholarships awarded by a school tuition organization shall equal the amount of donations the organization receives from taxpayers, minus allowable administrative or promotional costs. No less than 95 percent of the monies received by the school tuition organization from taxpayer donations for scholarships shall be used to provide scholarships to students for attendance at a qualified nonpublic school of their parent's choice.

B. The maximum amount for a scholarship provided by the school tuition organization to a qualified student in kindergarten through eighth grade shall not exceed actual tuition and mandatory fees or 80 percent of the state average MFP per pupil funding amount for the previous year, whichever is less.

C. The maximum amount for a scholarship for a qualified student in ninth through twelfth grades shall not exceed actual tuition and mandatory fees or 90 percent of the state average MFP per pupil funding amount for the previous year, whichever is less.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:

§311. Scholarship and Tuition Payments

A. School tuition organizations shall distribute scholarship payments in September, December, February, and May of each year as checks made out to a parent of a qualified student that are mailed to the qualifying school where the student is enrolled. The parent shall restrictively endorse each check for deposit into the account of the school. The parent shall not designate any entity or individual associated with the school as the parent's attorney to endorse a scholarship check.

B. Upon receipt of notification from a qualified school that a student who has received a scholarship has ceased to be enrolled in the school, the student tuition organization shall cease making payments to the school for that student.

C. The LDE shall verify that each qualified student has received scholarships not to exceed the lesser of actual tuition and fees at the qualified school or 80 percent of the state average MFP per pupil funding amount for the previous year in the case of a qualified student enrolled in kindergarten through eighth grade, or 90 percent of the state average MFP per pupil funding amount for the previous year in the case of a qualified student enrolled in ninth through twelfth grade. If the total amount of scholarships received by a qualified student has exceeded one of these amounts, as applicable, the school tuition organization that awarded the scholarship that caused the student's total scholarship amount to exceed this amount shall refund the state the difference.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Education, LR 39:

§313. Refund of Donations

A. If, at the end of the State's fiscal year, a donor requests a refund of unexpended funds from his donation, the school tuition organization shall reimburse the donor the full amount of unexpended funds otherwise available to be used on scholarships, exclusive of funds available for administrative costs. If the donor does not elect to receive a refund, the school tuition organization may retain and carry forward the funds indefinitely or for a shorter period of time if so indicated by the donor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:

Chapter 5. Donations to School Tuition Organizations and Rebates

§501. Donations; Qualifications

A. There shall be a rebate allowed for donations made by taxpayer during a taxable year to a school tuition organization which provides scholarships to qualified students to attend a qualified school.

B. To qualify for a rebate pursuant to R.S. 47:6301, the donor must be a taxpayer who files a Louisiana income tax return.

C. The LDE shall certify and issue a receipt to a taxpayer indicating the actual amount of the taxpayer's donation to a school tuition organization which was used to fund a scholarship after all of the requirements of this Rule have been satisfied.

D. The Department of Revenue shall provide a standardized format for the receipt to be issued by the LDE to a school tuition organization. The Department of Revenue shall require a taxpayer to provide a copy of the receipt when claiming the rebate authorized by this Rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Education, LR 39:

§503. Donations; Time

A. Upon making a donation to a school tuition organization, the donor shall indicate the duration of time which the school tuition organization may retain and carry forward the donation. The time may be indicated as being in perpetuity or for a stated period of time coinciding with a fiscal year of the state of Louisiana, the minimum of which shall not be less than twelve months or one fiscal year, whichever occurs later.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:

§505. Rebates

A. In order for a donation to qualify for the rebate, the donation shall be used by the school tuition organization to provide scholarships for tuition and fees for students to attend a qualified school in accordance with the provisions of this Rule and R.S. 47:6301.

B. The amount of the rebate to the donor shall be equal to the actual amount of the taxpayer's donation used by a school tuition organization to fund a scholarship to a qualified student, which shall not include administrative costs.

C. The rebate may be paid only after the conclusion of the school year and only when all of the following requirements have been satisfied:

1. The school tuition organization certifies to the LDE that the donation made by the taxpayer has funded a scholarship for a qualified student.

2. The LDE verifies that the student was not enrolled in a public school in Louisiana on 1 or February 1 of that school year. If the qualified student is enrolled in public school on February 1 of that school year, the amount of the rebate shall be equal to the actual amount expended by the school tuition organization on scholarships, which shall not include administrative costs and shall be prorated as applicable.

3. The LDE transmits an electronic file to the Department of Revenue verifying that the LDE has issued taxpayer receipts. The electronic file should include the following information for each receipt:

a. the date the LDE issued the receipt;

b. the name and social security number or Louisiana taxpayer identification number of each taxpayer;

and

c. the amount of each taxpayer's donation that funded student scholarships for the previous school year.

4. The taxpayer completes a rebate form, provided by the Department of Revenue, and submits both that form and the LDE-issued receipt to the Department of Revenue.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:

Chapter 7. School Tuition Organization Fiscal and Advertising Responsibilities

§701. Financial Information Report

A. Each school tuition organization shall prepare a financial information report that complies with uniform financial accounting standards, to be submitted to the LDE by the deadline set by the LDE each year. The report shall be prepared by a certified public accountant and shall be submitted to the LDE. The report shall contain a certification from an auditor that the report is free of material misstatements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:

§703. School Tuition Organization Advertising

A. Each school tuition organization shall adequately advertise the availability of scholarships to the public, with an emphasis on notifying parents of students in public schools that received a letter grade of "D" or "F."

B. School tuition organizations must perform at least the following activities to adequately advertise the availability of scholarships to the public, with an emphasis on notifying parents of students in public schools that received a letter grade of "D" or "F":

1. advertise scholarship availability on the school tuition organization's website;
2. host at least one public information session regarding scholarship availability in proximity to a "D" or "F" public school; and
3. on a per parish basis, advertise scholarship availability to parents of students of "D" and "F" school at least equally to parents of students of "A", "B", and "C" schools.

C. For school tuition organization to adequately advertise the availability of scholarships to the public, all school tuition organization advertisements must:

1. specify the monetary amount of student scholarships;
2. indicate scholarship availability on a first-come, first-serve basis, with priority given to students who received a scholarship in the previous year;
3. provide scholarship application instructions and deadlines;
4. provide the school tuition organization's contact information; and
5. indicate student eligibility requirements.

D. For school tuition organization to adequately advertise the availability of scholarships to the public, all school tuition organization advertisements must not:

1. discriminate against students for any reason, including, but not limited to, race or ethnicity, religion, academic performance, students with a disability, or gender;
2. guarantee enrollment to any nonpublic school;
3. indicate preference for any nonpublic school;
4. indicate that a school tuition organization's student application directly affects the status of a student's application for participation in the Student Scholarships for Educational Excellence Program; or
5. contradict any other requirement listed in R.S. 47:6301 or this policy rule.

F. School tuition organizations are required to submit all advertisements intended to communicate with external stakeholders, including donors, families, and nonpublic schools, to the LDE within thirty working days of when the advertisement was first used. The LDE will review the advertisement for conformity with policy and statute. Such review will include but not be limited to the completeness and accuracy of any information regarding the timeframes and tax implications of making a donation. If the advertisement presents information that does not conform with policy and statute, then the LDE may require the school tuition organization to make appropriate changes to the advertisement.

G. The LDE may bar a school tuition organization from participating in the rebate authorized under this Rule if the school tuition organization fails to comply with the advertising rules and regulations promulgated by the LDE.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:

§705. Annual Report

A. Each school tuition organization shall annually provide a public report to the LDE that contains information regarding all scholarships awarded or granted in the previous fiscal year. The report shall be prepared by a certified

public accountant and shall be submitted to the department no later than the first day of January each year. The report shall contain:

1. the name and address of the school tuition organization;
2. the total number and total dollar amount of donations received during the previous fiscal year;
3. the total number and total dollar amount of educational scholarships awarded to qualified students;
4. the total amount expended on administrative costs;
5. the percentage breakdown of donations expended on scholarship and administrative costs during the previous fiscal year;
6. the actual tuition and fee amounts published by the qualifying schools which enrolled a student with a scholarship from that school tuition organization;
7. the total amount of donations received by the school tuition organization;
8. the total amount of donations made by each donor during the previous calendar year;
9. the amount of each taxpayer's donations expended on scholarships during the previous school year; and
10. the social security number or Louisiana taxpayer identification number of each donor.

B. Each school tuition organization and the LDE shall redact all social security numbers before publicly releasing any annual report.

C. The LDE shall provide the Department of Revenue with copies of all such reports by February 1 of each year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:

§707. Budgeting

A. No more than 5 percent of any donation shall be used by the school tuition organization for administrative or promotional costs.

B. Each school tuition organization shall provide for the administration of the state tests associated with the school and district accountability system to those participating students to whom it has awarded scholarships in grades that require testing under the state's accountability and testing laws for public schools. Such costs shall not be included as part of any scholarship award.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:

Chapter 9. Review of School Tuition Organizations

§901. General Audits and Financial Reviews

A. The LDE may conduct a general or specific audit or a financial review or audit of a school tuition organization as deemed necessary by the LDE. The LDE may bar a school tuition organization from participating in the rebate authorized under this Section if the school tuition organization intentionally or substantially fails to comply with the requirements of this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:

Chapter 11. Qualified Schools

§1101. Background Checks.

A. Each qualified school must conduct criminal background checks on its employees in compliance with La. R.S. 17:15 and exclude from employment any person not permitted by state law to work in a nonpublic school. The LDE may bar an otherwise qualified school from participating in the rebate authorized under this Rule if the otherwise qualified school fails to comply with the requirements of R.S. 17:15.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:

§1103. Enrollment of Scholarship Recipients

A. Qualified schools shall admit qualified students for enrollment based on the letter grade of the public school for which the qualified student was attending or would have attended. Qualified students from public schools that received a letter grade "F" or "D," or any variation thereof, shall be given the first priority.

B. If more first-time qualified students who are otherwise eligible apply than there are seats available, the school shall conduct a random selection process that ensures all qualified and otherwise eligible students an equal chance for admission; however, the qualified school may give preference for the following:

1. siblings of students already enrolled in the qualified school; and
2. qualifying students who had previously enrolled at a different qualified school and who are otherwise eligible.

C. Enrollment of scholarship recipients in a school qualified under the provisions of this chapter and under the provisions of the Student Scholarships for Educational Excellence Program that has been approved for less than two years shall not exceed 20 percent of such school's total student enrollment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:

§1105. Tuition

A. Qualified schools enrolling participating students shall not charge a higher total tuition and fee amount to a qualified student than is charged to all students enrolled at the school.

B. Each qualified school enrolling participating students shall annually provide to each school tuition organization that has provided a scholarship to a student enrolled in that school, the actual tuition and fee amounts charged to all students.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:

§1107. Transfer/Withdrawal of Scholarship Students

A. If a student who has received a scholarship ceases to be enrolled in a qualified school, the school shall immediately notify the respective student tuition organization and the LDE that the student is no longer enrolled.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:

§1109. Testing of Scholarship Students.

A. Using funds retained for administrative costs by the school tuition organization, schools enrolling participating students shall annually administer the state test associated with the school and district accountability system to measure learning gains in math and language arts to such students in grades that require testing under the state's accountability and testing laws for public schools.

B. The LDE shall not incur any expense for the administration of the state tests to students applying for tuition scholarships from a school tuition organization.

C. The qualified school shall provide the parents of each student who was tested a copy of the student's test results on an annual basis, beginning with the first year the student is tested.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:

§1111. Surety Bonds

A. Any qualified school that receives more than \$50,000 in scholarship donations from a school tuition organization shall demonstrate its financial viability by filing, prior to the start of a school year, a surety bond payable to the school tuition organization in an amount equal to the aggregate amount of donations expected to be received during the school year or by filing, prior to the start of a school year, financial information with the qualified school tuition organization demonstrating its financial viability. However, a qualified school that has been in business for more than five years shall not be required to post a surety bond.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:

Chapter 13. Testing

§1301. Required Participation in the State Testing Program

A. Nonpublic schools that enroll scholarship recipients in grade levels with mandatory state accountability testing in math or English shall:

1. develop and submit annually to the LDE a test security policy approved by its board in compliance with Bulletin 118, Chapter 3;
2. follow BESE's test Security Policy as stated in Bulletin 118;
3. name a school test coordinator and provide contact information to the LDE;
4. be responsible for all required accountability and demographic coding of testing documents; and
5. investigate and report any testing irregularities and/or violations of test security to the department.

B. The school test coordinator for the participating nonpublic school shall attend the pretest workshop designed for the participating nonpublic schools as well as any additional training required to administer the state tests.

1. The school test coordinator shall provide to the LDE with a valid work email address. Personal email addresses (Yahoo, Hotmail, Google, etc.) will not be accepted.

2. When the school test coordinator changes, the participating nonpublic school shall provide the name and contact information of the new school test coordinator to the LDE on school letterhead within 15 days of the change in appointment;

C. The LDE staff shall have the authority to:

1. monitor the implementation of the state testing;
2. require changes to the test security policy as it deems necessary;
3. require changes to the testing plan as it deems necessary;
4. conduct site visits during testing; and
5. conduct an investigation into testing irregularities and/or violations, and void any scores deemed to be invalid.

D. The LDE staff shall:

1. notify participating nonpublic schools of any new requirements in state testing; and
2. evaluate annually the testing plan to ensure full compliance with policies and procedures

E. The LEA shall not test any students enrolled in participating nonpublic schools unless there is a written agreement between the LEA and the participating nonpublic school to this effect. No LEA shall ever be required to test students attending the participating nonpublic schools under the Tuition Donation Rebate program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:

§1303. Annual Report on Program Implementation

A. The LDE shall compile a public report which lists the name of all qualified schools receiving scholarship recipients pursuant to the provisions of this Rule, the number of scholarship recipients attending each qualified school, and the results of the state's accountability and testing laws for scholarship recipients in each grade.

B. The LDE shall release the public report on the LDE's website the same time the LDE traditionally releases reports regarding individual school performance on state tests.

C. State test scores will be reported publicly for the entirety of the students participating in the Tuition Donation Rebate program in accordance with the federal FERPA statute (20 U.S.C. 1232g) and regulations (34 C.F.R. 99.1 et seq). The LDE shall not include the name or any other identifying information for individual students.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39: