

Representative LaVar Christensen proposes the following substitute bill:

CARSON SMITH SPECIAL NEEDS

SCHOLARSHIPS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: J. Morgan Philpot

LONG TITLE

General Description:

This bill creates a program to award scholarships to students with disabilities who attend a private school.

Highlighted Provisions:

This bill:

- ▶ specifies criteria for qualifying for a scholarship;
- ▶ specifies criteria for private schools to enroll scholarship students;
- ▶ specifies the amount, timing, and form of scholarship payments;
- ▶ requires the State Board of Education to make rules;
- ▶ gives the State Board of Education enforcement authority; and
- ▶ requires the Legislature to annually appropriate money from the General Fund for scholarship payments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



26 53A-3-410, as last amended by Chapter 377, Laws of Utah 1999

27 ENACTS:

28 53A-1a-701, Utah Code Annotated 1953

29 53A-1a-702, Utah Code Annotated 1953

30 53A-1a-703, Utah Code Annotated 1953

31 53A-1a-704, Utah Code Annotated 1953

32 53A-1a-705, Utah Code Annotated 1953

33 53A-1a-706, Utah Code Annotated 1953

34 53A-1a-707, Utah Code Annotated 1953

35 53A-1a-708, Utah Code Annotated 1953

36 53A-1a-709, Utah Code Annotated 1953



37
38 *Be it enacted by the Legislature of the state of Utah:*

39 Section 1. Section 53A-1a-701 is enacted to read:

40 **Part 7. Carson Smith Scholarships for Students with Special Needs Act**

41 **53A-1a-701. Title.**

42 This part is known as the "Carson Smith Scholarships for Students with Special Needs
43 Act."

44 Section 2. Section 53A-1a-702 is enacted to read:

45 **53A-1a-702. Findings and purpose.**

46 (1) The Legislature finds that:

47 (a) the state system of public education as established and maintained under the state
48 constitution makes available a free public education for all children of the state;

49 (b) students with disabilities have special needs which must be satisfied to allow them
50 to learn and maximize their capabilities;

51 (c) those needs may include teachers trained in special teaching methods, small class
52 sizes, and special materials, equipment, and classroom environments;

53 (d) it is in the best interest of the state to offer effective and efficient educational
54 alternatives which will allow students with special needs to learn and maximize their
55 capabilities;

56 (e) the establishment of this scholarship program is justified on the basis of funding the

57 special needs of students with disabilities as with other programs similarly funded by the state
58 for people with disabilities; and

59 (f) nothing in this part shall be construed as a basis for granting vouchers or tuition tax
60 credits for any other students, with or without disabilities.

61 (2) The purpose of this part is to provide limited financial assistance to parents of
62 students with disabilities to allow them to enroll their student in a private school, if the parent
63 determines that the student's needs are best met by the private school.

64 Section 3. Section **53A-1a-703** is enacted to read:

65 **53A-1a-703. Definitions.**

66 As used in this part:

67 (1) "Assessment team" means a team consisting of:

68 (a) the student's parent or guardian;

69 (b) the student's classroom teacher;

70 (c) special education personnel from the student's resident school district; and

71 (d) if available, special education personnel from the private school at which the
72 student is enrolled.

73 (2) "Board" means the State Board of Education.

74 (3) "Eligible private school" means a private school that meets the requirements of
75 Section 53A-1a-705.

76 (4) "IEP" means a written statement for a student with a disability that is developed,
77 reviewed, and revised in accordance with board rules and the Individuals with Disabilities
78 Education Act, 20 U.S.C. Sec. 1400 et. seq.

79 (5) "Scholarship student" means a student who receives a scholarship under this part.

80 (6) "Value of the weighted pupil unit" means the amount specified in Section
81 53A-17a-103 that is multiplied by the number of weighted pupil units to yield the funding level
82 for the basic state-supported school program.

83 Section 4. Section **53A-1a-704** is enacted to read:

84 **53A-1a-704. Scholarship program created -- Qualifications.**

85 (1) The Carson Smith Scholarship Program is created to award scholarships to students
86 with disabilities to attend a private school.

87 (2) To qualify for a scholarship:

- 88 (a) the student's custodial parent or legal guardian shall reside within Utah;
89 (b) the student shall have one or more of the following disabilities:
90 (i) mental retardation;
91 (ii) a hearing impairment;
92 (iii) a speech or language impairment;
93 (iv) a visual impairment;
94 (v) a serious emotional disturbance;
95 (vi) an orthopedic impairment;
96 (vii) autism;
97 (viii) traumatic brain injury;
98 (ix) other health impairment; or
99 (x) specific learning disabilities;
100 (c) the student shall be at least five years of age before September 2 of the year in
101 which admission to a private school is sought and under 19 years of age on the last day of the
102 school year as determined by the private school, or, if the individual has not graduated from
103 high school with a regular diploma, will be under 22 years of age on the last of the school year
104 as determined by the private school; and
105 (d) except as provided in Subsection (3), the student shall:
106 (i) be enrolled in a Utah public school in the school year prior to the school year the
107 student will be enrolled in a private school;
108 (ii) have an IEP; and
109 (iii) have obtained acceptance for admission to an eligible private school.
110 (3) The board shall provide, by rule, for a waiver from the requirements of Subsection
111 (2)(c) in the following circumstances:
112 (a) the student is enrolled or has obtained acceptance for admission to an eligible
113 private school;
114 (b) the private school specializes in serving students with disabilities; and
115 (c) an assessment team is able to readily determine with reasonable certainty:
116 (i) that the student has a disability listed in Subsection (2)(b) and would qualify for
117 special education services, if enrolled in a public school; and
118 (ii) for the purpose of establishing the scholarship amount, the appropriate level of

- 119 special education services which should be provided to the student.
- 120 (4) (a) To receive a scholarship:
- 121 (i) the parent of a student meeting the qualifications of Subsection (2) shall submit an
- 122 application for the scholarship to the school district within which the student is enrolled:
- 123 (A) at least 60 days before the date of the first scholarship payment; and
- 124 (B) that contains a certification by the parent that the selected school is qualified and
- 125 capable of providing the level of special education services required for student; and
- 126 (ii) the parent of a student seeking a waiver pursuant to Subsection (3) shall submit an
- 127 application for the scholarship to the student's resident school district at least 60 days before
- 128 the date of the first scholarship payment.
- 129 (b) The board may provide, by rule, for a waiver of the 60-day application deadline.
- 130 (5) (a) The scholarship application form shall include a statement disclosing to
- 131 applicants that a private school may not provide the same level of special education services
- 132 that are provided in a public school.
- 133 (b) Upon acceptance of the scholarship, the parent assumes full financial responsibility
- 134 for the education of the scholarship student.
- 135 (c) The creation of the scholarship program or granting of a scholarship does not:
- 136 (i) imply that a public school did not provide a free and appropriate public education
- 137 for a student; or
- 138 (ii) constitute a waiver or admission by the state.
- 139 (6) (a) A scholarship shall remain in force for three years.
- 140 (b) A scholarship may be extended for an additional three years, if:
- 141 (i) the student is evaluated by an assessment team; and
- 142 (ii) the assessment team determines that the student is disabled and would qualify for
- 143 special education services, if enrolled in a public school.
- 144 (c) The assessment team shall determine the appropriate level of special education
- 145 services which should be provided to the student for the purpose of setting the scholarship
- 146 amount.
- 147 (d) A scholarship may be extended for successive three-year periods as provided in
- 148 Subsections (6)(b) and (6)(c) until the student graduates from high school.
- 149 (7) A student's parent, at any time, may remove the student from a private school and

150 place the student in another eligible private school and retain the scholarship.

151 (8) A scholarship student may not participate in a dual enrollment program pursuant to
152 Section 53A-11-102.5.

153 Section 5. Section **53A-1a-705** is enacted to read:

154 **53A-1a-705. Eligible private schools.**

155 (1) To be eligible to enroll a scholarship student, a private school may be a sectarian or
156 nonsectarian school and shall:

157 (a) have a physical location in Utah where the scholarship students attend classes and
158 have direct contact with the school's teachers;

159 (b) demonstrate fiscal soundness in accordance with Subsection (4);

160 (c) comply with the antidiscrimination provisions of 42 U.S.C. Sec. 2000d;

161 (d) meet state and local health and safety laws and codes;

162 (e) disclose to the parent of each prospective student, before the student is enrolled, the
163 special education services that will be provided to the student, including the cost of those
164 services;

165 (f) (i) administer an annual assessment of each scholarship student's academic
166 progress; and

167 (ii) report the results of the assessment to the student's parent;

168 (g) employ or contract with teachers who:

169 (i) hold baccalaureate or higher degrees;

170 (ii) have at least three years of teaching experience in public or private schools; or

171 (iii) have special skills, knowledge, or expertise that qualifies them to provide
172 instruction:

173 (A) in the subjects taught; and

174 (B) to the students taught;

175 (h) provide to parents the relevant credentials of the teachers who will be teaching their
176 students; and

177 (i) adhere to the tenets of its published disciplinary procedures prior to the expulsion of
178 a scholarship student.

179 (2) A home school is not eligible to enroll scholarship students.

180 (3) (a) Except as provided in Subsection (3)(b), a private school intending to enroll

181 scholarship students shall submit an application to the board by May 1 of the school year
182 preceding the school year in which it intends to enroll scholarship students.

183 (b) A private school intending to enroll scholarship students in the 2004-05 school year
184 shall submit an application by June 15, 2004.

185 (4) To initially demonstrate financial soundness, the board may require a private school
186 to obtain an audit and opinion letter from an independent certified public accountant showing
187 that the school is insured and has sufficient funds to maintain operations for the full school
188 year.

189 (5) The board shall:

190 (a) approve a private school's application to enroll scholarship students, if the private
191 school meets the eligibility requirements of this section; and

192 (b) make available to the public a list of the eligible private schools.

193 Section 6. Section **53A-1a-706** is enacted to read:

194 **53A-1a-706. Scholarship payments.**

195 (1) (a) Scholarships shall be awarded by the board subject to the availability of money
196 appropriated by the Legislature for that purpose.

197 (b) The Legislature shall annually appropriate money to the board from the General
198 Fund to make scholarship payments.

199 (c) If monies are not available to pay for all scholarships requested, the scholarships
200 shall be allocated in accordance with board rules, with preference given to students who
201 received scholarships in the previous school year.

202 (2) Full-year scholarships shall be awarded in the following amounts:

203 (a) for a student who received an average of 180 minutes per day or more of special
204 education services in a public school before transferring to a private school, an amount not to
205 exceed the lesser of:

206 (i) the value of the weighted pupil unit multiplied by 2.5; or

207 (ii) the private school tuition and fees; and

208 (b) for a student who received an average of less than 180 minutes per day of special
209 education services in a public school before transferring to a private school, an amount not to
210 exceed the lesser of:

211 (i) the value of the weighted pupil unit multiplied by 1.5; or

212 (ii) the private school tuition and fees.

213 (3) The scholarship amount for a student enrolled in a half-day kindergarten program
214 shall be the amount specified in Subsection (2)(a) or (2)(b) multiplied by .55.

215 (4) (a) The scholarship amount for a student who receives a waiver under Subsection
216 53A-1a-704(3) shall be based upon the assessment team's determination of the appropriate
217 level of special education services to be provided to the student.

218 (b) (i) If the student requires an average of 180 minutes per day or more of special
219 education services, a full-year scholarship shall be equal to the amount specified in Subsection
220 (2)(a).

221 (ii) If the student requires less than an average of 180 minutes per day of special
222 education services, a full-year scholarship shall be equal to the amount specified in Subsection
223 (2)(b).

224 (iii) If the student is enrolled in a half-day kindergarten program, the scholarship is
225 equal to the amount specified in Subsection (3).

226 (5) (a) Except as provided in Subsection (5)(b), upon review and receipt of the
227 documentation required by the board to verify a student's admission to, or continuing
228 enrollment and attendance at, a private school, the board shall make scholarship payments in
229 four equal amounts no later than September 1, November 1, February 1, and April 15 of each
230 school year in which a scholarship is in force.

231 (b) In accordance with board rule, the board may make a scholarship payment before
232 the first quarterly payment of the school year, if a private school requires partial payment of
233 tuition before the start of the school year to reserve space for a student admitted to the school.

234 (6) Before scholarship payments are made, the board shall cross-check enrollment lists
235 of scholarship students, school districts, and youth in custody to ensure that scholarship
236 payments are not erroneously made.

237 (7) (a) Scholarship payments shall be made by the board by individual warrant made
238 payable to the student's parent and mailed by the board to the private school. The parent shall
239 restrictively endorse the warrant to the private school for deposit into the account of the private
240 school.

241 (b) A person, on behalf of a private school, may not accept a power of attorney from a
242 parent to sign a warrant referred to in Subsection (7)(a), and a parent of a scholarship student

243 may not give a power of attorney designating a person, on behalf of a private school, as the
244 parent's attorney-in-fact.

245 Section 7. Section **53A-1a-707** is enacted to read:

246 **53A-1a-707. Board to make rules.**

247 The board shall make rules for the administration of the scholarship program.

248 Section 8. Section **53A-1a-708** is enacted to read:

249 **53A-1a-708. Enforcement and penalties.**

250 (1) (a) The board shall require private schools to submit signed affidavits assuring the
251 private school will comply with the requirements of this part and board rules made under this
252 part.

253 (b) If a school fails to submit a signed affidavit after having an opportunity to provide
254 explanations and request delays, the board may:

255 (i) deny the private school permission to enroll scholarship students; and

256 (ii) interrupt disbursement of or withhold scholarship payments.

257 (2) The board may:

258 (a) investigate complaints about a private school's or parent's failure to comply with
259 this part or board rules made under this part; and

260 (b) convene administrative hearings for a violation of this part or board rules.

261 (3) Upon a finding that a private school or parent failed to comply with this part or
262 board rules made under this part, the board may:

263 (a) deny a private school permission to enroll scholarship students;

264 (b) interrupt disbursement of or withhold scholarship payments; or

265 (c) issue an order for repayment of scholarship payments fraudulently obtained.

266 Section 9. Section **53A-1a-709** is enacted to read:

267 **53A-1a-709. Limitation on regulation of private schools.**

268 Nothing in this part grants additional authority to any state agency or school district to
269 regulate private schools except as expressly set forth in this part.

270 Section 10. Section **53A-3-410** is amended to read:

271 **53A-3-410. Criminal background checks on school personnel -- Notice -- Payment**
272 **of cost -- Request for review.**

273 (1) A school district superintendent or the superintendent's designee:

274 (a) shall require a potential employee or a volunteer who will be given significant
275 unsupervised access to a student in connection with the volunteer's assignment to submit to a
276 criminal background check as a condition for employment or appointment; and

277 (b) where reasonable cause exists, may require an existing employee or volunteer to
278 submit to a criminal background check.

279 (2) The chief administrative officer of a private school may require, and the chief
280 administrative officer of the private school that enrolls scholarship students under Chapter 1a,
281 Part 7, Carson Smith Scholarships for Students with Special Needs Act, shall require:

282 (a) a potential employee or volunteer to submit to a criminal background check as a
283 condition for employment or appointment; and

284 (b) where reasonable cause exists, an existing employee or volunteer to submit to a
285 criminal background check.

286 (3) The applicant, volunteer, or employee shall receive written notice that the
287 background check has been requested.

288 (4) (a) (i) Fingerprints of the individual shall be taken, and the Criminal Investigations
289 and Technical Services Division of the Department of Public Safety, established in Section
290 53-10-103, shall release the individual's full record of criminal convictions to the administrator
291 requesting the information.

292 (ii) The division shall maintain a separate file of fingerprints submitted under
293 Subsection (4)(a)(i) and notify the State Office of Education when a new entry is made against
294 a person whose fingerprints are held in the file regarding:

295 (A) any matters involving an alleged sexual offense;

296 (B) any matters involving an alleged felony or class A misdemeanor drug offense; or

297 (C) any matters involving an alleged offense against the person under Title 76, Chapter
298 5, Offenses Against the Person.

299 (iii) The cost of maintaining the separate file shall be paid by the State Office of
300 Education from fees charged to those submitting fingerprints.

301 (b) Information received by the division from entities other than agencies or political
302 subdivisions of the state may not be released to a private school unless the release is
303 permissible under applicable laws or regulations of the entity providing the information.

304 (5) The superintendent, local school board, or their counterparts at a private school

305 shall consider only those convictions which are job-related for the employee, applicant, or
306 volunteer.

307 (6) (a) The district or private school shall pay the cost of the background check except
308 as otherwise provided in Subsection (6)(b), and the monies collected shall be credited to the
309 Criminal Investigations and Technical Services Division to offset its expenses.

310 (b) The district or private school may require an applicant to pay the costs of a
311 background check as a condition for consideration for employment or appointment, if:

312 (i) the applicant:

313 (A) has passed an initial review;

314 (B) is one of a pool of no more than five candidates for a position; and

315 (C) except as may be otherwise provided by state board rule for an applicant who
316 submitted to a background check while completing a higher education program at a Utah
317 institution of higher education, has not been the subject of a criminal background check of
318 similar scope during the preceding two years that was requested by a potential employer or the
319 State Board of Education; and

320 (ii) a copy of the background check is provided to the district or school considering
321 employment or appointment of the applicant.

322 (7) The Criminal Investigations and Technical Services Division shall, upon request,
323 seek additional information from regional or national criminal data files in responding to
324 inquiries under this section.

325 (8) (a) A private school seeking information from the Federal Bureau of Investigation
326 or other national criminal data file which the private school may not access directly shall
327 submit its request to the Teacher Certification Section of the State Board of Education, together
328 with the required fee and the school's criminal data-related criteria for limiting or rejecting
329 employment.

330 (b) The section shall submit the request and, upon receiving the requested information,
331 shall determine whether the subject of the inquiry is entitled to employment under the school's
332 criteria.

333 (c) The section shall disclose its determination to the school but may not disclose the
334 data in the national criminal data file.

335 (9) (a) The applicant, volunteer, or employee shall have opportunity to respond to any

336 information received as a result of the background check.

337 (b) A private school applicant, volunteer, or employee who wishes to respond shall:

338 (i) submit a request to the school; and

339 (ii) give a written statement to the Teacher Certification Office authorizing the office to
340 release the background check information to a hearing officer selected by the individual and the
341 school.

342 (c) The individual and the school shall equally share any costs incurred under
343 Subsection (9)(b).

344 (d) A public agency shall resolve any request for review by an applicant, volunteer, or
345 employee seeking employment or employed by the agency through normal administrative
346 procedures established by the agency.

347 (10) If a person is denied employment or is dismissed from employment because of
348 information obtained through a criminal background check, the person shall receive written
349 notice of the reasons for denial or dismissal and have an opportunity to respond to the reasons
350 under the procedures set forth in Subsection (9).

351 (11) Information obtained under this part is confidential and may only be disclosed as
352 provided in this section.