

28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 ENACTS:

- 32 **53A-1a-801**, Utah Code Annotated 1953
- 33 **53A-1a-802**, Utah Code Annotated 1953
- 34 **53A-1a-803**, Utah Code Annotated 1953
- 35 **53A-1a-804**, Utah Code Annotated 1953
- 36 **53A-1a-805**, Utah Code Annotated 1953
- 37 **53A-1a-806**, Utah Code Annotated 1953
- 38 **53A-1a-807**, Utah Code Annotated 1953
- 39 **53A-1a-808**, Utah Code Annotated 1953
- 40 **53A-1a-809**, Utah Code Annotated 1953
- 41 **53A-1a-810**, Utah Code Annotated 1953
- 42 **53A-1a-811**, Utah Code Annotated 1953
- 43 **53A-1a-812**, Utah Code Annotated 1953



45 *Be it enacted by the Legislature of the state of Utah:*

46 Section 1. Section **53A-1a-801** is enacted to read:

47 **Part 8. Parent Choice in Education Act**

48 **53A-1a-801. Title.**

49 This part is known as the "Parent Choice in Education Act."

50 Section 2. Section **53A-1a-802** is enacted to read:

51 **53A-1a-802. Findings and purpose.**

52 The Legislature finds that:

53 (1) parents are presumed best informed to make decisions for their children, including
54 the educational setting that will best serve their children's interests and educational needs;

55 (2) the establishment of this choice in education program is justified on the basis of
56 funding the educational needs of school-age children as determined by their parents;

57 (3) school-age children are the primary beneficiaries of the choice in education
58 program authorized in this part, and any benefit to private schools, whether sectarian or secular,

59 is indirect and incidental;

60 (4) the choice in education program authorized by this part is available to the parents of
61 school-age children, solely on the basis of income level for the year immediately preceding the
62 year for which a scholarship is sought, and not on the basis of sex, race, religion, national
63 origin, or any other criteria; and

64 (5) the choice in education program authorized in this part is:

65 (a) enacted for the valid secular purpose of tailoring a child's education to that child's
66 specific needs as determined by the parent;

67 (b) neutral with respect to religion; and

68 (c) limited in its assistance to a parent, who may choose to use the scholarship to offset
69 tuition or fees charged by a private school, either sectarian or secular, in which enrollment of
70 the parent's child is sought, solely as a result of the parent's genuine and independent private
71 choices.

72 Section 3. Section **53A-1a-803** is enacted to read:

73 **53A-1a-803. Definitions.**

74 As used in this part:

75 (1) "Board" means the State Board of Education.

76 (2) "Eligible private school" means a private school that meets the requirements of
77 Section 53A-1a-805.

78 (3) "Income eligibility guideline" means the maximum annual income allowed to
79 qualify for reduced price meals for the applicable household size as published by the U.S.
80 Department of Agriculture by notice in the Federal Register.

81 (4) "Parent" includes a legal guardian.

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

83 (6) "Tuition" means amounts charged for attending a private school, excluding fees for
84 extracurricular activities or transportation to the private school.

85 Section 4. Section **53A-1a-804** is enacted to read:

86 **53A-1a-804. Scholarship program created -- Qualifications -- Application.**

87 (1) The Parent Choice in Education Program is created to award scholarships to
88 students to attend a private school.

89 (2) To qualify for a scholarship under this part:

90 (a) the student's custodial parent or legal guardian shall reside within Utah;

91 (b) the student shall be at least five years of age before September 2 of the year in
92 which admission to a private school is sought and under 19 years of age on the last day of the
93 school year as determined by the private school, or, if the individual has not graduated from
94 high school, will be under 22 years of age on the last day of the school year as determined by
95 the private school;

96 (c) the student shall meet one or more of the following criteria:

97 (i) the student was born after September 1, 2000;

98 (ii) the student was enrolled as a full-time student in a Utah public school on January 1,
99 2006;

100 (iii) the individual was not a Utah resident on January 1, 2006; or

101 (iv) the student's parents had an annual income less than or equal to 100% of the
102 income eligibility guideline in the calendar year immediately preceding the school year for
103 which a scholarship is sought; and

104 (d) the student may not be a recipient of a scholarship awarded under Chapter 1a, Part
105 7, Carson Smith Scholarships for Students with Special Needs Act.

106 (3) (a) To receive a scholarship, the parent of a student shall submit an application for
107 the scholarship to the board by the July 1 preceding the school year for which a scholarship is
108 sought. Along with the application, the student's parent shall submit documentation verifying
109 income as required by board rule.

110 (b) The board may waive the July 1 application deadline.

111 (4) The board shall award scholarships by the August 1 preceding the school year for
112 which a scholarship is sought.

113 (5) (a) The scholarship application form shall contain the following statement:

114 "I acknowledge that:

115 (1) A private school may not provide the same level of services that are provided in a
116 public school.

117 (2) The private school in which I have chosen to enroll my child has disclosed to me
118 the teaching credentials of the school's teachers and the school's accreditation status.

119 (3) I will assume full financial responsibility for the education of my scholarship
120 student if I accept this scholarship.

121 (4) Acceptance of this scholarship has the same effect as a parental refusal to consent
122 to services pursuant to Section 614(a)(1) of the Individuals with Disabilities Education Act, 20
123 U.S.C. Sec. 1400 et seq."

124 (b) Upon acceptance of the scholarship, the parent assumes full financial responsibility
125 for the education of the scholarship student.

126 (c) Acceptance of a scholarship has the same effect as a parental refusal to consent to
127 services pursuant to Section 614(a)(1) of the Individuals with Disabilities Education Act, 20
128 U.S.C. Sec. 1400 et seq.

129 (6) A student's parent, at any time, may remove the student from a private school and
130 place the student in another eligible private school and retain the scholarship.

131 Section 5. Section **53A-1a-805** is enacted to read:

132 **53A-1a-805. Eligible private schools.**

133 (1) To be eligible to enroll a scholarship student, a private school shall:

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

136 (b) contract with an independent certified public accountant to perform the agreed upon
137 procedures specified in Subsection (2) and produce a report of the results which shall be
138 submitted to the board at the times specified in Subsection (2);

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

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

141 (e) disclose to the parent of each prospective student, before the student is enrolled, the
142 special education services that will be provided to the student, if any, including the cost of
143 those services;

144 (f) (i) annually assess the achievement of each student by administering:

145 (A) a norm-referenced test scored by an independent party that provides a comparison
146 of the student's performance to other students on a national basis; or

147 (B) an alternative assessment of the student's achievement, if the student:

148 (I) has a disability or limited English proficiency; and

149 (II) would be exempt from taking a nationally norm-referenced achievement test if
150 enrolled in a Utah public school;

151 (ii) report the test results to the student's parents; and

152 (iii) upon request, make test results available to other persons, in a manner that does
153 not reveal the identity of any student;

154 (g) employ or contract with teachers who:

155 (i) hold baccalaureate or higher degrees; or

156 (ii) have special skills, knowledge, or expertise that qualifies them to provide
157 instruction in the subjects taught;

158 (h) provide to parents the teaching credentials of the school's teachers; and

159 (i) provide, upon request to any person, a statement indicating which, if any,
160 organizations have accredited the private school.

161 (2) (a) The agreed upon procedures to be performed pursuant to Subsection (1)(b) are
162 as follows:

163 (i) Determine that working capital is at least 80% of average quarterly expenditures by
164 taking total expenditures for a year and dividing it by four and then dividing average quarterly
165 expenditures into working capital. For a school in the first year of operations use the estimated
166 budget to estimate average quarterly expenditures.

167 (ii) Determine that voucher payments are accounted for separately and reconciled to
168 student records. For the first year of operations determine that procedures are in place for this
169 accounting.

170 (iii) Determine that expenditure of voucher funds have been made for education
171 expenses and is consistent with other tuition expenditures. For the first year of operations
172 determine that procedures are in place for this accounting.

173 (b) (i) The independent certified public accountant's report on the agreed upon
174 procedures specified in Subsection (2)(a) shall be submitted to the board when the private
175 school applies to accept scholarship students and every four years thereafter, except as
176 provided in Subsection (2)(b)(ii).

177 (ii) The board may by rule delay the date when the independent certified public
178 accountant's report shall be submitted for private schools applying to accept scholarship
179 students in the 2006-07 school year.

180 (3) The following are not eligible to enroll scholarship students:

181 (a) a school with an enrollment of fewer than 25 students;

182 (b) a school that operates in a residence; or

183 (c) a residential treatment facility licensed by the state.

184 (4) (a) Except as provided in Subsection (4)(b), a private school intending to enroll
185 scholarship students shall submit an application to the board by May 1 of the school year
186 preceding the school year in which it intends to enroll scholarship students.

187 (b) A private school intending to enroll scholarship students in the 2006-07 school year
188 shall submit an application by June 1, 2006.

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 (i) for the 2007-08 school year and each school year thereafter, by the May 30
194 preceding the school year; and

195 (ii) for the 2006-07 school year, by June 15, 2006.

196 Section 6. Section **53A-1a-806** is enacted to read:

197 **53A-1a-806. Scholarship payments.**

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

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

202 (c) (i) If monies are not available to pay for all scholarships requested, the scholarships
203 shall be allocated on a random basis except that preference shall be given to students who
204 received scholarships in the previous year.

205 (ii) If monies are insufficient in a school year to pay for all the continuing scholarships,
206 new scholarships may not be awarded during that school year, and the monies available for
207 scholarships shall be prorated among the eligible students who received scholarships in the
208 previous year.

209 (2) (a) Scholarships shall be awarded based upon the income of a scholarship student's
210 parents in the calendar year immediately preceding the school year for which a scholarship is
211 sought.

212 (b) (i) The board shall make rules specifying how the income of a prospective
213 scholarship student's parents shall be determined.

214 (ii) The rules shall provide that the scholarship shall be based upon parental income as
215 follows:

216 (A) if the parents are married, the income of both parents;

217 (B) if a parent is widowed, the income of the widowed parent;

218 (C) if a parent is widowed and has remarried, the income of the parent and stepparent;

219 (D) if the parents are divorced, the income of the parent with whom the scholarship
220 student resided for the greatest amount of time during the past 12 months;

221 (E) if the parents are divorced and the scholarship student resided with each parent an
222 equal amount of time, the income of the parent who provided more financial support during the
223 past 12 months;

224 (F) if the divorced parent with whom the scholarship student resided for the greatest
225 amount of time or who provided the greatest financial support has remarried, the income of the
226 parent and stepparent; and

227 (G) if the scholarship student resides with a guardian, the income of the guardian,
228 unless the guardian's income is exempt by board rule.

229 (iii) The rules shall provide that:

230 (A) if a parent filed federal or state income tax forms, income shall be based upon
231 adjusted gross income as listed on the income tax forms;

232 (B) if a parent was exempt from filing federal and state income tax forms, income shall
233 be based on income earned from work; and

234 (C) a parent shall submit documentation verifying income.

235 (3) (a) The board shall compare the income of a scholarship student's parents to the
236 maximum annual incomes listed in the income eligibility guideline as defined in Section
237 53A-1a-802 to set the scholarship amount.

238 (b) In determining scholarship amounts, the board shall use:

239 (i) the income eligibility guideline in effect for the school year immediately preceding
240 the school year for which a scholarship is sought; and

241 (ii) the scholarship student's household size as the applicable household size for the
242 purpose of the determining maximum annual income under the income eligibility guideline.

243 (4) Full-year scholarships shall be awarded in the amounts shown in the following
244 table, or for the amount of tuition for a full-year, whichever is less.

245	<u>If the annual income of a scholarship</u>	
246	<u>student's parents is:</u>	<u>The full-year scholarship amount is:</u>
247	<u>Less than or equal to 100% of the</u>	
248	<u>income eligibility guideline</u>	<u>\$3,000</u>
249	<u>Greater than 100% but less than or equal</u>	
250	<u>to 125% of the income eligibility guideline</u>	<u>\$2,750</u>
251	<u>Greater than 125% but less than or equal to</u>	
252	<u>150% of the income eligibility guideline</u>	<u>\$2,500</u>
253	<u>Greater than 150% but less than or equal to</u>	
254	<u>175% of the income eligibility guideline</u>	<u>\$2,250</u>
255	<u>Greater than 175% but less than or equal to</u>	
256	<u>200% of the income eligibility guideline</u>	<u>\$2,000</u>
257	<u>Greater than 200% but less than or equal to</u>	
258	<u>225% of the income eligibility guideline</u>	<u>\$1,750</u>
259	<u>Greater than 225% but less than or equal to</u>	
260	<u>250% of the income eligibility guideline</u>	<u>\$1,000</u>
261	<u>Greater than 250% of the income eligibility guideline</u>	<u>\$500</u>
262	<u>(5) The full-year scholarship amounts shown in the table in Subsection (4) apply to</u>	
263	<u>scholarships for all grades except kindergarten. The full-year scholarship amount for</u>	
264	<u>kindergarten shall be .55 times the amounts shown in the table in Subsection (4).</u>	
265	<u>(6) The board shall annually increase the full-year scholarship amounts shown in the</u>	
266	<u>table in Subsection (4) by the same percentage annual increase in the value of the weighted</u>	
267	<u>pupil unit established in Section 53A-17a-103.</u>	
268	<u>(7) (a) Except as provided in Subsection (7)(b), upon review and receipt of</u>	
269	<u>documentation that verifies a student's admission to, or continuing enrollment and attendance</u>	
270	<u>at, a private school, the board shall make scholarship payments in four equal amounts no later</u>	
271	<u>than September 1, November 1, February 1, and April 15 of each school year in which a</u>	
272	<u>scholarship is in force.</u>	
273	<u>(b) In accordance with board rule, the board shall make a scholarship payment before</u>	
274	<u>the first quarterly payment of the school year, if a private school requires partial payment of</u>	
275	<u>tuition before the start of the school year to reserve space for a student admitted to the school.</u>	

276 (8) A parent of a scholarship student shall notify the board if the student does not have
277 continuing enrollment and attendance at an eligible private school.

278 (9) Before scholarship payments are made, the board shall cross-check enrollment lists
279 of scholarship students, school districts, and youth in custody to ensure that scholarship
280 payments are not erroneously made.

281 (10) (a) Scholarship payments shall be made by the board by individual warrant made
282 payable to the student's parent and mailed by the board to the private school. The parent shall
283 restrictively endorse the warrant to the private school for deposit into the account of the private
284 school.

285 (b) A person, on behalf of a private school, may not accept a power of attorney from a
286 parent to sign a warrant referred to in Subsection (10)(a), and a parent of a scholarship student
287 may not give a power of attorney designating a person, on behalf of a private school, as the
288 parent's attorney in fact.

289 Section 7. Section **53A-1a-807** is enacted to read:

290 **53A-1a-807. Mitigation monies.**

291 (1) As provided in this section, a school district shall receive monies to mitigate
292 potential impacts due to the unplanned reduction in revenues resulting from the transfer of
293 scholarship students from the district to a private school.

294 (2) A school district shall retain in enrollment for purposes of receiving funds under
295 the Minimum School Program each scholarship student that:

296 (a) transfers from the school district to a private school; and

297 (b) resides within the boundaries of the school district.

298 (3) Each transferred scholarship student meeting the criteria of Subsection (2) shall be
299 retained in enrollment:

300 (a) for five years following the transfer; or

301 (b) until the student transfers back to the school district, if the student transfers back to
302 the school district within five years.

303 (4) For each year a school district retains in enrollment transferred scholarship students
304 as provided in this section, the board shall deduct from Minimum School Program funds
305 distributed to the school district an amount equal to the number of transferred scholarship
306 students retained in enrollment times the average scholarship amount for scholarship students

307 statewide.

308 Section 8. Section **53A-1a-808** is enacted to read:

309 **53A-1a-808. Transfer of balance.**

310 After awarding the scholarships and budgeting for mitigation monies under this part,
311 the board shall transfer any remaining balance appropriated for scholarships or mitigation
312 monies to the kindergarten and grades 1-12 basic programs established under Chapter 17a,
313 Minimum School Program Act.

314 Section 9. Section **53A-1a-809** is enacted to read:

315 **53A-1a-809. Board to make rules.**

316 (1) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
317 board shall make rules consistent with this part:

318 (a) establishing the application process for the scholarship program;

319 (b) establishing how the income of a scholarship student's parents shall be determined;

320 and

321 (c) implementing Section 53A-1a-807.

322 (2) By May 15, 2006, the board shall adopt rules establishing:

323 (a) the application process for private schools and scholarship students; and

324 (b) how the income of a scholarship student's parents shall be determined.

325 Section 10. Section **53A-1a-810** is enacted to read:

326 **53A-1a-810. Enforcement and penalties.**

327 (1) (a) The board shall require private schools to submit signed affidavits assuring the
328 private school will comply with the requirements of this part.

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

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

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

333 (2) The board may investigate complaints and convene administrative hearings for an
334 alleged violation of this part.

335 (3) Upon a finding that this part was violated, the board may:

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

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

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

339 Section 11. Section **53A-1a-811** is enacted to read:

340 **53A-1a-811. Limitation on regulation of private schools.**

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

343 Section 12. Section **53A-1a-812** is enacted to read:

344 **53A-1a-812. Review by Legislative Auditor General.**

345 The Legislative Auditor General shall conduct a review and issue a report on the Parent
346 Choice in Education Program after the conclusion of the 2009-10 school year.

347 Section 13. **Appropriation.**

348 As an ongoing appropriation subject to future budget constraints, \$100,000 is
349 appropriated from the General Fund for fiscal year 2005-06 to the State Board of Education for
350 the administration of the Parent Choice in Education Act created in Title 53A, Chapter 1a, Part
351 8.

Legislative Review Note
as of 1-25-06 3:51 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel