

1 **CARSON SMITH SCHOLARSHIP PROGRAM**

2 **AMENDMENTS**

3 2006 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Merlynn T. Newbold**

6 Senate Sponsor: Curtis S. Bramble

7

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies the State System of Public Education Code by amending provisions
11 of the Carson Smith Scholarship Program.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ modifies scholarship qualification provisions;
- 15 ▶ requires notification to parents or guardians of the availability of scholarships;
- 16 ▶ modifies eligible private school audit provisions; and
- 17 ▶ makes technical corrections.

18 **Monies Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **53A-1a-704**, as enacted by Chapter 35, Laws of Utah 2005

25 **53A-1a-705**, as enacted by Chapter 35, Laws of Utah 2005

26

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



28 Section 1. Section **53A-1a-704** is amended to read:

29 **53A-1a-704. Scholarship program created -- Qualifications.**

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

32 (2) To qualify for a scholarship:

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

34 (b) the student shall have one or more of the following disabilities:

35 (i) mental retardation;

36 (ii) a hearing impairment;

37 (iii) a speech or language impairment;

38 (iv) a visual impairment;

39 (v) a serious emotional disturbance;

40 (vi) an orthopedic impairment;

41 (vii) autism;

42 (viii) traumatic brain injury;

43 (ix) other health impairment;

44 (x) specific learning disabilities; or

45 (xi) a developmental delay, provided the student is at least five years of age, pursuant
46 to Subsection (2)(c), and is younger than eight years of age;

47 (c) the student shall be at least five years of age before September 2 of the year in
48 which admission to a private school is sought and under 19 years of age on the last day of the
49 school year as determined by the private school, or, if the individual has not graduated from
50 high school, will be under 22 years of age on the last day of the school year as determined by
51 the private school; and

52 (d) except as provided in Subsection (3), the student shall:

53 (i) be enrolled in a Utah public school in the school year prior to the school year the
54 student will be enrolled in a private school;

55 (ii) have an IEP; and

56 (iii) have obtained acceptance for admission to an eligible private school.

57 (3) The requirements of Subsection (2)(d) do not apply in the following circumstances:

58 (a) the student is enrolled or has obtained acceptance for admission to an eligible

59 private school; and
60 ~~[(b) the private school specializes in serving students with disabilities; and]~~
61 ~~[(c)]~~ (b) an assessment team is able to readily determine with reasonable certainty:
62 (i) that the student has a disability listed in Subsection (2)(b) and would qualify for
63 special education services, if enrolled in a public school; and
64 (ii) for the purpose of establishing the scholarship amount, the appropriate level of
65 special education services which should be provided to the student.
66 (4) (a) To receive a scholarship, the parent of a student shall submit an application for
67 the scholarship to the school district within which the student is enrolled:
68 (i) at least 60 days before the date of the first scholarship payment; and
69 (ii) that contains an acknowledgment by the parent that the selected school is qualified
70 and capable of providing the level of special education services required for the student.
71 (b) The board may waive the 60-day application deadline.
72 (5) (a) The scholarship application form shall contain the following statement:
73 "I acknowledge that:
74 (1) A private school may not provide the same level of special education services that
75 are provided in a public school;
76 (2) I will assume full financial responsibility for the education of my scholarship
77 student if I accept this scholarship; and
78 (3) Acceptance of this scholarship has the same effect as a parental refusal to consent
79 to services pursuant to Section 614(a)(1) of the Individuals with Disabilities Education Act, 20
80 U.S.C. Sec. 1400 et seq."
81 (b) Upon acceptance of the scholarship, the parent assumes full financial responsibility
82 for the education of the scholarship student.
83 (c) Acceptance of a scholarship has the same effect as a parental refusal to consent to
84 services pursuant to Section 614(a)(1) of the Individuals with Disabilities Education Act, 20
85 U.S.C. Sec. 1400 et seq.
86 (d) The creation of the scholarship program or granting of a scholarship does not:
87 (i) imply that a public school did not provide a free and appropriate public education
88 for a student; or
89 (ii) constitute a waiver or admission by the state.

90 (6) (a) A scholarship shall remain in force for three years.

91 (b) A scholarship shall be extended for an additional three years, if:

92 (i) the student is evaluated by an assessment team; and

93 (ii) the assessment team determines that the student would qualify for special education
94 services, if enrolled in a public school.

95 (c) The assessment team shall determine the appropriate level of special education
96 services which should be provided to the student for the purpose of setting the scholarship
97 amount.

98 (d) A scholarship shall be extended for successive three-year periods as provided in
99 Subsections (6)(a) and (b):

100 (i) until the student graduates from high school; or

101 (ii) if the student does not graduate from high school, until the student is age 22.

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

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

106 (9) The parents or guardians of a scholarship student have the authority to choose the
107 private school that will best serve the interests and educational needs of that student, which
108 may be a sectarian or nonsectarian school, and to direct the scholarship resources available for
109 that student solely as a result of their genuine and independent private choices.

110 (10) Each school district and charter school shall notify the parents or guardians of
111 students enrolled in the school district or charter school who have an IEP of the availability of a
112 scholarship to attend a private school through the Carson Smith Scholarship Program.

113 Section 2. Section **53A-1a-705** is amended to read:

114 **53A-1a-705. Eligible private schools.**

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

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

118 ~~[(b) demonstrate fiscal soundness in the initial year it accepts scholarship students by~~
119 ~~obtaining an audit and opinion letter from an independent certified public accountant showing~~
120 ~~that the school is insured and has sufficient funds to maintain operations for the full school~~

- 121 year;]
- 122 (b) (i) (A) obtain an audit and report from a licensed independent certified public
123 accountant that conforms with the following requirements:
- 124 (I) the audit shall be performed in accordance with generally accepted auditing
125 standards;
- 126 (II) the financial statements shall be presented in accordance with generally accepted
127 accounting principles;
- 128 (III) the audited financial statements shall be as of a period within the last 12 months;
129 and
- 130 (IV) the audit report may not include a going concern qualification; or
131 (B) contract with a licensed independent certified public accountant to perform an
132 agreed upon procedure as follows:
- 133 (I) the agreed upon procedure shall be to determine that the private school has adequate
134 working capital to maintain operations for the first full year; and
- 135 (II) working capital shall be calculated by subtracting current liabilities from current
136 assets; and
- 137 (ii) submit the audit report or report of the agreed upon procedure to the board when
138 the private school applies to accept scholarship students;
- 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, including the cost of those
143 services;
- 144 (f) (i) administer an annual assessment of each scholarship student's academic
145 progress;
- 146 (ii) report the results of the assessment to the student's parent; and
- 147 (iii) make the results available to the assessment team evaluating the student pursuant
148 to Subsection 53A-1a-704(6);
- 149 (g) employ or contract with teachers who:
- 150 (i) hold baccalaureate or higher degrees;
- 151 (ii) have at least three years of teaching experience in public or private schools; or

- 152 (iii) have special skills, knowledge, or expertise that qualifies them to provide
153 instruction:
- 154 (A) in the subjects taught; and
155 (B) to the students taught; and
156 (h) provide to parents the relevant credentials of the teachers who will be teaching their
157 students.
- 158 (2) A home school is not eligible to enroll scholarship students.
159 (3) Residential treatment facilities licensed by the state are not eligible to enroll
160 scholarship students.
- 161 (4) ~~[(a) Except as provided in Subsection (4)(b), a]~~ A private school intending to enroll
162 scholarship students shall submit an application to the board by May 1 of the school year
163 preceding the school year in which it intends to enroll scholarship students.
- 164 ~~[(b) A private school intending to enroll scholarship students in the 2005-06 school~~
165 ~~year shall submit an application by June 15, 2005.]~~
- 166 (5) The board shall:
167 (a) approve a private school's application to enroll scholarship students, if the private
168 school meets the eligibility requirements of this section; and
169 (b) make available to the public a list of the eligible private schools.

Legislative Review Note
as of 1-19-06 11:54 AM

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

Fiscal Note
Bill Number HB0351

Carson Smith Scholarship Program Amendments

16-Feb-06

4:44 PM

State Impact

The provisions outlined in this bill may be implemented within existing resources. Depending on how a school district or charter school implements the parental notification provisions outlined in the bill, additional costs for printing and delivery of notices may be incurred. This impact may be mitigated by combining the notification with other school mailings or using alternative routes of notification.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst