

1                                   **CARSON SMITH SCHOLARSHIP PROGRAM**

2   **AMENDMENTS**

3   2009 GENERAL SESSION

4   STATE OF UTAH

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

6   Senate Sponsor: Curtis S. Bramble

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8   **LONG TITLE**

9   **General Description:**

10                   This bill modifies provisions of the Carson Smith Scholarships for Students with  
11   Special Needs Act.

12   **Highlighted Provisions:**

13                   This bill:

- 14                   ▶ modifies certain notice requirements for a school district, school within a school  
15   district, or charter school that has an enrolled student who has an IEP;  
16                   ▶ requires an approved eligible private school that changes ownership to reapply to  
17   the State Board of Education and demonstrate that it continues to meet the  
18   eligibility requirements of the program; and  
19                   ▶ makes technical corrections.

20   **Monies Appropriated in this Bill:**

21                   None

22   **Other Special Clauses:**

23                   None

24   **Utah Code Sections Affected:**

25   AMENDS:

26                   **53A-1a-704**, as last amended by Laws of Utah 2006, Chapter 200

27                   **53A-1a-705**, as last amended by Laws of Utah 2006, Chapter 200



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

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

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

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

(2) To qualify for a scholarship:

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

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

(i) mental retardation;

(ii) a hearing impairment;

(iii) a speech or language impairment;

(iv) a visual impairment;

(v) a serious emotional disturbance;

(vi) an orthopedic impairment;

(vii) autism;

(viii) traumatic brain injury;

(ix) other health impairment;

(x) specific learning disabilities; or

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

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

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

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

(ii) have an IEP; and

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

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

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

61 private school that has previously served students with disabilities; and

62 (b) an assessment team is able to readily determine with reasonable certainty:

63 (i) that the student has a disability listed in Subsection (2)(b) and would qualify for

64 special education services, if enrolled in a public school; and

65 (ii) for the purpose of establishing the scholarship amount, the appropriate level of

66 special education services which should be provided to the student.

67 (4) (a) To receive a scholarship, the parent of a student shall submit an application for  
68 the scholarship to the school district within which the student is enrolled:

69 (i) at least 60 days before the date of the first scholarship payment; and

70 (ii) that contains an acknowledgment by the parent that the selected school is qualified

71 and capable of providing the level of special education services required for the student.

72 (b) The board may waive the 60-day application deadline.

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

74 "I acknowledge that:

75 (1) A private school may not provide the same level of special education services that  
76 are provided in a public school;

77 (2) I will assume full financial responsibility for the education of my scholarship  
78 student if I accept this scholarship;

79 (3) Acceptance of this scholarship has the same effect as a parental refusal to consent  
80 to services pursuant to Section 614(a)(1) of the Individuals with Disabilities Education Act, 20  
81 U.S.C. Sec. 1400 et seq.; and

82 (4) My child may return to a public school at any time."

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

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

88 (d) The creation of the scholarship program or granting of a scholarship does not:

89 (i) imply that a public school did not provide a free and appropriate public education

90 for a student; or

91 (ii) constitute a waiver or admission by the state.

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

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

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

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

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

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

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

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

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

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

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

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

116 (b) The notice described under Subsection (10)(a) shall:

117 (i) be provided no later than 30 days after the student initially qualifies for an IEP;

118 (ii) be provided annually no later than February 1 to all students who have an IEP; and

119 (iii) include the address of the Internet website maintained by the board that provides  
120 prospective applicants with detailed program information and application forms for the Carson

121 Smith Scholarship Program.

122 (c) A school district, school within a school district, or charter school that has an  
123 enrolled student who has an IEP shall post the address of the Internet website maintained by the  
124 board that provides prospective applicants with detailed program information and application  
125 forms for the Carson Smith Scholarship Program on the school district's or school's website, if  
126 the school district or school has one.

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

128 **53A-1a-705. Eligible private schools.**

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

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

132 (b) (i) (A) obtain an audit and report from a licensed independent certified public  
133 accountant that conforms with the following requirements:

134 (I) the audit shall be performed in accordance with generally accepted auditing  
135 standards;

136 (II) the financial statements shall be presented in accordance with generally accepted  
137 accounting principles; and

138 (III) the audited financial statements shall be as of a period within the last 12 months;

139 or

140 (B) contract with a licensed independent certified public accountant to perform an  
141 agreed upon procedure as follows:

142 (I) the agreed upon procedure shall be to determine that the private school has adequate  
143 working capital to maintain operations for the first full year; and

144 (II) working capital shall be calculated by subtracting current liabilities from current  
145 assets; and

146 (ii) submit the audit report or report of the agreed upon procedure to the board when  
147 the private school applies to accept scholarship students;

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

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

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

152 services;

153 (f) (i) administer an annual assessment of each scholarship student's academic  
154 progress;

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

156 (iii) make the results available to the assessment team evaluating the student pursuant  
157 to Subsection 53A-1a-704(6);

158 (g) employ or contract with teachers who:

159 (i) hold baccalaureate or higher degrees;

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

161 (iii) have the necessary special skills, knowledge, or expertise that qualifies them to  
162 provide instruction:

163 (A) in the subjects taught; and

164 (B) to the special needs students taught; and

165 (h) provide to parents the relevant credentials of the teachers who will be teaching their  
166 students.

167 (2) A private school is not eligible to enroll scholarship students if:

168 (a) the audit report submitted under Subsection (1)(b) contains a going concern  
169 explanatory paragraph; or

170 (b) the report of the agreed upon procedure submitted under Subsection (1)(b) shows  
171 that the private school does not have adequate working capital to maintain operations for the  
172 first full year, as determined under Subsection (1)(b).

173 (3) A home school is not eligible to enroll scholarship students.

174 (4) Residential treatment facilities licensed by the state are not eligible to enroll  
175 scholarship students.

176 (5) A private school intending to enroll scholarship students shall submit an application  
177 to the board by May 1 of the school year preceding the school year in which it intends to enroll  
178 scholarship students.

179 (6) The board shall:

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

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

183           (7) An approved eligible private school that changes ownership shall submit a new  
184 application to the board and demonstrate that it continues to meet the eligibility requirements  
185 of this section.

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**Legislative Review Note**  
as of 2-11-09 4:19 PM

**Office of Legislative Research and General Counsel**

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**H.B. 425 - Carson Smith Scholarship Program Amendments**

**Fiscal Note**

2009 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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