

**CARSON SMITH SCHOLARSHIP AMENDMENTS**

2015 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: J. Stuart Adams**

House Sponsor: Steve Eliason

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**LONG TITLE**

**General Description:**

This bill amends provisions related to the Carson Smith Scholarship Program.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ reduces the minimum age that a student can receive a Carson Smith Scholarship from age five to age three;
- ▶ sets a time limit on a requirement for a private school that receives the Carson Smith Scholarship; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**53A-1a-703**, as last amended by Laws of Utah 2010, Chapter 3

**53A-1a-704**, as last amended by Laws of Utah 2014, Chapter 278

**53A-1a-706**, as last amended by Laws of Utah 2013, Chapter 154

**53A-1a-708**, as enacted by Laws of Utah 2005, Chapter 35



28 **53A-1a-709**, as enacted by Laws of Utah 2005, Chapter 35



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

31 Section 1. Section **53A-1a-703** is amended to read:

32 **53A-1a-703. Definitions.**

33 As used in this part:

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

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

36 (b) the student's private school classroom teacher;

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

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

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

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

43 (4) "Individualized Education Program" or "IEP" means a written statement for a  
44 student with a disability that is developed, reviewed, and revised in accordance with the  
45 Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.

46 (5) "Local Education Agency" or "LEA" means:

47 (a) a school district; or

48 (b) a charter school.

49 (6) "Preschool" means an education program for a student who:

50 (a) is age three, four, or five; and

51 (b) has not entered kindergarten.

52 [~~(5)~~] (7) "Scholarship student" means a student who receives a scholarship under this  
53 part.

54 [~~(6)~~] (8) "Value of the weighted pupil unit" means the amount established each year in  
55 statute that is multiplied by the number of weighted pupil units to yield the funding level for  
56 the basic state-supported school program.

57 Section 2. Section **53A-1a-704** is amended to read:

58 **53A-1a-704. Scholarship program created -- Qualifications.**

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

61 (2) To qualify for a scholarship:

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

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

64 (i) an intellectual disability;

65 (ii) a hearing impairment;

66 (iii) a speech or language impairment;

67 (iv) a visual impairment;

68 (v) a serious emotional disturbance;

69 (vi) an orthopedic impairment;

70 (vii) autism;

71 (viii) traumatic brain injury;

72 (ix) other health impairment;

73 (x) specific learning disabilities; or

74 (xi) a developmental delay, provided the student is at least [~~five~~] three years of age,

75 pursuant to Subsection (2)(c), and is younger than eight years of age;

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

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

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

84 (ii) have an IEP; and

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

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

87 (a) the student is enrolled or has obtained acceptance for admission to an eligible  
88 private school that has previously served students with disabilities; and

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

90 (i) that the student has a disability listed in Subsection (2)(b) and would qualify for  
91 special education services, if enrolled in a public school; and

92 (ii) for the purpose of establishing the scholarship amount, the appropriate level of  
93 special education services which should be provided to the student.

94 (4) (a) To receive a full-year scholarship under this part, a parent of a student shall  
95 submit to the [~~school district~~] LEA where the student is enrolled an application on or before the  
96 August 15 immediately preceding the first day of the school year for which the student would  
97 receive the scholarship.

98 (b) The board may waive the full-year scholarship deadline described in Subsection  
99 (4)(a).

100 (c) An application for a scholarship shall contain an acknowledgment by the parent that  
101 the selected school is qualified and capable of providing the level of special education services  
102 required for the student.

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

104 "I acknowledge that:

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

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

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

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

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

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

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

119 (i) imply that a public school did not provide a free and appropriate public education  
120 for a student; or

- 121 (ii) constitute a waiver or admission by the state.
- 122 (6) (a) A scholarship shall remain in force for three years.
- 123 (b) A scholarship shall be extended for an additional three years, if:
- 124 (i) the student is evaluated by an assessment team; and
- 125 (ii) the assessment team determines that the student would qualify for special education
- 126 services, if enrolled in a public school.
- 127 (c) The assessment team shall determine the appropriate level of special education
- 128 services which should be provided to the student for the purpose of setting the scholarship
- 129 amount.
- 130 (d) A scholarship shall be extended for successive three-year periods as provided in
- 131 Subsections (6)(a) and (b):
- 132 (i) until the student graduates from high school; or
- 133 (ii) if the student does not graduate from high school, until the student is age 22.
- 134 (7) A student's parent, at any time, may remove the student from a private school and
- 135 place the student in another eligible private school and retain the scholarship.
- 136 (8) A scholarship student may not participate in a dual enrollment program pursuant to
- 137 Section [53A-11-102.5](#).
- 138 (9) The parents or guardians of a scholarship student have the authority to choose the
- 139 private school that will best serve the interests and educational needs of that student, which
- 140 may be a sectarian or nonsectarian school, and to direct the scholarship resources available for
- 141 that student solely as a result of their genuine and independent private choices.
- 142 (10) (a) [~~A school district or charter school~~] An LEA shall notify in writing the parents
- 143 or guardians of students enrolled in the [~~school district or charter school~~] LEA who have an
- 144 IEP of the availability of a scholarship to attend a private school through the Carson Smith
- 145 Scholarship Program.
- 146 (b) The notice described under Subsection (10)(a) shall:
- 147 (i) be provided no later than 30 days after the student initially qualifies for an IEP;
- 148 (ii) be provided annually no later than February 1 to all students who have an IEP; and
- 149 (iii) include the address of the Internet website maintained by the board that provides
- 150 prospective applicants with detailed program information and application forms for the Carson
- 151 Smith Scholarship Program.

152 (c) ~~[A school district,]~~ An LEA or school within ~~[a school district, or charter school]~~ an  
153 LEA that has an enrolled student who has an IEP shall post the address of the Internet website  
154 maintained by the board that provides prospective applicants with detailed program  
155 information and application forms for the Carson Smith Scholarship Program on the ~~[school~~  
156 ~~district's]~~ LEA's or school's website, if the ~~[school district]~~ LEA or school has one.

157 Section 3. Section **53A-1a-706** is amended to read:

158 **53A-1a-706. Scholarship payments.**

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

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

163 (c) Beginning with the 2013-14 school year, the Legislature shall annually increase the  
164 amount of money appropriated under Subsection (1)(b) by an amount equal to the product of:

165 (i) the average scholarship amount awarded as of December 1 in the previous year; and

166 (ii) the product of:

167 (A) the number of students in ~~[grades kindergarten]~~ preschool through grade 12 in  
168 public schools statewide who have an IEP on December 1 of the previous year; and

169 (B) 0.0007.

170 (d) If the number of scholarship students as of December 1 in any school year equals or  
171 exceeds 7% of the number of students in ~~[grades kindergarten]~~ preschool through grade 12 in  
172 public schools statewide who have an IEP as of December 1 in the same school year, the Public  
173 Education Appropriations Subcommittee shall study the requirement to increase appropriations  
174 for scholarship payments as provided in this section.

175 (e) (i) If money is not available to pay for all scholarships requested, the scholarships  
176 shall be allocated on a random basis except that preference shall be given to students who  
177 received scholarships in the previous school year.

178 (ii) If money is insufficient in a school year to pay for all the continuing scholarships,  
179 new scholarships may not be awarded during that school year and the money available for  
180 scholarships shall be prorated among the eligible students who received scholarships in the  
181 previous year.

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

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

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

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

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

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

192 (ii) the private school tuition and fees.

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

195 (4) (a) The scholarship amount for a student who receives a waiver under Subsection  
196 [53A-1a-704](#)(3) shall be based upon the assessment team's determination of the appropriate  
197 level of special education services to be provided to the student.

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

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

204 (iii) If the student is enrolled in a half-day kindergarten or part-day preschool program,  
205 a full-year scholarship is equal to the amount specified in Subsection (3).

206 (5) (a) Except as provided in Subsection (5)(b), upon review and receipt of  
207 documentation that verifies a student's admission to, or continuing enrollment and attendance  
208 at, a private school, the board shall make scholarship payments quarterly in four equal amounts  
209 in each school year in which a scholarship is in force.

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

213 (6) A parent of a scholarship student shall notify the board if the student does not have

214 continuing enrollment and attendance at an eligible private school.

215 (7) Before scholarship payments are made, the board shall cross-check enrollment lists  
216 of scholarship students, [~~school districts~~] LEAs, and youth in custody to ensure that scholarship  
217 payments are not erroneously made.

218 (8) (a) Scholarship payments shall be made by the board by individual warrant made  
219 payable to the student's parent and mailed by the board to the private school. The parent shall  
220 restrictively endorse the warrant to the private school for deposit into the account of the private  
221 school.

222 (b) A person, on behalf of a private school, may not accept a power of attorney from a  
223 parent to sign a warrant referred to in Subsection (8)(a), and a parent of a scholarship student  
224 may not give a power of attorney designating a person, on behalf of a private school, as the  
225 parent's attorney-in-fact.

226 Section 4. Section **53A-1a-708** is amended to read:

227 **53A-1a-708. Enforcement and penalties.**

228 (1) (a) The board shall require a private [~~schools~~] school to submit a signed [~~affidavits~~]  
229 affidavit assuring the private school will comply with the requirements of this part.

230 (b) If a school fails to submit a signed affidavit [~~after having an opportunity to provide~~  
231 explanations and request delays] within 30 days of receiving notification that the school is an  
232 approved private school to receive the Carson Smith Scholarship, the board may:

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

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

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

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

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

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

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

241 Section 5. Section **53A-1a-709** is amended to read:

242 **53A-1a-709. Limitation on regulation of private schools.**

243 Nothing in this part grants additional authority to any state agency or [~~school district~~]  
244 LEA to regulate private schools except as expressly set forth in this part.

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**Legislative Review Note**  
as of 2-25-15 3:10 PM

**Office of Legislative Research and General Counsel**