

Effective 1/24/2018

Chapter 7 Special Education

Part 1 General Provisions

53E-7-101 Title.

This chapter is known as "Special Education."

Enacted by Chapter 1, 2018 General Session

Part 2 Special Education Program

53E-7-201 Definitions.

As used in this part:

- (1) "Child with a disability" means the same as that term is defined in 34 C.F.R. Sec. 300.308.
- (2) "Due process hearing" means an administrative due process hearing authorized by 20 U.S.C. Sec. 1415.
- (3) "IEP team" means the same as that term is defined in 34 C.F.R. Sec. 300.321.
- (4) "LEA special education program" means systems an LEA establishes to:
 - (a) implement an eligible student's IEP;
 - (b) appropriately and timely identify eligible students;
 - (c) evaluate and classify eligible students by qualified personnel;
 - (d) implement standards for special education classes and services;
 - (e) deliver special education service responsibilities;
 - (f) ensure special education instructional staff are appropriately credentialed; and
 - (g) provide services for dual enrollment students that are:
 - (i) eligible students; and
 - (ii) attending public school on a part-time basis.
- (5) "Least restrictive environment" means the same as that term is defined in 34 C.F.R. Secs. 300.114 through 300.116.
- (6) "Special education" means the same as that term is defined in 34 C.F.R. Sec. 300.39.
- (7) "Specially designed instruction" means the same as that term is defined in 34 C.F.R. Sec. 300.39.
- (8) "Student who is eligible for special education services" or "eligible student" means a child with a disability who is:
 - (a) at least 3 years old but younger than 22 years old; or
 - (b) 22 years old, if the school year in which the child with a disability turned 22 years old has not yet ended.

Amended by Chapter 431, 2022 General Session

53E-7-202 Free appropriate public education for eligible students.

An eligible student who has not received a regular high school diploma is entitled to a free appropriate public education.

Repealed and Re-enacted by Chapter 187, 2019 General Session

53E-7-204 State board special education authority and duties -- Rulemaking.

- (1) The state board shall have general control and supervision over LEA special education programs in the state for eligible students.
- (2) A program described in Subsection (1) shall comply with state board rule.
- (3) In accordance with federal and state law, the state board shall make rules to implement this part, including provisions that ensure:
 - (a) appropriate and timely identification of a potentially eligible student;
 - (b) the evaluation of a student and classification of a student as an eligible student by qualified personnel;
 - (c) standards for special education services and supports;
 - (d) availability of LEA special education programs;
 - (e) delivery of special education in the least restrictive environment as determined by an eligible student's IEP team;
 - (f) certification and qualification for the instructional staff of eligible students; and
 - (g) special education services for eligible students who are dual enrollment students attending public school on a part-time basis as described in Section 53G-6-702.
- (4) In accordance with federal and state law, the state board may make rules to otherwise administer the state board's authority described in Subsection (1).

Amended by Chapter 431, 2022 General Session

53E-7-206 Special education funding.

In accordance with Title 53F, Chapter 2, State Funding -- Minimum School Program, state board rule, and other applicable law, the state board shall administer the payment of restricted state and federal funds to an LEA to provide special education to an eligible student.

Amended by Chapter 431, 2022 General Session

Superseded 7/1/2024

53E-7-207 Local education agency special education duty and authority.

- (1) An LEA shall, at no cost to the eligible student, provide a full continuum of special education services and placements to an eligible student enrolled at the LEA.
- (2) As determined by an eligible student's IEP team, an LEA may provide special education to an eligible student in the least restrictive environment as determined by the eligible student's IEP team, regardless of whether the other students in the class or setting are eligible students.
- (3)
 - (a) Upon request of the Division of Child and Family Services and if the LEA obtains appropriate consent for the evaluation, an LEA shall provide an initial special education evaluation to an individual who enters the custody of the Division of Child and Family Services, if the Division of Child and Family Services suspects the individual may be an eligible student.
 - (b)

- (i) Except as provided in Subsection (3)(b)(ii), the LEA shall conduct an evaluation described in Subsection (3)(a) within 30 days after the day on which the Division of Child and Family Services makes the request.
 - (ii) An LEA may refuse to conduct an evaluation described in Subsection (3)(a) if the LEA reviews the relevant data regarding the individual and, within 10 days after the day on which the LEA received the request described in Subsection (3)(a), gives the Division of Child and Family Services written prior notice of refusal to evaluate.
- (4)
- (a) In accordance with Subsection (4)(b), an LEA may provide education or training for an individual with a disability who is:
 - (i) younger than 3 years old; or
 - (ii) at least 22 years old and not an eligible student.
 - (b)
 - (i) Except as provided in Subsection (4)(b)(ii), an LEA may not use funding described in Title 53F, Chapter 2, State Funding -- Minimum School Program, to pay for the cost of education or training described in Subsection (4)(a).
 - (ii) An LEA may use adult education program funding described in Section 53F-2-401, in accordance with the requirements described in Section 53F-2-401, to pay for the cost of the education or training described in Subsection (4)(a).
 - (c) To pay for the cost of education or training described in Subsection (4)(a), an LEA may use fees, contributions, or other funds received by the LEA if the purpose of the fees, contributions, or other funds is to provide the education or training.

Amended by Chapter 431, 2022 General Session

Effective 7/1/2024

53E-7-207 Local education agency special education duty and authority.

- (1) An LEA shall, at no cost to the eligible student, provide a full continuum of special education services and placements to an eligible student enrolled at the LEA.
 - (2) As determined by an eligible student's IEP team, an LEA may provide special education to an eligible student in the least restrictive environment as determined by the eligible student's IEP team, regardless of whether the other students in the class or setting are eligible students.
- (3)
- (a) Upon request of the Division of Child and Family Services and if the LEA obtains appropriate consent for the evaluation, an LEA shall provide an initial special education evaluation to an individual who enters the custody of the Division of Child and Family Services, if the Division of Child and Family Services suspects the individual may be an eligible student.
 - (b)
 - (i) Except as provided in Subsection (3)(b)(ii), the LEA shall conduct an evaluation described in Subsection (3)(a) within 30 days after the day on which the Division of Child and Family Services makes the request.
 - (ii) An LEA may refuse to conduct an evaluation described in Subsection (3)(a) if the LEA reviews the relevant data regarding the individual and, within 10 days after the day on which the LEA received the request described in Subsection (3)(a), gives the Division of Child and Family Services written prior notice of refusal to evaluate.
- (4)
- (a) In accordance with Subsection (4)(b), an LEA may provide education or training for an individual with a disability who is:

- (i) younger than 3 years old; or
 - (ii) at least 22 years old and not an eligible student.
- (b)
 - (i) Except as provided in Subsection (4)(b)(ii), an LEA may not use funding described in Title 53F, Chapter 2, State Funding -- Minimum School Program, to pay for the cost of education or training described in Subsection (4)(a).
 - (ii) An LEA may use adult education program funding described in Section 53F-2-401, in accordance with the requirements described in Section 53F-2-401, to pay for the cost of the education or training described in Subsection (4)(a).
- (c) To pay for the cost of education or training described in Subsection (4)(a), an LEA may use fees, contributions, or other funds received by the LEA if the purpose of the fees, contributions, or other funds is to provide the education or training.
- (5) In accordance with Subsection (6) and beginning July 1, 2025:
 - (a) An LEA shall provide education to all students within the LEA in the least restrictive environment possible that does not predictably threaten serious bodily injury to educators, school staff, or other students.
 - (b) An LEA shall provide education to all students within the LEA in the least restrictive environment possible that does not result in a pattern of behavior that interferes substantially and materially with the instruction of the other students in the classroom.
 - (c) An LEA shall provide an environment to all educators, school staff, and students in the least restrictive environment possible that does not allow for repeated:
 - (i) verbal or physical sexual harassment; or
 - (ii) sexual assault.
- (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the state board shall make rules to ensure implementation of the requirements described in Subsection (5).
- (7) Nothing in this section creates a private right of action or constitutes a waiver of immunity under Section 63G-7-301.

Amended by Chapter 69, 2024 General Session

53E-7-208 Special education dispute resolution -- Rulemaking -- Due process hearing -- Right to appeal.

- (1) In accordance with this section, the state board shall make rules that:
 - (a) allow for a prompt, fair, and final resolution of a dispute that arises over the provision of special education to an eligible student;
 - (b) establish and maintain procedural safeguards that meet the requirements of 20 U.S.C. Sec. 1415; and
 - (c) establish timelines that provide adequate time to address and resolve a dispute described in Subsection (1)(a) without unnecessarily disrupting or delaying an eligible student's free appropriate public education.
- (2) A party to a dispute described in Subsection (1)(a), including an LEA, shall make a diligent and good faith effort to resolve the dispute informally at the LEA level before seeking a due process hearing under state board rule.
- (3)
 - (a) If a dispute is not resolved informally as described in Subsection (2), a party to the dispute may request a due process hearing in accordance with state board rule.
 - (b) Upon request of a party to a dispute described in Subsection (2), the state board shall, in accordance with state board rule and 20 U.S.C. Sec. 1415:

- (i) conduct a due process hearing; and
 - (ii) issue a decision on the due process hearing.
- (4)
 - (a) A party to a due process hearing may appeal the decision resulting from the due process hearing by filing a civil action with a court described in 20 U.S.C. Sec. 1415(i), if the party files the action within 30 days after the day on which the due process hearing decision was issued.
 - (b) If parties to a due process hearing fail to reach agreement on the payment of attorney fees for the due process hearing, a party may seek to recover attorney fees in accordance with 20 U.S.C. Sec. 1415(i) by filing a court action within 30 days after the day on which the due process hearing decision was issued.

Amended by Chapter 431, 2022 General Session

53E-7-209 Use of state special education funds.

- (1) An LEA may use state special education funds to:
 - (a) provide an LEA special education program and specially designed instruction and related services and supports to an eligible student in the least restrictive environment;
 - (b) employ appropriately credentialed staff necessary to provide specially designed instruction and related services; or
 - (c) employ staff who are trained and supervised by appropriately credentialed staff necessary to provide specially designed instruction and related services.
- (2) The state board shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act for:
 - (a) accounting for the use of state special education funds; and
 - (b) documentation required for an LEA to demonstrate appropriate use of state special education funds under this section.
- (3) The state board shall annually provide training and training materials to LEAs on:
 - (a) appropriate use of state special education funds;
 - (b) rules the state board creates under Subsection (2)(a); and
 - (c) the documentation described in Subsection (2)(b).

Enacted by Chapter 431, 2022 General Session

Part 4
Carson Smith Opportunity Scholarship

53E-7-401 Definitions.

As used in this part:

- (1) "The Carson Smith Opportunity Scholarship Program" or "program" means the program established in Section 53E-7-402.
- (2) "Eligible student" means:
 - (a) a student who:
 - (i) is:
 - (A) eligible to participate in public school, in kindergarten, or grades 1 through 12;
 - (B) enrolled in a qualifying school as defined in Subsection (11);
 - (C) a home-based scholarship student as defined in Subsection (6); or

- (D) at least three years old before September 2 of the year the scholarship is awarded;
- (ii) is a resident of the state;
- (iii) has a qualified disability identified under 20 U.S.C. Sec. 140(3) as determined by:
 - (A) having an IEP within the previous three years; or
 - (B) a multidisciplinary team evaluation described in Subsection (7); and
- (iv) during the school year for which the student is applying for the scholarship, is not:
 - (A) a student who receives a scholarship under the Carson Smith Scholarship Program created in Section 53F-4-302; or
 - (B) enrolled as a public school student; or
- (b) a student who:
 - (i) meets the requirement of Subsections (2)(a)(i) and (ii); and
 - (ii) is a sibling of and resides in the same household as a student described in Subsection (2)(a) if:
 - (A) the student described in Subsection (2)(a) is a scholarship student and has verified enrollment or intent to enroll at a qualifying school or participate in services provided by a qualifying provider; and
 - (B) the sibling is applying for a scholarship to attend the same qualifying school or participate in the same services provided by a qualifying provider.
- (3)
 - (a) "Employee" means an individual working in a position in which the individual's salary, wages, pay, or compensation, including as a contractor, is paid from:
 - (i) program donations to a scholarship granting organization; or
 - (ii) scholarship money allocated to a qualifying school or qualifying provider by a scholarship granting organization under Section 53E-7-405.
 - (b) "Employee" does not include an individual who volunteers at the scholarship granting organization, qualifying school, or qualifying provider.
- (4) "Family income" means the annual income of the parent, parents, legal guardian, or legal guardians with whom a scholarship student lives.
- (5) "Federal poverty level" means the poverty level as defined by the most recently revised poverty income guidelines published by the United States Department of Health and Human Services in the Federal Register.
- (6) "Home-based scholarship student" means a student who:
 - (a) is eligible to participate in public school, in kindergarten or grades 1 through 12;
 - (b) is excused from enrollment in an LEA in accordance with Section 53G-6-204 to attend a home school; and
 - (c) receives a benefit from a scholarship under the program.
- (7) "Multidisciplinary evaluation team" means two or more individuals:
 - (a) who are qualified in two or more separate disciplines or professions; and
 - (b) who evaluate a child.
- (8) "Officer" means:
 - (a) a member of the board of a scholarship granting organization, qualifying school, or qualifying provider; or
 - (b) the chief administrative officer of a scholarship granting organization, qualifying school, or qualifying provider.
- (9) "Program donation" means a donation to the program under Section 53E-7-405.
- (10) "Qualifying provider" means:
 - (a) an entity that:

- (i) is not a public school and is autonomous and not an agent of the state, in accordance with Section 53E-7-406; and
 - (ii) meets the requirement described in Section 53E-7-403; and
- (b) is an eligible service provider approved by the scholarship granting organization in accordance with Section 53E-7-408.5.
- (11) "Qualifying school" means a private school that:
 - (a) provides kindergarten, elementary, or secondary education;
 - (b) is approved by the state board under Section 53E-7-408; and
 - (c) meets the requirements described in Section 53E-7-403.
- (12) "Relative" means a father, mother, husband, wife, son, daughter, sister, brother, uncle, aunt, nephew, niece, first cousin, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law.
- (13) "Scholarship" means a grant awarded to an eligible student:
 - (a) by a scholarship granting organization out of program donations; and
 - (b) for the purpose of paying for a scholarship expense.
- (14) "Scholarship expense" means an expense that a parent or eligible student incurs in the education of the eligible student for goods or a service that a qualifying school or qualifying provider provides or facilitates, including:
 - (a) published tuition and fees of a qualifying school or qualifying provider;
 - (b) fees and instructional materials at a technical college;
 - (c) tutoring services;
 - (d) fees for after-school or summer education programs;
 - (e) textbooks, curricula, or other instructional materials, including any supplemental materials or associated online instruction that a curriculum, qualifying provider, or a qualifying school recommends;
 - (f) educational software and applications;
 - (g) supplies or other equipment related to an eligible student's educational needs;
 - (h) computer hardware or other technological devices that are intended primarily for an eligible student's educational needs;
 - (i) fees for the following examinations, or for a preparation course for the following examinations, that the scholarship granting organization approves:
 - (i) a national norm-referenced or standardized assessment described in Section 53F-6-410, an advanced placement examination, or another similar assessment;
 - (ii) a state-recognized industry certification examination; and
 - (iii) an examination related to college or university admission;
 - (j) educational services for students with disabilities from a licensed or accredited practitioner or provider, including occupational, behavioral, physical, audiology, or speech-language therapies;
 - (k) contracted services that the scholarship granting organization approves and that an LEA provides, including individual classes, after-school tutoring services, transportation, or fees or costs associated with participation in extracurricular activities;
 - (l) ride fees or fares for a fee-for-service transportation provider to transport the eligible student to and from a qualifying school or qualifying provider, not to exceed \$750 in a given school year;
 - (m) expenses related to extracurricular activities, field trips, educational supplements, and other educational experiences; or
 - (n) the scholarship granting organization approves in accordance with Subsection 53E-7-405(3).
- (15) "Scholarship granting organization" means an organization that is:
 - (a) qualified as tax exempt under Section 501(c)(3), Internal Revenue Code; and

- (b) recognized through an agreement with the state board as a scholarship granting organization, as described in Section 53E-7-404.
- (16) "Scholarship student" means an eligible student, including a home-based scholarship student, who receives a scholarship under this part.
- (17) "Value of the weighted pupil unit" means the amount established each year in the enacted public education budget that is multiplied by the number of weighted pupil units to yield the funding level for the basic state-supported school program.

Amended by Chapter 466, 2024 General Session

53E-7-402 Carson Smith Opportunity Scholarship Program.

- (1) There is established the Carson Smith Opportunity Scholarship Program under which a parent may apply to a scholarship granting organization on behalf of the parent's student for a scholarship to help cover the cost of a scholarship expense.
- (2)
 - (a) A scholarship granting organization shall award, in accordance with this part, scholarships to eligible students.
 - (b) In awarding scholarships, a scholarship granting organization shall give priority to an eligible student described in Subsection 53E-7-401(1)(a) by:
 - (i) establishing an August 10 deadline for an eligible student described in Subsection 53E-7-401(1)(b) to apply for a scholarship; and
 - (ii) awarding a scholarship to an eligible student described in Subsection 53E-7-401(2)(b) only if funds exist after awarding scholarships to all eligible students described in Subsection 53E-7-401(2)(a) who have applied and qualify.
 - (c) Subject to available funds, a scholarship awarded to an eligible student described in Subsection 53E-7-401(2)(b) shall be for a similar term as a scholarship awarded to the eligible student's sibling.
- (3) A scholarship granting organization shall determine a full-year scholarship award to pay for the cost of one or more scholarship expenses in an amount not more than:
 - (a) for an eligible student described in Subsection 53E-7-401(2)(a) who is:
 - (i) in kindergarten through grade 12 and whose family income is:
 - (A) at or below 185% of the federal poverty level, the value of the weighted pupil unit multiplied by 2.5;
 - (B) except as provided in Subsection (3)(a)(i)(C), above 185% of the federal poverty level, the value of the weighted pupil unit multiplied by two; or
 - (C) above 185% of the federal poverty level and the eligible student would have received an average of 180 minutes per day or more of special education services in a public school before transferring to a private school, the value of the weighted pupil unit multiplied by 2.5; or
 - (ii) in preschool, the value of the weighted pupil unit; or
 - (b) for an eligible student described in Subsection 53E-7-401(2)(b), half the value of the weighted pupil unit.
- (4) Eligibility for a scholarship as determined by a multidisciplinary evaluation team under this program does not establish eligibility for an IEP under the Individuals with Disabilities Education Act, Subchapter II, 20 U.S.C. Secs. 1400 to 1419, and is not binding on any LEA that is required to provide an IEP under the Individuals with Disabilities Education Act.
- (5) The scholarship granting organizations shall prepare and disseminate information on the program to a parent applying for a scholarship on behalf of a student.

Amended by Chapter 466, 2024 General Session

53E-7-403 Qualifying school and qualifying provider requirements.

- (1) A qualifying school or qualifying provider shall:
 - (a) notify a scholarship granting organization of the qualifying school's or qualifying provider's intention to participate in the program;
 - (b) submit evidence to the scholarship granting organization that the qualifying school has been approved by the state board under Section 53E-7-408; and
 - (c) submit a signed affidavit to the scholarship granting organization that the qualifying school or qualifying provider will comply with the requirements of this part.
- (2) A qualifying school or qualifying provider shall comply with 42 U.S.C. Sec. 1981, and meet state and local health and safety laws and codes.
- (3) Before the beginning of the school year immediately following a school year in which a qualifying school or qualifying provider receives scholarship money equal to or more than \$500,000, the qualifying school or qualifying provider shall file with a scholarship granting organization that allocates scholarship money to the qualifying school:
 - (a) a surety bond payable to the scholarship granting organization in an amount equal to the aggregate amount of scholarship money expected to be received during the school year; or
 - (b) financial information that demonstrates the financial viability of the qualifying school or qualifying provider, as required by the scholarship granting organization.
- (4) If a scholarship granting organization determines that a qualifying school or qualifying provider has violated a provision of this part, the scholarship granting organization may interrupt disbursement of or withhold scholarship money from the qualifying school or qualifying provider.
- (5)
 - (a) If the state board determines that a qualifying school no longer meets the eligibility requirements described in Section 53E-7-408, the state board may withdraw the state board's approval of the school.
 - (b) A private school that does not have the state board's approval under Section 53E-7-408 may not accept scholarship money under this part.
- (6) A qualifying school shall, when administering an annual assessment required under Section 53E-7-408, ensure that the qualifying school uses a norm-referenced assessment.
- (7) If a scholarship granting organization determines that a qualifying provider no longer meets the requirements described in Section 53E-7-208.5, the scholarship granting organization may interrupt disbursement of or withhold scholarship money for the qualifying provider.

Amended by Chapter 466, 2024 General Session

53E-7-404 State board duties.

- (1) The state board shall:
 - (a) publish on the state board's website:
 - (i) information about the program; and
 - (ii) information about each scholarship granting organization;
 - (b) conduct a financial review or audit of a scholarship granting organization, if the state board receives evidence of fraudulent practice by the scholarship granting organization;
 - (c) conduct a criminal background check on each scholarship granting organization employee and scholarship granting organization officer;
 - (d) establish uniform financial accounting standards for scholarship granting organizations;

- (e) in accordance with Section 53E-1-202.1, annually submit a report on the program to the Public Education Appropriations Subcommittee that includes:
 - (i) administrative costs of the program;
 - (ii) the number of scholarship students that are eligible students described in Subsection 53E-7-401(2)(a) and the number of scholarship students that are eligible students described in Subsection 53E-7-401(2)(b) from each school district;
 - (iii) standards used by the scholarship granting organization to determine whether a student is an eligible student; and
 - (iv) savings to the state and LEAs as a result of scholarship students exiting the public school system.
- (2)
 - (a) In accordance with Subsection (3) and Title 63G, Chapter 6a, Utah Procurement Code, the state board shall issue a request for proposals and enter into at least one agreement with an organization that is qualified as tax exempt under Section 501(c)(3), Internal Revenue Code, to be recognized by the state board as a scholarship granting organization.
 - (b) An organization that responds to a request for proposals described in Subsection (2)(a) shall submit the following information in the organization's response:
 - (i) a copy of the organization's incorporation documents;
 - (ii) a copy of the organization's Internal Revenue Service determination letter qualifying the organization as being tax exempt under Section 501(c)(3), Internal Revenue Code;
 - (iii) a description of the methodology the organization will use to verify that a student is an eligible student under this part; and
 - (iv) a description of the organization's proposed scholarship application process.
- (3)
 - (a) The state board shall enter into an agreement described in Subsection (2)(a) with one scholarship granting organization on or before January 1, 2021.
 - (b) The state board may enter into an agreement described in Subsection (2)(a) with additional scholarship granting organizations after January 1, 2023, if the state board makes rules regarding how multiple scholarship granting organizations may issue tax credit certificates in accordance with Section 53E-7-407.
 - (c)
 - (i) No later than 10 days after the day on which the state board enters into an agreement with a scholarship granting organization, the state board shall forward the name and contact information of the scholarship granting organization to the State Tax Commission.
 - (ii) If, under Subsection (4)(c)(i), the state board bars a scholarship granting organization from further participation in the program, the state board shall, no later than 10 days after the day on which the state board bars the scholarship granting organization, forward the name and contact information of the barred scholarship granting organization to the State Tax Commission.
- (4)
 - (a) If the state board determines that a scholarship granting organization has violated a provision of this part or state board rule, the state board shall send written notice to the scholarship granting organization explaining the violation and the remedial action required to correct the violation.
 - (b) A scholarship granting organization that receives a notice described in Subsection (4)(a) shall, no later than 60 days after the day on which the scholarship granting organization receives the notice, correct the violation and report the correction to the state board.
 - (c)

- (i) If a scholarship granting organization that receives a notice described in Subsection (4)(a) fails to correct a violation in the time period described in Subsection (4)(b), the state board may bar the scholarship granting organization from further participation in the program.
- (ii) A scholarship granting organization may appeal a decision made by the state board under Subsection (4)(c)(i) in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
- (d) A scholarship granting organization may not accept program donations while the scholarship granting organization:
 - (i) is barred from participating in the program under Subsection (4)(c)(i); or
 - (ii) has an appeal pending under Subsection (4)(c)(ii).
- (e) A scholarship granting organization that has an appeal pending under Subsection (4)(c)(ii) may continue to administer scholarships from previously donated program donations during the pending appeal.
- (5) The state board shall provide for a process for a scholarship granting organization to report information as required under Section 53E-7-405.
- (6) The state board shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to administer the program, including rules for:
 - (a) the administration of scholarships to a qualifying school or qualifying provider receiving scholarship money from a scholarship granting organization that is barred from participating in the program under Subsection (4)(c)(i);
 - (b) when an eligible student does not continue in enrollment at a qualifying school or participation in services provided by a qualifying provider:
 - (i) requiring the scholarship granting organization to:
 - (A) notify the state board; and
 - (B) obtain reimbursement of scholarship money from the qualifying school in which the eligible student is no longer enrolled or qualifying provider in which the eligible student is no longer participating; and
 - (ii) requiring the qualifying school or qualifying provider in which the eligible student is no longer enrolled to reimburse scholarship money to the scholarship granting organization;
 - (c) audit and report requirements as described in Section 53E-7-405; and
 - (d) requiring the scholarship granting organization, in accordance with the Family Educational Rights and Privacy Act, 20 U.S.C. Sec. 1232g, to submit to the state board:
 - (i) the number of scholarship students that are eligible students described in Subsection 53E-7-401(2)(a) and the number of scholarship students that are eligible students described in Subsection 53E-7-401(2)(b) from each school district;
 - (ii) standards used to determine whether a student is an eligible student; and
 - (iii) any other information requested by the Public Education Appropriations Subcommittee for the state board to include in the annual report described in Section 53E-1-202.1.

Amended by Chapter 466, 2024 General Session

**53E-7-405 Program donations -- Scholarship granting organization requirements --
Legislative appropriations.**

- (1) A person that makes a donation to a scholarship granting organization to help fund scholarships through the program may be eligible to receive a nonrefundable tax credit as described in Sections 59-7-625 and 59-10-1041.
- (2) In accordance with Section 53E-7-404, an organization may enter into an agreement with the state board to be a scholarship granting organization.
- (3) A scholarship granting organization shall:

- (a) accept program donations and allow a person that makes a program donation to designate a qualifying school or qualifying provider to which the donation shall be directed for scholarships;
- (b) adopt an application process in accordance with Subsection (5);
- (c) review scholarship applications and determine scholarship awards;
- (d) allocate scholarship money to a scholarship student's parent or, on the parent's behalf, to a qualifying school or qualifying provider in which the scholarship student is enrolled or participates;
- (e) adopt a process, with state board approval, that allows a parent to use a scholarship to pay for a nontuition scholarship expense for the scholarship student;
- (f) ensure that during the state fiscal year:
 - (i) at least 92% of the scholarship granting organization's revenue from program donations and other funding sources are spent on scholarships;
 - (ii) up to 5% of the scholarship granting organization's revenue from program donations and other funding sources are spent on administration of the program;
 - (iii) up to 3% of the scholarship granting organization's revenue from program donations and other funding sources are spent on marketing and fundraising costs; and
 - (iv) all revenue from interest or investments is spent on scholarships;
- (g) carry forward no more than 60% of the scholarship granting organization's funds, less funds for a scholarship that has been awarded, and funds expended for administration and marketing, from the state fiscal year in which the scholarship granting organization received the funds to the following state fiscal year;
- (h) at the end of a state fiscal year, remit to the state treasurer donation amounts greater than the amount described in Subsection (3)(g);
- (i) prohibit a scholarship granting organization employee or officer from handling, managing, or processing program donations or other funds, if, based on a criminal background check conducted by the state board in accordance with Section 53E-7-404, the state board identifies the employee or officer as posing a risk to the appropriate use of program donations or other funds;
- (j) ensure that a scholarship can be transferred during the school year to a different qualifying school or qualifying provider that accepts the scholarship student;
- (k) report to the state board on or before November 1 of each year the following information, prepared by a certified public accountant:
 - (i) the name and address of the scholarship granting organization;
 - (ii) the total number and total dollar amount of program donations and other funding sources that the scholarship granting organization received during the previous calendar year;
 - (iii)
 - (A) the total number and total dollar amount of scholarships the scholarship granting organization awarded during the previous state fiscal year to eligible students described in Subsection 53E-7-401(2)(a); and
 - (B) the total number and total dollar amount of scholarships the scholarship granting organization awarded during the previous state fiscal year to eligible students described in Subsection 53E-7-401(2)(b); and
 - (iv) the percentage of first-time scholarship recipients who were enrolled in a public school during the previous school year or who entered kindergarten or a higher grade for the first time in Utah;
- (l) issue tax credit certificates as described in Section 53E-7-407; and
- (m)

- (i) require a parent to notify a scholarship granting organization if the parent's scholarship recipient:
 - (A) receives scholarship money for tuition expenses; and
 - (B) does not have continuing enrollment and attendance at a qualifying school; or
 - (ii) has transitioned to be a home-based student.
- (4) The state treasurer shall deposit the money described in Subsection (3)(h) into the Income Tax Fund.
- (5)
 - (a) An application for a scholarship shall contain an acknowledgment by the applicant's parent that the qualifying school or qualifying provider selected by the parent for the applicant to attend or participate in using a scholarship is capable of providing the level of disability services required for the student.
 - (b) A scholarship application form shall contain the following statement:
 - "I acknowledge that:
 - (1) A private school may not provide the same level of disability services that are provided in a public school;
 - (2) I will assume full financial responsibility for the education of my scholarship recipient if I accept this scholarship;
 - (3) Acceptance of this scholarship has the same effect as a parental refusal to consent to services as described in 24 C.F.R. Sec. 300.300, issued under the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.; and
 - (4) My child may return to a public school at any time."
 - (c) Upon acceptance of a scholarship, the parent assumes full financial responsibility for the education of the scholarship recipient.
 - (d) Acceptance of a scholarship has the same effect as a parental refusal to consent to services as described in 24 C.F.R. Sec. 300.300, issued under the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.
 - (e) The creation of the program or granting of a scholarship does not:
 - (i) imply that a public school did not provide a free and appropriate public education for a student; or
 - (ii) constitute a waiver or admission by the state.
- (6) A scholarship granting organization shall demonstrate the scholarship granting organization's financial accountability by annually submitting to the state board a financial information report that:
 - (a) complies with the uniform financial accounting standards described in Section 53E-7-404; and
 - (b) is prepared by a certified public accountant.
- (7)
 - (a) If a scholarship granting organization allocates \$500,000 or more in scholarships annually through the program, the scholarship granting organization shall:
 - (i) contract for an annual audit, conducted by a certified public accountant who is independent from:
 - (A) the scholarship granting organization; and
 - (B) the scholarship granting organization's accounts and records pertaining to program donations and other funding sources; and
 - (ii) in accordance with Subsection (7)(b), report the results of the audit to the state board for review.
 - (b) For the report described in Subsection (7)(a)(ii), the scholarship granting organization shall:

- (i) include the scholarship granting organization's financial statements in a format that meets generally accepted accounting standards; and
 - (ii) submit the report to the state board no later than November 1.
- (c) The certified public accountant shall conduct an audit described in Subsection (7)(a)(i) in accordance with generally accepted auditing standards and rules made by the state board.
- (d)
 - (i) The state board shall review a report submitted under this section and may request that the scholarship granting organization revise or supplement the report if the report is not in compliance with the provisions of this Subsection (7) or rules adopted by the state board.
 - (ii) A scholarship granting organization shall provide a revised report or supplement to the report no later than 45 days after the day on which the state board makes a request described in Subsection (7)(d)(i).
- (8)
 - (a) A scholarship granting organization may not allocate scholarship money to a qualifying school or qualifying provider if:
 - (i) the scholarship granting organization determines that the qualifying school or qualifying provider intentionally or substantially misrepresented information on overpayment;
 - (ii) the qualifying school or qualifying provider fails to refund an overpayment in a timely manner; or
 - (iii) the qualifying school or qualifying provider routinely fails to provide scholarship recipients with promised educational goods or services.
 - (b) A scholarship granting organization shall notify a scholarship recipient if the scholarship granting organization stops allocation of the recipient's scholarship money to a qualifying school or qualifying provider under Subsection (8)(a).
- (9) If a scholarship recipient transfers to another qualifying school or qualifying provider during the school year, the scholarship granting organization may prorate scholarship money between the qualifying schools or qualifying providers according to the time the scholarship recipient spends at each school or each provider.
- (10) A scholarship granting organization may not:
 - (a) award a scholarship to a relative of the scholarship granting organization's officer; or
 - (b) allocate scholarship money to a qualifying school or qualifying provider at which the scholarship recipient has a relative who is an officer or an administrator of the qualifying school or qualifying provider.
- (11) The Legislature may appropriate funds to the board to be distributed in an equal amount to each scholarship granting organization for the same purposes program donations are used.

Amended by Chapter 466, 2024 General Session

53E-7-406 Qualifying school or qualifying provider regulatory autonomy -- Home school autonomy -- Student records -- Scholarship student status.

- (1) Nothing in this part:
 - (a) except as expressly described in this part, grants additional authority to any state agency or LEA to regulate or control:
 - (i) a qualifying school, qualifying provider, or home school; or
 - (ii) students receiving education from a qualifying school, qualifying provider, or home school;
 - (b) applies to or otherwise affects the freedom of choice of an out-of-program home school student, including the curriculum, resources, developmental planning, or any other aspect of the out-of-program home school student's education; or

- (c) expands the regulatory authority of the state, a state office holder, or an LEA to impose any additional regulation of a qualifying school or qualifying provider beyond any regulation necessary to administer this part.
- (2) A qualifying school or qualifying provider:
 - (a) has a right to maximum freedom from unlawful governmental control in providing for the educational needs of a scholarship student who attends or engages with the qualifying school or qualifying provider; and
 - (b) is not an agent of the state by virtue of the provider's acceptance of payment from a scholarship account in accordance with this part.
- (3) Except as provided in Section 53E-7-403 regarding qualifying schools or qualifying providers, Section 53E-7-408 regarding eligible schools, or Section 53E-7-408.5 regarding eligible service providers, a scholarship granting organization may not require a qualifying provider to alter the qualifying provider's creed, practices, admissions policies, hiring practices, or curricula in order to accept scholarship funds.
- (4) An LEA or a school in an LEA in which a scholarship student was previously enrolled shall provide to the scholarship student's parent a copy of all school records relating to the student that the LEA possesses within 30 days after the day on which the LEA or school receives the parent's request for the student's records, subject to:
 - (a) Title 53E, Chapter 9, Student Privacy and Data Protection; and
 - (b) Family Educational Rights and Privacy Act, 20 U.S.C. Sec. 1232g.
- (5) By virtue of a scholarship student's involvement in the program and unless otherwise expressly provided in statute, a scholarship student is not:
 - (a) enrolled in the public education system; or
 - (b) otherwise subject to statute, administrative rules, or other state regulations as if the student was enrolled in the public education system.

Amended by Chapter 466, 2024 General Session

53E-7-407 Tax credit certificates issued by a scholarship granting organization.

- (1) In accordance with this section, a scholarship granting organization shall provide a tax credit certificate, on a form provided by the State Tax Commission, to a person that makes a donation as described in Section 53E-7-405.
- (2)
 - (a) The scholarship granting organization shall provide the information from a completed tax credit certificate to the State Tax Commission electronically and in a manner prescribed by the State Tax Commission.
 - (b) A scholarship granting organization shall issue a tax credit certificate within 30 days after the day on which a person makes a donation to the program.
- (3)
 - (a) Before accepting a donation to the program from a person, the scholarship granting organization shall provide the person with notice:
 - (i) that the donation may not be eligible for a tax credit;
 - (ii) of the process described in Subsection (3)(b); and
 - (iii) of the total amount of tax credit certificates that the scholarship granting organization has issued for the calendar year.
 - (b) During a calendar year, a scholarship granting organization shall:
 - (i) issue tax credit certificates in the order that the scholarship granting organization received a corresponding donation; and

- (ii) track the total amount of program donations received during the year as corresponding tax credit certificates are issued.
- (c) If a scholarship granting organization accepts a donation that, when added to the current total amount of program donations received that year, will exceed the program donations cap described in Subsection (4), the scholarship granting organization shall issue a tax credit certificate in the amount that is the difference between the program donations cap and the total amount of program donations received before the donation was received.
- (4)
 - (a) The program donations cap for the 2021 calendar year is \$5,940,000.
 - (b) For a calendar year after 2021, the state board shall calculate the program donations cap as follows:
 - (i) if the total program donations for the previous calendar year exceed 90% of the cap amount for that calendar year, the cap for the current calendar year is the cap amount for the previous calendar year increased by 10% plus a percentage equal to the percentage of growth in the participation of the program from the previous calendar year; or
 - (ii) if the total program donations for the previous calendar year did not exceed 90% of the cap amount for that calendar year, the cap for the current calendar year is the same as the cap amount for the previous calendar year.
- (5) A person that receives a tax credit certificate in accordance with this section shall retain the certificate for the same time period a person is required to keep books and records under Section 59-1-1406.

Amended by Chapter 466, 2024 General Session

53E-7-408 Eligible private schools.

- (1) To be eligible to enroll a scholarship student, a private school shall:
 - (a) have a physical location in Utah where the scholarship students attend classes and have direct contact with the school's teachers;
 - (b)
 - (i) contract with an independent licensed certified public accountant to conduct an Agreed Upon Procedures engagement as adopted by the state board, or obtain an audit and report from a licensed independent certified public accountant that conforms with the following requirements:
 - (A) the audit shall be performed in accordance with generally accepted auditing standards;
 - (B) the financial statements shall be presented in accordance with generally accepted accounting principles; and
 - (C) the audited financial statements shall be as of a period within the last 12 months; and
 - (ii) submit the audit report or report of the agreed upon procedure to the state board when the private school applies to accept scholarship students;
 - (c) comply with the antidiscrimination provisions of 42 U.S.C. 2000d;
 - (d) meet state and local health and safety laws and codes;
 - (e) provide a written disclosure to the parent of each prospective student, before the student is enrolled, of:
 - (i) the special education services that will be provided to the student, including the cost of those services;
 - (ii) tuition costs;
 - (iii) additional fees a parent will be required to pay during the school year; and
 - (iv) the skill or grade level of the curriculum in which the prospective student will participate;

- (f)
 - (i) administer an annual assessment of each scholarship student's academic progress; and
 - (ii) report the results of the assessment described in Subsection (1)(f)(i) to the scholarship student's parent;
 - (g) employ or contract with teachers who:
 - (i) hold baccalaureate or higher degrees;
 - (ii) have at least three years of teaching experience in public or private schools; or
 - (iii) have the necessary skills, knowledge, or expertise that qualifies the teacher to provide instruction:
 - (A) in the subject or subjects taught; and
 - (B) to the special needs students taught;
 - (h) maintain documentation demonstrating that teachers at the private school meet the qualifications described in Subsection (1)(g);
 - (i) require the following individuals to submit to a nationwide, fingerprint-based criminal background check and ongoing monitoring, in accordance with Section 53G-11-402, as a condition for employment or appointment, as authorized by the Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248:
 - (i) an employee who does not hold a current Utah educator license issued by the state board under Chapter 6, Education Professional Licensure;
 - (ii) a contract employee; and
 - (iii) a volunteer who is given significant unsupervised access to a student in connection with the volunteer's assignment; and
 - (j) provide to the parent of a scholarship student the relevant credentials of the teachers who will be teaching the scholarship student.
- (2) A private school is not eligible to enroll scholarship students if:
- (a) the private school requires a student to sign a contract waiving the student's rights to transfer to another qualifying school during the school year;
 - (b) the audit report submitted under Subsection (1)(b) contains a going concern explanatory paragraph;
 - (c) the report of the agreed upon procedures submitted under Subsection (1)(b) shows that the private school does not have adequate working capital to maintain operations for the first full year, as determined under Subsection (1)(b); or
 - (d) the private school charges a scholarship student more in tuition or fees than another student based solely upon the scholarship student being a scholarship recipient under this part.
- (3) Residential treatment facilities licensed by the state are not eligible to enroll scholarship students.
- (4) A private school intending to enroll scholarship students shall submit an application to the state board.
- (5) The state board shall:
- (a) approve a private school's application to enroll scholarship students, if the private school meets the eligibility requirements of this section; and
 - (b) publish on the state board's website, a list of private schools approved under this section.
- (6) A private school approved under this section that changes ownership shall:
- (a) submit a new application to the state board; and
 - (b) demonstrate that the private school continues to meet the eligibility requirements of this section.

Amended by Chapter 466, 2024 General Session

53E-7-408.5 Eligible service provider.

- (1) To be an eligible service provider, a private program or service:
 - (a) shall provide to the scholarship granting organization:
 - (i) a federal employer identification number;
 - (ii) the provider's address and contact information;
 - (iii) a description of each program or service the provider proposes to offer directly to a scholarship student; and
 - (iv) subject to Subsection (2), any other information as required by the scholarship granting organization;
 - (b) shall comply with the antidiscrimination provisions of 42 U.S.C. Sec. 2000d; and
 - (c) may not act as a consultant, clearing house, or intermediary that connects a scholarship student with or otherwise facilitates the student's engagement with a program or service that another entity provides.
- (2) The scholarship granting organization shall adopt policies that maximize the number of eligible service providers, including accepting new providers throughout the school year, while ensuring education programs or services provided through the program meet student needs and otherwise comply with this part.
- (3) A private program or service intending to receive scholarship funds shall:
 - (a) submit an application to the scholarship granting organization; and
 - (b) agree to not refund, rebate, or share scholarship funds with scholarship students or scholarship students' parents in any manner except remittances or refunds to a scholarship account in accordance with this part and procedures that the program manager establishes.
- (4) The scholarship granting organization shall:
 - (a) if the private program or service meets the eligibility requirements of this section, recognize the private program or service as an eligible service provider and approve a private program or service's application to receive scholarship funds on behalf of a scholarship student; and
 - (b) make available to the public a list of eligible service providers approved under this section.
- (5) A private program or service approved under this section that changes ownership shall:
 - (a) cease operation as an eligible service provider until:
 - (i) the program or service submits a new application to the scholarship granting organization; and
 - (ii) the scholarship granting organization approves the new application; and
 - (b) demonstrate that the private program or service continues to meet the eligibility requirements of this section.

Enacted by Chapter 466, 2024 General Session

53E-7-409 Public Education Appropriations Subcommittee to conduct feasibility study.

The Public Education Appropriations Subcommittee shall:

- (1) study the feasibility of combining the program with the Carson Smith Scholarship Program created in Section 53F-4-302;
- (2) prepare a written report of the study's findings, including any legislative recommendations; and
- (3) on or before the Executive Appropriations Committee's November 2023 meeting, submit the report to the Executive Appropriations Committee.

Enacted by Chapter 3, 2020 Special Session 4

53E-7-410 Background checks for scholarship granting organizations -- State board responsibilities -- Bureau responsibilities -- Fees.

(1) As used in this section:

- (a) "Applicant" means an employee or officer of a scholarship granting organization.
- (b) "Bureau" means the Bureau of Criminal Identification created in Section 53-10-201 within the Department of Public Safety.
- (c) "Department" means the Department of Public Safety.
- (d) "Division" means the Criminal Investigations and Technical Services Division created in Section 53-10-103.
- (e) "FBI" means the Federal Bureau of Investigation.
- (f) "FBI Rap Back System" means the rap back system maintained by the FBI.
- (g) "Personal identifying information" means:
 - (i) current name;
 - (ii) former names;
 - (iii) nicknames;
 - (iv) aliases;
 - (v) date of birth;
 - (vi) address;
 - (vii) telephone number;
 - (viii) driver license number or other government-issued identification number;
 - (ix) social security number; and
 - (x) fingerprints.
- (h) "Rap back system" means a system that enables authorized entities to receive ongoing status notifications of any criminal history reported on individuals whose fingerprints are registered in the system.
- (i) "WIN Database" means the Western Identification Network Database that consists of eight western states sharing one electronic fingerprint database.

(2) The state board shall:

- (a) require an applicant to submit to a nationwide criminal background check and ongoing monitoring in accordance with Section 53E-7-404;
- (b) collect the following from an applicant:
 - (i) personal identifying information;
 - (ii) a fee described in Subsection (4); and
 - (iii) consent, on a form specified by the state board, for:
 - (A) an initial fingerprint-based background check by the FBI and bureau;
 - (B) retention of personal identifying information for ongoing monitoring through registration with the systems described in Subsection (3); and
 - (C) disclosure of any criminal history information to the state board;
- (c) submit an applicant's personal identifying information to the bureau for:
 - (i) an initial fingerprint-based background check by the FBI and bureau; and
 - (ii) ongoing monitoring through registration with the systems described in Subsection (3) if the results of the initial background check do not contain disqualifying criminal history information as determined by the state board in accordance with Section 53E-7-404;
- (d) identify the appropriate privacy risk mitigation strategy that will be used to ensure that the state board only receives notifications for individuals with whom the state board maintains an authorizing relationship; and
- (e) submit the information to the bureau for ongoing monitoring through registration with the systems described in Subsection (3)(a).

- (3) The bureau shall:
 - (a) upon request from the state board, register the fingerprints submitted by the state board as part of a background check with:
 - (i) the WIN Database rap back system, or any successor system; and
 - (ii) the FBI Rap Back System;
 - (b) notify the state board when a new entry is made against an individual whose fingerprints are registered with the rap back systems described in Subsection (3)(a) regarding:
 - (i) an alleged offense; or
 - (ii) a conviction, including a plea in abeyance;
 - (c) assist the state board to identify the appropriate privacy risk mitigation strategy that is to be used to ensure that the state board only receives notifications for individuals with whom the authorized entity maintains an authorizing relationship; and
 - (d) collaborate with the state board to provide training to appropriate state board employees on the notification procedures and privacy risk mitigation strategies described in this section.
- (4)
 - (a) The division shall impose fees set in accordance with Section 63J-1-504 for an applicant fingerprint card, name check, and to register fingerprints under this section.
 - (b) Funds generated under this Subsection (4) shall be deposited into the General Fund as a dedicated credit by the department to cover the costs incurred in providing the information.

Enacted by Chapter 3, 2020 Special Session 4