

1 **CARSON SMITH SPECIAL NEEDS**

2 **SCHOLARSHIPS**

3 2004 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: J. Morgan Philpot**

7 **LONG TITLE**

8 **General Description:**

9 This bill creates a program to award scholarships to students with disabilities who
10 attend a private school.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ specifies criteria for qualifying for a scholarship;
- 14 ▶ specifies criteria for private schools to enroll scholarship students;
- 15 ▶ specifies the amount, timing, and form of scholarship payments;
- 16 ▶ requires the State Board of Education to make rules;
- 17 ▶ gives the State Board of Education enforcement authority; and
- 18 ▶ requires the Legislature to annually appropriate money from the General Fund for

19 scholarship payments.

20 **Monies Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **53A-3-410**, as last amended by Chapter 377, Laws of Utah 1999

27 ENACTS:



- 28 **53A-1a-701**, Utah Code Annotated 1953
- 29 **53A-1a-702**, Utah Code Annotated 1953
- 30 **53A-1a-703**, Utah Code Annotated 1953
- 31 **53A-1a-704**, Utah Code Annotated 1953
- 32 **53A-1a-705**, Utah Code Annotated 1953
- 33 **53A-1a-706**, Utah Code Annotated 1953
- 34 **53A-1a-707**, Utah Code Annotated 1953
- 35 **53A-1a-708**, Utah Code Annotated 1953
- 36 **53A-1a-709**, Utah Code Annotated 1953



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

39 Section 1. Section **53A-1a-701** is enacted to read:

40 **Part 7. Carson Smith Scholarships for Students with Special Needs Act**

41 **53A-1a-701. Title.**

42 This part is known as the "Carson Smith Scholarships for Students with Special Needs
43 Act."

44 Section 2. Section **53A-1a-702** is enacted to read:

45 **53A-1a-702. Findings and purpose.**

46 (1) The Legislature finds that:

47 (a) students with disabilities have special needs which must be satisfied to allow them
48 to learn and maximize their capabilities;

49 (b) those needs may include teachers trained in special teaching methods, small class
50 sizes, and special materials, equipment, and classroom environments;

51 (c) parents of students with disabilities should be able to select the school, whether
52 public or private, that best meets the needs of the student; and

53 (d) the cost of education in a private school, especially for a student with a disability, is
54 burdensome or unaffordable for many parents.

55 (2) The purpose of this part is to provide financial assistance to parents of students
56 with disabilities to allow them to enroll their student in a private school, if the parent
57 determines that the student's needs are best met by the private school.

58 Section 3. Section **53A-1a-703** is enacted to read:

59 **53A-1a-703. Definitions.**

60 As used in this part:

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

62 (a) the student's parent;

63 (b) the student's classroom teacher;

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

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

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

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

70 (4) "IEP" means a written statement for a student with a disability that is developed,
71 reviewed, and revised in accordance with board rules and the Individuals with Disabilities
72 Education Act, 20 U.S.C. Sec. 1400 et. seq.

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

74 (6) "Value of the weighted pupil unit" means the amount specified in Section
75 53A-17a-103 that is multiplied by the number of weighted pupil units to yield the funding level
76 for the basic state-supported school program.

77 Section 4. Section **53A-1a-704** is enacted to read:

78 **53A-1a-704. Scholarship program created -- Qualifications.**

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

81 (2) To qualify for a scholarship:

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

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

84 (i) mental retardation;

85 (ii) a hearing impairment;

86 (iii) a speech or language impairment;

87 (iv) a visual impairment;

88 (v) a serious emotional disturbance;

89 (vi) an orthopedic impairment;

90 (vii) autism;
91 (viii) traumatic brain injury;
92 (ix) other health impairment; or
93 (x) specific learning disabilities; and
94 (c) except as provided in Subsection (3), the student shall:
95 (i) be enrolled in a Utah public school in the school year prior to the school year the
96 student will be enrolled in a private school;
97 (ii) have an IEP; and
98 (iii) have obtained acceptance for admission to an eligible private school, as a student
99 in any grade from kindergarten through grade 12.
100 (3) The board shall provide, by rule, for a waiver from the requirements of Subsections
101 (2)(c)(i) and (ii) in the following circumstances:
102 (a) the student is enrolled or has obtained acceptance for admission to an eligible
103 private school, as a student in any grade from kindergarten through grade 12;
104 (b) the private school specializes in serving students with disabilities; and
105 (c) an assessment team is able to readily determine with reasonable certainty:
106 (i) that the student has a disability listed in Subsection (2)(b) and would qualify for
107 special education services, if enrolled in a public school; and
108 (ii) for the purpose of establishing the scholarship amount, the appropriate level of
109 special education services which should be provided to the student.
110 (4) (a) To receive a scholarship:
111 (i) the parent of a student meeting the qualifications of Subsection (2) shall submit an
112 application for the scholarship to the school district within which the student is enrolled at least
113 60 days before the date of the first scholarship payment; and
114 (ii) the parent of a student seeking a waiver pursuant to Subsection (3) shall submit an
115 application for the scholarship to the student's resident school district at least 60 days before
116 the date of the first scholarship payment.
117 (b) The board may provide, by rule, for a waiver of the 60-day application deadline.
118 (5) The scholarship application form shall include a statement disclosing to applicants
119 that a private school may or may not provide the same special education services that are
120 provided in a public school.

121 (6) (a) A scholarship shall remain in force for three years.
122 (b) A scholarship may be extended for an additional three years, if:
123 (i) the student is evaluated by an assessment team; and
124 (ii) the assessment team determines that the student is disabled and would qualify for
125 special education services, if enrolled in a public school.

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

129 (d) A scholarship may be extended for successive three-year periods as provided in
130 Subsections (6)(b) and (6)(c) until the student graduates from high school.

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

133 Section 5. Section **53A-1a-705** is enacted to read:

134 **53A-1a-705. Eligible private schools.**

135 (1) To be eligible to enroll a scholarship student, a private school may be a sectarian or
136 nonsectarian school and shall:

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

139 (b) demonstrate fiscal soundness in accordance with Subsection (4);

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

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

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

144 (f) (i) administer an annual assessment of each scholarship student's academic
145 progress; and

146 (ii) report the results of the assessment to the student's parents;

147 (g) (i) employ or contract with teachers who:

148 (A) hold baccalaureate or higher degrees;

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

150 (C) have special skills, knowledge, or expertise that qualifies them to provide

151 instruction in the subjects taught; and

152 (ii) provide to parents the relevant credentials of the teachers who will be teaching their
153 students; and

154 (h) adhere to the tenets of its published disciplinary procedures prior to the expulsion
155 of a scholarship student.

156 (2) A home school is not eligible to enroll scholarship students.

157 (3) (a) Except as provided in Subsection (3)(b), a private school intending to enroll
158 scholarship students shall submit an application to the board by May 1 of the school year
159 preceding the school year in which it intends to enroll scholarship students.

160 (b) A private school intending to enroll scholarship students in the 2004-05 school year
161 shall submit an application by June 15, 2004.

162 (4) To initially demonstrate financial soundness, the board may require a private school
163 to obtain an audit and opinion letter from an independent certified public accountant showing
164 that the school is insured and has sufficient funds to maintain operations for the full school
165 year.

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.

170 Section 6. Section **53A-1a-706** is enacted to read:

171 **53A-1a-706. Scholarship payments.**

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

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

176 (c) If monies are not available to pay for all scholarships requested, the scholarships
177 shall be allocated in accordance with board rules, with preference given to students who
178 received scholarships in the previous school year.

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

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

183 (i) the value of the weighted pupil unit multiplied by 2.5; or
184 (ii) the private school tuition and fees; and
185 (b) for a student who received an average of less than 180 minutes per day of special
186 education services in a public school before transferring to a private school, an amount not to
187 exceed the lesser of:

188 (i) the value of the weighted pupil unit multiplied by 1.73; or

189 (ii) the private school tuition and fees.

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

192 (4) (a) The scholarship amount for a student who receives a waiver under Subsection
193 53A-1a-704(3) shall be based upon the assessment team's determination of the appropriate
194 level of special education services to be provided to the student.

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

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

201 (iii) If the student is enrolled in a half-day kindergarten program, the scholarship is
202 equal to the amount specified in Subsection (3).

203 (5) (a) Except as provided in Subsection (5)(b), upon review and receipt of the
204 documentation required by the board to verify a student's admission to, or continuing
205 enrollment and attendance at, a private school, the board shall make scholarship payments in
206 four equal amounts no later than September 1, November 1, February 1, and April 15 of each
207 school year in which a scholarship is in force.

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

211 (6) Before scholarship payments are made, the board shall cross-check enrollment lists
212 of scholarship students, school districts, and youth in custody to ensure that scholarship
213 payments are not erroneously made.

214 (7) (a) Scholarship payments shall be made by the board by individual warrant made
215 payable to the student's parent and mailed by the board to the private school. The parent shall
216 restrictively endorse the warrant to the private school for deposit into the account of the private
217 school.

218 (b) A person, on behalf of a private school, may not accept a power of attorney from a
219 parent to sign a warrant referred to in Subsection (7)(a), and a parent of a scholarship student
220 may not give a power of attorney designating a person, on behalf of a private school, as the
221 parent's attorney-in-fact.

222 Section 7. Section **53A-1a-707** is enacted to read:

223 **53A-1a-707. Board to make rules.**

224 The board shall make rules for the administration of the scholarship program.

225 Section 8. Section **53A-1a-708** is enacted to read:

226 **53A-1a-708. Enforcement and penalties.**

227 (1) (a) The board may require private schools to submit signed affidavits assuring the
228 private school will comply with the requirements of this part and board rules made under this
229 part.

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

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

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

234 (2) The board may:

235 (a) investigate complaints about a private school's or parent's failure to comply with
236 this part or board rules made under this part; and

237 (b) convene administrative hearings for a violation of this part or board rules.

238 (3) Upon a finding that a private school or parent failed to comply with this part or
239 board rules made under this part, the board may:

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

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

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

243 Section 9. Section **53A-1a-709** is enacted to read:

244 **53A-1a-709. Limitation on regulation of private schools.**

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

247 Section 10. Section **53A-3-410** is amended to read:

248 **53A-3-410. Criminal background checks on school personnel -- Notice -- Payment**
249 **of cost -- Request for review.**

250 (1) A school district superintendent or the superintendent's designee:

251 (a) shall require a potential employee or a volunteer who will be given significant
252 unsupervised access to a student in connection with the volunteer's assignment to submit to a
253 criminal background check as a condition for employment or appointment; and

254 (b) where reasonable cause exists, may require an existing employee or volunteer to
255 submit to a criminal background check.

256 (2) The chief administrative officer of a private school may require, and the chief
257 administrative officer of the private school that enrolls scholarship students under Chapter 1a,
258 Part 7, Carson Smith Scholarships for Students with Special Needs Act, shall require:

259 (a) a potential employee or volunteer to submit to a criminal background check as a
260 condition for employment or appointment; and

261 (b) where reasonable cause exists, an existing employee or volunteer to submit to a
262 criminal background check.

263 (3) The applicant, volunteer, or employee shall receive written notice that the
264 background check has been requested.

265 (4) (a) (i) Fingerprints of the individual shall be taken, and the Criminal Investigations
266 and Technical Services Division of the Department of Public Safety, established in Section
267 53-10-103, shall release the individual's full record of criminal convictions to the administrator
268 requesting the information.

269 (ii) The division shall maintain a separate file of fingerprints submitted under
270 Subsection (4)(a)(i) and notify the State Office of Education when a new entry is made against
271 a person whose fingerprints are held in the file regarding:

272 (A) any matters involving an alleged sexual offense;

273 (B) any matters involving an alleged felony or class A misdemeanor drug offense; or

274 (C) any matters involving an alleged offense against the person under Title 76, Chapter
275 5, Offenses Against the Person.

276 (iii) The cost of maintaining the separate file shall be paid by the State Office of
277 Education from fees charged to those submitting fingerprints.

278 (b) Information received by the division from entities other than agencies or political
279 subdivisions of the state may not be released to a private school unless the release is
280 permissible under applicable laws or regulations of the entity providing the information.

281 (5) The superintendent, local school board, or their counterparts at a private school
282 shall consider only those convictions which are job-related for the employee, applicant, or
283 volunteer.

284 (6) (a) The district or private school shall pay the cost of the background check except
285 as otherwise provided in Subsection (6)(b), and the monies collected shall be credited to the
286 Criminal Investigations and Technical Services Division to offset its expenses.

287 (b) The district or private school may require an applicant to pay the costs of a
288 background check as a condition for consideration for employment or appointment, if:

289 (i) the applicant:

290 (A) has passed an initial review;

291 (B) is one of a pool of no more than five candidates for a position; and

292 (C) except as may be otherwise provided by state board rule for an applicant who
293 submitted to a background check while completing a higher education program at a Utah
294 institution of higher education, has not been the subject of a criminal background check of
295 similar scope during the preceding two years that was requested by a potential employer or the
296 State Board of Education; and

297 (ii) a copy of the background check is provided to the district or school considering
298 employment or appointment of the applicant.

299 (7) The Criminal Investigations and Technical Services Division shall, upon request,
300 seek additional information from regional or national criminal data files in responding to
301 inquiries under this section.

302 (8) (a) A private school seeking information from the Federal Bureau of Investigation
303 or other national criminal data file which the private school may not access directly shall
304 submit its request to the Teacher Certification Section of the State Board of Education, together
305 with the required fee and the school's criminal data-related criteria for limiting or rejecting
306 employment.

307 (b) The section shall submit the request and, upon receiving the requested information,
308 shall determine whether the subject of the inquiry is entitled to employment under the school's
309 criteria.

310 (c) The section shall disclose its determination to the school but may not disclose the
311 data in the national criminal data file.

312 (9) (a) The applicant, volunteer, or employee shall have opportunity to respond to any
313 information received as a result of the background check.

314 (b) A private school applicant, volunteer, or employee who wishes to respond shall:

315 (i) submit a request to the school; and

316 (ii) give a written statement to the Teacher Certification Office authorizing the office to
317 release the background check information to a hearing officer selected by the individual and the
318 school.

319 (c) The individual and the school shall equally share any costs incurred under
320 Subsection (9)(b).

321 (d) A public agency shall resolve any request for review by an applicant, volunteer, or
322 employee seeking employment or employed by the agency through normal administrative
323 procedures established by the agency.

324 (10) If a person is denied employment or is dismissed from employment because of
325 information obtained through a criminal background check, the person shall receive written
326 notice of the reasons for denial or dismissal and have an opportunity to respond to the reasons
327 under the procedures set forth in Subsection (9).

328 (11) Information obtained under this part is confidential and may only be disclosed as
329 provided in this section.

Legislative Review Note
as of 1-22-04 2:27 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

State Impact

It is estimated that passage of this bill will require an appropriation in FY 2005 to the Utah State Office of Education in General Funds of \$1,843,400 for scholarships, and \$230,000 in Uniform School Funds for increased administrative costs. There would also be a reduced appropriation in the Minimum School Program of (\$860,000) in Uniform School Funds. There could be a potential loss of \$1,200 in federal funds for each student that leaves the public school system and does not continue to receive those services.

	<u>FY 2005</u> <u>Approp.</u>	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2005</u> <u>Revenue</u>	<u>FY 2006</u> <u>Revenue</u>
General Fund	\$1,843,400	\$2,089,400	\$0	\$0
Uniform School Fund	(\$630,000)	(\$920,000)	\$0	\$0
TOTAL	\$1,213,400	\$1,169,400	\$0	\$0

Individual and Business Impact

Individuals could benefit from having costs of schooling paid by state scholarships. There could be increased monetary benefits to private schools.
