

**Representative Merlynn T. Newbold** proposes the following substitute bill:

**CARSON SMITH SPECIAL NEEDS**

**SCHOLARSHIPS**

2004 GENERAL SESSION

STATE OF UTAH

**Sponsor: J. Morgan Philpot**

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**LONG TITLE**

**General Description:**

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

**Highlighted Provisions:**

This bill:

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

**Monies Appropriated in this Bill:**

This bill appropriates:

- ▶ as an ongoing appropriation subject to future budget constraints, \$100,000 from the Uniform School Fund for fiscal year 2004-05 to the State Board of Education.

**Other Special Clauses:**

None



26 **Utah Code Sections Affected:**

27 AMENDS:

28 **53A-3-410**, as last amended by Chapter 377, Laws of Utah 1999

29 ENACTS:

30 **53A-1a-701**, Utah Code Annotated 1953

31 **53A-1a-702**, Utah Code Annotated 1953

32 **53A-1a-703**, Utah Code Annotated 1953

33 **53A-1a-704**, Utah Code Annotated 1953

34 **53A-1a-705**, Utah Code Annotated 1953

35 **53A-1a-706**, Utah Code Annotated 1953

36 **53A-1a-707**, Utah Code Annotated 1953

37 **53A-1a-708**, Utah Code Annotated 1953

38 **53A-1a-709**, Utah Code Annotated 1953



39  
40 *Be it enacted by the Legislature of the state of Utah:*

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

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

43 **53A-1a-701. Title.**

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

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

47 **53A-1a-702. Findings and purpose.**

48 (1) The Legislature finds that:

49 (a) the state system of public education as established and maintained under the state  
50 constitution is charged with making available a free public education for all children of the  
51 state;

52 (b) students with disabilities have special needs that merit educational alternatives  
53 which will allow students to learn in an appropriate setting and manner;

54 (c) those needs may include teachers trained in special teaching methods, small class  
55 sizes, and special materials, equipment, and classroom environments;

56 (d) the establishment of this scholarship program is justified on the basis of funding the

57 special needs of students with disabilities as with other programs similarly funded by the state  
58 for people with disabilities; and

59 (e) nothing in this part shall be construed as a basis for granting vouchers or tuition tax  
60 credits for any other students, with or without disabilities.

61 (2) The purpose of this part, in accordance with the best interests of the taxpayers and  
62 citizens of this state, is to encourage educational opportunities and provide limited financial  
63 assistance for students with disabilities whose parents enroll their child in a private school  
64 when it is determined that the student's needs are best met by the private school.

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

66 **53A-1a-703. Definitions.**

67 As used in this part:

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

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

70 (b) the student's classroom teacher;

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

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

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

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

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

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

81 (6) "Value of the weighted pupil unit" means the amount specified in Section  
82 53A-17a-103 that is multiplied by the number of weighted pupil units to yield the funding level  
83 for the basic state-supported school program.

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

85 **53A-1a-704. Scholarship program created -- Qualifications.**

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

- 88           (2) To qualify for a scholarship:  
89           (a) the student's custodial parent or legal guardian shall reside within Utah;  
90           (b) the student shall have one or more of the following disabilities:  
91           (i) mental retardation;  
92           (ii) a hearing impairment;  
93           (iii) a speech or language impairment;  
94           (iv) a visual impairment;  
95           (v) a serious emotional disturbance;  
96           (vi) an orthopedic impairment;  
97           (vii) autism;  
98           (viii) traumatic brain injury;  
99           (ix) other health impairment; or  
100           (x) specific learning disabilities;  
101           (c) the student shall be at least five years of age before September 2 of the year in  
102 which admission to a private school is sought and under 19 years of age on the last day of the  
103 school year as determined by the private school, or, if the individual has not graduated from  
104 high school with a regular diploma, will be under 22 years of age on the last of the school year  
105 as determined by the private school; and  
106           (d) except as provided in Subsection (3), the student shall:  
107           (i) be enrolled in a Utah public school in the school year prior to the school year the  
108 student will be enrolled in a private school;  
109           (ii) have an IEP; and  
110           (iii) have obtained acceptance for admission to an eligible private school.  
111           (3) The board shall provide, by rule, for a waiver from the requirements of Subsection  
112 (2)(c) in the following circumstances:  
113           (a) the student is enrolled or has obtained acceptance for admission to an eligible  
114 private school;  
115           (b) the private school specializes in serving students with disabilities; and  
116           (c) an assessment team is able to readily determine with reasonable certainty:  
117           (i) that the student has a disability listed in Subsection (2)(b) and would qualify for  
118 special education services, if enrolled in a public school; and

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

121 (4) (a) To receive a scholarship:

122 (i) the parent of a student meeting the qualifications of Subsection (2) shall submit an  
123 application for the scholarship to the school district within which the student is enrolled:

124 (A) at least 60 days before the date of the first scholarship payment; and

125 (B) that contains a certification by the parent that the selected school is qualified and  
126 capable of providing the level of special education services required for student; and

127 (ii) the parent of a student seeking a waiver pursuant to Subsection (3) shall submit an  
128 application for the scholarship to the student's resident school district at least 60 days before  
129 the date of the first scholarship payment.

130 (b) The board may provide, by rule, for a waiver of the 60-day application deadline.

131 (5) (a) The scholarship application form shall include a statement disclosing to  
132 applicants that a private school may not provide the same level of special education services  
133 that are provided in a public school.

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

136 (c) The creation of the scholarship program or granting of a scholarship does not:

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

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

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

141 (b) A scholarship may be extended for an additional three years, if:

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

143 (ii) the assessment team determines that the student is disabled and would qualify for  
144 special education services, if enrolled in a public school.

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

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

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

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

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

155 **53A-1a-705. Eligible private schools.**

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

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

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

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

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

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

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

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

169 (g) employ or contract with teachers who:

170 (i) hold baccalaureate or higher degrees;

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

172 (iii) have special skills, knowledge, or expertise that qualifies them to provide  
173 instruction:

174 (A) in the subjects taught; and

175 (B) to the students taught;

176 (h) provide to parents the relevant credentials of the teachers who will be teaching their  
177 students; and

178 (i) adhere to the tenets of its published disciplinary procedures prior to the expulsion of  
179 a scholarship student.

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

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

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

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

190 (5) The board shall:

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

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

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

195 **53A-1a-706. Scholarship payments.**

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

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

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

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

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

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

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

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

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

213 (ii) the private school tuition and fees.

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

216 (4) (a) The scholarship amount for a student who receives a waiver under Subsection  
217 53A-1a-704(3) shall be based upon the assessment team's determination of the appropriate  
218 level of special education services to be provided to the student.

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

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

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

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

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

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

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

242 (b) A person, on behalf of a private school, may not accept a power of attorney from a



243 parent to sign a warrant referred to in Subsection (7)(a), and a parent of a scholarship student  
244 may not give a power of attorney designating a person, on behalf of a private school, as the  
245 parent's attorney-in-fact.

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

247 **53A-1a-707. Board to make rules.**

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

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

250 **53A-1a-708. Enforcement and penalties.**

251 (1) (a) The board shall require private schools to submit signed affidavits assuring the  
252 private school will comply with the requirements of this part and board rules made under this  
253 part.

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

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

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

258 (2) The board may:

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

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

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

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

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

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

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

268 **53A-1a-709. Limitation on regulation of private schools.**

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

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

272 **53A-3-410. Criminal background checks on school personnel -- Notice -- Payment**  
273 **of cost -- Request for review.**

274 (1) A school district superintendent or the superintendent's designee:  
275 (a) shall require a potential employee or a volunteer who will be given significant  
276 unsupervised access to a student in connection with the volunteer's assignment to submit to a  
277 criminal background check as a condition for employment or appointment; and  
278 (b) where reasonable cause exists, may require an existing employee or volunteer to  
279 submit to a criminal background check.

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

283 (a) a potential employee or volunteer to submit to a criminal background check as a  
284 condition for employment or appointment; and  
285 (b) where reasonable cause exists, an existing employee or volunteer to submit to a  
286 criminal background check.

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

289 (4) (a) (i) Fingerprints of the individual shall be taken, and the Criminal Investigations  
290 and Technical Services Division of the Department of Public Safety, established in Section  
291 53-10-103, shall release the individual's full record of criminal convictions to the administrator  
292 requesting the information.

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

296 (A) any matters involving an alleged sexual offense;  
297 (B) any matters involving an alleged felony or class A misdemeanor drug offense; or  
298 (C) any matters involving an alleged offense against the person under Title 76, Chapter  
299 5, Offenses Against the Person.

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

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

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

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

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

313 (i) the applicant:

314 (A) has passed an initial review;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

354 Section 11. **Appropriation.**

355 As an ongoing appropriation subject to future budget constraints, there is appropriated  
356 from the Uniform School Fund for fiscal year 2004-05, \$100,000 to the State Board of  
357 Education to fund administration of the Carson Smith Scholarship Program.