

**CARSON SMITH SPECIAL NEEDS  
SCHOLARSHIPS**

2005 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Merlynn T. Newbold**

Senate Sponsor: Curtis S. Bramble

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Aaron Tilton  
David Ure  
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Peggy Wallace  
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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 General Fund for fiscal year 2005-06 to the State Board of Education.

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

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

ENACTS:

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

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

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

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

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

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

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

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

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

**53A-1a-710**, Utah Code Annotated 1953

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

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

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

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

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

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

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

The Legislature finds that:

(1) the state system of public education as established and maintained under the state constitution shall be open to all children of the state;

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

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

(4) parents are best equipped to make decisions for their children, including the educational setting that will best serve the interests and educational needs of their children;

(5) the establishment of this scholarship program is justified on the basis of funding the special needs of students with disabilities as with other programs similarly funded by the state for people with disabilities;

(6) children, parents, and families are the primary beneficiaries of the scholarship program authorized in this part and any benefit to private schools, sectarian or otherwise, is purely incidental;

(7) the scholarship program authorized in this part is:

(a) enacted for the valid secular purpose of tailoring a student's education to that student's specific needs;

(b) neutral with respect to religion;

(c) provides limited assistance to citizens who are then able to direct their resources to religious and secular schools solely as a result of their genuine and independent private choices; and

(d) in accordance with the best interests of the taxpayers and citizens of the state to encourage educational opportunities; and

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

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

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

As used in this part:

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

(a) the student's parent or guardian;

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

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

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

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

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

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

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

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

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

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

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

(2) To qualify for a scholarship:

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

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

(i) mental retardation;

(ii) a hearing impairment;

(iii) a speech or language impairment;

(iv) a visual impairment;

(v) a serious emotional disturbance;

(vi) an orthopedic impairment;

(vii) autism;

(viii) traumatic brain injury;

(ix) other health impairment;

(x) specific learning disabilities; or

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

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

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

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

(ii) have an IEP; and

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

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

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

(b) the private school specializes in serving students with disabilities; and

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

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

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

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

(i) at least 60 days before the date of the first scholarship payment; and  
(ii) that contains an acknowledgment by the parent that the selected school is qualified and capable of providing the level of special education services required for the student.

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

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

"I acknowledge that:

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

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

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

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

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

(d) The creation of the scholarship 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) A scholarship shall remain in force for three years.

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

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

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

(c) The assessment team shall determine the appropriate level of special education

services which should be provided to the student for the purpose of setting the scholarship amount.

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

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

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

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

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

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

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

**53A-1a-705. 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) demonstrate fiscal soundness in the initial year it accepts scholarship students by obtaining an audit and opinion letter from an independent certified public accountant showing that the school is insured and has sufficient funds to maintain operations for the full school year;

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

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

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

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

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

(iii) make the results available to the assessment team evaluating the student pursuant to

Subsection 53A-1a-704(6);

(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 special skills, knowledge, or expertise that qualifies them to provide

instruction:

(A) in the subjects taught; and

(B) to the students taught; and

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

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

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

(4) (a) Except as provided in Subsection (4)(b), a private school intending to enroll scholarship students shall submit an application to the board by May 1 of the school year preceding the school year in which it intends to enroll scholarship students.

(b) A private school intending to enroll scholarship students in the 2005-06 school year shall submit an application by June 15, 2005.

(5) The 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) make available to the public a list of the eligible private schools.

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

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

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



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

(c) (i) If monies are not available to pay for all scholarships requested, the scholarships shall be allocated on a random basis except that preference shall be given to students who received scholarships in the previous school year.

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

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

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

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

(ii) the private school tuition and fees; and

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

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

(ii) the private school tuition and fees.

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

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

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

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

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

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

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

(6) A parent of a scholarship student shall notify the board if the student does not have continuing enrollment and attendance at an eligible private school.

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

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

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

(9) (a) Scholarships shall be retroactively awarded to students with disabilities for attendance at a private school in the 2004-05 school year, if:

(i) the student meets the qualifications for a scholarship under Section 53A-1a-704 and is awarded a scholarship under this section; and

(ii) the private school meets the eligibility requirements of Section 53A-1a-705, including submitting an application to enroll scholarship students in the 2005-06 school year.

(b) Subsection (5) does not apply to retroactive scholarship payments.

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

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

In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the board shall make rules consistent with this part establishing:

(1) the eligibility of students to participate in the scholarship program; and

(2) the application process for the scholarship program.

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

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

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

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

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

(ii) interrupt disbursement of or withhold scholarship payments.

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

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

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

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

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

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

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

Nothing in this part grants additional authority to any state agency or school district to

regulate private schools except as expressly set forth in this part.

Section 10. Section **53A-1a-710** is enacted to read:

**53A-1a-710. Review by Legislative Auditor General.**

The Legislative Auditor General shall conduct a review and issue a report on the Carson Smith Scholarship Program after the conclusion of the 2006-07 school year.

Section 11. Section **53A-3-410** is amended to read:

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

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

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

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

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

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

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

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

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

(ii) The division shall maintain a separate file of fingerprints submitted under Subsection

(4)(a)(i) and notify the State Office of Education when a new entry is made against a person whose fingerprints are held in the file regarding:

- (A) any matters involving an alleged sexual offense;
- (B) any matters involving an alleged felony or class A misdemeanor drug offense; or
- (C) any matters involving an alleged offense against the person under Title 76, Chapter

5, Offenses Against the Person.

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

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

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

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

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

- (i) the applicant:
  - (A) has passed an initial review;
  - (B) is one of a pool of no more than five candidates for a position; and
  - (C) except as may be otherwise provided by state board rule for an applicant who

submitted to a background check while completing a higher education program at a Utah institution of higher education, has not been the subject of a criminal background check of similar scope during the preceding two years that was requested by a potential employer or the State Board of Education; and

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

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

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

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

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

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

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

(i) submit a request to the school; and

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

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

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

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

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

**Section 12. Appropriation.**

As an ongoing appropriation subject to future budget constraints, there is appropriated from the General Fund for fiscal year 2005-06, \$100,000 to the State Board of Education to fund administration of the Carson Smith Scholarship Program.