

1 **CARSON SMITH SPECIAL NEEDS**

2 **SCHOLARSHIPS**

3 2005 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Merlynn T. Newbold**

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15 **LONG TITLE**

16 **General Description:**

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

19 **Highlighted Provisions:**

20 This bill:

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

28 **Monies Appropriated in this Bill:**

29 This bill appropriates:



30           ▶ as an ongoing appropriation subject to future budget constraints, \$100,000 from the  
31 General Fund for fiscal year 2005-06 to the State Board of Education.

32 **Other Special Clauses:**

33           None

34 **Utah Code Sections Affected:**

35 AMENDS:

36           **53A-3-410**, as last amended by Chapter 377, Laws of Utah 1999

37 ENACTS:

38           **53A-1a-701**, Utah Code Annotated 1953

39           **53A-1a-702**, Utah Code Annotated 1953

40           **53A-1a-703**, Utah Code Annotated 1953

41           **53A-1a-704**, Utah Code Annotated 1953

42           **53A-1a-705**, Utah Code Annotated 1953

43           **53A-1a-706**, Utah Code Annotated 1953

44           **53A-1a-707**, Utah Code Annotated 1953

45           **53A-1a-708**, Utah Code Annotated 1953

46           **53A-1a-709**, Utah Code Annotated 1953

47           **53A-1a-710**, Utah Code Annotated 1953



48  
49 *Be it enacted by the Legislature of the state of Utah:*

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

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

52                   **53A-1a-701. Title.**

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

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

56                   **53A-1a-702. Findings and purpose.**

57                   The Legislature finds that:

58                   (1) the state system of public education as established and maintained under the state  
59 constitution is charged with making available a free public education for all children of the  
60 state;

- 61 (2) students with disabilities have special needs that merit educational alternatives  
62 which will allow students to learn in an appropriate setting and manner;
- 63 (3) those needs may include teachers trained in special teaching methods, small class  
64 sizes, and special materials, equipment, and classroom environments;
- 65 (4) parents are best equipped to make decisions for their children, including the  
66 educational setting that will best serve the interests and educational needs of their children;
- 67 (5) the establishment of this scholarship program is justified on the basis of funding the  
68 special needs of students with disabilities as with other programs similarly funded by the state  
69 for people with disabilities;
- 70 (6) children, parents, and families are the primary beneficiaries of the scholarship  
71 program authorized in this part and any benefit to private schools, sectarian or otherwise, is  
72 purely incidental;
- 73 (7) the scholarship program authorized in this part is:
- 74 (a) enacted for the valid secular purpose of tailoring a student's education to that  
75 student's specific needs;
- 76 (b) neutral with respect to religion;
- 77 (c) provides limited assistance to citizens who are then able to direct their resources to  
78 religious and secular schools solely as a result of their genuine and independent private  
79 choices; and
- 80 (d) in accordance with the best interests of the taxpayers and citizens of the state to  
81 encourage educational opportunities; and
- 82 (8) nothing in this part shall be construed as a basis for granting vouchers or tuition tax  
83 credits for any other students, with or without disabilities.

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

85 **53A-1a-703. Definitions.**

86 As used in this part:

- 87 (1) "Assessment team" means a team consisting of:
- 88 (a) the student's parent or guardian;
- 89 (b) the student's classroom teacher;
- 90 (c) special education personnel from the student's resident school district; and
- 91 (d) if available, special education personnel from the private school at which the

92 student is enrolled.

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

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

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

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

100 (6) "Value of the weighted pupil unit" means the amount specified in Section  
101 53A-17a-103 that is multiplied by the number of weighted pupil units to yield the funding level  
102 for the basic state-supported school program.

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

104 **53A-1a-704. Scholarship program created -- Qualifications.**

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

107 (2) To qualify for a scholarship:

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

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

110 (i) mental retardation;

111 (ii) a hearing impairment;

112 (iii) a speech or language impairment;

113 (iv) a visual impairment;

114 (v) a serious emotional disturbance;

115 (vi) an orthopedic impairment;

116 (vii) autism;

117 (viii) traumatic brain injury;

118 (ix) other health impairment;

119 (x) specific learning disabilities; or

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

122 (c) the student shall be at least five years of age before September 2 of the year in

123 which admission to a private school is sought and under 19 years of age on the last day of the  
124 school year as determined by the private school, or, if the individual has not graduated from  
125 high school, will be under 22 years of age on the last day of the school year as determined by  
126 the private school; and

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

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

130 (ii) have an IEP; and

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

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

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

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

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

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

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

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

143 (i) at least 60 days before the date of the first scholarship payment; and

144 (ii) that contains an acknowledgment by the parent that the selected school is qualified  
145 and capable of providing the level of special education services required for the student.

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

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

148 "I acknowledge that:

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

151 (2) I will assume full financial responsibility for the education of my scholarship  
152 student if I accept this scholarship."

153 (b) Upon acceptance of the scholarship, the parent assumes full financial responsibility

154 for the education of the scholarship student.

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

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

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

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

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

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

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

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

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

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

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

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

173 (8) A scholarship student may not participate in an academic dual enrollment program  
174 pursuant to Section 53A-11-102.5, but may participate in public school extracurricular  
175 activities pursuant to Section 53A-11-102.5.

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

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

181 **53A-1a-705. Eligible private schools.**

182 (1) To be eligible to enroll a scholarship student, a private school shall:

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

185 (b) demonstrate fiscal soundness in the initial year it accepts scholarship students by  
186 obtaining an audit and opinion letter from an independent certified public accountant showing  
187 that the school is insured and has sufficient funds to maintain operations for the full school  
188 year;

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

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

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

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

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

197 (iii) make the results available to the assessment team evaluating the student pursuant  
198 to Subsection 53A-1a-704(6);

199 (g) employ or contract with teachers who:

200 (i) hold baccalaureate or higher degrees;

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

202 (iii) have special skills, knowledge, or expertise that qualifies them to provide  
203 instruction;

204 (A) in the subjects taught; and

205 (B) to the students taught; and

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

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

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

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

214 (4) The board shall:

215 (a) approve a private school's application to enroll scholarship students, if the private

216 school meets the eligibility requirements of this section; and

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

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

219 **53A-1a-706. Scholarship payments.**

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

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

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

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

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

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

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

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

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

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

241 (ii) the private school tuition and fees.

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

244 (4) (a) The scholarship amount for a student who receives a waiver under Subsection  
245 53A-1a-704(3) shall be based upon the assessment team's determination of the appropriate  
246 level of special education services to be provided to the student.



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

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

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

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

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

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

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

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

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

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

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

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

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

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

284 **53A-1a-707. Board to make rules.**

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

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

288 (2) the application process for the scholarship program.

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

290 **53A-1a-708. Enforcement and penalties.**

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

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

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

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

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

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

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

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

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

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

304 **53A-1a-709. Limitation on regulation of private schools.**

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

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

308 **53A-1a-710. Review by Legislative Auditor General.**

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

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

312           **53A-3-410. Criminal background checks on school personnel -- Notice -- Payment**  
313 **of cost -- Request for review.**

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

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

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

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

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

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

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

329           (4) (a) (i) Fingerprints of the individual shall be taken, and the Criminal Investigations  
330 and Technical Services Division of the Department of Public Safety, established in Section  
331 53-10-103, shall release the individual's full record of criminal convictions to the administrator  
332 requesting the information.

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

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

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

338           (C) any matters involving an alleged offense against the person under Title 76, Chapter  
339 5, Offenses Against the Person.

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

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

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

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

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

353 (i) the applicant:

354 (A) has passed an initial review;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

394 **Section 12. Appropriation.**

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

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**Legislative Review Note**

**as of 11-27-04 2:27 PM**

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

**Office of Legislative Research and General Counsel**

**AMENDED NOTE**

**State Impact**

It is estimated that passage of this bill will require a supplemental appropriation for FY 2005 to the Utah State Office of Education (USOE) in General Funds of \$1,628,400 for scholarships. It is estimated that the bill will require an appropriation for FY 2006 to the Utah State Office of Education (USOE) in General Funds of \$2,470,900 for scholarships. The bill appropriates \$100,000 from the General Fund to the USOE for FY 2006 for administrative expenses. There would also be a reduced appropriation in the Minimum School Program in FY 2006 of \$958,300 in Uniform School Funds. The bill provides for scholarship amounts prorated at the level of funding provided by the Legislature. The participation rates are based on calculated assumptions and could vary in actual practice.

	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>
	<u>Approp.</u>	<u>Approp.</u>	<u>Approp.</u>	<u>Revenue</u>	<u>Revenue</u>	<u>Revenue</u>
General Fund	\$1,628,400	\$2,570,900	\$2,708,700	\$0	\$0	\$0
Uniform School Fund	\$0	(\$903,300)	(\$958,300)	\$0	\$0	\$0
<b>TOTAL</b>	<b>\$1,628,400</b>	<b>\$1,667,600</b>	<b>\$1,750,400</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**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.