

EDUCATION SCHOLARSHIP AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lincoln Fillmore

House Sponsor: _____

LONG TITLE

General Description:

This bill amends eligibility requirements of private schools to enroll scholarship students and amends scholarship donation reporting requirements.

Highlighted Provisions:

This bill:

- ▶ amends a scholarship granting organization's time period for submitting an audit report to the board;
- ▶ prohibits private schools from charging a scholarship student more in fees than other students based solely upon the scholarship student being a scholarship recipient; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53E-7-405, as last amended by Laws of Utah 2022, Chapters 262, 456

53E-7-408, as last amended by Laws of Utah 2022, Chapter 262

53F-4-303, as last amended by Laws of Utah 2019, Chapter 186



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

Section 1. Section **53E-7-405** is amended to read:

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

(1) A person that makes a donation to a scholarship granting organization to help fund scholarships through the program may be eligible to receive a nonrefundable tax credit as described in Sections [59-7-625](#) and [59-10-1041](#).

(2) In accordance with Section [53E-7-404](#), an organization may enter into an agreement with the state board to be a scholarship granting organization.

(3) A scholarship granting organization shall:

(a) accept program donations and allow a person that makes a program donation to designate a qualifying school to which the donation shall be directed for scholarships;

(b) adopt an application process in accordance with Subsection (5);

(c) review scholarship applications and determine scholarship awards;

(d) allocate scholarship money to a scholarship student's parent or, on the parent's behalf, to a qualifying school in which the scholarship student is enrolled;

(e) adopt a process, with state board approval, that allows a parent to use a scholarship to pay for a nontuition scholarship expense for the scholarship student;

(f) ensure that during the state fiscal year:

(i) at least 92% of the scholarship granting organization's revenue from program donations is spent on scholarships;

(ii) up to 5% of the scholarship granting organization's revenue from program donations is spent on administration of the program;

(iii) up to 3% of the scholarship granting organization's revenue from program donations is spent on marketing and fundraising costs; and

(iv) all revenue from program donations' interest or investments is spent on scholarships;

(g) carry forward no more than 40% of the scholarship granting organization's program donations from the state fiscal year in which the scholarship granting organization received the program donations to the following state fiscal year;

59 (h) at the end of a state fiscal year, remit to the state treasurer donation amounts greater
60 than the amount described in Subsection (3)(g);

61 (i) prohibit a scholarship granting organization employee or officer from handling,
62 managing, or processing program donations, if, based on a criminal background check
63 conducted by the state board in accordance with Section 53E-7-404, the state board identifies
64 the employee or officer as posing a risk to the appropriate use of program donations;

65 (j) ensure that a scholarship can be transferred during the school year to a different
66 qualifying school that accepts the scholarship student;

67 (k) report to the state board on or before October 1 of each year the following
68 information, prepared by a certified public accountant:

69 (i) the name and address of the scholarship granting organization;

70 (ii) the total number and total dollar amount of program donations that the scholarship
71 granting organization received during the previous calendar year;

72 (iii) (A) the total number and total dollar amount of scholarships the scholarship
73 granting organization awarded during the previous state fiscal year to eligible students
74 described in Subsection 53E-7-401(1)(a); and

75 (B) the total number and total dollar amount of scholarships the scholarship granting
76 organization awarded during the previous state fiscal year to eligible students described in
77 Subsection 53E-7-401(1)(b); and

78 (iv) the percentage of first-time scholarship recipients who were enrolled in a public
79 school during the previous school year or who entered kindergarten or a higher grade for the
80 first time in Utah;

81 (l) issue tax credit certificates as described in Section 53E-7-407; and

82 (m) require a parent to notify a scholarship granting organization if the parent's
83 scholarship recipient:

84 (i) receives scholarship money for tuition expenses; and

85 (ii) does not have continuing enrollment and attendance at a qualifying school.

86 (4) The state treasurer shall deposit the money described in Subsection (3)(h) into the
87 Income Tax Fund.

88 (5) (a) An application for a scholarship shall contain an acknowledgment by the
89 applicant's parent that the qualifying school selected by the parent for the applicant to attend

90 using a scholarship is capable of providing the level of disability services required for the
91 student.

92 (b) A scholarship application form shall contain the following statement:

93 "I acknowledge that:

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

96 (2) I will assume full financial responsibility for the education of my scholarship
97 recipient if I accept this scholarship;

98 (3) Acceptance of this scholarship has the same effect as a parental refusal to consent to
99 services as described in 24 C.F.R. Sec. 300.300, issued under the Individuals with Disabilities
100 Education Act, 20 U.S.C. Sec. 1400 et seq.; and

101 (4) My child may return to a public school at any time."

102 (c) Upon acceptance of a scholarship, the parent assumes full financial responsibility
103 for the education of the scholarship recipient.

104 (d) Acceptance of a scholarship has the same effect as a parental refusal to consent to
105 services as described in 24 C.F.R. Sec. 300.300, issued under the Individuals with Disabilities
106 Education Act, 20 U.S.C. Sec. 1400 et seq.

107 (e) The creation of the program or granting of a scholarship does not:

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

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

111 (6) A scholarship granting organization shall demonstrate the scholarship granting
112 organization's financial accountability by annually submitting to the state board a financial
113 information report that:

114 (a) complies with the uniform financial accounting standards described in Section
115 [53E-7-404](#); and

116 (b) is prepared by a certified public accountant.

117 (7) (a) If a scholarship granting organization allocates \$500,000 or more in
118 scholarships annually through the program, the scholarship granting organization shall:

119 (i) contract for an annual audit, conducted by a certified public accountant who is
120 independent from:

121 (A) the scholarship granting organization; and
122 (B) the scholarship granting organization's accounts and records pertaining to program
123 donations; and

124 (ii) in accordance with Subsection (7)(b), report the results of the audit to the state
125 board for review.

126 (b) For the report described in Subsection (7)(a)(ii), the scholarship granting
127 organization shall:

128 (i) include the scholarship granting organization's financial statements in a format that
129 meets generally accepted accounting standards; and

130 (ii) submit the report to the state board no later than ~~[+80]~~ 120 days after the last day
131 ~~[of a scholarship granting organization's]~~ of the state fiscal year.

132 (c) The certified public accountant shall conduct an audit described in Subsection
133 (7)(a)(i) in accordance with generally accepted auditing standards and rules made by the state
134 board.

135 (d) (i) The state board shall review a report submitted under this section and may
136 request that the scholarship granting organization revise or supplement the report if the report
137 is not in compliance with the provisions of this Subsection (7) or rules adopted by the state
138 board.

139 (ii) A scholarship granting organization shall provide a revised report or supplement to
140 the report no later than 45 days after the day on which the state board makes a request
141 described in Subsection (7)(d)(i).

142 (8) (a) A scholarship granting organization may not allocate scholarship money to a
143 qualifying school if:

144 (i) the scholarship granting organization determines that the qualifying school
145 intentionally or substantially misrepresented information on overpayment;

146 (ii) the qualifying school fails to refund an overpayment in a timely manner; or

147 (iii) the qualifying school routinely fails to provide scholarship recipients with
148 promised educational goods or services.

149 (b) A scholarship granting organization shall notify a scholarship recipient if the
150 scholarship granting organization stops allocation of the recipient's scholarship money to a
151 qualifying school under Subsection (8)(a).

152 (9) If a scholarship recipient transfers to another qualifying school during the school
153 year, the scholarship granting organization may prorate scholarship money between the
154 qualifying schools according to the time the scholarship recipient spends at each school.

155 (10) A scholarship granting organization may not:

156 (a) award a scholarship to a relative of the scholarship granting organization's officer or
157 employee; or

158 (b) allocate scholarship money to a qualifying school at which the scholarship recipient
159 has a relative who is an officer or an employee of the qualifying school.

160 Section 2. Section **53E-7-408** is amended to read:

161 **53E-7-408. Eligible private schools.**

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

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

165 (b) (i) contract with an independent licensed certified public accountant to conduct an
166 Agreed Upon Procedures engagement as adopted by the state board, or obtain an audit and
167 report from a licensed independent certified public accountant that conforms with the following
168 requirements:

169 (A) the audit shall be performed in accordance with generally accepted auditing
170 standards;

171 (B) the financial statements shall be presented in accordance with generally accepted
172 accounting principles; and

173 (C) the audited financial statements shall be as of a period within the last 12 months;
174 and

175 (ii) submit the audit report or report of the agreed upon procedure to the state board
176 when the private school applies to accept scholarship students;

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

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

179 (e) provide a written disclosure to the parent of each prospective student, before the
180 student is enrolled, of:

181 (i) the special education services that will be provided to the student, including the cost
182 of those services;

- 183 (ii) tuition costs;
- 184 (iii) additional fees a parent will be required to pay during the school year; and
- 185 (iv) the skill or grade level of the curriculum in which the prospective student will
- 186 participate;
- 187 (f) (i) administer an annual assessment of each scholarship student's academic
- 188 progress; and
- 189 (ii) report the results of the assessment described in Subsection (1)(f)(i) to the
- 190 scholarship student's parent;
- 191 (g) employ or contract with teachers who:
- 192 (i) hold baccalaureate or higher degrees;
- 193 (ii) have at least three years of teaching experience in public or private schools; or
- 194 (iii) have the necessary skills, knowledge, or expertise that qualifies the teacher to
- 195 provide instruction:
- 196 (A) in the subject or subjects taught; and
- 197 (B) to the special needs students taught;
- 198 (h) maintain documentation demonstrating that teachers at the private school meet the
- 199 qualifications described in Subsection (1)(g);
- 200 (i) require the following individuals to submit to a nationwide, fingerprint-based
- 201 criminal background check and ongoing monitoring, in accordance with Section [53G-11-402](#),
- 202 as a condition for employment or appointment, as authorized by the Adam Walsh Child
- 203 Protection and Safety Act of 2006, Pub. L. No. 109-248:
- 204 (i) an employee who does not hold a current Utah educator license issued by the state
- 205 board under Chapter 6, Education Professional Licensure;
- 206 (ii) a contract employee; and
- 207 (iii) a volunteer who is given significant unsupervised access to a student in connection
- 208 with the volunteer's assignment; and
- 209 (j) provide to the parent of a scholarship student the relevant credentials of the teachers
- 210 who will be teaching the scholarship student.
- 211 (2) A private school is not eligible to enroll scholarship students if:
- 212 (a) the private school requires a student to sign a contract waiving the student's rights
- 213 to transfer to another qualifying school during the school year;

214 (b) the audit report submitted under Subsection (1)(b) contains a going concern
215 explanatory paragraph; [~~or~~]

216 (c) the report of the agreed upon procedures submitted under Subsection (1)(b) shows
217 that the private school does not have adequate working capital to maintain operations for the
218 first full year, as determined under Subsection (1)(b)[~~;~~]; or

219 (d) the private school charges a scholarship student more in tuition or fees than another
220 student based solely upon the scholarship student being a scholarship recipient under this part.

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

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

224 (5) A private school intending to enroll scholarship students shall submit an application
225 to the state board.

226 (6) The state board shall:

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

229 (b) publish on the state board's website, a list of private schools approved under this
230 section.

231 (7) A private school approved under this section that changes ownership shall:

232 (a) submit a new application to the state board; and

233 (b) demonstrate that the private school continues to meet the eligibility requirements of
234 this section.

235 Section 3. Section **53F-4-303** is amended to read:

236 **53F-4-303. Eligible private schools.**

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

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

240 (b) (i) [~~(A)~~] contract with an independent licensed certified public accountant to
241 conduct an Agreed Upon Procedures engagement, as adopted by the state board, or obtain an
242 audit and report from a licensed independent certified public accountant that conforms with the
243 following requirements:

244 [~~(F)~~] (A) the audit shall be performed in accordance with generally accepted auditing

245 standards;

246 ~~[(H)]~~ (B) the financial statements shall be presented in accordance with generally
247 accepted accounting principles; and

248 ~~[(H)]~~ (C) the audited financial statements shall be as of a period within the last 12
249 months; ~~[or] and~~

250 ~~[(B)] contract with an independent licensed certified public accountant to conduct an~~
251 ~~Agreed Upon Procedures engagement, as adopted by the state board; and]~~

252 (ii) submit the audit report or report of the agreed upon procedure to the state board
253 when the private school applies to accept scholarship students;

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

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

256 (e) provide a written disclosure to the parent of each prospective student, before the
257 student is enrolled of:

258 (i) the special education services that will be provided to the student, including the cost
259 of those services;

260 (ii) tuition costs;

261 (iii) additional fees a parent will be required to pay during the school year; and

262 (iv) the skill or grade level of the curriculum that the student will be participating in;

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

265 (ii) report the results of the assessment described in Subsection (1)(f)(i) to the student's
266 parent; and

267 (iii) make the results available to the assessment team evaluating the student pursuant
268 to Subsection [53F-4-302\(6\)](#);

269 (g) employ or contract with teachers who:

270 (i) hold baccalaureate or higher degrees;

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

272 (iii) have the necessary special skills, knowledge, or expertise that qualifies them to
273 provide instruction:

274 (A) in the subjects taught; and

275 (B) to the special needs students taught;

276 (h) maintain documentation demonstrating that teachers at the private school meet the
277 qualifications described in Subsection (1)(g);

278 (i) require the following individuals to submit to a nationwide, fingerprint-based
279 criminal background check and ongoing monitoring, in accordance with Section 53G-11-402,
280 as a condition for employment or appointment, as authorized by the Adam Walsh Child
281 Protection and Safety Act of 2006, Pub. L. No. 109-248:

282 (i) an employee who does not hold a current Utah educator license issued by the state
283 board under Title 53E, Chapter 6, Education Professional Licensure;

284 (ii) a contract employee; and

285 (iii) a volunteer who is given significant unsupervised access to a student in connection
286 with the volunteer's assignment; and

287 (j) provide to [~~parents~~] the parent of the scholarship student the relevant credentials of
288 the teachers who will be teaching [~~their students~~] the scholarship student.

289 (2) A private school is not eligible to enroll scholarship students if:

290 (a) the private school requires a student to sign a contract waiving the student's rights
291 to transfer to another eligible private school during the school year;

292 (b) the audit report submitted under Subsection (1)(b) contains a going concern
293 explanatory paragraph; [~~or~~]

294 (c) the report of the agreed upon procedure submitted under Subsection (1)(b) shows
295 that the private school does not have adequate working capital to maintain operations for the
296 first full year, as determined under Subsection (1)(b)[~~;~~]; and

297 (d) the private school charges a scholarship student more in tuition or fees than another
298 student based solely upon the scholarship student being a scholarship recipient under this part.

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

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

302 (5) A private school intending to enroll scholarship students shall submit an application
303 to the state board by May 1 of the school year preceding the school year in which it intends to
304 enroll scholarship students.

305 (6) The state board shall:

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

307 school meets the eligibility requirements of this section; and
308 (b) ~~[make available to the public a list of the eligible private schools]~~ publish on the
309 state board's website, a list of private schools approved under this section.
310 (7) An approved eligible private school that changes ownership shall;
311 (a) submit a new application to the state board; and
312 (b) demonstrate that [it] the private school continues to meet the eligibility
313 requirements of this section.