

CARSON SMITH SCHOLARSHIP AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brian Zehnder

House Sponsor: Steve Eliason

LONG TITLE

General Description:

This bill amends provisions related to the Carson Smith Scholarship Program.

Highlighted Provisions:

This bill:

- ▶ includes deafblindness as a qualifying disability for scholarship eligibility;
- ▶ enacts provisions governing the term of a scholarship and participation in other specified education programs;
- ▶ amends requirements for eligible private schools;
- ▶ enacts language governing payment of scholarships;
- ▶ authorizes the State Board of Education to award additional scholarships in certain circumstances;
- ▶ requires the State Board of Education to adopt rules on payment procedures to eligible private schools;
- ▶ repeals outdated language; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53F-4-302, as renumbered and amended by Laws of Utah 2018, Chapter 2

30 **53F-4-303**, as renumbered and amended by Laws of Utah 2018, Chapter 2

31 **53F-4-304**, as renumbered and amended by Laws of Utah 2018, Chapter 2

32 **53F-4-305**, as renumbered and amended by Laws of Utah 2018, Chapter 2

33 REPEALS:

34 **53F-4-308**, as renumbered and amended by Laws of Utah 2018, Chapter 2



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

37 Section 1. Section **53F-4-302** is amended to read:

38 **53F-4-302. Scholarship program created -- Qualifications.**

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

41 (2) To qualify for a scholarship:

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

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

44 (i) an intellectual disability;

45 (ii) deafness or being hard of hearing;

46 (iii) a speech or language impairment;

47 (iv) a visual impairment;

48 (v) a serious emotional disturbance;

49 (vi) an orthopedic impairment;

50 (vii) autism;

51 (viii) traumatic brain injury;

52 (ix) other health impairment;

53 (x) specific learning disabilities; [or]

54 (xi) deafblindness; or

55 [~~(xi)~~] (xii) a developmental delay, provided the student is at least three years of age,
56 pursuant to Subsection (2)(c), and is younger than eight years of age;

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

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

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

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

65 (ii) have an IEP; and

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

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

68 (a) the student is enrolled or has obtained acceptance for admission to an eligible
69 private school that has previously served students with disabilities; and

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

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

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

75 (4) (a) To receive a full-year scholarship under this part, a parent of a student shall
76 submit to the LEA where the student is enrolled an application on or before the August 15
77 immediately preceding the first day of the school year for which the student would receive the
78 scholarship.

79 (b) The board may waive the full-year scholarship deadline described in Subsection
80 (4)(a).

81 (c) An application for a scholarship shall contain an acknowledgment by the parent that
82 the selected school is qualified and capable of providing the level of special education services
83 required for the student.

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

85 "I acknowledge that:

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

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

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

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

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

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

99 (d) The creation of the scholarship program or granting of a scholarship does not:

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

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

103 (6) (a) [~~A~~] Except as provided in Subsection (6)(b), a scholarship shall remain in force
104 for the lesser of:

105 (i) three years[-]; or

106 (ii) until the student is determined ineligible for special education services.

107 (b) If a student is determined ineligible for special education services as described in
108 Subsection (6)(a)(ii) before the end of a school year, the student may remain enrolled at the
109 private school and qualifies for the scholarship until the end of the school year.

110 [~~b~~] (c) A scholarship shall be extended for an additional three years, if:

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

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

114 ~~[(c)]~~ (d) The assessment team shall determine the appropriate level of special education
115 services which should be provided to the student for the purpose of setting the scholarship
116 amount.

117 ~~[(d)]~~ (e) A scholarship shall be extended for successive three-year periods as provided
118 in Subsections (6)(a) and ~~[(b)]~~ (c):

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

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

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

123 (8) A scholarship student:

124 (a) may participate in the Statewide Online Education Program described in Part 5,
125 Statewide Online Education Program; and

126 (b) may not participate in a dual enrollment program pursuant to Section 53G-6-702.

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

131 (10) (a) An LEA shall notify in writing the parents or guardians of students enrolled in
132 the LEA who have an IEP of the availability of a scholarship to attend a private school through
133 the Carson Smith Scholarship Program.

134 (b) The notice described under Subsection (10)(a) shall:

135 (i) be provided no later than 30 days after the student initially qualifies for an IEP;

136 (ii) be provided annually no later than February 1 to all students who have an IEP; and

137 (iii) include the address of the Internet website maintained by the board that provides
138 prospective applicants with detailed program information and application forms for the Carson
139 Smith Scholarship Program.

140 (c) An LEA or school within an LEA that has an enrolled student who has an IEP shall
141 post the address of the Internet website maintained by the board that provides prospective

142 applicants with detailed program information and application forms for the Carson Smith
143 Scholarship Program on the LEA's or school's website, if the LEA or school has one.

144 Section 2. Section **53F-4-303** is amended to read:

145 **53F-4-303. Eligible private schools.**

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

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

149 (b) (i) (A) obtain an audit and report from a licensed independent certified public
150 accountant that conforms with the following requirements:

151 (I) the audit shall be performed in accordance with generally accepted auditing
152 standards;

153 (II) the financial statements shall be presented in accordance with generally accepted
154 accounting principles; and

155 (III) the audited financial statements shall be as of a period within the last 12 months;
156 or

157 ~~[(B) contract with a licensed independent certified public accountant to perform an
158 agreed upon procedure as follows:]~~

159 ~~[(F) the agreed upon procedure shall be to determine that the private school has
160 adequate working capital to maintain operations for the first full year; and]~~

161 ~~[(H) working capital shall be calculated by subtracting current liabilities from current
162 assets; and]~~

163 (B) contract with an independent licensed certified public accountant to conduct an
164 Agreed Upon Procedures engagement, as adopted by the board; and

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

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

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

169 (e) ~~[disclose]~~ provide a written disclosure to the parent of each prospective student,

170 before the student is enrolled[;] of:

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

173 (ii) tuition costs;

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

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

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

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

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

182 (g) employ or contract with teachers who:

183 (i) hold baccalaureate or higher degrees;

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

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

187 (A) in the subjects taught; and

188 (B) to the special needs students taught;

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

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

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

197 (ii) a contract employee; and

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

200 ~~[(†)]~~ (j) provide to parents the relevant credentials of the teachers who will be teaching
201 their students.

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

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

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

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

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

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

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

216 (6) The board shall:

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

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

220 (7) An approved eligible private school that changes ownership shall submit a new
221 application to the board and demonstrate that it continues to meet the eligibility requirements
222 of this section.

223 Section 3. Section **53F-4-304** is amended to read:

224 **53F-4-304. Scholarship payments.**

225 (1) (a) ~~[Scholarships shall be awarded by the board]~~ The board shall award

226 scholarships subject to the availability of money appropriated by the Legislature for that
227 purpose.

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

230 (c) [~~Beginning with the 2013-14 school year, the~~] The Legislature shall annually
231 increase the amount of money appropriated under Subsection (1)(b) by an amount equal to the
232 product of:

233 (i) the average scholarship amount awarded as of December 1 in the previous year; and

234 (ii) the product of:

235 (A) the number of students in preschool through grade 12 in public schools statewide
236 who have an IEP on December 1 of the previous year; and

237 (B) 0.0007.

238 (d) If the number of scholarship students as of December 1 in any school year equals or
239 exceeds 7% of the number of students in preschool through grade 12 in public schools
240 statewide who have an IEP as of December 1 in the same school year, the Public Education
241 Appropriations Subcommittee shall study the requirement to increase appropriations for
242 scholarship payments as provided in this section.

243 (e) (i) If money is not available to pay for all scholarships requested, the [~~scholarships~~
244 ~~shall be allocated~~] board shall allocate scholarships on a random basis except that [~~preference~~
245 ~~shall be given~~] the board shall give preference to students who received scholarships in the
246 previous school year.

247 (ii) If money is insufficient in a school year to pay for all the continuing scholarships,
248 [~~new scholarships may not be awarded~~] the board may not award new scholarships during that
249 school year and the board shall prorate money available for scholarships [~~shall be prorated~~]
250 among the eligible students who received scholarships in the previous year.

251 (2) [~~Full-year~~] Except as provided in Subsection (4), the board shall award full-year
252 scholarships [~~shall be awarded~~] in the following amounts:

253 (a) for a student who received an average of 180 minutes per day or more of special

254 education services in a public school before transferring to a private school, an amount not to
255 exceed the lesser of:

- 256 (i) the value of the weighted pupil unit multiplied by 2.5; or
- 257 (ii) the private school tuition and fees; and

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

- 261 (i) the value of the weighted pupil unit multiplied by 1.5; or
- 262 (ii) the private school tuition and fees.

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

265 (4) If a student leaves a private school before the end of a fiscal quarter:

266 (a) the private school is only entitled to the amount of scholarship equivalent to the
267 number of days that the student attended the private school; and

268 (b) the private school shall remit a prorated amount of the scholarship to the board in
269 accordance with the procedures described in rules adopted by the board in accordance with
270 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

271 (5) For the amount of funds remitted under Subsection (4)(b), the board shall:

272 (a) make the amount available to the student to enroll immediately in another
273 qualifying private school; or

274 (b) refund the amount back to the Carson Smith Scholarship Program account to be
275 available to support the costs of another scholarship.

276 (6) (a) The board shall make an additional allocation on a random basis before June 30
277 each year only:

278 (i) if there are sufficient remaining funds in the program; and

279 (ii) for scholarships for students enrolled in a full-day preschool program.

280 (b) If the board awards a scholarship under Subsection (6)(a), the scholarship amount
281 or supplement may not exceed the lesser of:

282 (i) the value of the weighted pupil unit multiplied by 1.0; or

283 (ii) the private school tuition and fees.

284 (c) The board shall, when preparing annual growth projection numbers for the
285 Legislature, include the annual number of applications for additional allocations described in
286 Subsection (6)(a).

287 ~~[(4)]~~ (7) (a) The scholarship amount for a student who receives a waiver under
288 Subsection 53F-4-302(3) shall be based upon the assessment team's determination of the
289 appropriate level of special education services to be provided to the student.

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

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

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

298 ~~[(5)]~~ (8) (a) Except as provided in Subsection ~~[(5)]~~ (8)(b), upon review and receipt of
299 documentation that verifies a student's admission to, or continuing enrollment and attendance
300 at, a private school, the board shall make scholarship payments quarterly in four equal amounts
301 in each school year in which a scholarship is in force.

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

305 ~~[(6)]~~ (9) A parent of a scholarship student shall notify the board if the student does not
306 have continuing enrollment and attendance at an eligible private school.

307 ~~[(7)]~~ (10) Before scholarship payments are made, the board shall cross-check
308 enrollment lists of scholarship students, LEAs, and youth in custody to ensure that scholarship
309 payments are not erroneously made.

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

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

318 Section 4. Section **53F-4-305** is amended to read:

319 **53F-4-305. Board to make rules.**

320 In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
321 board shall make rules consistent with this part establishing:

- 322 (1) the eligibility of students to participate in the scholarship program; ~~[and]~~
- 323 (2) the application process for the scholarship program~~[-];~~ and
- 324 (3) payment procedures to eligible private schools.

325 Section 5. **Repealer.**

326 This bill repeals:

327 Section **53F-4-308, Review by Legislative Auditor General.**