

1 **SPECIAL NEEDS OPPORTUNITY SCHOLARSHIP PROGRAM**

2 **AMENDMENTS**

3 2023 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Nelson T. Abbott**

6 Senate Sponsor: Lincoln Fillmore

7

8 **LONG TITLE**

9 **General Description:**

10 This bill amends provisions related to the Special Needs Opportunity Scholarship
11 Program.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ modifies defined terms;
- 15 ▶ expands the expenses for which a scholarship recipient may use a scholarship
16 award;
- 17 ▶ amends the formula for calculating a scholarship amount for an eligible student;
- 18 ▶ increases the amount of donations a scholarship granting organization may carry
19 forward in a fiscal year; and
- 20 ▶ makes technical changes.

21 **Money Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 This bill provides a coordination clause.

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **53E-7-401**, as last amended by Laws of Utah 2022, Chapter 262

28 **53E-7-402**, as last amended by Laws of Utah 2022, Chapter 262

29 **53E-7-405**, as last amended by Laws of Utah 2022, Chapters 262, 456

30 **Utah Code Sections Affected by Coordination Clause:**

31 **53E-7-402**, as last amended by Laws of Utah 2022, Chapter 262

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

34 Section 1. Section **53E-7-401** is amended to read:

35 **53E-7-401. Definitions.**

36 As used in this part:

37 (1) "Eligible student" means:

38 (a) a student who:

39 (i) is eligible to participate in public school, in kindergarten or grades 1 through 12;

40 (ii) is a resident of the state;

41 (iii) (A) has an IEP; or

42 (B) is determined by a multidisciplinary evaluation team to be eligible for services

43 under 20 U.S.C. Sec. 1401(3); and

44 (iv) during the school year for which the student is applying for the scholarship, is not:

45 (A) a student who receives a scholarship under the Carson Smith Scholarship Program

46 created in Section **53F-4-302**; or

47 (B) enrolled as a public school student; or

48 (b) a student who:

49 (i) meets the requirement of Subsections (1)(a)(i) and (ii); and

50 (ii) is a sibling of and resides in the same household as a student described in

51 Subsection (1)(a) if:

52 (A) the student described in Subsection (1)(a) is a scholarship student and has verified

53 enrollment or intent to enroll at a qualifying school; and

54 (B) the sibling is applying for a scholarship to attend the same qualifying school.

55 (2) (a) "Employee" means an individual working in a position in which the individual's

56 salary, wages, pay, or compensation, including as a contractor, is paid from:

57 (i) program donations to a scholarship granting organization; or

58 (ii) scholarship money allocated to a qualifying school by a scholarship granting
59 organization under Section [53E-7-405](#).

60 (b) "Employee" does not include an individual who volunteers at the scholarship
61 granting organization or qualifying school.

62 (3) "Family income" means the annual income of the parent, parents, legal guardian, or
63 legal guardians with whom a scholarship student lives.

64 (4) "Federal poverty level" means the poverty level as defined by the most recently
65 revised poverty income guidelines published by the United States Department of Health and
66 Human Services in the Federal Register.

67 (5) "Multidisciplinary evaluation team" means two or more individuals:

68 (a) who are qualified in two or more separate disciplines or professions; and

69 (b) who evaluate a child.

70 (6) "Officer" means:

71 (a) a member of the board of a scholarship granting organization or qualifying school;

72 or

73 (b) the chief administrative officer of a scholarship granting organization or qualifying
74 school.

75 (7) "Program donation" means a donation to the program under Section [53E-7-405](#).

76 (8) "Qualifying school" means a private school that:

77 (a) provides kindergarten, elementary, or secondary education;

78 (b) is approved by the state board under Section [53E-7-408](#); and

79 (c) meets the requirements described in Section [53E-7-403](#).

80 (9) "Relative" means a father, mother, husband, wife, son, daughter, sister, brother,
81 uncle, aunt, nephew, niece, first cousin, mother-in-law, father-in-law, brother-in-law,
82 sister-in-law, son-in-law, or daughter-in-law.

- 83 (10) "Scholarship" means a grant awarded to an eligible student:
- 84 (a) by a scholarship granting organization out of program donations; and
- 85 (b) for the purpose of paying for a scholarship expense.
- 86 ~~[(11) "Scholarship expense" means:]~~
- 87 ~~[(a) tuition, fees, or textbooks for a qualifying school;]~~
- 88 ~~[(b) educational therapy, if the educational therapy is provided by a licensed physician~~
- 89 ~~or licensed practitioner, including occupational, behavioral, physical, or speech-language~~
- 90 ~~therapies;]~~
- 91 ~~[(c) textbooks, curriculum, or other instructional materials, including supplemental~~
- 92 ~~materials or associated online instruction required by a curriculum;]~~
- 93 ~~[(d) tuition and fees for an online learning course or program; or]~~
- 94 ~~[(e) fees associated with a state-recognized industry certification examination or any~~
- 95 ~~examination related to college or university admission.]~~
- 96 (11) "Scholarship expense" means an expense that a parent or eligible student incurs in
- 97 the education of the eligible student for goods or a service that a qualifying school provides or
- 98 facilitates, including:
- 99 (a) tuition and fees of a qualifying school;
- 100 (b) fees and instructional materials at a technical college;
- 101 (c) tutoring services;
- 102 (d) fees for after-school or summer education programs;
- 103 (e) textbooks, curricula, or other instructional materials, including any supplemental
- 104 materials or associated online instruction that a curriculum or a qualifying school recommends;
- 105 (f) educational software and applications;
- 106 (g) supplies or other equipment related to an eligible student's educational needs;
- 107 (h) computer hardware or other technological devices that are intended primarily for an
- 108 eligible student's educational needs;
- 109 (i) fees for the following examinations, or for a preparation course for the following

110 examinations, that the scholarship granting organization approves:

111 (i) a national norm-referenced or standardized assessment described in Section
 112 53F-6-410, an advanced placement examination, or another similar assessment;

113 (ii) a state-recognized industry certification examination; and

114 (iii) an examination related to college or university admission;

115 (j) educational services for students with disabilities from a licensed or accredited
 116 practitioner or provider, including occupational, behavioral, physical, audiology, or
 117 speech-language therapies;

118 (k) contracted services that the scholarship granting organization approves and that an
 119 LEA provides, including individual classes, after-school tutoring services, transportation, or
 120 fees or costs associated with participation in extracurricular activities;

121 (l) ride fees or fares for a fee-for-service transportation provider to transport the
 122 eligible student to and from a qualifying school, not to exceed \$750 in a given school year;

123 (m) expenses related to extracurricular activities, field trips, educational supplements,
 124 and other educational experiences; or

125 (n) the scholarship granting organization approves in accordance with Subsection
 126 53E-7-405(3).

127 (12) "Scholarship granting organization" means an organization that is:

128 (a) qualified as tax exempt under Section 501(c)(3), Internal Revenue Code; and

129 (b) recognized through an agreement with the state board as a scholarship granting
 130 organization, as described in Section 53E-7-404.

131 (13) "Scholarship student" means an eligible student who receives a scholarship under
 132 this part.

133 (14) "Special Needs Opportunity Scholarship Program" or "program" means the
 134 program established in Section 53E-7-402.

135 (15) "Value of the weighted pupil unit" means the amount established each year in the
 136 enacted public education budget that is multiplied by the number of weighted pupil units to

137 yield the funding level for the basic state-supported school program.

138 Section 2. Section **53E-7-402** is amended to read:

139 **53E-7-402. Special Needs Opportunity Scholarship Program.**

140 (1) There is established the Special Needs Opportunity Scholarship Program under
141 which a parent may apply to a scholarship granting organization on behalf of the parent's
142 student for a scholarship to help cover the cost of a scholarship expense.

143 (2) (a) A scholarship granting organization shall[:]
144 [(i)] award, in accordance with this part, scholarships to eligible students[; and].
145 [(ii) ~~determine the amount of a scholarship in accordance with Subsection (3).~~]

146 (b) In awarding scholarships, a scholarship granting organization shall give priority to
147 an eligible student described in Subsection **53E-7-401**(1)(a) by:

148 (i) establishing an August 10 deadline for an eligible student described in Subsection
149 **53E-7-401**(1)(b) to apply for a scholarship; and

150 (ii) awarding a scholarship to an eligible student described in Subsection
151 **53E-7-401**(1)(b) only if funds exist after awarding scholarships to all eligible students
152 described in Subsection **53E-7-401**(1)(a) who have applied and qualify.

153 (c) Subject to available funds, a scholarship awarded to an eligible student described in
154 Subsection **53E-7-401**(1)(b) shall be for a similar term as a scholarship awarded to the eligible
155 student's sibling.

156 (3) A scholarship granting organization shall determine a full-year scholarship award to
157 pay for the cost of one or more scholarship expenses in an amount not more than:

158 (a) for an eligible student described in Subsection **53E-7-401**(1)(a) who is:

159 (i) in [~~grades 1~~] kindergarten through grade 12 [~~with an IEP~~] and whose family income
160 is:

161 (A) at or below 185% of the federal poverty level, the value of the weighted pupil unit
162 multiplied by 2.5; or

163 (B) [~~between~~] above 185% [~~and 555%~~] of the federal poverty level, the value of the

164 weighted pupil unit multiplied by two; or
165 ~~[(C) above 555% of the federal poverty level, the value of the weighted pupil unit~~
166 ~~multiplied by 1.5;]~~
167 ~~[(ii) in grades 1 through 12 and who does not have an IEP, the value of the weighted~~
168 ~~pupil unit;]~~
169 ~~[(iii) in kindergarten with an IEP, the value of the weighted pupil unit; or]~~
170 ~~[(iv) in kindergarten and who does not have an IEP, half the value of the weighted~~
171 ~~pupil unit; or]~~

172 (b) for an eligible student described in Subsection 53E-7-401(1)(b), half the value of
173 the weighted pupil unit.

174 (4) Eligibility for a scholarship as determined by a multidisciplinary evaluation team
175 under this program does not establish eligibility for an IEP under the Individuals with
176 Disabilities Education Act, Subchapter II, 20 U.S.C. Secs. 1400 to 1419, and is not binding on
177 any LEA that is required to provide an IEP under the Individuals with Disabilities Education
178 Act.

179 (5) The scholarship granting organizations shall prepare and disseminate information
180 on the program to a parent applying for a scholarship on behalf of a student.

181 Section 3. Section 53E-7-405 is amended to read:

182 **53E-7-405. Program donations -- Scholarship granting organization**
183 **requirements.**

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

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

189 (3) A scholarship granting organization shall:

190 (a) accept program donations and allow a person that makes a program donation to

- 191 designate a qualifying school to which the donation shall be directed for scholarships;
- 192 (b) adopt an application process in accordance with Subsection (5);
- 193 (c) review scholarship applications and determine scholarship awards;
- 194 (d) allocate scholarship money to a scholarship student's parent or, on the parent's
- 195 behalf, to a qualifying school in which the scholarship student is enrolled;
- 196 (e) adopt a process, with state board approval, that allows a parent to use a scholarship
- 197 to pay for a nontuition scholarship expense for the scholarship student;
- 198 (f) ensure that during the state fiscal year:
- 199 (i) at least 92% of the scholarship granting organization's revenue from program
- 200 donations is spent on scholarships;
- 201 (ii) up to 5% of the scholarship granting organization's revenue from program
- 202 donations is spent on administration of the program;
- 203 (iii) up to 3% of the scholarship granting organization's revenue from program
- 204 donations is spent on marketing and fundraising costs; and
- 205 (iv) all revenue from program donations' interest or investments is spent on
- 206 scholarships;
- 207 (g) carry forward no more than ~~[40]~~ 60% of the scholarship granting organization's
- 208 program donations, less funds for a scholarship that has been awarded, and funds expended for
- 209 administration and marketing, from the state fiscal year in which the scholarship granting
- 210 organization received the program donations to the following state fiscal year;
- 211 (h) at the end of a state fiscal year, remit to the state treasurer donation amounts greater
- 212 than the amount described in Subsection (3)(g);
- 213 (i) prohibit a scholarship granting organization employee or officer from handling,
- 214 managing, or processing program donations, if, based on a criminal background check
- 215 conducted by the state board in accordance with Section 53E-7-404, the state board identifies
- 216 the employee or officer as posing a risk to the appropriate use of program donations;
- 217 (j) ensure that a scholarship can be transferred during the school year to a different

218 qualifying school that accepts the scholarship student;

219 (k) report to the state board on or before October 1 of each year the following

220 information, prepared by a certified public accountant:

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

222 (ii) the total number and total dollar amount of program donations that the scholarship

223 granting organization received during the previous calendar year;

224 (iii) (A) the total number and total dollar amount of scholarships the scholarship

225 granting organization awarded during the previous state fiscal year to eligible students

226 described in Subsection 53E-7-401(1)(a); and

227 (B) the total number and total dollar amount of scholarships the scholarship granting

228 organization awarded during the previous state fiscal year to eligible students described in

229 Subsection 53E-7-401(1)(b); and

230 (iv) the percentage of first-time scholarship recipients who were enrolled in a public

231 school during the previous school year or who entered kindergarten or a higher grade for the

232 first time in Utah;

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

234 (m) require a parent to notify a scholarship granting organization if the parent's

235 scholarship recipient:

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

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

238 (4) The state treasurer shall deposit the money described in Subsection (3)(h) into the

239 Income Tax Fund.

240 (5) (a) An application for a scholarship shall contain an acknowledgment by the

241 applicant's parent that the qualifying school selected by the parent for the applicant to attend

242 using a scholarship is capable of providing the level of disability services required for the

243 student.

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

245 "I acknowledge that:

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

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

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

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

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

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

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

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

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

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

266 (a) complies with the uniform financial accounting standards described in Section
267 [53E-7-404](#); and

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

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

271 (i) contract for an annual audit, conducted by a certified public accountant who is

272 independent from:

273 (A) the scholarship granting organization; and

274 (B) the scholarship granting organization's accounts and records pertaining to program
275 donations; and

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

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

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

282 (ii) submit the report to the state board no later than 180 days after the last day of a
283 scholarship granting organization's fiscal year.

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

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

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

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

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

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

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

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

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

307 (10) A scholarship granting organization may not:

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

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

312 **Section 4. Coordinating H.B. 398 with H.B. 2 -- Superseding technical and**
313 **substantive amendments.**

314 If this H.B. 398 and H.B. 2, Public Education Budget Amendments, both pass and
315 become law, it is the intent of the Legislature that the amendments to Section 53E-7-402 in this
316 bill supersede the amendments to Section 53E-7-402 in H.B. 2 when the Office of Legislative
317 Research and General Counsel prepares the Utah Code database for publication.

318 **Section 5. Coordinating H.B. 398 with H.B. 477 -- Superseding technical and**
319 **substantive amendments.**

320 If this H.B. 398 and H.B. 477, Full-day Kindergarten Amendments, both pass and
321 become law, it is the intent of the Legislature that the amendments to Section 53E-7-402 in this
322 bill supersede the amendments to Section 53E-7-402 in H.B. 477 when the Office of
323 Legislative Research and General Counsel prepares the Utah Code database for publication.