

1 **SPECIAL NEEDS OPPORTUNITY SCHOLARSHIP PROGRAM**

2 **AMENDMENTS**

3 2022 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Lincoln Fillmore**

6 House Sponsor: Mike Schultz

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies the Special Needs Opportunity Scholarship Program (the program).

11 **Highlighted Provisions:**

12 This bill:

13 ▶ expands eligibility for the program to include siblings of scholarship students under
14 certain circumstances;

15 ▶ modifies the duties and rulemaking authority of the State Board of Education in
16 relation to the program;

17 ▶ provides that eligibility for a scholarship does not affect eligibility for an
18 individualized education program;

19 ▶ authorizes the scholarship granting organizations to prepare and distribute
20 information about the program to parents who apply for a scholarship under the
21 program;

22 ▶ clarifies what constitutes a fiscal year for purposes of reporting and administering
23 the program;

24 ▶ modifies a scholarship granting organization's reporting deadline;

25 ▶ allows a person that makes a donation to direct a donation to a particular school to
26 which a scholarship will be offered;

27 ▶ provides for a one-year carry back of the income tax credit for making a donation to
28 the program; and

29 ▶ makes technical changes.

30 **Money Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 This bill provides retrospective operation.

34 **Utah Code Sections Affected:**

35 AMENDS:

36 **53E-7-401**, as enacted by Laws of Utah 2020, Fourth Special Session, Chapter 3

37 **53E-7-402**, as enacted by Laws of Utah 2020, Fourth Special Session, Chapter 3

38 **53E-7-404**, as last amended by Laws of Utah 2021, Chapter 341

39 **53E-7-405**, as enacted by Laws of Utah 2020, Fourth Special Session, Chapter 3

40 **53E-7-407**, as enacted by Laws of Utah 2020, Fourth Special Session, Chapter 3

41 **53E-7-408**, as enacted by Laws of Utah 2020, Fourth Special Session, Chapter 3

42 **59-7-625**, as enacted by Laws of Utah 2020, Fourth Special Session, Chapter 3

43 **59-10-1041**, as enacted by Laws of Utah 2020, Fourth Special Session, Chapter 3



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

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

47 **53E-7-401. Definitions.**

48 As used in this part:

49 (1) "Eligible student" means:

50 (a) a student who:

51 ~~[(a)]~~ (i) is eligible to participate in public school, in kindergarten or grades 1 through
52 12;

53 ~~[(b)]~~ (ii) is a resident of the state;

54 ~~[(c)]~~ (i) (iii) (A) has an IEP; or

55 ~~[(d)]~~ (B) is determined by a multidisciplinary evaluation team to be eligible for

56 services under ~~[the Individuals with Disabilities Education Act, Subchapter H, 20 U.S.C. Secs.~~

57 ~~1400 to 1419]~~ 20 U.S.C. Sec. 1401(3); and

58 ~~[(iv)]~~ (iv) during the school year for which the student is applying for the scholarship, is
59 not:

60 ~~[(i)]~~ (A) a student who receives a scholarship under the Carson Smith Scholarship
61 Program created in Section 53F-4-302; or

62 ~~[(ii)]~~ (B) a public school student~~[-];~~ or

63 (b) a student who:

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

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

66 Subsection (1)(a) if:

67 (A) the student described in Subsection (1)(a) is a scholarship student and has verified
68 enrollment or intent to enroll at a qualifying school; and

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

70 (2) (a) "Employee" means an individual working in a position in which the individual's
71 salary, wages, pay, or compensation, including as a contractor, is paid from:

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

73 (ii) scholarship money allocated to a qualifying school by a scholarship granting
74 organization under Section 53E-7-405.

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

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

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

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

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

84 (b) who evaluate a child.

85 ~~[(5)]~~ (6) "Officer" means:

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

87 or

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

90 [~~(6)~~] (7) "Program [~~donations~~] donation" means [~~donations~~] a donation to the program
91 under Section 53E-7-405.

92 [~~(7)~~] (8) "Qualifying school" means a private school that:

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

94 (b) is approved by the state board under Section 53E-7-408; and

95 (c) meets the requirements described in Section 53E-7-403.

96 [~~(8)~~] (9) "Relative" means a father, mother, husband, wife, son, daughter, sister,
97 brother, uncle, aunt, nephew, niece, first cousin, mother-in-law, father-in-law, brother-in-law,
98 sister-in-law, son-in-law, or daughter-in-law.

99 [~~(9)~~] (10) "Scholarship" means a grant awarded to an eligible student:

100 (a) by a scholarship granting organization out of program donations; and

101 (b) for the purpose of paying for a scholarship expense.

102 [~~(10)~~] (11) "Scholarship expense" means:

103 (a) tuition, fees, or textbooks for a qualifying school;

104 (b) educational therapy, if the educational therapy is provided by a licensed physician
105 or licensed practitioner, including occupational, behavioral, physical, or speech-language
106 therapies;

107 (c) textbooks, curriculum, or other instructional materials, including supplemental
108 materials or associated online instruction required by a curriculum;

109 (d) tuition and fees for an online learning course or program; or

110 (e) fees associated with a state-recognized industry certification examination or any
111 examination related to college or university admission.

112 [~~(11)~~] (12) "Scholarship granting organization" means an organization that is:

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

114 (b) recognized through an agreement with the state board as a scholarship granting
115 organization, as described in Section [53E-7-404](#).

116 ~~[(12)]~~ (13) "Scholarship student" means an eligible student who receives a scholarship
117 under this part.

118 ~~[(13)]~~ (14) "Special Needs Opportunity Scholarship Program" or "program" means the
119 program established in Section [53E-7-402](#).

120 ~~[(14)]~~ (15) "Value of the weighted pupil unit" means the amount established each year
121 in the enacted public education budget that is multiplied by the number of weighted pupil units
122 to yield the funding level for the basic state-supported school program.

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

124 **53E-7-402. Special Needs Opportunity Scholarship Program.**

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

128 (2) (a) A scholarship granting organization shall:

129 ~~[(a)]~~ (i) award, in accordance with this part, scholarships to eligible students; and

130 ~~[(b)]~~ (ii) determine the amount of a scholarship in accordance with Subsection (3).

131 (b) In awarding scholarships, a scholarship granting organization shall give priority to
132 an eligible student described in Subsection [53E-7-401\(1\)\(a\)](#) by:

133 (i) establishing an August 10 deadline for an eligible student described in Subsection
134 [53E-7-401\(1\)\(b\)](#) to apply for a scholarship; and

135 (ii) awarding a scholarship to an eligible student described in Subsection
136 [53E-7-401\(1\)\(b\)](#) only if funds exist after awarding scholarships to all eligible students
137 described in Subsection [53E-7-401\(1\)\(a\)](#) who have applied and qualify.

138 (c) Subject to available funds, a scholarship awarded to an eligible student described in
139 Subsection [53E-7-401\(1\)\(b\)](#) shall be for a similar term as a scholarship awarded to the eligible
140 student's sibling.

141 (3) A scholarship granting organization shall determine a full-year scholarship award to

142 pay for the cost of one or more scholarship expenses in an amount not more than:

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

144 (i) in grades 1 through 12 with an IEP[;] and whose family income is:

145 [(i)] (A) at or below 185% of the federal poverty level, the value of the weighted pupil
146 unit multiplied by 2.5;

147 [(ii)] (B) between 185% and 555% of the federal poverty level, the value of the
148 weighted pupil unit multiplied by two; or

149 [(iii)] (C) above 555% of the federal poverty level, the value of the weighted pupil unit
150 multiplied by 1.5;

151 [~~(b) for an eligible student~~] (ii) in grades 1 through 12 and who does not have an IEP,
152 the value of the weighted pupil unit;

153 [~~(c) for an eligible student~~] (iii) in kindergarten with an IEP, the value of the weighted
154 pupil unit; or

155 [~~(d) for an eligible student~~] (iv) in kindergarten and who does not have an IEP, half the
156 value of the weighted pupil unit[;]; or

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

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

164 [(4)] (5) The [~~state board shall prepare and disseminate to a scholarship granting~~
165 ~~organization for distribution~~] scholarship granting organizations shall prepare and disseminate
166 information on the program to a parent applying for a scholarship on behalf of a student[;].

167 [(a) information on the program; and]

168 [(b) information on how a parent may enroll the parent's child in a public school.]

169 [(5) A scholarship granting organization shall distribute the information described in

170 Subsection (4) to a parent who applies to the scholarship granting organization for a
171 scholarship on behalf of the parent's student.]

172 Section 3. Section 53E-7-404 is amended to read:

173 **53E-7-404. State board duties.**

174 [~~(1) The state board shall administer the program.~~]

175 [~~(2)~~] (1) The state board shall:

176 [(a) provide a tax credit certificate form, for use by a scholarship granting organization
177 as described in Section 53E-7-407, that includes:]

178 [(i) the name, address, and social security number or federal employer identification
179 number of the person that makes a donation under Section 53E-7-405;]

180 [(ii) the date of the donation;]

181 [(iii) the amount of the donation;]

182 [(iv) the amount of the tax credit, and]

183 [(v) any other relevant information;]

184 (a) publish on the state board's website:

185 (i) information about the program; and

186 (ii) information about each scholarship granting organization;

187 (b) conduct a financial review or audit of a scholarship granting organization, if the
188 state board receives evidence of fraudulent practice by the scholarship granting organization;

189 (c) conduct a criminal background check on each scholarship granting organization
190 employee and scholarship granting organization officer;

191 (d) establish uniform financial accounting standards for scholarship granting
192 organizations;

193 (e) annually calculate the amount of the program donations cap described in Section
194 53E-7-407; and

195 (f) [~~beginning in 2021,~~] in accordance with Section 53E-1-202.1, annually submit a
196 report on the program to the Public Education Appropriations Subcommittee that includes:

197 (i) for the 2020-21, 2021-22, 2022-23, and 2023-24 school years, the amount of tuition

198 and fees a qualifying school charges;

199 (ii) administrative costs of the program;

200 (iii) the number of scholarship students that are eligible students described in
201 Subsection 53E-7-401(1)(a) and the number of scholarship students that are eligible students
202 described in Subsection 53E-7-401(1)(b) from each school district;

203 (iv) standards used by the scholarship granting organization to determine whether a
204 student is an eligible student; and

205 (v) savings to the state and LEAs as a result of scholarship students exiting the public
206 school system.

207 ~~[(3)]~~ (2) (a) In accordance with Subsection ~~[(4)]~~ (3) and Title 63G, Chapter 6a, Utah
208 Procurement Code, the state board shall issue a request for proposals and enter into at least one
209 agreement with an organization that is qualified as tax exempt under Section 501(c)(3), Internal
210 Revenue Code, to be recognized by the state board as a scholarship granting organization.

211 (b) An organization that responds to a request for proposals described in Subsection
212 ~~[(3)]~~ (2)(a) shall submit the following information in the organization's response:

213 (i) a copy of the organization's incorporation documents;

214 (ii) a copy of the organization's Internal Revenue Service determination letter
215 qualifying the organization as being tax exempt under Section 501(c)(3), Internal Revenue
216 Code;

217 (iii) a description of the methodology the organization will use to verify that a student
218 is an eligible student under this part; and

219 (iv) a description of the organization's proposed scholarship application process.

220 ~~[(4)]~~ (3) (a) The state board shall enter into an agreement described in Subsection ~~[(3)]~~
221 (2)(a) with one scholarship granting organization on or before January 1, 2021.

222 (b) The state board may enter into an agreement described in Subsection ~~[(3)]~~ (2)(a)
223 with additional scholarship granting organizations after January 1, 2023, if the state board
224 makes rules regarding how multiple scholarship granting organizations may issue tax credit
225 certificates in accordance with Section 53E-7-407.

226 (c) (i) No later than 10 days after the day on which the state board enters into an
227 agreement with a scholarship granting organization, the state board shall forward the name and
228 contact information of the scholarship granting organization to the State Tax Commission.

229 (ii) If, under Subsection [~~(5)~~] (4)(c)(i), the state board bars a scholarship granting
230 organization from further participation in the program, the state board shall, no later than 10
231 days after the day on which the state board bars the scholarship granting organization, forward
232 the name and contact information of the barred scholarship granting organization to the State
233 Tax Commission.

234 [~~(5)~~] (4) (a) If the state board determines that a scholarship granting organization has
235 violated a provision of this part or state board rule, the state board shall send written notice to
236 the scholarship granting organization explaining the violation and the remedial action required
237 to correct the violation.

238 (b) A scholarship granting organization that receives a notice described in Subsection
239 [~~(5)~~] (4)(a) shall, no later than 60 days after the day on which the scholarship granting
240 organization receives the notice, correct the violation and report the correction to the state
241 board.

242 (c) (i) If a scholarship granting organization that receives a notice described in
243 Subsection [~~(5)~~] (4)(a) fails to correct a violation in the time period described in Subsection
244 [~~(5)~~] (4)(b), the state board may bar the scholarship granting organization from further
245 participation in the program.

246 (ii) A scholarship granting organization may appeal a decision made by the state board
247 under Subsection [~~(5)~~] (4)(c)(i) in accordance with Title 63G, Chapter 4, Administrative
248 Procedures Act.

249 (d) A scholarship granting organization may not accept program donations while the
250 scholarship granting organization:

251 (i) is barred from participating in the program under Subsection [~~(5)~~] (4)(c)(i); or

252 (ii) has an appeal pending under Subsection [~~(5)~~] (4)(c)(ii).

253 (e) A scholarship granting organization that has an appeal pending under Subsection

254 ~~[(5)]~~ (4)(c)(ii) may continue to administer scholarships from previously donated program
255 donations during the pending appeal.

256 ~~[(6)]~~ (5) The state board shall provide for a process for a scholarship granting
257 organization to report information as required under Section 53E-7-405.

258 ~~[(7)]~~ (6) The state board shall make rules in accordance with Title 63G, Chapter 3,
259 Utah Administrative Rulemaking Act, to administer the program, including rules for:

260 ~~[(a) a scholarship granting organization's acceptance of program donations;]~~

261 ~~[(b)]~~ (a) the administration of scholarships to a qualifying school receiving scholarship
262 money from a scholarship granting organization that is barred from participating in the
263 program under Subsection ~~[(5)]~~ (4)(c)(i);

264 ~~[(c) payment of scholarship money to qualifying schools by a scholarship granting
265 organization;]~~

266 ~~[(d) granting scholarship awards and disbursing scholarship money for nontuition
267 scholarship expenses by a scholarship granting organization;]~~

268 ~~[(e)]~~ (b) when an eligible student does not continue in enrollment at a qualifying
269 school:

270 (i) requiring the scholarship granting organization to:

271 (A) notify the state board; and

272 (B) obtain reimbursement of scholarship money from the qualifying school in which
273 the eligible student is no longer enrolled; and

274 (ii) requiring the qualifying school in which the eligible student is no longer enrolled to
275 reimburse scholarship money to the scholarship granting organization;

276 ~~[(f)]~~ (c) audit and report requirements as described in Section 53E-7-405; and

277 ~~[(g)]~~ (d) requiring the scholarship granting organization, in accordance with the Family
278 Educational Rights and Privacy Act, 20 U.S.C. Sec. 1232g, to submit to the state board:

279 (i) for the 2020-21, 2021-22, 2022-23, and 2023-24 school years, the amount of tuition
280 and fees a qualifying school charges;

281 (ii) the number of scholarship students that are eligible students described in

282 Subsection 53E-7-401(1)(a) and the number of scholarship students that are eligible students
283 described in Subsection 53E-7-401(1)(b) from each school district;

284 (iii) standards used to determine whether a student is an eligible student; and

285 (iv) any other information requested by the [~~state board for the purpose of completing]~~

286 Public Education Appropriations Subcommittee for the state board to include in the annual
287 report described in Section 53E-1-202.1.

288 Section 4. Section 53E-7-405 is amended to read:

289 **53E-7-405. Program donations -- Scholarship granting organization**
290 **requirements.**

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

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

296 (3) A scholarship granting organization shall:

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

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

300 (c) review scholarship applications and determine scholarship awards;

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

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

305 (f) ensure that during the state fiscal year:

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

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

- 310 (iii) up to 3% of the scholarship granting organization's revenue from program
311 donations is spent on marketing and fundraising costs; and
- 312 (iv) all revenue from program donations' interest or investments is spent on
313 scholarships;
- 314 (g) carry forward no more than 40% of the scholarship granting organization's program
315 donations from the state fiscal year in which the scholarship granting organization received the
316 program donations to the following state fiscal year;
- 317 (h) at the end of a state fiscal year, remit to the state treasurer donation amounts greater
318 than the amount described in Subsection (3)(g);
- 319 (i) prohibit a scholarship granting organization employee or officer from handling,
320 managing, or processing program donations, if, based on a criminal background check
321 conducted by the state board in accordance with Section 53E-7-404, the state board identifies
322 the employee or officer as posing a risk to the appropriate use of program donations;
- 323 (j) ensure that a scholarship can be transferred during the school year to a different
324 qualifying school that accepts the scholarship student;
- 325 (k) report to the state board on or before [~~June~~] October 1 of each year the following
326 information, prepared by a certified public accountant:
- 327 (i) the name and address of the scholarship granting organization;
- 328 (ii) the total number and total dollar amount of program donations that the scholarship
329 granting organization received during the previous calendar year;
- 330 (iii) (A) the total number and total dollar amount of scholarships the scholarship
331 granting organization awarded during the previous [~~calendar year; and~~] state fiscal year to
332 eligible students described in Subsection 53E-7-401(1)(a); and
- 333 (B) the total number and total dollar amount of scholarships the scholarship granting
334 organization awarded during the previous state fiscal year to eligible students described in
335 Subsection 53E-7-401(1)(b); and
- 336 (iv) the percentage of first-time scholarship recipients who were enrolled in a public
337 school during the previous school year or who entered kindergarten or a higher grade for the

338 first time in Utah;

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

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

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

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

344 (4) The state treasurer shall deposit the money described in Subsection (3)(h) into the
345 Education Fund.

346 (5) (a) An application for a scholarship shall contain an acknowledgment by the
347 applicant's parent that the qualifying school selected by the parent for the applicant to attend
348 using a scholarship is capable of providing the level of disability services required for the
349 student.

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

351 "I acknowledge that:

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

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

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

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

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

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

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

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

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

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

372 (a) complies with the uniform financial accounting standards described in Section
373 [53E-7-404](#); and

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

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

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

379 (A) the scholarship granting organization; and

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

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

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

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

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

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

393 (d) (i) The state board shall review a report submitted under this section and may

394 request that the scholarship granting organization revise or supplement the report if the report
395 is not in compliance with the provisions of this Subsection (7) or rules adopted by the state
396 board.

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

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

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

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

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

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

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

413 (10) A scholarship granting organization may not:

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

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

418 Section 5. Section **53E-7-407** is amended to read:

419 **53E-7-407. Tax credit certificates issued by a scholarship granting organization.**

420 (1) In accordance with this section and subject to Subsection (3), a scholarship granting
421 organization shall provide a tax credit certificate, on a form provided by the State Tax

422 Commission, to a person that makes a donation as described in Section 53E-7-405.

423 ~~[(2)(a) The scholarship granting organization shall issue a tax credit certificate~~
424 ~~described in Subsection (1) on the tax credit certificate form described in Section 53E-7-404.]~~

425 ~~[(b)]~~ (2)(a) The scholarship granting organization shall provide the information from a
426 completed tax credit certificate to the State Tax Commission electronically and in a manner
427 prescribed by the State Tax Commission.

428 ~~[(c)]~~ (b) A scholarship granting organization shall issue a tax credit certificate within
429 30 days after the day on which a person makes a donation to the program.

430 (3)(a) A scholarship granting organization may not issue a tax credit certificate for a
431 calendar year if issuing the tax credit certificate will cause the total amount of the tax credit
432 certificates issued for the calendar year to exceed the program donations cap amount described
433 in Subsection (4).

434 (b) Before accepting a donation to the program from a person, the scholarship granting
435 organization shall provide the person with notice:

436 (i) that the donation may not be eligible for a tax credit;

437 (ii) of the process described in Subsection (3)(c); and

438 (iii) of the total amount of tax credit certificates that the scholarship granting
439 organization has issued for the calendar year.

440 (c) During a calendar year, a scholarship granting organization shall:

441 (i) issue tax credit certificates in the order that the scholarship granting organization
442 received a corresponding donation; and

443 (ii) track the total amount of program donations received during the year as
444 corresponding tax credit certificates are issued.

445 (d) If a scholarship granting organization accepts a donation that, when added to the
446 current total amount of program donations received that year, will exceed the program
447 donations cap described in Subsection (4), the scholarship granting organization shall issue a
448 tax credit certificate in the amount that is the difference between the program donations cap
449 and the total amount of program donations received before the donation was received.

450 (4) (a) The program donations cap for the 2021 calendar year is \$5,940,000.

451 (b) For a calendar year after 2021, the state board shall calculate the program donations
452 cap as follows:

453 (i) if the total program donations for the previous calendar year exceed 90% of the cap
454 amount for that calendar year, the cap for the current calendar year is the cap amount for the
455 previous calendar year increased by 10%; or

456 (ii) if the total program donations for the previous calendar year did not exceed 90% of
457 the cap amount for that calendar year, the cap for the current calendar year is the same as the
458 cap amount for the previous calendar year.

459 (5) A person that receives a tax credit certificate in accordance with this section shall
460 retain the certificate for the same time period a person is required to keep books and records
461 under Section 59-1-1406.

462 Section 6. Section 53E-7-408 is amended to read:

463 **53E-7-408. Eligible private schools.**

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

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

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

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

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

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

477 (ii) submit the audit report or report of the agreed upon procedure to the state board

478 when the private school applies to accept scholarship students;

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

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

481 (e) provide a written disclosure to the parent of each prospective student, before the

482 student is enrolled, of:

483 (i) the special education services that will be provided to the student, including the cost

484 of those services;

485 (ii) tuition costs;

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

487 (iv) the skill or grade level of the curriculum in which the prospective student will

488 participate;

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

490 progress; and

491 (ii) report the results of the assessment described in Subsection (1)(f)(i) to the

492 scholarship student's parent;

493 (g) employ or contract with teachers who:

494 (i) hold baccalaureate or higher degrees;

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

496 (iii) have the necessary skills, knowledge, or expertise that qualifies the teacher to

497 provide instruction:

498 (A) in the subject or subjects taught; and

499 (B) to the special needs students taught;

500 (h) maintain documentation demonstrating that teachers at the private school meet the

501 qualifications described in Subsection (1)(g);

502 (i) require the following individuals to submit to a nationwide, fingerprint-based

503 criminal background check and ongoing monitoring, in accordance with Section [53G-11-402](#),

504 as a condition for employment or appointment, as authorized by the Adam Walsh Child

505 Protection and Safety Act of 2006, Pub. L. No. 109-248:

506 (i) an employee who does not hold a current Utah educator license issued by the state
507 board under Chapter 6, Education Professional Licensure;

508 (ii) a contract employee; and

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

511 (j) provide to the parent of a scholarship student the relevant credentials of the teachers
512 who will be teaching the scholarship student.

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

514 (a) the private school requires a student to sign a contract waiving the student's rights
515 to transfer to another qualifying school during the school year;

516 (b) the audit report submitted under Subsection (1)(b) contains a going concern
517 explanatory paragraph; or

518 (c) the report of the agreed upon procedures submitted under Subsection (1)(b) shows
519 that the private school does not have adequate working capital to maintain operations for the
520 first full year, as determined under Subsection (1)(b).

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

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

524 (5) A private school intending to enroll scholarship students shall submit an application
525 to the state board [~~by May 1 of the school year preceding the school year in which the private~~
526 ~~school intends to enroll scholarship students~~].

527 (6) The state board shall:

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

530 (b) [~~make available to the public~~] publish on the state board's website, a list of private
531 schools approved under this section.

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

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

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

536 Section 7. Section **59-7-625** is amended to read:

537 **59-7-625. Nonrefundable tax credit for donation to Special Needs Opportunity**
538 **Scholarship Program.**

539 (1) A taxpayer that makes a donation to the Special Needs Opportunity Scholarship
540 Program established in Section **53E-7-402** may claim a nonrefundable tax credit equal to 100%
541 of the amount stated on a tax credit certificate issued in accordance with Section **53E-7-407**.

542 (2) ~~[(a)]~~ If the amount of a tax credit listed on the tax credit certificate exceeds a
543 taxpayer's liability under this chapter for a taxable year, the taxpayer:

544 (a) may carry forward the amount of the tax credit exceeding the liability for a period
545 that does not exceed the next three taxable years~~[-];~~ and

546 (b) ~~[A taxpayer may not]~~ may carry back the amount of the tax credit that exceeds the
547 taxpayer's tax liability ~~[for the]~~ to the previous taxable year.

548 Section 8. Section **59-10-1041** is amended to read:

549 **59-10-1041. Nonrefundable tax credit for donation to Special Needs Opportunity**
550 **Scholarship Program.**

551 (1) Except as provided in Subsection (3), a claimant, estate, or trust that makes a
552 donation to the Special Needs Opportunity Scholarship Program established in Section
553 **53E-7-402**~~[-];~~ may claim a nonrefundable tax credit equal to 100% of the amount stated on a tax
554 credit certificate issued in accordance with Section **53E-7-407**.

555 (2) ~~[(a)]~~ If the amount of a tax credit listed on the tax credit certificate exceeds a
556 claimant's, estate's, or trust's tax liability under this chapter for a taxable year, the claimant,
557 estate, or trust:

558 (a) may carry forward the amount of the tax credit exceeding the liability for a period
559 that does not exceed the next three taxable years~~[-];~~ and

560 (b) ~~[A claimant, estate, or trust may not]~~ may carry back the amount of the tax credit
561 that exceeds the claimant's, estate's, or trust's tax liability ~~[for the]~~ to the previous taxable year.

562 (3) A claimant, estate, or trust may not claim a credit described in Subsection (1) to the
563 extent the claimant, estate, or trust claims a donation described in Subsection (1) as an itemized
564 deduction on the claimant's, estate's, or trust's federal individual income tax return for that
565 taxable year.

566 Section 9. **Retrospective operation.**

567 The changes to the following sections have retrospective operation for a taxable year
568 beginning on or after January 1, 2022:

569 (1) Section [59-7-625](#); and

570 (2) Section [59-10-1041](#).