Parental Choice in Education

This Act establishes tuition scholarships to enable certain public school students to transfer to a private school. The Act:

- specifies criteria for qualifying for a scholarship;
- specifies criteria for private schools to enroll scholarship students;
- specifies the amount, timing, and form of scholarship payments;
- requires the State Board of Education to make rules;
- gives the State Board of Education enforcement authority;
- requires the Legislature to annually appropriate money from the General Fund for scholarship payments; and
- allows a school district to retain in enrollment a student that transfers to a private school for a period of five years, with a deduction equal to the average scholarship amount.

Submitted as:
Utah
HB 148 (Enrolled version)
Status: Enacted into law in 2007.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act shall be cited as “The Parent Choice in Education Act.”

Section 2. [Findings and Purpose.] The Legislature finds that:

1. parents are presumed best informed to make decisions for their children, including the educational setting that will best serve their children’s interests and educational needs;
2. the establishment of this Parent Choice In Education Program is justified on the basis of funding the educational needs of school-age children as determined by their parents;
3. school-age children are the primary beneficiaries of the Parent Choice In Education Program authorized in this Act, and any benefit to private schools, whether sectarian or secular, is indirect and incidental;
4. the Parent Choice In Education Program authorized by this Act is available to the parents of school-age children, solely on the basis of income level for the year immediately preceding the year for which a scholarship is sought, and not on the basis of sex, race, religion, national origin, or any other criteria; and
5. the Parent Choice In Education Program authorized in this Act is:
   a. enacted for the valid secular purpose of tailoring a child’s education to that child’s specific needs as determined by the parent;
   b. neutral with respect to religion; and
   c. limited in its assistance to a parent, who may choose to use the scholarship to offset tuition or fees charged by a private school, either sectarian or secular, in which enrollment of the parent’s child is sought, solely as a result of the parent’s genuine and independent private choices.

Section 3. [Definitions.] As used in this Act:

1. “Board” means the [State Board of Education].
(2) “Eligible private school” means a private school that meets the requirements of [Section 5] of this Act.

(3) “Income eligibility guideline” means the maximum annual income allowed to qualify for reduced price meals for the applicable household size as published by the U.S. Department of Agriculture by notice in the Federal Register.

(4) “Parent” includes a legal guardian.

(5) “Scholarship student” means a student who receives a scholarship under this part.

(6) “Tuition” means amounts charged for attending a private school, excluding fees for extracurricular activities or transportation to the private school.

Section 4. [Scholarship Program Created -- Qualifications -- Application.]

(1) The Parent Choice in Education Program is created to award scholarships to students to attend a private school.

(2) To qualify for a scholarship under this Act:
   (a) the student’s custodial parent or legal guardian shall reside within [insert state];
   (b) the student shall be at least [five years of age before September 2] of the year in which admission to a private school is sought and under [19 years of age] on the last day of the school year as determined by the private school, or, if the individual has not graduated from high school, will be under [22 years of age] on the last day of the school year as determined by the private school;
   (c) the student shall meet one or more of the following criteria:
      (i) the student was born after [September 1, 2001];
      (ii) the student was enrolled as a full-time student in a [insert state] public school on [January 1, 2007];
      (iii) the individual was not a [insert state] resident on [January 1, 2007]; or
      (iv) the student’s parents had an annual income less than or equal to 100% of the income eligibility guideline in the calendar year immediately preceding the school year for which a scholarship is sought; and
   (d) the student may not be a recipient of a scholarship awarded under the [State Special Needs Act].

(3) (a) To receive a scholarship, the parent of a student shall submit an application for the scholarship to the [board] by the [June 1] preceding the school year for which a scholarship is sought. Along with the application, the student’s parent shall submit documentation verifying income as required by [board] rule.
   (b) The [board] may waive the application deadline.

(4) The [board] shall award scholarships by the [July 1] preceding the school year for which a scholarship is sought.

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

“I acknowledge that a private school may not provide the same level of services that are provided in a public school; the private school in which I have chosen to enroll my child has disclosed to me the teaching credentials of the school’s teachers and the school’s accreditation status; I will assume full financial responsibility for the education of my scholarship student if I accept this scholarship; and acceptance of this scholarship has the same effect as a parental refusal to consent to services pursuant to Section 614(a)(1) of the Individuals with Disabilities Education Act, 20 122 U.S.C. Sec. 1400 et seq.”

(b) Upon acceptance of the scholarship, the parent assumes full financial responsibility for the education of the scholarship student for the period in which the student receives the scholarship.
(c) Acceptance of a scholarship has the same effect as a parental refusal to consent
to services pursuant to Section 614(a)(1) of the Individuals with Disabilities Education Act, 20
U.S.C. Sec. 1400 et seq.

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

Section 5. [Eligible Private Schools.]

(1) To be eligible to enroll a scholarship student, a private school shall:
(a) have a physical location in this state where the scholarship students attend
classes and have direct contact with the school’s teachers;
(b) contract with an independent certified public accountant to perform the agreed
upon procedures specified in [Subsection (2)] and produce a report of the results which shall be
submitted to the board at the times specified in [Subsection (2)];
(c) comply with the antidiscrimination provisions of 42 U.S.C. Sec. 2000d;
(d) meet state and local health and safety laws and codes;
(e) disclose to the parent of each prospective student, before the student is
enrolled, the special education services that will be provided to the student, if any, including the
cost of those services;
(f) (i) annually assess the achievement of each student by administering:
(A) a norm-referenced test scored by an independent party that
provides a comparison of the student’s performance to other students on a national basis; or
(B) an alternative assessment of the student’s achievement, if the
student:
(I) has a disability or limited English proficiency; and
(II) would be exempt from taking a nationally norm-
referenced achievement test if enrolled in a public school in this state;
(ii) report the test results to the student’s parents; and
(iii) upon request, make test results available to other people, in a manner
that does not reveal the identity of any student;
(g) employ or contract with teachers who:
(i) hold baccalaureate or higher degrees; or
(ii) have special skills, knowledge, or expertise that qualifies them to
provide instruction in the subjects taught;
(h) provide to parents the teaching credentials of the school’s teachers; and
(i) provide, upon request to any person, a statement indicating which, if any,
organizations have accredited the private school.

(2) (a) The agreed upon procedures to be performed pursuant to [Subsection (1)(b)]
are as follows:
(i) (A) determine that working capital is at least [80%] of average
quarterly expenditures by taking total expenditures for a year and dividing it by four and then
dividing average quarterly expenditures into working capital; and
(B) for a school in the first year of operations, use the estimated
budget to estimate average quarterly expenditures;
(ii) (A) determine that scholarship payments are accounted for
separately and reconciled to student records; and
(B) for the first year of operations, determine that procedures are in
place for this accounting; and
(iii) (A) determine that expenditure of scholarship funds have been
made for education expenses and is consistent with other tuition expenditures; and
(B) for the first year of operations, determine that procedures are in place for this accounting.

(b) (i) The independent certified public accountant’s report on the agreed upon procedures specified in [Subsection (2)(a)] shall be submitted to the [board] when the private school applies to accept scholarship students and every [four years] thereafter, except as provided in [Subsection (2)(b)(ii)].

(ii) The [board] may, by rule, delay the date when the independent certified public accountant’s report shall be submitted.

(3) The following are not eligible to enroll scholarship students:

(a) a school with an enrollment of fewer than [40] students;
(b) a school that operates in a residence; or
(c) a residential treatment facility licensed by the state.

(4) A private school intending to enroll scholarship students shall submit an application to the board by [April 1] of the school year preceding the school year in which it intends to enroll scholarship students.

(5) The [board] shall:

(a) approve a private school’s application to enroll scholarship students if the private school meets the eligibility requirements of this section; and
(b) make available to the public a list of the eligible private schools by the [April 30] preceding the school year.

Section 6. [Scholarship Payments.]

(1) (a) Scholarships shall be awarded by the board subject to the availability of money appropriated by the [Legislature] for that purpose.
(b) The [Legislature] shall annually appropriate money to the [board] from the [General Fund] to make scholarship payments for all students projected to apply for scholarships.
(c) (i) If monies are not available to pay for all scholarships requested, the scholarships shall be allocated on a random basis except that preference shall be given to students who received scholarships in the previous year.
(ii) If monies are insufficient in a school year to pay for all the continuing scholarships:

(A) new scholarships may not be awarded during that school year;
(B) the monies available for scholarships shall be prorated among the eligible students who received scholarships in the previous year; and
(C) the [board] shall request a supplemental appropriation from the [Legislature] to make full scholarship payments as provided in [Subsection (4) or (5)].

(2) (a) Scholarships shall be awarded based upon the income of a scholarship student’s parents in the calendar year immediately preceding the school year for which a scholarship is sought.
(b) (i) The [board] shall make rules specifying how the income of a prospective scholarship student’s parents shall be determined.
(ii) The rules shall provide that the scholarship shall be based upon parental income as follows:

(A) if the parents are married, the income of both parents;
(B) if a parent is widowed, the income of the widowed parent;
(C) if a parent is widowed and has remarried, the income of the parent and stepparent;
(D) if the parents are divorced, the income of the parent with whom the scholarship student resided for the greatest amount of time during the past [12 months];
(E) if the parents are divorced and the scholarship student resided with each parent an equal amount of time, the income of the parent who provided more financial support during the past [12 months];
(F) if the divorced parent with whom the scholarship student resided for the greatest amount of time or who provided the greatest financial support has remarried, the income of the parent and stepparent; and
(G) if the scholarship student resides with a guardian, the income of the guardian, unless the guardian’s income is exempt by [board] rule.

(iii) The rules shall provide that:
(A) if a parent filed federal or state income tax forms, income shall be based upon adjusted gross income as listed on the income tax forms;
(B) if a parent was exempt from filing federal and state income tax forms, income shall be based on income earned from work; and
(C) a parent shall submit documentation verifying income.

(3) (a) The [board] shall compare the income of a scholarship student’s parents to the maximum annual incomes listed in the income eligibility guideline as defined in [Section 3] of this Act to set the scholarship amount.

    (b) In determining scholarship amounts, the [board] shall use:

    (i) the income eligibility guideline in effect for the school year immediately preceding the school year for which a scholarship is sought; and

    (ii) the scholarship student’s household size as the applicable household size for the purpose of determining maximum annual income under the income eligibility guideline.

(4) Full-year scholarships shall be awarded in the amounts shown in the following table, or for the amount of tuition for a full year, whichever is less.

<table>
<thead>
<tr>
<th>If the annual income of a scholarship student’s parents is:</th>
<th>The full-year scholarship amount is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Less than or equal to 100% of the income eligibility guideline</td>
<td>$3,000</td>
</tr>
<tr>
<td>• Greater than 100% but less than or equal to 125% of the income eligibility guideline</td>
<td>$2,750</td>
</tr>
<tr>
<td>• Greater than 125% but less than or equal to 150% of the income eligibility guideline</td>
<td>$2,500</td>
</tr>
<tr>
<td>• Greater than 150% but less than or equal to 175% of the income eligibility guideline</td>
<td>$2,250</td>
</tr>
<tr>
<td>• Greater than 175% but less than or equal to 200% of the income eligibility guideline</td>
<td>$2,000</td>
</tr>
<tr>
<td>• Greater than 200% but less than or equal to 225% of the income eligibility guideline</td>
<td>$1,750</td>
</tr>
<tr>
<td>• Greater than 225% but less than or equal to 250% of the income eligibility guideline</td>
<td>$1,000</td>
</tr>
<tr>
<td>• Greater than 250% of the income eligibility guideline</td>
<td>$500</td>
</tr>
</tbody>
</table>

(5) The full-year scholarship amounts shown in the table in [Subsection (4)] apply to scholarships for all grades except kindergarten. The full-year scholarship amount for kindergarten shall be [.55 times] the amounts shown in the table in [Subsection (4)].
(6) The [board] shall annually increase the full-year scholarship amounts shown in the table in [Subsection (4)] by the same percentage annual increase in the value of the weighted pupil unit established in [insert citation].

(7) (a) Except as provided in [Subsection (7)(b)], upon review and receipt of documentation that verifies a student’s admission to, or continuing enrollment and attendance at, a private school, the [board] shall make scholarship payments in four equal amounts no later than [September 1, November 1, February 1, and April 15] of each school year in which a scholarship is in force.

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

(8) A parent of a scholarship student and the student’s private school shall notify the [board] if the student does not have continuing enrollment and attendance at the private school.

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

(10) (a) Scholarship payments shall be made by the [board] by individual warrant made payable to the student’s parent and mailed by the [board] to the private school. The parent shall restrictively endorse the warrant to the private school for deposit into the account of the private school.

(b) A person, on behalf of a private school, may not accept a power of attorney from a parent to sign a warrant referred to in [Subsection (10)(a)], and a parent of a scholarship student may not give a power of attorney designating a person, on behalf of a private school, as the parent’s attorney in fact.

Section 7. [Mitigation Monies.]

(1) As provided in this section, a school district shall receive monies to mitigate potential impacts due to the unplanned reduction in revenues resulting from the transfer of scholarship students from the district to a private school.

(2) A school district shall retain in enrollment for purposes of receiving funds under the minimum school program each scholarship student that:

(a) transfers from the school district to a private school; and

(b) resides within the boundaries of the school district.

(3) Each transferred scholarship student meeting the criteria of [Subsection (2)] shall be retained in enrollment:

(a) for [five years] following the transfer or until the student would have graduated from high school if within [five years] of the date of transfer; or

(b) until the student transfers back to the school district, if the student transfers back to the school district within [five years].

(4) For each year a school district retains in enrollment transferred scholarship students as provided in this section, the [board] shall deduct from minimum school program funds distributed to the school district an amount equal to the number of transferred scholarship students retained in enrollment times the average scholarship amount for scholarship students statewide.

(5) The monies deducted from a school district’s minimum school program funds as provided in [Subsection (4)] shall be deposited into the [Uniform School Fund] established by [insert citation].

Section 8. [Board to Make Rules.]

(1) In accordance with [insert citation] the [board] shall make rules consistent with this Act:
(a) establishing the application process for the scholarship program, including procedures to allow a parent to apply for a scholarship online;

(b) establishing how the income of a scholarship student’s parents shall be determined; and

(c) implementing [Section 7] of this Act.

(2) By [insert date], the [board] shall adopt rules establishing:

(a) the application process for private schools and scholarship students; and

(b) how the income of a scholarship student’s parents shall be determined.

Section 9. [Enforcement and Penalties.]

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

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

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

(ii) interrupt disbursement of or withhold scholarship payments.

(2) The [board] may investigate complaints and convene administrative hearings for an alleged violation of this Act.

(3) Upon a finding that this Act was violated, the [board] may:

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

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

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

Section 10. [Limitation on Regulation of Private Schools.] Nothing in this Act grants additional authority to any state agency or school district to regulate private schools except as expressly set forth in this Act.

Section 11. [Review by [Legislative Auditor General].] The [legislative auditor general] shall conduct a review and issue a report on the Parent Choice in Education Program after the conclusion of the [2013-14 school year].

Section 12. [Appropriation.] As an ongoing appropriation subject to future budget constraints, [$100,000] is appropriated from the [General Fund] for [fiscal year 2006-07] to the [State Board of Education] for the administration of the Parent Choice in Education Act created by this legislation.

Section 13. [Severability.] [Insert severability clause.]

Section 14. [Repealer.] [Insert repealer clause.]

Section 15. [Effective Date.] [Insert effective date.]