

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 COMMITTEE SUBSTITUTE
4 FOR

5 HOUSE BILL NO. 1744

6 By: Nelson

7 COMMITTEE SUBSTITUTE

8 An Act relating to schools; amending Section 2,
9 Chapter 381, O.S.L. 2010 (70 O.S. Supp. 2010, Section
10 13-101.2), which relates to the Lindsey Nicole Henry
11 Scholarships for Student with Disabilities Program
12 Act; modifying scope of the program; clarifying prior
13 year attendance requirement; providing an exception
14 to certain attendance requirement for certain
15 students; modifying certain notification
16 requirements; adding age limitation; adding a public
17 school placement option; providing for eligibility
18 for certain students who were denied for certain
19 reasons; requiring regular teacher contact; requiring
20 a school district to notify parents of the available
21 options and information sources; stating criteria for
22 the public school option; allowing for certain
23 transfer; stating effect of acceptance of a Lindsey
24 Nicole Henry Scholarship; specifying parental
responsibility upon acceptance of a scholarship;
prohibiting certain designation; directing the State
Department of Education to make certain calculation;
establishing process for reducing State Aid payments
to pay scholarship costs; requiring inclusion of all
disability weights in the average daily membership
calculation; deleting authorization for an
administrative service fee; allowing for payment of
an assessment fee and other amounts; deleting certain
reporting requirement by a school district; requiring
certain notification of scholarship amount; changing
payment and cost responsibilities; directing the
Department to establish a toll-free hotline;
requiring an annual sworn compliance statement;
directing the Department to cross-check enrollments;
requiring the Department to establish a process for

1 filing violation complaints; providing for inquiry
2 process; providing for suspension or revocation of a
3 private school participation approval by the State
4 Superintendent of Public Instruction; providing
5 process for denying, revoking or suspending approval;
6 authorizing certain hearing procedures; allowing for
7 immediate suspension under certain circumstances;
8 modifying liability limitations; limiting regulatory
9 authority; providing an effective date; and declaring
10 an emergency.

11
12 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

13 SECTION 1. AMENDATORY Section 2, Chapter 381, O.S.L.
14 2010 (70 O.S. Supp. 2010, Section 13-101.2), is amended to read as
15 follows:

16 Section 13-101.2 A. There is hereby created the Lindsey Nicole
17 Henry Scholarships for Students with Disabilities Program. The
18 Lindsey Nicole Henry Scholarships for Students with Disabilities
19 Program is established to provide the option of either attending a
20 public school other than the one to which the student is assigned or
21 providing a scholarship to a private school of choice for students
22 with disabilities for whom an individualized education program (IEP)
23 in accordance with the Individuals with Disabilities Education Act
24 (IDEA) has been developed at any time prior to notifying the State
Department of Education of the intent to participate in the Program.
Scholarships shall be awarded beginning with the 2010-2011 school
year.

1 B. The parent or legal guardian of a public school student with
2 a disability may exercise their parental option and request to have
3 a Lindsey Nicole Henry Scholarship awarded for the child to enroll
4 in and attend a private school in accordance with this section and
5 the scholarship shall be awarded if:

6 1. The student has spent the prior school year in attendance at
7 a public school in this state. For purposes of this section, "prior
8 school year in attendance" means that the student was enrolled in
9 and reported by a school district for funding purposes during the
10 preceding school year regardless of whether or not the student had
11 an IEP at the time the student was counted for funding purposes. A
12 student who is a child of a member of the United States Armed Forces
13 who transfers to a school in this state from out of state or from a
14 foreign country pursuant to a permanent change of station orders of
15 the parent shall be exempt from the requirements of this paragraph
16 but shall be required to meet all other eligibility requirements to
17 participate as provided for in this section; and

18 2. The parent or legal guardian has obtained acceptance for
19 admission of the student to a private school that is eligible for
20 the program as provided in subsection D H of this section and has
21 notified, ~~in writing,~~ the ~~school district~~ State Department of
22 Education of the request for a scholarship at least sixty (60) days
23 prior to the date of the first scholarship payment. The request
24 shall be through a communication directly to the Department in a

1 manner that creates a written or electronic record of the request
2 and the date of receipt of the request. The Department shall notify
3 the school district upon receipt of the request. For purposes of
4 continuity of educational choice, the scholarship shall remain in
5 force until the student returns to a public school ~~or~~, graduates
6 from high school or reaches the age of twenty two (22), whichever
7 occurs first. If the residence of the student changes, the district
8 of residence shall assume responsibility for the scholarship. At
9 any time, the parent or legal guardian of the student may remove the
10 student from the private school and place the student in another
11 private school that is eligible for the program as provided in
12 subsection D H of this section or place the student in a public
13 school.

14 C. A student shall be eligible for a scholarship if the parent
15 or legal guardian of the student made a request for a scholarship
16 for the 2010-2011 school year and the student transferred to an
17 eligible private school but was subsequently denied a scholarship
18 because the student did not have an IEP in effect on October 1,
19 2009, but did meet all other eligibility requirements as set forth
20 in the Lindsey Nicole Henry Scholarships for Students with
21 Disabilities Program Act.

22 D. A student shall not be eligible for a Lindsey Nicole Henry
23 Scholarship if the student is not having regular and direct contact
24

1 with the private school teachers at the physical location of the
2 private school.

3 E. 1. By April 1 of each year and within ten (10) days after
4 an individual education plan meeting, a school district shall notify
5 the parent or legal guardian of a public school student with a
6 disability of all options available pursuant to this section, inform
7 the parent or legal guardian of the availability of information
8 about the program from the State Department of Education through the
9 toll-free telephone hotline or website and offer the parent or legal
10 guardian an opportunity to enroll the student in another public
11 school within the school district.

12 2. The parent or legal guardian shall not be required to accept
13 the offer of enrolling in another public school in lieu of
14 requesting the scholarship to a private school. If the parent or
15 legal guardian chooses the public school option, the student may
16 continue attending a public school chosen by the parent or legal
17 guardian until the student graduates from high school.

18 3. If the parent or legal guardian chooses the public school
19 option, the school district shall provide transportation to the
20 public school selected by the parent or legal guardian.

21 4. The parent or legal guardian may choose, as an alternative,
22 to enroll the student in and transport the student to a public
23 school in an adjacent school district which has available space and
24 has a program with the services agreed to in the individual

1 education plan (IEP) for the student already in place, and that
2 school district shall accept the transfer of the student as provided
3 for pursuant to Section 13-103 of this title.

4 F. 1. Acceptance of a Lindsey Nicole Henry Scholarship shall
5 have the same effect as a parental refusal to consent to service
6 pursuant to 20 U.S.C., Section 614(a)(1) of the IDEA.

7 2. Upon acceptance of a Lindsey Nicole Henry Scholarship, the
8 parent or legal guardian shall assume full financial responsibility
9 for the education of the student, including but not limited to
10 transportation to and from the private school.

11 G. If the parent or legal guardian requests a Lindsey Nicole
12 Henry Scholarship and the student is accepted by the private school
13 pending the availability of a space for the student, the parent or
14 legal guardian of the student shall notify the State Department of
15 Education and the school district sixty (60) days prior to the first
16 scholarship payment and before entering the private school in order
17 to be eligible for the scholarship when a space becomes available
18 for the student in the private school.

19 ~~D.~~ H. To be eligible to participate in the Lindsey Nicole Henry
20 Scholarships for Students with Disabilities Program, a private
21 school shall notify the State Department of Education of its intent
22 to participate. The notice shall specify the grade levels and
23 services that the private school has available for students with
24 disabilities who are participating in the scholarship program. The

1 State Department of Education shall approve a private school as
2 eligible to participate in the scholarship program upon
3 determination that the private school:

4 1. Meets the accreditation requirements set by the State Board
5 of Education or another accrediting association approved by the
6 State Board of Education;

7 2. Demonstrates fiscal soundness by having been in operation
8 for one (1) school year or providing the State Department of
9 Education with a statement by a certified public accountant
10 confirming that the private school desiring to participate is
11 insured and the owner or owners have sufficient capital or credit to
12 operate the school for the upcoming year by serving the number of
13 students anticipated with expected revenues from tuition and other
14 sources that may be reasonably expected. In lieu of a statement, a
15 surety bond or letter of credit for the amount equal to the
16 scholarship funds for any quarter may be filed with the Department;

17 3. Complies with the antidiscrimination provisions of 42
18 U.S.C., Section 2000d;

19 4. Meets state and local health and safety laws and codes;

20 5. Will be academically accountable to the parent or legal
21 guardian for meeting the educational needs of the student;

22 6. Employs or contracts with teachers who hold baccalaureate or
23 higher degrees, or have at least three (3) years of teaching
24 experience in public or private schools, or have special skills,

1 knowledge, or expertise that qualifies them to provide instruction
2 in subjects taught;

3 7. Complies with all state laws relating to general regulation
4 of private schools; and

5 8. Adheres to the tenets of its published disciplinary
6 procedures prior to the expulsion of a scholarship student.

7 ~~E.~~ I. 1. Lindsey Nicole Henry Scholarship Program participants
8 shall comply with the following:

9 a. the parent or legal guardian shall select the private
10 school from the schools approved for eligibility
11 pursuant to subsection ~~D~~ H of this section and apply
12 for the admission of the child,

13 b. the parent or legal guardian shall request the
14 scholarship at least sixty (60) days prior to the date
15 of the first scholarship payment,

16 c. any student participating in the scholarship program
17 shall attend throughout the school year, unless
18 excused by the school for illness or other good cause,
19 and shall comply fully with the code of conduct for
20 the school,

21 d. the parent or legal guardian shall fully comply with
22 the parental involvement requirements of the private
23 school, unless excused by the school for illness or
24 other good cause, and

1 e. upon issuance of a scholarship warrant, the parent or
2 legal guardian to whom the warrant is made shall
3 restrictively endorse the warrant to the private
4 school for deposit into the account of the private
5 school. The parent or legal guardian may not
6 designate any entity or individual associated with the
7 private school as the attorney in fact for the parent
8 or legal guardian to endorse a warrant. A parent or
9 legal guardian who fails to comply with this
10 subparagraph shall forfeit the scholarship.

11 2. A participant who fails to comply with this subsection
12 forfeits the scholarship.

13 ~~F.~~ J. Provisions governing payment of a Lindsey Nicole Henry
14 Scholarship shall be as follows:

15 1. The State Department of Education shall calculate the total
16 cost of all scholarships for eligible students from each school
17 district of residence. The State Department of Education shall then
18 reduce the State Aid allocation to each district of residence by an
19 amount equal to the total cost of all scholarships awarded to
20 eligible students that are residents of the district for the purpose
21 of making scholarship payments;

22 2. If the State Department of Education is unable to reduce the
23 State Aid allocation to a district of residence by an amount
24 sufficient to make the scholarship payments for eligible students

1 that are residents of that district, the Department shall make the
2 scholarship payments by subtracting the scholarship amount from the
3 total amount appropriated to the State Board of Education for State
4 Aid purposes prior to making allocations to school districts;

5 3. The maximum scholarship granted for an eligible student with
6 disabilities shall be a calculated amount equivalent to the local
7 and county revenue for the school district which is chargeable in
8 the State Aid formula, state-dedicated revenue, and state-
9 appropriated funds per weighted average daily membership generated
10 by that student for the applicable school year. The weighted
11 average daily membership shall be determined using the grade and
12 disability weights only. The disability weights used in calculating
13 the average daily membership shall include all disability weights
14 which correspond to the disabilities included in the IEP for the
15 student at the time the request for a scholarship is made by the
16 parent or legal guardian. The maximum scholarship amount shall be
17 calculated by the State Board of Education for each year the student
18 is participating in the scholarship program;

19 ~~2- 4.~~ The amount of the scholarship shall be the amount
20 calculated in paragraph ~~±~~ 3 of this subsection or the amount of
21 tuition and fees for the private school, whichever is less, ~~minus up~~
22 ~~to five percent (5%) of the scholarship amount which may be retained~~
23 ~~by the school district as a fee for administrative services~~
24 ~~rendered.~~ The amount of any assessment fee required by the private

1 school and the amount associated with providing services and
2 therapies to address the disabilities of the student may be paid
3 from the total amount of the scholarship;

4 ~~3. The school district shall annually report for child count~~
5 ~~and funding purposes all students who are attending a private school~~
6 ~~under the Lindsey Nicole Henry Scholarships for Students with~~
7 ~~Disabilities Program to the State Department of Education;~~

8 ~~4.~~ 5. The State Department of Education shall notify the
9 private school of the amount of the scholarship within ten (10) days
10 after receiving the request for a scholarship. The initial payment
11 shall be made after the ~~school district~~ Department verifies
12 admission acceptance and enrollment. Quarterly payments shall be
13 made upon verification of continued enrollment and attendance at the
14 private school. Payment shall be made by the ~~school district~~
15 Department with an individual warrant made payable to the parent or
16 legal guardian of the student and mailed by the ~~school district~~
17 Department to the private school that the parent or legal guardian
18 chooses. The parent or legal guardian shall restrictively endorse
19 the warrant to the private school for deposit into the account of
20 the private school; ~~and~~

21 ~~5. A school district~~ 6. The State Department of Education
22 shall not be responsible for any additional costs associated with
23 special education and related services incurred by the private
24 school for the student including the cost of teachers, equipment,

1 material, and special costs associated with the special education
2 class;

3 7. The State Department of Education shall establish a toll-
4 free hotline that provides parents or legal guardians and private
5 schools with information about the program;

6 8. The State Department of Education shall require an annual,
7 notarized, sworn compliance statement by participating private
8 schools certifying compliance with state laws and shall retain all
9 records received from a participating private school; and

10 9. The State Department of Education shall cross-check the list
11 of participating scholarship students with the public school
12 enrollments prior to each scholarship payment to avoid duplication.

13 K. The State Department of Education shall establish a process
14 by which individuals may notify the Department of any violation of
15 the provisions of this section by a parent or legal guardian,
16 private school or school district relating to program participation.
17 The Department shall conduct an inquiry of any written complaint of
18 a violation or make a referral to the appropriate agency for an
19 investigation, if the complaint is signed by the complainant and is
20 legally sufficient. A complaint is legally sufficient if it
21 contains ultimate facts that show that a violation of this section
22 or any rule adopted by the State Board of Education has occurred.
23 In order to determine legal sufficiency, the Department may require
24 supporting information or documentation from the complainant.

1 L. 1. The State Superintendent of Public Instruction shall
2 deny, suspend, or revoke the participation of a private school in
3 the scholarship program if it is determined that the private school
4 has failed to comply with the provisions of this section. However,
5 in instances in which the noncompliance is correctable within a
6 reasonable amount of time and in which the health, safety, or
7 welfare of the students is not threatened, the Superintendent may
8 issue a notice of noncompliance which shall provide the private
9 school with a time frame within which to provide evidence of
10 compliance prior to taking action to suspend or revoke participation
11 in the scholarship program.

12 2. If the Superintendent intends to deny, suspend, or revoke
13 the participation of a private school in the scholarship program,
14 the Department shall notify the private school of the proposed
15 action in writing by certified mail and regular mail to the private
16 school's address of record with the Department. The Department
17 shall also notify any parents or legal guardians of scholarship
18 students attending the private school. The notification shall
19 include the reasons for the proposed action and notice of the
20 timelines and procedures set forth in this subsection.

21 3. The private school that is adversely affected by the
22 proposed action shall have fifteen (15) days from receipt of the
23 notice of proposed action to file with the Department a request for
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1 an administrative hearing proceeding pursuant to the Administrative
2 Procedures Act.

3 4. Upon receipt of a request for a hearing, the State Board of
4 Education shall commence a hearing within thirty (30) days after the
5 receipt of the formal written request and enter an order within
6 thirty (30) days after the hearing.

7 5. The Board may immediately suspend payment of scholarship
8 funds if it is determined that there is probable cause to believe
9 that there is an imminent threat to the health, safety, or welfare
10 of the students or fraudulent activity on the part of the private
11 school.

12 G. M. No liability shall arise on the part of the state, the
13 State Board of Education, the State Department of Education or a
14 school district based on the award or use of any scholarship
15 provided through the Lindsey Nicole Henry Scholarships for Students
16 with Disabilities Program.

17 N. The inclusion of private schools within options available to
18 public school students in Oklahoma shall not expand the regulatory
19 authority of the state or any school district to impose any
20 additional regulation of private schools beyond those reasonably
21 necessary to enforce the requirements expressly set forth in this
22 section.

23 SECTION 2. This act shall become effective July 1, 2011.
24

1 SECTION 3. It being immediately necessary for the preservation
2 of the public peace, health and safety, an emergency is hereby
3 declared to exist, by reason whereof this act shall take effect and
4 be in full force from and after its passage and approval.

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