

1 **SENATE FLOOR VERSION**

2 April 2, 2012

3 As Amended

4 ENGROSSED HOUSE

5 BILL NO. 3090

6 By: Nelson, Kern and Pittman of
7 the House

8 and

9 Anderson of the Senate

10 **[schools - Lindsey Nicole Henry Scholarships for
11 Students with Disabilities Program Act - Special
12 Education Statewide Cooperative Task Force]**

13 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

14 SECTION 1. AMENDATORY 70 O.S. 2011, Section 13-101.2, is
15 amended to read as 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 a scholarship to a private school
20 of choice for students with disabilities for whom an individualized
21 education program (IEP) in accordance with the Individuals with
22 Disabilities Education Act (IDEA) has been developed at any time
23 prior to notifying the State Department of Education of the intent
24 to participate in the Program and the IEP is in effect at the time

1 the request for a scholarship is received by the State Department of
2 Education. Scholarships shall be awarded beginning with the 2010-
3 2011 school year.

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

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

21 2. The parent or legal guardian has obtained acceptance for
22 admission of the student to a private school that is eligible for
23 the program as provided in subsection H of this section and has
24 notified the State Department of Education of the request for a

1 scholarship no later than December 1 of the school year during which
2 the scholarship is requested. The request shall be through a
3 communication directly to the Department in a manner that creates a
4 written or electronic record of the request and the date of receipt
5 of the request. The Department shall notify the school district
6 upon receipt of the request. For purposes of continuity of
7 educational choice, the scholarship shall remain in force until the
8 student returns to a public school, graduates from high school or
9 reaches the age of twenty-two (22), whichever occurs first. At any
10 time, the parent or legal guardian of the student may remove the
11 student from the private school and place the student in another
12 private school that is eligible for the program as provided in
13 subsection H of this section or place the student in a public
14 school.

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

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

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

3 E. School districts shall notify the parent or legal guardian
4 of a public school student with a disability of all options
5 available pursuant to this section and inform the parent or legal
6 guardian of the availability of information about the program from
7 the State Department of Education through the toll-free telephone
8 number or website. The notification shall be provided with or
9 included in the copy of the "Parents Rights in Special Education:
10 Notice of Procedural Safeguards" document given to parents at least
11 annually or as otherwise required by law.

12 F. 1. Acceptance of a Lindsey Nicole Henry Scholarship shall
13 have the same effect as a parental ~~refusal to~~ revocation of consent
14 to service pursuant to 20 U.S.C., ~~Section 614(a)(1)~~ Sections
15 1414(a)(1)(D) and 1414(C) of the IDEA.

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

20 G. If the parent or legal guardian requests a Lindsey Nicole
21 Henry Scholarship and the student is accepted by the private school
22 pending the availability of a space for the student, the parent or
23 legal guardian of the student shall notify the State Department of
24 Education before entering the private school and before December 1

1 in order to be eligible for the scholarship during the school year
2 when a space becomes available for the student in the private
3 school. If notification is made after December 1, payment of the
4 scholarship shall not begin until the next school year.

5 H. To be eligible to participate in the Lindsey Nicole Henry
6 Scholarships for Students with Disabilities Program, a private
7 school shall notify the State Department of Education of its intent
8 to participate. The notice shall specify the grade levels and
9 services that the private school has available for students with
10 disabilities who are participating in the scholarship program. The
11 State Department of Education shall approve a private school as
12 eligible to participate in the scholarship program upon
13 determination that the private school:

14 1. Meets the accreditation requirements set by the State Board
15 of Education or another accrediting association approved by the
16 State Board of Education;

17 2. Demonstrates fiscal soundness by having been in operation
18 for one (1) school year or providing the State Department of
19 Education with a statement by a certified public accountant
20 confirming that the private school desiring to participate is
21 insured and the owner or owners have sufficient capital or credit to
22 operate the school for the upcoming year by serving the number of
23 students anticipated with expected revenues from tuition and other
24 sources that may be reasonably expected. In lieu of a statement, a

1 surety bond or letter of credit for the amount equal to the
2 scholarship funds for any quarter may be filed with the Department;

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

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

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

8 6. Employs or contracts with teachers who hold baccalaureate or
9 higher degrees, or have at least three (3) years of teaching
10 experience in public or private schools, or have special skills,
11 knowledge, or expertise that qualifies them to provide instruction
12 in subjects taught;

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

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

17 I. 1. Lindsey Nicole Henry Scholarship Program participants
18 shall comply with the following:

19 a. the parent or legal guardian shall select the private
20 school from the schools approved for eligibility
21 pursuant to subsection H of this section and apply for
22 the admission of the child,

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- 1 b. the parent or legal guardian shall request the
2 scholarship no later than December 1 of the school
3 year during which the scholarship is requested,
- 4 c. any student participating in the scholarship program
5 shall attend throughout the school year, unless
6 excused by the school for illness or other good cause,
7 and shall comply fully with the code of conduct for
8 the school,
- 9 d. the parent or legal guardian shall fully comply with
10 the parental involvement requirements of the private
11 school, unless excused by the school for illness or
12 other good cause, and
- 13 e. upon issuance of a scholarship warrant, the parent or
14 legal guardian to whom the warrant is made shall
15 restrictively endorse the warrant to the private
16 school for deposit into the account of the private
17 school. The parent or legal guardian may not
18 designate any entity or individual associated with the
19 private school as the attorney in fact for the parent
20 or legal guardian to endorse a warrant. A parent or
21 legal guardian who fails to comply with this
22 subparagraph shall forfeit the scholarship.

23 2. A participant who fails to comply with this subsection
24 forfeits the scholarship.

1 J. Provisions governing payment of a Lindsey Nicole Henry
2 Scholarship shall be as follows:

3 1. The State Department of Education shall calculate the total
4 cost of all scholarships for all eligible students in the state.
5 The State Department of Education shall then reserve or retain from
6 the total amount appropriated to the State Board of Education for
7 State Aid purposes and any other revenue available for allocation
8 for State Aid purposes the total cost for all scholarship payments;

9 2. The maximum scholarship granted for an eligible student with
10 disabilities shall be a calculated amount equivalent to the total
11 State Aid factors for the applicable school year multiplied by the
12 grade and disability weights generated by that student for the
13 applicable school year. The disability weights used in calculating
14 the scholarship amount shall include all disability weights which
15 correspond to the disabilities included in the multidisciplinary
16 evaluation and eligibility group summary for the student at the time
17 the request for a scholarship is made by the parent or legal
18 guardian. The maximum scholarship amount shall be calculated by the
19 State Board of Education for each year the student is participating
20 in the scholarship program;

21 3. The amount of the scholarship shall be the amount calculated
22 in paragraph 2 of this subsection or the amount of tuition and fees
23 for the private school, whichever is less, minus up to two and one-
24 half percent (2 1/2%) of the scholarship amount which may be

1 retained by the State Department of Education as a fee for
2 administrative services rendered. The amount of any assessment fee
3 required by the private school and the amount associated with
4 providing services and therapies to address the disabilities of the
5 student may be paid from the total amount of the scholarship. The
6 amount of the scholarship shall be prorated to reflect the number of
7 days remaining in the current school year, if the scholarship
8 request is granted after the beginning of the school year;

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

22 5. The State Department of Education shall not be responsible
23 for any additional costs associated with special education and
24 related services incurred by the private school for the student

1 including the cost of teachers, equipment, material, and special
2 costs associated with the special education class;

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

6 7. 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 8. 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. 1. The State Superintendent of Public Instruction shall
14 deny, suspend, or revoke the participation of a private school in
15 the scholarship program if it is determined that the private school
16 has failed to comply with the provisions of this section. However,
17 in instances in which the noncompliance is correctable within a
18 reasonable amount of time and in which the health, safety, or
19 welfare of the students is not threatened, the Superintendent may
20 issue a notice of noncompliance which shall provide the private
21 school with a time frame within which to provide evidence of
22 compliance prior to taking action to suspend or revoke participation
23 in the scholarship program.

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1 2. If the Superintendent intends to deny, suspend, or revoke
2 the participation of a private school in the scholarship program,
3 the Department shall notify the private school of the proposed
4 action in writing by certified mail and regular mail to the private
5 school's address of record with the Department. The Department
6 shall also notify any parents or legal guardians of scholarship
7 students attending the private school. The notification shall
8 include the reasons for the proposed action and notice of the
9 timelines and procedures set forth in this subsection.

10 3. The private school that is adversely affected by the
11 proposed action shall have fifteen (15) days from receipt of the
12 notice of proposed action to file with the Department a request for
13 an administrative hearing proceeding pursuant to the Administrative
14 Procedures Act.

15 4. Upon receipt of a request for a hearing, the State Board of
16 Education shall commence a hearing within sixty (60) days after the
17 receipt of the formal written request and enter an order within
18 thirty (30) days after the hearing.

19 5. The Board may immediately suspend payment of scholarship
20 funds if it is determined that there is probable cause to believe
21 that there is an imminent threat to the health, safety, or welfare
22 of the students or fraudulent activity on the part of the private
23 school.

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1 L. No liability shall arise on the part of the state, the State
2 Board of Education, the State Department of Education or a school
3 district based on the award or use of any scholarship provided
4 through the Lindsey Nicole Henry Scholarships for Students with
5 Disabilities Program.

6 M. The inclusion of private schools within options available to
7 public school students in Oklahoma shall not expand the regulatory
8 authority of the state or any school district to impose any
9 additional regulation of private schools beyond those reasonably
10 necessary to enforce the requirements expressly set forth in this
11 section.

12 N. If the State Department of Education determines that a
13 school district prior to the effective date of this act has failed
14 to comply with the provisions of the Lindsey Nicole Henry
15 Scholarships for Students with Disabilities Program Act and has
16 failed to make full or partial scholarship payments for eligible
17 students, the Department shall have authority to reduce the amount
18 of State Aid allocated to the school district or require the school
19 district to make repayment to the Department of State Aid
20 allocations in an amount equal to the amount of scholarship payments
21 the school district failed to make. The Department shall make
22 payment to the parent or legal guardian in the amount the school
23 district failed to make in the manner as provided for in subsection
24 J of this section.

1 SECTION 2. AMENDATORY Section 2, Chapter 356, O.S.L.

2 2011, is amended to read as follows:

3 A. There is hereby created until May 31, ~~2012~~ 2013, the Special
4 Education Statewide Cooperative Task Force.

5 B. The Task Force shall study and develop a plan to provide for
6 the delivery of special education and related services to students
7 with disabilities for whom an individualized education program (IEP)
8 has been developed in accordance with the Individuals with
9 Disabilities Education Act (IDEA) through a statewide special
10 education cooperative which will result in improved outcomes. The
11 Task Force shall study, review and make recommendations on the
12 following:

13 1. The appropriate governance and organizational structure for
14 a statewide special education cooperative;

15 2. What resources are needed and available to support a
16 statewide special education cooperative;

17 3. Which students should participate in the statewide special
18 education cooperative;

19 4. How special education services can be improved through
20 improved economies of scale;

21 5. How students will be enrolled in or provided services
22 through the statewide special education cooperative;

23 6. How the services of teachers and other related personnel
24 will be provided by the statewide special education cooperative;

1 7. How equipment and other resources that support and benefit
2 students with an IEP will be provided by the statewide special
3 education cooperative;

4 8. How partnerships with school districts, technology center
5 school districts, higher education institutions, and any other
6 public or private entities will benefit students with an IEP;

7 9. The relevant federal IDEA compliance issues;

8 10. How assessments for placing students on an IEP can be
9 improved; and

10 11. Any other relevant issues.

11 C. The Task Force shall consist of sixteen (16) members as
12 follows:

13 1. The State Superintendent of Public Instruction or designee;

14 2. The Secretary of Education or designee;

15 3. An executive director of a special education cooperative,
16 appointed by the Governor;

17 4. A special education director of a special education
18 cooperative, appointed by the Speaker of the House of
19 Representatives;

20 5. A service provider of special-education-related services,
21 appointed by the President Pro Tempore of the Senate;

22 6. A special education teacher, appointed by the State
23 Superintendent of Public Instruction;

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1 7. A parent representing the federally funded parent training
2 and information center for Oklahoma known as the Oklahoma Parent
3 Center, appointed by the Governor;

4 8. A parent representing a private association which advocates
5 for individual with disabilities, appointed by the Speaker of the
6 House of Representatives;

7 9. A person representing a sheltered workshop, appointed by the
8 President Pro Tempore of the Senate;

9 10. A private employer who employees individuals with
10 disabilities, appointed by the State Superintendent of Public
11 Instruction;

12 11. A disability coordinator for a higher education
13 institution, appointed by the Governor;

14 12. A representative of a technology center school district,
15 appointed by the Speaker of the House of Representatives;

16 13. A representative of the federally funded protection and
17 advocacy system for Oklahoma known as the Oklahoma Disability Law
18 Center, appointed by the President Pro Tempore of the Senate;

19 14. A self advocate, appointed by the State Superintendent of
20 Public Instruction;

21 15. A member of the House of Representatives, appointed by the
22 Speaker of the House of Representatives; and

23 16. A member of the Senate, appointed by the President Pro
24 Tempore of the Senate.

1 D. The member of the House of Representatives and the member of
2 the Senate shall serve as cochairs of the Task Force. Appointments
3 to the Task Force shall be made within thirty (30) days after the
4 effective date of this act. Meetings of the Task Force shall be
5 held at the call of either cochair of the Task Force. Members shall
6 serve at the pleasure of their appointing authorities. A majority
7 of the members of the Task Force shall constitute a quorum to
8 transact business, but no vacancy shall impair the right of the
9 remaining members to exercise all of the powers of the Task Force.
10 A vacancy on the Task Force shall be filled by the original
11 appointing authority. Staff support for the Task Force shall be
12 provided by the staff of the House of Representatives, Senate and
13 State Department of Education. The Oklahoma Department of Career
14 and Technology Education, Oklahoma State Regents for Higher
15 Education, Office of Disability Concerns, State Department of
16 Rehabilitation Services, Oklahoma Health Care Authority, Department
17 of Human Services, and the State Use Committee for the Department of
18 Central Services shall provide support and information as requested
19 by the Task Force.

20 E. Members of the Task Force shall receive no compensation for
21 serving on the Task Force, but may receive travel reimbursement,
22 contingent on the availability of public or private funds for this
23 purpose.

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1 F. The Task Force may seek the assistance of the Legislative
2 Service Bureau or the State Board of Education to contract with an
3 independent consultant as necessary to fulfill the duties specified
4 in this section contingent on the availability of funds.

5 G. The Task Force shall submit a preliminary report by December
6 31, ~~2011~~ 2012, and a final report by May 31, ~~2012~~ 2013, to the
7 Governor, the President Pro Tempore of the Senate, and the Speaker
8 of the House of Representatives.

9 COMMITTEE REPORT BY: COMMITTEE ON EDUCATION, dated 4-2-12 - DO PASS,
10 As Amended.

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