

1 STATE OF OKLAHOMA

2 2nd Session of the 56th Legislature (2018)

3 COMMITTEE SUBSTITUTE

4 FOR

5 SENATE BILL NO. 1301

By: Sparks

6
7 COMMITTEE SUBSTITUTE

8 An Act relating to special education; amending 70
9 O.S. 2011, Section 13-101.2, as last amended by
10 Section 1, Chapter 249, O.S.L. 2017 (70 O.S. Supp.
11 2017, Section 13-101.2), which relates to the Lindsey
12 Nicole Henry Scholarships for Students with
13 Disabilities Program; requiring participating private
14 schools to provide certain affirmation regarding
15 services for students with disabilities; updating
16 statutory reference; providing an effective date; and
17 declaring an emergency.

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

19 SECTION 1. AMENDATORY 70 O.S. 2011, Section 13-101.2, as
20 last amended by Section 1, Chapter 249, O.S.L. 2017 (70 O.S. Supp.
21 2017, Section 13-101.2), is amended to read as follows:

22 Section 13-101.2. A. There is hereby created the Lindsey
23 Nicole Henry Scholarships for Students with Disabilities Program.
24 The Lindsey Nicole Henry Scholarships for Students with Disabilities
Program is established to provide a scholarship to a private school
of choice for students with disabilities for whom an individualized
education program (IEP) in accordance with the Individuals with

1 Disabilities Education Act (IDEA) or an individualized service plan
2 pursuant to Section 1-4-704 of Title 10A of the Oklahoma Statutes
3 has been developed at any time prior to notifying the State
4 Department of Education of the intent to participate in the Program
5 and the IEP is in effect at the time the request for a scholarship
6 is received by the State Department of Education. Scholarships
7 shall be awarded beginning with the 2010-2011 school year.

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

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

1 provided services under an Individual Family Service Plan through
2 the SoonerStart program and during transition was evaluated and
3 determined to be eligible for school district services shall be
4 exempt from the requirements of this paragraph but shall be required
5 to meet all other eligibility requirements to participate as
6 provided for in this section. A student who was in out-of-home
7 placement with the Department of Human Services, who was adopted
8 while in the permanent custody of the Department of Human Services
9 or who was in out-of-home placement with the Office of Juvenile
10 Affairs shall be exempt from the requirements of this paragraph but
11 shall be required to meet all other eligibility requirements to
12 participate as provided for in this section; and

13 2. The parent or legal guardian has obtained acceptance for
14 admission of the student to a private school that is eligible for
15 the program as provided in subsection H of this section and has
16 notified the State Department of Education of the request for a
17 scholarship. Requests to participate in the program made after
18 December 1 shall be granted, but funding for scholarships requested
19 after December 1 shall not be available until the beginning of the
20 next school year. The request shall be through a communication
21 directly to the Department in a manner that creates a written or
22 electronic record of the request and the date of receipt of the
23 request. The Department shall notify the school district upon
24 receipt of the request. For purposes of continuity of educational

1 choice, the scholarship shall remain in force until the student
2 returns to a public school, graduates from high school or reaches
3 the age of twenty-two (22), whichever occurs first. At any time,
4 the parent or legal guardian of the student may remove the student
5 from the private school and place the student in another private
6 school that is eligible for the program as provided in subsection H
7 of this section or place the student in a public school.

8 C. A student shall be eligible for a scholarship if the parent
9 or legal guardian of the student made a request for a scholarship
10 for the 2010-2011 school year and the student transferred to an
11 eligible private school but was subsequently denied a scholarship
12 because the student did not have an IEP in effect on October 1,
13 2009, but did meet all other eligibility requirements as set forth
14 in the Lindsey Nicole Henry Scholarships for Students with
15 Disabilities Program Act.

16 D. A student shall not be eligible for a Lindsey Nicole Henry
17 Scholarship if the student is not having regular and direct contact
18 with the private school teachers at the physical location of the
19 private school.

20 E. School districts shall notify the parent or legal guardian
21 of a public school student with a disability of all options
22 available pursuant to this section and inform the parent or legal
23 guardian of the availability of information about the program from
24 the State Department of Education through the toll-free telephone

1 number or website. The notification shall be provided with or
2 included in the copy of the "Parents Rights in Special Education:
3 Notice of Procedural Safeguards" document given to parents at least
4 annually or as otherwise required by law.

5 F. 1. Acceptance of a Lindsey Nicole Henry Scholarship shall
6 have the same effect as a parental revocation of consent to service
7 pursuant to 20 U.S.C., Sections 1414(a)(1)(D) and 1414(C) of the
8 IDEA.

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

13 G. If the parent or legal guardian requests a Lindsey Nicole
14 Henry Scholarship and the student is accepted by the private school
15 pending the availability of a space for the student, the parent or
16 legal guardian of the student shall notify the State Department of
17 Education before entering the private school and before December 1
18 in order to be eligible for the scholarship during the school year
19 when a space becomes available for the student in the private
20 school. If notification is made after December 1, payment of the
21 scholarship shall not begin until the next school year.

22 H. To be eligible to participate in the Lindsey Nicole Henry
23 Scholarships for Students with Disabilities Program, a private
24 school shall notify the State Department of Education of its intent

1 to participate. The notice shall specify the grade levels and
2 services that the private school has available for students with
3 disabilities who are participating in the scholarship program. The
4 State Department of Education shall approve a private school as
5 eligible to participate in the scholarship program upon
6 determination that the private school:

7 1. Meets the accreditation requirements set by the State Board
8 of Education or another accrediting association approved by the
9 State Board of Education;

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

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

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

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

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

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

8 8. Adheres to the tenets of its published disciplinary
9 procedures prior to the expulsion of a scholarship student; and

10 9. Provides an affirmation of its ability to provide services
11 to students with disabilities who are participating in the
12 scholarship program.

13 I. 1. Lindsey Nicole Henry Scholarship Program participants
14 shall comply with the following:

- 15 a. the parent or legal guardian shall select the private
16 school from the schools approved for eligibility
17 pursuant to subsection H of this section and apply for
18 the admission of the child,
- 19 b. the parent or legal guardian shall request the
20 scholarship no later than December 1 of the school
21 year during which the scholarship is requested,
- 22 c. any student participating in the scholarship program
23 shall attend throughout the school year, unless
24 excused by the school for illness or other good cause,

1 and shall comply fully with the code of conduct for
2 the school,

3 d. the parent or legal guardian shall fully comply with
4 the parental involvement requirements of the private
5 school, unless excused by the school for illness or
6 other good cause, and

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

17 2. A participant who fails to comply with this subsection
18 forfeits the scholarship.

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

21 1. The State Department of Education shall calculate the total
22 cost of all scholarships for all eligible students in the state.
23 The State Department of Education shall then reserve or retain from
24 the total amount appropriated to the State Board of Education for

1 State Aid purposes and any other revenue available for allocation
2 for State Aid purposes the total cost for all scholarship payments;

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

15 3. The amount of the scholarship shall be the amount calculated
16 in paragraph 2 of this subsection or the amount of tuition and fees
17 for the private school, whichever is less, minus up to two and one-
18 half percent (2 1/2%) of the scholarship amount which may be
19 retained by the State Department of Education as a fee for
20 administrative services rendered. The amount of any assessment fee
21 required by the private school and the amount associated with
22 providing services and therapies to address the disabilities of the
23 student may be paid from the total amount of the scholarship. The
24 amount of the scholarship shall be prorated to reflect the number of

1 days remaining in the current school year, if the scholarship
2 request is granted after the beginning of the school year;

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

16 5. The State Department of Education shall not be responsible
17 for any additional costs associated with special education and
18 related services incurred by the private school for the student
19 including the cost of teachers, equipment, material, and special
20 costs associated with the special education class;

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

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

5 8. The State Department of Education shall cross-check the list
6 of participating scholarship students with the public school
7 enrollments prior to each scholarship payment to avoid duplication.

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

19 2. If the Superintendent intends to deny, suspend, or revoke
20 the participation of a private school in the scholarship program,
21 the Department shall notify the private school of the proposed
22 action in writing by certified mail and regular mail to the private
23 school's address of record with the Department. The Department
24 shall also notify any parents or legal guardians of scholarship

1 students attending the private school. The notification shall
2 include the reasons for the proposed action and notice of the
3 timelines and procedures set forth in this subsection.

4 3. The private school that is adversely affected by the
5 proposed action shall have fifteen (15) days from receipt of the
6 notice of proposed action to file with the Department a request for
7 an administrative hearing proceeding pursuant to the Administrative
8 Procedures Act.

9 4. Upon receipt of a request for a hearing, the State Board of
10 Education shall commence a hearing within sixty (60) days after the
11 receipt of the formal written request and enter an order within
12 thirty (30) days after the hearing.

13 5. The Board may immediately suspend payment of scholarship
14 funds if it is determined that there is probable cause to believe
15 that there is an imminent threat to the health, safety, or welfare
16 of the students or fraudulent activity on the part of the private
17 school.

18 L. No liability shall arise on the part of the state, the State
19 Board of Education, the State Department of Education or a school
20 district based on the award or use of any scholarship provided
21 through the Lindsey Nicole Henry Scholarships for Students with
22 Disabilities Program.

23 M. The inclusion of private schools within options available to
24 public school students in Oklahoma shall not expand the regulatory

1 authority of the state or any school district to impose any
2 additional regulation of private schools beyond those reasonably
3 necessary to enforce the requirements expressly set forth in this
4 section.

5 N. If the State Department of Education determines that a
6 school district prior to ~~the effective date of this act~~ August 26,
7 2011, has failed to comply with the provisions of the Lindsey Nicole
8 Henry Scholarships for Students with Disabilities Program Act and
9 has failed to make full or partial scholarship payments for eligible
10 students, the Department shall have authority to reduce the amount
11 of State Aid allocated to the school district or require the school
12 district to make repayment to the Department of State Aid
13 allocations in an amount equal to the amount of scholarship payments
14 the school district failed to make. The Department shall make
15 payment to the parent or legal guardian in the amount the school
16 district failed to make in the manner as provided for in subsection
17 J of this section.

18 SECTION 2. This act shall become effective July 1, 2018.

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

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