

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1459

By: Echols, Hall and Downing of
the House

and

Griffin of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to schools; amending 70 O.S. 2011, Section 13-101.2, as last amended by Section 1, Chapter 342, O.S.L. 2014 (70 O.S. Supp. 2016, Section 13-101.2), which relates to the Lindsey Nicole Henry Scholarships for Students with Disabilities Program; modifying purpose of program to include students on an individualized service plan; providing limited exemption for students in out-of-home placements or who have been adopted while in Department of Human Services' custody; providing limited exemption for students eligible for special education prior to enrollment in second grade; and declaring an emergency.

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

SECTION 1. AMENDATORY 70 O.S. 2011, Section 13-101.2, as last amended by Section 1, Chapter 342, O.S.L. 2014 (70 O.S. Supp. 2016, Section 13-101.2), is amended to read as follows:

1 Section 13-101.2 A. There is hereby created the Lindsey Nicole
2 Henry Scholarships for Students with Disabilities Program. The
3 Lindsey Nicole Henry Scholarships for Students with Disabilities
4 Program is established to provide a scholarship to a private school
5 of choice for students with disabilities for whom an individualized
6 education program (IEP) in accordance with the Individuals with
7 Disabilities Education Act (IDEA) or an individualized service plan
8 pursuant to Section 1-4-704 of Title 10A of the Oklahoma Statutes or
9 20 U.S.C. Section 1412(a)(10)(A) has been developed at any time
10 prior to notifying the State Department of Education of the intent
11 to participate in the Program and the IEP is in effect at the time
12 the request for a scholarship is received by the State Department of
13 Education. Scholarships shall be awarded beginning with the 2010-
14 2011 school year.

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

20 1. The student has spent the prior school year in attendance at
21 a public school in this state. For purposes of this section, "prior
22 school year in attendance" means that the student was enrolled in
23 and reported by a school district for funding purposes during the
24 preceding school year regardless of whether or not the student had

1 an IEP at the time the student was counted for funding purposes. A
2 student who is a child of a member of the United States Armed Forces
3 who transfers to a school in this state from out of state or from a
4 foreign country pursuant to a permanent change of station orders of
5 the parent shall be exempt from the requirements of this paragraph
6 but shall be required to meet all other eligibility requirements to
7 participate as provided for in this section. A student who has been
8 provided services under an Individual Family Service Plan through
9 the SoonerStart program and during transition was evaluated and
10 determined to be eligible for school district services shall be
11 exempt from the requirements of this paragraph but shall be required
12 to meet all other eligibility requirements to participate as
13 provided for in this section. A student who was in out-of-home
14 placement with the Department of Human Services, who was adopted
15 while in the permanent custody of the Department of Human Services
16 or who was in out-of-home placement with the Office of Juvenile
17 Affairs, shall be exempt from the requirements of this paragraph but
18 shall be required to meet all other eligibility requirements to
19 participate as provided for in this section. A student who was
20 evaluated and identified as eligible for special education and
21 related services in accordance with the IDEA prior to enrollment in
22 the second grade shall be exempt from the requirements of this
23 paragraph but shall be required to meet all other eligibility
24 requirements to participate as provided for in this section; and

1 2. The parent or legal guardian has obtained acceptance for
2 admission of the student to a private school that is eligible for
3 the program as provided in subsection H of this section and has
4 notified the State Department of Education of the request for a
5 scholarship. Requests to participate in the program made after
6 December 1 shall be granted, but funding for scholarships requested
7 after December 1 shall not be available until the beginning of the
8 next school year. The request shall be through a communication
9 directly to the Department in a manner that creates a written or
10 electronic record of the request and the date of receipt of the
11 request. The Department shall notify the school district upon
12 receipt of the request. For purposes of continuity of educational
13 choice, the scholarship shall remain in force until the student
14 returns to a public school, graduates from high school or reaches
15 the age of twenty-two (22), whichever occurs first. At any time,
16 the parent or legal guardian of the student may remove the student
17 from the private school and place the student in another private
18 school that is eligible for the program as provided in subsection H
19 of this section or place the student in a public school.

20 C. A student shall be eligible for a scholarship if the parent
21 or legal guardian of the student made a request for a scholarship
22 for the 2010-2011 school year and the student transferred to an
23 eligible private school but was subsequently denied a scholarship
24 because the student did not have an IEP in effect on October 1,

1 2009, but did meet all other eligibility requirements as set forth
2 in the Lindsey Nicole Henry Scholarships for Students with
3 Disabilities Program Act.

4 D. A student shall not be eligible for a Lindsey Nicole Henry
5 Scholarship if the student is not having regular and direct contact
6 with the private school teachers at the physical location of the
7 private school.

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

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

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

1 G. If the parent or legal guardian requests a Lindsey Nicole
2 Henry Scholarship and the student is accepted by the private school
3 pending the availability of a space for the student, the parent or
4 legal guardian of the student shall notify the State Department of
5 Education before entering the private school and before December 1
6 in order to be eligible for the scholarship during the school year
7 when a space becomes available for the student in the private
8 school. If notification is made after December 1, payment of the
9 scholarship shall not begin until the next school year.

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

19 1. Meets the accreditation requirements set by the State Board
20 of Education or another accrediting association approved by the
21 State Board of Education;

22 2. Demonstrates fiscal soundness by having been in operation
23 for one (1) school year or providing the State Department of
24 Education with a statement by a certified public accountant

1 confirming that the private school desiring to participate is
2 insured and the owner or owners have sufficient capital or credit to
3 operate the school for the upcoming year by serving the number of
4 students anticipated with expected revenues from tuition and other
5 sources that may be reasonably expected. In lieu of a statement, a
6 surety bond or letter of credit for the amount equal to the
7 scholarship funds for any quarter may be filed with the Department;

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

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

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

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

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

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

22 I. 1. Lindsey Nicole Henry Scholarship Program participants
23 shall comply with the following:
24

- a. the parent or legal guardian shall select the private school from the schools approved for eligibility pursuant to subsection H of this section and apply for the admission of the child,
- b. the parent or legal guardian shall request the scholarship no later than December 1 of the school year during which the scholarship is requested,
- c. any student participating in the scholarship program shall attend throughout the school year, unless excused by the school for illness or other good cause, and shall comply fully with the code of conduct for the school,
- d. the parent or legal guardian shall fully comply with the parental involvement requirements of the private school, unless excused by the school for illness or other good cause, and
- e. upon issuance of a scholarship warrant, the parent or legal guardian to whom the warrant is made shall restrictively endorse the warrant to the private school for deposit into the account of the private school. The parent or legal guardian may not designate any entity or individual associated with the private school as the attorney in fact for the parent or legal guardian to endorse a warrant. A parent or

1 legal guardian who fails to comply with this
2 subparagraph shall forfeit the scholarship.

3 2. A participant who fails to comply with this subsection
4 forfeits the scholarship.

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

7 1. The State Department of Education shall calculate the total
8 cost of all scholarships for all eligible students in the state.

9 The State Department of Education shall then reserve or retain from
10 the total amount appropriated to the State Board of Education for
11 State Aid purposes and any other revenue available for allocation
12 for State Aid purposes the total cost for all scholarship payments;

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

1 3. The amount of the scholarship shall be the amount calculated
2 in paragraph 2 of this subsection or the amount of tuition and fees
3 for the private school, whichever is less, minus up to two and one-
4 half percent (2 1/2%) of the scholarship amount which may be
5 retained by the State Department of Education as a fee for
6 administrative services rendered. The amount of any assessment fee
7 required by the private school and the amount associated with
8 providing services and therapies to address the disabilities of the
9 student may be paid from the total amount of the scholarship. The
10 amount of the scholarship shall be prorated to reflect the number of
11 days remaining in the current school year, if the scholarship
12 request is granted after the beginning of the school year;

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

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

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

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

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

18 K. 1. The State Superintendent of Public Instruction shall
19 deny, suspend, or revoke the participation of a private school in
20 the scholarship program if it is determined that the private school
21 has failed to comply with the provisions of this section. However,
22 in instances in which the noncompliance is correctable within a
23 reasonable amount of time and in which the health, safety, or
24 welfare of the students is not threatened, the Superintendent may

1 issue a notice of noncompliance which shall provide the private
2 school with a time frame within which to provide evidence of
3 compliance prior to taking action to suspend or revoke participation
4 in the scholarship program.

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

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

19 4. Upon receipt of a request for a hearing, the State Board of
20 Education shall commence a hearing within sixty (60) days after the
21 receipt of the formal written request and enter an order within
22 thirty (30) days after the hearing.

23 5. The Board may immediately suspend payment of scholarship
24 funds if it is determined that there is probable cause to believe

1 that there is an imminent threat to the health, safety, or welfare
2 of the students or fraudulent activity on the part of the private
3 school.

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

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

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

1 payment to the parent or legal guardian in the amount the school
2 district failed to make in the manner as provided for in subsection
3 J of this section.

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

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