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March 1, 2018

COMMITTEE SUBSTITUTE
FOR

SENATE BILL NO. 1301

By: Sparks

[special education - Lindsey Nicole Henry
Scholarships for Students with Disabilities Program -
private schools - services for students with
disabilities - ~~effective date~~ - 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 249, O.S.L. 2017 (70 O.S. Supp. 2017, Section 13-101.2), is amended to read as follows:

Section 13-101.2. A. There is hereby created the Lindsey Nicole Henry Scholarships for Students with Disabilities Program. 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 Disabilities Education Act (IDEA) or an individualized service plan pursuant to Section 1-4-704 of Title 10A of the Oklahoma Statutes has been developed at any time prior to notifying the State

1 Department of Education of the intent to participate in the Program
2 and the IEP is in effect at the time the request for a scholarship
3 is received by the State Department of Education. Scholarships
4 shall be awarded beginning with the 2010-2011 school year.

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

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

1 exempt from the requirements of this paragraph but shall be required
2 to meet all other eligibility requirements to participate as
3 provided for in this section. A student who was in out-of-home
4 placement with the Department of Human Services, who was adopted
5 while in the permanent custody of the Department of Human Services
6 or who was in out-of-home placement with the Office of Juvenile
7 Affairs shall be exempt from the requirements of this paragraph but
8 shall be required to meet all other eligibility requirements to
9 participate as provided for in this section; and

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

1 the parent or legal guardian of the student may remove the student
2 from the private school and place the student in another private
3 school that is eligible for the program as provided in subsection H
4 of this section or place the student in a public school.

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

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

17 E. School districts shall notify the parent or legal guardian
18 of a public school student with a disability of all options
19 available pursuant to this section and inform the parent or legal
20 guardian of the availability of information about the program from
21 the State Department of Education through the toll-free telephone
22 number or website. The notification shall be provided with or
23 included in the copy of the "Parents Rights in Special Education:
24

1 Notice of Procedural Safeguards" document given to parents at least
2 annually or as otherwise required by law.

3 F. 1. Acceptance of a Lindsey Nicole Henry Scholarship shall
4 have the same effect as a parental revocation of consent to service
5 pursuant to 20 U.S.C., Sections 1414(a)(1)(D) and 1414(C) of the
6 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 before entering the private school and before December 1
16 in order to be eligible for the scholarship during the school year
17 when a space becomes available for the student in the private
18 school. If notification is made after December 1, payment of the
19 scholarship shall not begin until the next school year.

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

1 disabilities who are participating in the scholarship program. The
2 State Department of Education shall approve a private school as
3 eligible to participate in the scholarship program upon
4 determination that the private school:

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

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

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

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

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

23 6. Employs or contracts with teachers who hold baccalaureate or
24 higher degrees, or have at least three (3) years of teaching

1 experience in public or private schools, or have special skills,
2 knowledge, or expertise that qualifies them to provide instruction
3 in subjects taught;

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

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

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

11 I. 1. Lindsey Nicole Henry Scholarship Program participants
12 shall comply with the following:

13 a. the parent or legal guardian shall select the private
14 school from the schools approved for eligibility
15 pursuant to subsection H of this section and apply for
16 the admission of the child,

17 b. the parent or legal guardian shall request the
18 scholarship no later than December 1 of the school
19 year during which the scholarship is requested,

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

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

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

15 2. A participant who fails to comply with this subsection
16 forfeits the scholarship.

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

19 1. The State Department of Education shall calculate the total
20 cost of all scholarships for all eligible students in the state.
21 The State Department of Education shall then reserve or retain from
22 the total amount appropriated to the State Board of Education for
23 State Aid purposes and any other revenue available for allocation
24 for State Aid purposes the total cost for all scholarship payments;

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

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

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

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

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

22 7. The State Department of Education shall require an annual,
23 notarized, sworn compliance statement by participating private
24

1 schools certifying compliance with state laws and shall retain all
2 records received from a participating private school; and

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

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

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

1 include the reasons for the proposed action and notice of the
2 timelines and procedures set forth in this subsection.

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

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

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

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

22 M. The inclusion of private schools within options available to
23 public school students in Oklahoma shall not expand the regulatory
24 authority of the state or any school district to impose any

1 additional regulation of private schools beyond those reasonably
2 necessary to enforce the requirements expressly set forth in this
3 section.

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

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

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

22 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS
23 March 1, 2018 - DO PASS AS AMENDED
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