

1 STATE OF OKLAHOMA

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

3 SENATE BILL 881

By: Sharp

6 AS INTRODUCED

7 An Act relating to schools; amending 70 O.S. 2011,
8 Section 3-136, as amended by Section 1, Chapter 277,
9 O.S.L. 2014 (70 O.S. Supp. 2017, Section 3-136),
10 which relates to charter school compliance with
11 certain regulations; prohibiting a charter school
12 from entering into a contract with a teacher who does
13 not hold a valid certificate; allowing a charter
14 school to enter into a contract with a teacher issued
15 a certain certificate; amending 70 O.S. 2011, Section
16 13-101.2, as last amended by Section 1, Chapter 249,
17 O.S.L. 2017 (70 O.S. Supp. 2017, Section 13-101.2),
18 which relates to the Lindsey Nicole Henry
19 Scholarships for Students with Disabilities Program;
20 requiring participating private schools to hire
21 teachers who hold certain certificates; providing an
22 effective date; and declaring an emergency.

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

24 SECTION 1. AMENDATORY 70 O.S. 2011, Section 3-136, as
amended by Section 1, Chapter 277, O.S.L. 2014 (70 O.S. Supp. 2017,
Section 3-136), is amended to read as follows:

Section 3-136. A. A charter school shall adopt a charter which
will ensure compliance with the following:

1. A charter school shall comply with all federal regulations
and state and local rules and statutes relating to health, safety,

1 civil rights and insurance. By January 1, 2000, the State
2 Department of Education shall prepare a list of relevant rules and
3 statutes which a charter school must comply with as required by this
4 paragraph and shall annually provide an update to the list;

5 2. A charter school shall be nonsectarian in its programs,
6 admission policies, employment practices, and all other operations.
7 A sponsor may not authorize a charter school or program that is
8 affiliated with a nonpublic sectarian school or religious
9 institution;

10 3. The charter school may provide a comprehensive program of
11 instruction for a prekindergarten program, a kindergarten program or
12 any grade between grades one and twelve. Instruction may be
13 provided to all persons between the ages of four (4) and twenty-one
14 (21) years. A charter school may offer a curriculum which
15 emphasizes a specific learning philosophy or style or certain
16 subject areas such as mathematics, science, fine arts, performance
17 arts, or foreign language. The charter of a charter school which
18 offers grades nine through twelve shall specifically address whether
19 the charter school will comply with the graduation requirements
20 established in Section 11-103.6 of this title. No charter school
21 shall be chartered for the purpose of offering a curriculum for deaf
22 or blind students that is the same or similar to the curriculum
23 being provided by or for educating deaf or blind students that are
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1 being served by the Oklahoma School for the Blind or the Oklahoma
2 School for the Deaf;

3 4. A charter school shall participate in the testing as
4 required by the Oklahoma School Testing Program Act and the
5 reporting of test results as is required of a school district. A
6 charter school shall also provide any necessary data to the Office
7 of Accountability;

8 5. Except as provided for in the Oklahoma Charter Schools Act
9 and its charter, a charter school shall be exempt from all statutes
10 and rules relating to schools, boards of education, and school
11 districts;

12 6. A charter school, to the extent possible, shall be subject
13 to the same reporting requirements, financial audits, audit
14 procedures, and audit requirements as a school district. The State
15 Department of Education or State Auditor and Inspector may conduct
16 financial, program, or compliance audits. A charter school shall
17 use the Oklahoma Cost Accounting System to report financial
18 transactions to the sponsoring school district;

19 7. A charter school shall comply with all federal and state
20 laws relating to the education of children with disabilities in the
21 same manner as a school district;

22 8. A charter school shall provide for a governing body for the
23 school which shall be responsible for the policies and operational
24 decisions of the charter school;

1 9. A charter school shall not be used as a method of generating
2 revenue for students who are being home schooled and are not being
3 educated at an organized charter school site;

4 10. A charter school may not charge tuition or fees;

5 11. A charter school shall provide instruction each year for at
6 least the number of days required in Section 1-109 of this title;

7 12. A charter school shall comply with the student suspension
8 requirements provided for in Section 24-101.3 of this title;

9 13. A charter school shall be considered a school district for
10 purposes of tort liability under The Governmental Tort Claims Act;

11 14. Employees of a charter school may participate as members of
12 the Teachers' Retirement System of Oklahoma in accordance with
13 applicable statutes and rules if otherwise allowed pursuant to law;

14 15. A charter school may participate in all health and related
15 insurance programs available to the employees of the sponsor of the
16 charter school;

17 16. A charter school shall comply with the Oklahoma Open
18 Meeting Act and the Oklahoma Open Records Act;

19 17. The governing body of a charter school shall be subject to
20 the same conflict of interest requirements as a member of a local
21 school board; ~~and~~

22 18. No later than September 1 each year, the governing board of
23 each charter school formed pursuant to the Oklahoma Charter Schools
24 Act shall prepare a statement of actual income and expenditures for

1 the charter school for the fiscal year that ended on the preceding
2 June 30, in a manner compliant with Section 5-135 of this title.
3 The statement of expenditures shall include functional categories as
4 defined in rules adopted by the State Board of Education to
5 implement the Oklahoma Cost Accounting System pursuant to Section 5-
6 145 of this title. Charter schools shall not be permitted to submit
7 estimates of expenditures or prorated amounts to fulfill the
8 requirements of this paragraph; and

9 19. A charter school shall not enter into any written contract
10 with a teacher who does not hold a valid certificate issued or
11 recognized by the State Board of Education authorizing the teacher
12 to teach the grades or subject matter for which the teacher is
13 employed. A charter school may enter into a written contract with a
14 teacher who has been issued an emergency or provisional certificate,
15 as provided for in Section 6-187 of this title.

16 B. The charter of a charter school shall include a description
17 of the personnel policies, personnel qualifications, and method of
18 school governance, and the specific role and duties of the sponsor
19 of the charter school.

20 C. The charter of a charter school may be amended at the
21 request of the governing body of the charter school and upon the
22 approval of the sponsor.

23 D. A charter school may enter into contracts and sue and be
24 sued.

1 E. The governing body of a charter school may not levy taxes or
2 issue bonds.

3 F. The charter of a charter school shall include a provision
4 specifying the method or methods to be employed for disposing of
5 real and personal property acquired by the charter school upon
6 expiration or termination of the charter or failure of the charter
7 school to continue operations. Except as otherwise provided, any
8 real or personal property purchased with state or local funds shall
9 be retained by the sponsoring school district. If a charter school
10 that was previously sponsored by the board of education of a school
11 district continues operation within the school district under a new
12 charter sponsored by an entity authorized pursuant to Section 3-132
13 of this title, the charter school may retain any personal property
14 purchased with state or local funds for use in the operation of the
15 charter school until termination of the new charter or failure of
16 the charter school to continue operations.

17 SECTION 2. AMENDATORY 70 O.S. 2011, Section 13-101.2, as
18 last amended by Section 1, Chapter 249, O.S.L. 2017 (70 O.S. Supp.
19 2017, Section 13-101.2), is amended to read as follows:

20 Section 13-101.2. A. There is hereby created the Lindsey
21 Nicole Henry Scholarships for Students with Disabilities Program.
22 The Lindsey Nicole Henry Scholarships for Students with Disabilities
23 Program is established to provide a scholarship to a private school
24 of choice for students with disabilities for whom an individualized

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

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

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

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

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

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

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

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

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

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

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

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

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

23 H. To be eligible to participate in the Lindsey Nicole Henry
24 Scholarships for Students with Disabilities Program, a private

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

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

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

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

23 4. Meets state and local health and safety laws and codes;
24

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

3 6. Employs or contracts with teachers who hold ~~baccalaureate or~~
4 ~~higher degrees, or have at least three (3) years of teaching~~
5 ~~experience in public or private schools, or have special skills,~~
6 ~~knowledge, or expertise that qualifies them to provide instruction~~
7 ~~in subjects taught~~ a valid certificate issued or recognized by the
8 State Board of Education authorizing the teacher to teach the grades
9 or subject matter for which the teacher is employed or who has been
10 issued an emergency or provisional certificate, as provided for in
11 Section 6-187 of this title;

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

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

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

- 18 a. the parent or legal guardian shall select the private
19 school from the schools approved for eligibility
20 pursuant to subsection H of this section and apply for
21 the admission of the child,
- 22 b. the parent or legal guardian shall request the
23 scholarship no later than December 1 of the school
24 year during which the scholarship is requested,

- 1 c. any student participating in the scholarship program
2 shall attend throughout the school year, unless
3 excused by the school for illness or other good cause,
4 and shall comply fully with the code of conduct for
5 the school,
- 6 d. the parent or legal guardian shall fully comply with
7 the parental involvement requirements of the private
8 school, unless excused by the school for illness or
9 other good cause, and
- 10 e. upon issuance of a scholarship warrant, the parent or
11 legal guardian to whom the warrant is made shall
12 restrictively endorse the warrant to the private
13 school for deposit into the account of the private
14 school. The parent or legal guardian may not
15 designate any entity or individual associated with the
16 private school as the attorney in fact for the parent
17 or legal guardian to endorse a warrant. A parent or
18 legal guardian who fails to comply with this
19 subparagraph shall forfeit the scholarship.

20 2. A participant who fails to comply with this subsection
21 forfeits the scholarship.

22 J. Provisions governing payment of a Lindsey Nicole Henry
23 Scholarship shall be as follows:
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1 1. The State Department of Education shall calculate the total
2 cost of all scholarships for all eligible students in the state.

3 The State Department of Education shall then reserve or retain from
4 the total amount appropriated to the State Board of Education for
5 State Aid purposes and any other revenue available for allocation
6 for State Aid purposes the total cost for all scholarship payments;

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

19 3. The amount of the scholarship shall be the amount calculated
20 in paragraph 2 of this subsection or the amount of tuition and fees
21 for the private school, whichever is less, minus up to two and one-
22 half percent (2 1/2%) of the scholarship amount which may be
23 retained by the State Department of Education as a fee for
24 administrative services rendered. The amount of any assessment fee

1 required by the private school and the amount associated with
2 providing services and therapies to address the disabilities of the
3 student may be paid from the total amount of the scholarship. The
4 amount of the scholarship shall be prorated to reflect the number of
5 days remaining in the current school year, if the scholarship
6 request is granted after the beginning of the school year;

7 4. The State Department of Education shall notify the private
8 school of the amount of the scholarship within ten (10) days after
9 receiving the request for a scholarship, when the total State Aid
10 factors have been determined for the current fiscal year. The
11 initial payment shall be made after the 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 Department with an
15 individual warrant made payable to the parent or legal guardian of
16 the student and mailed by the Department to the private school that
17 the parent or legal guardian chooses. The parent or legal guardian
18 shall restrictively endorse the warrant to the private school for
19 deposit into the account of the private school;

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

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

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

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

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

22 2. If the Superintendent intends to deny, suspend, or revoke
23 the participation of a private school in the scholarship program,
24 the Department shall notify the private school of the proposed

1 action in writing by certified mail and regular mail to the private
2 school's address of record with the Department. The Department
3 shall also notify any parents or legal guardians of scholarship
4 students attending the private school. The notification shall
5 include the reasons for the proposed action and notice of the
6 timelines and procedures set forth in this subsection.

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

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

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

21 L. No liability shall arise on the part of the state, the State
22 Board of Education, the State Department of Education or a school
23 district based on the award or use of any scholarship provided
24

1 through the Lindsey Nicole Henry Scholarships for Students with
2 Disabilities Program.

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

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

22 SECTION 3. This act shall become effective July 1, 2018.

23 SECTION 4. It being immediately necessary for the preservation
24 of the public peace, health or safety, an emergency is hereby

1 declared to exist, by reason whereof this act shall take effect and
2 be in full force from and after its passage and approval.

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