

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

HOUSE BILL 3035

By: Lepak

AS INTRODUCED

An Act relating to the Lindsey Nicole Henry Scholarships for Students with Disabilities Program; amending 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), which relates to the Lindsey Nicole Henry Scholarships for Students with Disabilities Program Act; clarifying language; and providing an effective date.

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

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

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

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

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

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

1 the age of twenty-two (22), whichever occurs first. At any time,
2 the parent or legal guardian of the student may remove the student
3 from the private school and place the student in another private
4 school that is eligible for the program as provided in subsection H
5 of this section or place the student in a public school.

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

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

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

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.

8 I. 1. Lindsey Nicole Henry Scholarship Program participants
9 shall comply with the following:

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

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

13 2. A participant who fails to comply with this subsection
14 forfeits the scholarship.

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

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

23 2. The maximum scholarship granted for an eligible student with
24 disabilities shall be a calculated amount equivalent to the total

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

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

23 4. The State Department of Education shall notify the private
24 school of the amount of the scholarship within ten (10) days after

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

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

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

20 7. The State Department of Education shall require an annual,
21 notarized, sworn compliance statement by participating private
22 schools certifying compliance with state laws and shall retain all
23 records received from a participating private school; and
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1 8. The State Department of Education shall cross-check the list
2 of participating scholarship students with the public school
3 enrollments prior to each scholarship payment to avoid duplication.

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

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

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

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

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

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

20 M. The inclusion of private schools within options available to
21 public school students in Oklahoma shall not expand the regulatory
22 authority of the state or any school district to impose any
23 additional regulation of private schools beyond those reasonably
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1 necessary to enforce the requirements expressly set forth in this
2 section.

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

16 SECTION 2. This act shall become effective November 1, 2018.

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