

1 **SENATE FLOOR VERSION**

2 February 19, 2019

3 SENATE BILL NO. 901

By: Treat

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7 An Act relating to the Lindsey Nicole Henry
8 Scholarships for Students with Disabilities Program;
9 amending 70 O.S. 2011, Section 13-101.2, as last
10 amended by Section 1, Chapter 249, O.S.L. 2017 (70
11 O.S. Supp. 2018, Section 13-101.2), which relates to
12 eligibility for the program; providing certain
13 exemption for students who are classified as homeless
14 and enroll in certain school; providing for
15 calculation of scholarship if certain private school
16 does not charge tuition; providing an effective date;
17 and 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 2018, 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 parental option and request to have
10 a Lindsey Nicole Henry Scholarship awarded for the child to enroll
11 in and attend a private school in accordance with this section and
12 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 Students who meet the following criteria shall be exempt from the
20 requirements of this paragraph but shall be required to meet all
21 other eligibility requirements to participate as provided for in
22 this section:

23 a. a student who is a child of a member of the United
24 States Armed Forces who transfers to a school in this

1 state from out of state or from a foreign country
2 pursuant to a permanent change of station orders of
3 the parent ~~shall be exempt from the requirements of~~
4 ~~this paragraph but shall be required to meet all other~~
5 ~~eligibility requirements to participate as provided~~
6 ~~for in this section. A,~~

7 b. a student who has been provided services under an
8 Individual Family Service Plan through the SoonerStart
9 program and during transition was evaluated and
10 determined to be eligible for school district services
11 ~~shall be exempt from the requirements of this~~
12 ~~paragraph but shall be required to meet all other~~
13 ~~eligibility requirements to participate as provided~~
14 ~~for in this section. A,~~

15 c. a student who was in out-of-home placement with the
16 Department of Human Services, who was adopted while in
17 the permanent custody of the Department of Human
18 Services or who was in out-of-home placement with the
19 Office of Juvenile Affairs ~~shall be exempt from the~~
20 ~~requirements of this paragraph but shall be required~~
21 ~~to meet all other eligibility requirements to~~
22 ~~participate as provided for in this section, and~~

23 d. a student who is classified as homeless, meaning that
24 they lack a fixed, regular and adequate nighttime

1 residence, and is enrolling in a school specifically
2 designated for homeless students; and

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

22 C. A student shall be eligible for a scholarship if the parent
23 or legal guardian of the student made a request for a scholarship
24 for the 2010-2011 school year and the student transferred to an

1 eligible private school but was subsequently denied a scholarship
2 because the student did not have an IEP in effect on October 1,
3 2009, but did meet all other eligibility requirements as set forth
4 in the Lindsey Nicole Henry Scholarships for Students with
5 Disabilities Program Act.

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

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

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

23 2. Upon acceptance of a Lindsey Nicole Henry Scholarship, the
24 parent or legal guardian shall assume full financial responsibility

1 for the education of the student, including but not limited to
2 transportation to and from the private school.

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

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

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

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

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

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

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

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

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

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

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

3 a. the parent or legal guardian shall select the private
4 school from the schools approved for eligibility
5 pursuant to subsection H of this section and apply for
6 the admission of the child,

7 b. the parent or legal guardian shall request the
8 scholarship no later than December 1 of the school
9 year during which the scholarship is requested,

10 c. any student participating in the scholarship program
11 shall attend throughout the school year, unless
12 excused by the school for illness or other good cause,
13 and shall comply fully with the code of conduct for
14 the school,

15 d. the parent or legal guardian shall fully comply with
16 the parental involvement requirements of the private
17 school, unless excused by the school for illness or
18 other good cause, and

19 e. upon issuance of a scholarship warrant, the parent or
20 legal guardian to whom the warrant is made shall
21 restrictively endorse the warrant to the private
22 school for deposit into the account of the private
23 school. The parent or legal guardian may not
24 designate any entity or individual associated with the

1 private school as the attorney in fact for the parent
2 or legal guardian to endorse a warrant. A parent or
3 legal guardian who fails to comply with this
4 subparagraph shall forfeit the scholarship.

5 2. A participant who fails to comply with this subsection
6 forfeits the scholarship.

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

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

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

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

1 State Board of Education for each year the student is participating
2 in the scholarship program;

3 3. The amount of the scholarship shall be the amount calculated
4 in paragraph 2 of this subsection or the amount of tuition and fees
5 for the private school, whichever is less, minus up to two and one-
6 half percent (2 1/2%) of the scholarship amount which may be
7 retained by the State Department of Education as a fee for
8 administrative services rendered. If a private school does not
9 charge tuition, the amount of the scholarship shall be the amount
10 calculated in paragraph 2 of this subsection minus up to two and
11 one-half percent (2 1/2%) of the scholarship amount which may be
12 retained by the State Department of Education as a fee for
13 administrative services rendered. The amount of any assessment fee
14 required by the private school and the amount associated with
15 providing services and therapies to address the disabilities of the
16 student may be paid from the total amount of the scholarship. The
17 amount of the scholarship shall be prorated to reflect the number of
18 days remaining in the current school year, if the scholarship
19 request is granted after the beginning of the school year;

20 4. The State Department of Education shall notify the private
21 school of the amount of the scholarship within ten (10) days after
22 receiving the request for a scholarship, when the total State Aid
23 factors have been determined for the current fiscal year. The
24 initial payment shall be made after the Department verifies

1 admission acceptance and enrollment. Quarterly payments shall be
2 made upon verification of continued enrollment and attendance at the
3 private school. Payment shall be made by the Department with an
4 individual warrant made payable to the parent or legal guardian of
5 the student and mailed by the Department to the private school that
6 the parent or legal guardian chooses. The parent or legal guardian
7 shall restrictively endorse the warrant to the private school for
8 deposit into the account of the private school;

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

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

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

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

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

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

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

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

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

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

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

23 N. If the State Department of Education determines that a
24 school district prior to the effective date of this act has failed

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

12 SECTION 2. This act shall become effective July 1, 2019.

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

17 COMMITTEE REPORT BY: COMMITTEE ON EDUCATION
18 February 19, 2019 - DO PASS and referred to second committee,
19 withdrawn from APPROPRIATIONS, February 27, 2019
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