

1 STATE OF OKLAHOMA

2 2nd Session of the 57th Legislature (2020)

3 HOUSE BILL 3321

By: Conley

4
5
6 AS INTRODUCED

7 An Act relating to schools; amending 70 O.S. 2011,
8 Section 13-101.2, as last amended by Section 1,
9 Chapter 249, O.S.L. 2017 (70 O.S. Supp. 2019, Section
10 13-101.2), which relates to the Lindsey Nicole Henry
11 Scholarships for Students with Disabilities Program;
12 extending eligibility to children of incarcerated
13 parents; requiring certain parents or legal guardians
14 to submit documentation of parental incarceration;
15 and providing an effective date.

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

17 SECTION 1. 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 2019, Section 13-101.2), is amended to read as follows:

20 Section 13-101.2 A. There is hereby created the Lindsey Nicole
21 Henry Scholarships for Students with Disabilities Program. The
22 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
education program (IEP) in accordance with the Individuals with
Disabilities Education Act (IDEA) or an individualized service plan

1 pursuant to Section 1-4-704 of Title 10A of the Oklahoma Statutes
2 has been developed at any time prior to notifying the State
3 Department of Education of the intent to participate in the Program
4 and the IEP is in effect at the time the request for a scholarship
5 is received by the State Department of Education and for students
6 who have at least one incarcerated parent at the time the request
7 for a scholarship is received by the State Department of Education.
8 Scholarships shall be awarded beginning with the 2010-2011 school
9 year.

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

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

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

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

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

12 C. A student shall be eligible for a scholarship if the parent
13 or legal guardian of the student made a request for a scholarship
14 for the 2010-2011 school year and the student transferred to an
15 eligible private school but was subsequently denied a scholarship
16 because the student did not have an IEP in effect on October 1,
17 2009, but did meet all other eligibility requirements as set forth
18 in the Lindsey Nicole Henry Scholarships for Students with
19 Disabilities Program Act.

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

24

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

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

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

19 G. If the parent or legal guardian requests a Lindsey Nicole
20 Henry Scholarship and the student is accepted by the private school
21 pending the availability of a space for the student, the parent or
22 legal guardian of the student shall notify the State Department of
23 Education before entering the private school and before December 1
24 in order to be eligible for the scholarship during the school year

1 when a space becomes available for the student in the private
2 school. If notification is made after December 1, payment of the
3 scholarship shall not begin until the next school year.

4 H. To be eligible to participate in the Lindsey Nicole Henry
5 Scholarships for Students with Disabilities Program, a private
6 school shall notify the State Department of Education of its intent
7 to participate. The notice shall specify the grade levels and
8 services that the private school has available for students with
9 disabilities or with at least one incarcerated parent who are
10 participating in the scholarship program. The State Department of
11 Education shall approve a private school as eligible to participate
12 in the scholarship program upon determination that the private
13 school:

14 1. Meets the accreditation requirements set by the State Board
15 of Education or another accrediting association approved by the
16 State Board of Education;

17 2. Demonstrates fiscal soundness by having been in operation
18 for one (1) school year or providing the State Department of
19 Education with a statement by a certified public accountant
20 confirming that the private school desiring to participate is
21 insured and the owner or owners have sufficient capital or credit to
22 operate the school for the upcoming year by serving the number of
23 students anticipated with expected revenues from tuition and other
24 sources that may be reasonably expected. In lieu of a statement, a

1 surety bond or letter of credit for the amount equal to the
2 scholarship funds for any quarter may be filed with the Department;

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

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

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

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

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

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

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

19 a. the parent or legal guardian shall select the private
20 school from the schools approved for eligibility
21 pursuant to subsection H of this section and apply for
22 the admission of the child,
23
24

- 1 b. the parent or legal guardian shall request the
2 scholarship no later than December 1 of the school
3 year during which the scholarship is requested,
- 4 c. any student participating in the scholarship program
5 shall attend throughout the school year, unless
6 excused by the school for illness or other good cause,
7 and shall comply fully with the code of conduct for
8 the school,
- 9 d. the parent or legal guardian shall fully comply with
10 the parental involvement requirements of the private
11 school, unless excused by the school for illness or
12 other good cause, and
- 13 e. upon issuance of a scholarship warrant, the parent or
14 legal guardian to whom the warrant is made shall
15 restrictively endorse the warrant to the private
16 school for deposit into the account of the private
17 school. The parent or legal guardian may not
18 designate any entity or individual associated with the
19 private school as the attorney in fact for the parent
20 or legal guardian to endorse a warrant. A parent or
21 legal guardian who fails to comply with this
22 subparagraph shall forfeit the scholarship.

23 2. A participant who fails to comply with this subsection
24 forfeits the scholarship.

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

3 1. The State Department of Education shall calculate the total
4 cost of all scholarships for all eligible students in the state.
5 The State Department of Education shall then reserve or retain from
6 the total amount appropriated to the State Board of Education for
7 State Aid purposes and any other revenue available for allocation
8 for State Aid purposes the total cost for all scholarship payments;

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

21 3. The amount of the scholarship shall be the amount calculated
22 in paragraph 2 of this subsection or the amount of tuition and fees
23 for the private school, whichever is less, minus up to two and one-
24 half percent (2 1/2%) of the scholarship amount which may be

1 retained by the State Department of Education as a fee for
2 administrative services rendered. The amount of any assessment fee
3 required by the private school and the amount associated with
4 providing services and therapies to address the disabilities of the
5 student may be paid from the total amount of the scholarship. The
6 amount of the scholarship shall be prorated to reflect the number of
7 days remaining in the current school year, if the scholarship
8 request is granted after the beginning of the school year;

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

22 5. The State Department of Education shall not be responsible
23 for any additional costs associated with special education and
24 related services incurred by the private school for the student

1 including the cost of teachers, equipment, material, and special
2 costs associated with the special education class;

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

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

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

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

24

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

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

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

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

24

1 L. A parent or legal guardian who applies for a Lindsey Nicole
2 Henry Scholarship for a public school student who has at least one
3 incarcerated parent shall, in support of the application, provide
4 documentation verifying a parent is incarcerated in the custody of
5 the Department of Corrections, another out-of-state prison system,
6 or the Federal Bureau of Prisons. The documentation shall include,
7 but not be limited to, the active Department of Corrections inmate
8 number for the incarcerated parent.

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

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

20 ~~N.~~ O. If the State Department of Education determines that a
21 school district prior to the effective date of this act has failed
22 to comply with the provisions of the Lindsey Nicole Henry
23 Scholarships for Students with Disabilities Program Act and has
24 failed to make full or partial scholarship payments for eligible

1 students, the Department shall have authority to reduce the amount
2 of State Aid allocated to the school district or require the school
3 district to make repayment to the Department of State Aid
4 allocations in an amount equal to the amount of scholarship payments
5 the school district failed to make. The Department shall make
6 payment to the parent or legal guardian in the amount the school
7 district failed to make in the manner as provided for in subsection
8 J of this section.

9 SECTION 2. This act shall become effective November 1, 2020.

10
11 57-2-9569 AB 01/05/20
12
13
14
15
16
17
18
19
20
21
22
23
24