

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED

5 SENATE BILL NO. 126

By: Daniels of the Senate

and

6 Martinez of the House

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10 COMMITTEE SUBSTITUTE

11 An Act relating to the Lindsey Nicole Henry
12 Scholarships for Students with Disabilities Program;
13 amending 70 O.S. 2011, Section 13-101.2, as last
14 amended by Section 1, Chapter 1, O.S.L. 2020 (70 O.S.
15 Supp. 2020, Section 13-101.2), which relates to
eligibility for the program; modifying discrimination
prohibition to which participating private schools
must comply; providing an effective date; and
declaring an emergency.

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

20 SECTION 1. AMENDATORY 70 O.S. 2011, Section 13-101.2, as
21 last amended by Section 1, Chapter 1, O.S.L. 2020 (70 O.S. Supp.
22 2020, Section 13-101.2), is amended to read as follows:

23 Section 13-101.2 A. There is hereby created the Lindsey Nicole
24 Henry Scholarships for Students with Disabilities Program. The

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

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

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

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

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

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

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

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

1 school. If notification is made after December 1, payment of the
2 scholarship shall not begin until the next school year.

3 H. 1. To be eligible to participate in the Lindsey Nicole
4 Henry Scholarships for Students with Disabilities Program, a private
5 school shall notify the State Department of Education of its intent
6 to participate. The notice shall specify the grade levels and
7 services that the private school has available for students with
8 disabilities who are participating in the scholarship program. The
9 State Department of Education shall approve a private school as
10 eligible to participate in the scholarship program upon
11 determination that the private school:

12 a. meets the accreditation requirements set by the State
13 Board of Education or another accrediting association
14 approved by the State Board of Education. The State
15 Department of Education shall list on its website all
16 accrediting associations approved by the Board,

17 b. demonstrates fiscal soundness by having been in
18 operation for one (1) school year or providing the
19 State Department of Education with a statement by a
20 certified public accountant confirming that the
21 private school desiring to participate is insured and
22 the owner or owners have sufficient capital or credit
23 to operate the school for the upcoming year by serving
24 the number of students anticipated with expected

1 revenues from tuition and other sources that may be
2 reasonably expected. In lieu of a statement, a surety
3 bond or letter of credit for the amount equal to the
4 scholarship funds for any quarter may be filed with
5 the Department,

6 c. ~~complies with the antidiscrimination provisions of 42~~
7 ~~U.S.C., Section 2000d~~ prohibits discrimination on the
8 basis of race, color and national origin,

9 d. meets state and local health and safety laws and
10 codes,

11 e. will be academically accountable to the parent or
12 legal guardian for meeting the educational needs of
13 the student,

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

20 g. complies with all state laws relating to general
21 regulation of private schools, and

22 h. adheres to the tenets of its published disciplinary
23 procedures prior to the expulsion of a scholarship
24 student.

1 2. Upon approval of a private school, the State Department of
2 Education shall provide on its website all information and material
3 submitted by the private school with its application.

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

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

1 school for deposit into the account of the private
2 school. The parent or legal guardian may not
3 designate any entity or individual associated with the
4 private school as the attorney in fact for the parent
5 or legal guardian to endorse a warrant. A parent or
6 legal guardian who fails to comply with this
7 subparagraph shall forfeit the scholarship.

8 2. A participant who fails to comply with this subsection
9 forfeits the scholarship.

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

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

18 2. The maximum scholarship granted for an eligible student with
19 disabilities shall be a calculated amount equivalent to the total
20 State Aid factors for the applicable school year multiplied by the
21 grade and disability weights generated by that student for the
22 applicable school year. The disability weights used in calculating
23 the scholarship amount shall include all disability weights which
24 correspond to the disabilities included in the multidisciplinary

1 evaluation and eligibility group summary for the student at the time
2 the request for a scholarship is made by the parent or legal
3 guardian. The maximum scholarship amount shall be calculated by the
4 State Board of Education for each year the student is participating
5 in the scholarship program;

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

18 4. The State Department of Education shall notify the private
19 school of the amount of the scholarship within ten (10) days after
20 receiving the request for a scholarship, when the total State Aid
21 factors have been determined for the current fiscal year. The
22 initial payment shall be made after the Department verifies
23 admission acceptance and enrollment. Quarterly payments shall be
24 made upon verification of continued enrollment and attendance at the

1 private school. Payment shall be made by the Department with an
2 individual warrant made payable to the parent or legal guardian of
3 the student and mailed by the Department to the private school that
4 the parent or legal guardian chooses. The parent or legal guardian
5 shall restrictively endorse the warrant to the private school for
6 deposit into the account of the private school;

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

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

15 7. The State Department of Education shall require an annual,
16 notarized, sworn compliance statement by participating private
17 schools certifying compliance with state laws and shall retain all
18 records received from a participating private school. The State
19 Department of Education shall post on its website the annual
20 compliance statement for each 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.

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~~ August 26,

1 2011, has failed to comply with the provisions of the Lindsey Nicole
2 Henry Scholarships for Students with Disabilities Program Act and
3 has 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 O. The State Department of Education shall annually prepare and
13 post on its website a report of Lindsey Nicole Henry Scholarships
14 for Students with Disabilities Program. The annual report shall
15 include, but not be limited to, the following information:

16 1. The total number and amount of scholarships awarded and
17 reported for each participating private school;

18 2. The total number of scholarships denied;

19 3. The total number and amount of scholarship payments
20 suspended for each participating private school; and

21 4. Data on participating students, disaggregated by years of
22 participation in the program, grade level, economically
23 disadvantaged status, racial and ethnic groups and disability
24 category.

1 SECTION 2. This act shall become effective July 1, 2021.

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

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7 58-1-8074 AMM 04/06/21