

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 58th Legislature (2021)

4 COMMITTEE SUBSTITUTE
5 FOR ENGROSSED
6 SENATE BILL NO. 126

By: Daniels of the Senate

and

Martinez of the House

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9
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11 COMMITTEE SUBSTITUTE

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

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

22 SECTION 1. AMENDATORY 70 O.S. 2011, Section 13-101.2, as
23 last amended by Section 1, Chapter 1, O.S.L. 2020 (70 O.S. Supp.
24 2020, Section 13-101.2), is amended to read as follows:

1 Section 13-101.2 A. There is hereby created the Lindsey Nicole
2 Henry Scholarships for Students with Disabilities Program. The
3 Lindsey Nicole Henry Scholarships for Students with Disabilities
4 Program is established to provide a scholarship to a private school
5 of choice for students with disabilities for whom an individualized
6 education program (IEP) in accordance with the Individuals with
7 Disabilities Education Act (IDEA) or an individualized service plan
8 pursuant to Section 1-4-704 of Title 10A of the Oklahoma Statutes
9 has been developed at any time prior to notifying the State
10 Department of Education of the intent to participate in the Program
11 and the IEP is in effect at the time the request for a scholarship
12 is received by the State Department of Education. Scholarships
13 shall be awarded beginning with the 2010-2011 school year.

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

19 1. The student has spent the prior school year in attendance at
20 a public school in this state. For purposes of this section, "prior
21 school year in attendance" means that the student was enrolled in
22 and reported by a school district for funding purposes during the
23 preceding school year regardless of whether or not the student had
24 an IEP at the time the student was counted for funding purposes. A

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

19 2. The parent or legal guardian has obtained acceptance for
20 admission of the student to a private school that is eligible for
21 the program as provided in subsection H of this section and has
22 notified the State Department of Education of the request for a
23 scholarship. Requests to participate in the program made after
24 December 1 shall be granted, but funding for scholarships requested

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

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

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

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

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

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

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

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

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

- 14 a. meets the accreditation requirements set by the State
15 Board of Education or another accrediting association
16 approved by the State Board of Education. The State
17 Department of Education shall list on its website all
18 accrediting associations approved by the Board,
- 19 b. demonstrates fiscal soundness by having been in
20 operation for one (1) school year or providing the
21 State Department of Education with a statement by a
22 certified public accountant confirming that the
23 private school desiring to participate is insured and
24 the owner or owners have sufficient capital or credit

1 to operate the school for the upcoming year by serving
2 the number of students anticipated with expected
3 revenues from tuition and other sources that may be
4 reasonably expected. In lieu of a statement, a surety
5 bond or letter of credit for the amount equal to the
6 scholarship funds for any quarter may be filed with
7 the Department,

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

11 d. meets state and local health and safety laws and
12 codes,

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

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

22 g. complies with all state laws relating to general
23 regulation of private schools, and
24

1 h. adheres to the tenets of its published disciplinary
2 procedures prior to the expulsion of a scholarship
3 student.

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

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

9 a. the parent or legal guardian shall select the private
10 school from the schools approved for eligibility
11 pursuant to subsection H of this section and apply for
12 the admission of the child,

13 b. the parent or legal guardian shall request the
14 scholarship no later than December 1 of the school
15 year during which the scholarship is requested,

16 c. any student participating in the scholarship program
17 shall attend throughout the school year, unless
18 excused by the school for illness or other good cause,
19 and shall comply fully with the code of conduct for
20 the school,

21 d. the parent or legal guardian shall fully comply with
22 the parental involvement requirements of the private
23 school, unless excused by the school for illness or
24 other good cause, and

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

11 2. A participant who fails to comply with this subsection
12 forfeits the scholarship.

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

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

21 2. The maximum scholarship granted for an eligible student with
22 disabilities shall be a calculated amount equivalent to the total
23 State Aid factors for the applicable school year multiplied by the
24 grade and disability weights generated by that student for the

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

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

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

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

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

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

18 7. The State Department of Education shall require an annual,
19 notarized, sworn compliance statement by participating private
20 schools certifying compliance with state laws and shall retain all
21 records received from a participating private school. The State
22 Department of Education shall post on its website the annual
23 compliance statement for each 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~~7~~ 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~~7~~ 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~~7~~ 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~~ August 26,
5 2011, has failed to comply with the provisions of the Lindsey Nicole
6 Henry Scholarships for Students with Disabilities Program Act and
7 has 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 O. The State Department of Education shall annually prepare and
17 post on its website a report of Lindsey Nicole Henry Scholarships
18 for Students with Disabilities Program. The annual report shall
19 include, but not be limited to, the following information:

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

22 2. The total number of scholarships denied;

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

1 4. Data on participating students, disaggregated by years of
2 participation in the program, grade level, economically
3 disadvantaged status, racial and ethnic groups and disability
4 category.

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

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

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11 COMMITTEE REPORT BY: COMMITTEE ON COMMON EDUCATION, dated 04/06/2021
12 - DO PASS, As Amended.