

1 **SENATE FLOOR VERSION**

2 February 23, 2021

3 SENATE BILL NO. 126

By: Daniels

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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 1, O.S.L. 2020 (70 O.S.  
11 Supp. 2020, Section 13-101.2), which relates to  
eligibility for the program; modifying discrimination  
prohibition to which participating private schools  
must comply; updating reference; providing an  
effective date; and declaring an emergency.

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

15 SECTION 1. AMENDATORY 70 O.S. 2011, Section 13-101.2, as  
16 last amended by Section 1, Chapter 1, O.S.L. 2020 (70 O.S. Supp.  
17 2020, Section 13-101.2), is amended to read as follows:

18 Section 13-101.2. A. There is hereby created the Lindsey  
19 Nicole Henry Scholarships for Students with Disabilities Program.  
20 The Lindsey Nicole Henry Scholarships for Students with Disabilities  
21 Program is established to provide a scholarship to a private school  
22 of choice for students with disabilities for whom an individualized  
23 education program (IEP) in accordance with the Individuals with  
24 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. Scholarships  
6 shall be awarded beginning with the 2010-2011 school year.

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

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

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

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

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

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

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

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

1 included in the copy of the "Parents Rights in Special Education:  
2 Notice of Procedural Safeguards" document given to parents at least  
3 annually or as otherwise required by law.

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

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

12 G. If the parent or legal guardian requests a Lindsey Nicole  
13 Henry Scholarship and the student is accepted by the private school  
14 pending the availability of a space for the student, the parent or  
15 legal guardian of the student shall notify the State Department of  
16 Education before entering the private school and before December 1  
17 in order to be eligible for the scholarship during the school year  
18 when a space becomes available for the student in the private  
19 school. If notification is made after December 1, payment of the  
20 scholarship shall not begin until the next school year.

21 H. 1. To be eligible to participate in the Lindsey Nicole  
22 Henry Scholarships for Students with Disabilities Program, a private  
23 school shall notify the State Department of Education of its intent  
24 to participate. The notice shall specify the grade levels and

1 services that the private school has available for students with  
2 disabilities who are participating in the scholarship program. The  
3 State Department of Education shall approve a private school as  
4 eligible to participate in the scholarship program upon  
5 determination that the private school:

6       a. meets the accreditation requirements set by the State  
7       Board of Education or another accrediting association  
8       approved by the State Board of Education. The State  
9       Department of Education shall list on its website all  
10      accrediting associations approved by the Board,

11      b. demonstrates fiscal soundness by having been in  
12      operation for one (1) school year or providing the  
13      State Department of Education with a statement by a  
14      certified public accountant confirming that the  
15      private school desiring to participate is insured and  
16      the owner or owners have sufficient capital or credit  
17      to operate the school for the upcoming year by serving  
18      the number of students anticipated with expected  
19      revenues from tuition and other sources that may be  
20      reasonably expected. In lieu of a statement, a surety  
21      bond or letter of credit for the amount equal to the  
22      scholarship funds for any quarter may be filed with  
23      the Department,

- c. ~~complies with the antidiscrimination~~ prohibits discrimination on the basis of race, color and national origin in compliance with the provisions of 42 U.S.C., Section 2000d,
- d. meets state and local health and safety laws and codes,
- e. will be academically accountable to the parent or legal guardian for meeting the educational needs of the student,
- f. employs or contracts with teachers who hold baccalaureate or higher degrees, or have at least three (3) years of teaching experience in public or private schools, or have special skills, knowledge, or expertise that qualifies them to provide instruction in subjects taught,
- g. complies with all state laws relating to general regulation of private schools, and
- h. adheres to the tenets of its published disciplinary procedures prior to the expulsion of a scholarship student.

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

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. The amount of any assessment fee  
9 required by the private school and the amount associated with  
10 providing services and therapies to address the disabilities of the  
11 student may be paid from the total amount of the scholarship. The  
12 amount of the scholarship shall be prorated to reflect the number of  
13 days remaining in the current school year, if the scholarship  
14 request is granted after the beginning of the school year;

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

1 the parent or legal guardian chooses. The parent or legal guardian  
2 shall restrictively endorse the warrant to the private school for  
3 deposit into the account of the private school;

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

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

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

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

21 K. 1. The State Superintendent of Public Instruction shall  
22 deny, suspend, or revoke the participation of a private school in  
23 the scholarship program if it is determined that the private school  
24 has failed to comply with the provisions of this section. However,

1 in instances in which the noncompliance is correctable within a  
2 reasonable amount of time and in which the health, safety, or  
3 welfare of the students is not threatened, the Superintendent may  
4 issue a notice of noncompliance which shall provide the private  
5 school with a time frame within which to provide evidence of  
6 compliance prior to taking action to suspend or revoke participation  
7 in the scholarship program.

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

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

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

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

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

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

19 N. If the State Department of Education determines that a  
20 school district prior to ~~the effective date of this act~~ August 26,  
21 2011, has failed to comply with the provisions of the Lindsey Nicole  
22 Henry Scholarships for Students with Disabilities Program Act and  
23 has failed to make full or partial scholarship payments for eligible  
24 students, the Department shall have authority to reduce the amount

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

8 O. The State Department of Education shall annually prepare and  
9 post on its website a report of Lindsey Nicole Henry Scholarships  
10 for Students with Disabilities Program. The annual report shall  
11 include, but not be limited to, the following information:

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

14 2. The total number of scholarships denied;

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

17 4. Data on participating students, disaggregated by years of  
18 participation in the program, grade level, economically  
19 disadvantaged status, racial and ethnic groups and disability  
20 category.

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

22 SECTION 3. It being immediately necessary for the preservation  
23 of the public peace, health or safety, an emergency is hereby  
24

1 declared to exist, by reason whereof this act shall take effect and  
2 be in full force from and after its passage and approval.

3 COMMITTEE REPORT BY: COMMITTEE ON EDUCATION  
4 February 23, 2021 - DO PASS  
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