

1 ENGROSSED SENATE
2 BILL NO. 358

By: Daniels of the Senate

3 and

4 Echols and Conley of the
5 House

6 An Act relating to the Lindsey Nicole Henry
7 Scholarships for Students with Disabilities Program;
8 amending 70 O.S. 2021, Section 13-101.2, which
9 relates to eligibility for the program; removing
10 requirement for prior public school year attendance;
11 providing certain exemption to certain students;
12 modifying reference to weights to be used in certain
13 calculation; providing for calculation of scholarship
14 amount if certain private school does not charge
15 tuition; and updating statutory language.

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

17 SECTION 1. AMENDATORY 70 O.S. 2021, Section 13-101.2, is
18 amended to read as follows:

19 Section 13-101.2. A. There is hereby created the Lindsey
20 Nicole Henry Scholarships for Students with Disabilities Program.
21 The Lindsey Nicole Henry Scholarships for Students with Disabilities
22 Program is established to provide a scholarship to a private school
23 of choice for students with disabilities for whom an individualized
24 education program (IEP) in accordance with the Individuals with
Disabilities Education Act (IDEA) or an individualized service plan
pursuant to Section 1-4-704 of Title 10A of the Oklahoma Statutes
has been developed at any time prior to notifying the State

1 Department of Education of the intent to participate in the Program
2 and the IEP is in effect at the time the request for a scholarship
3 is received by the State Department of Education. Scholarships
4 shall be awarded beginning with the 2010-2011 school year.

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

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

~~exempt from the requirements of this paragraph but shall be required to meet all other eligibility requirements to participate as provided for in this section. A~~ an IEP or individualized service plan as provided for in subsection A of this section; provided, however, a student who was in out-of-home placement with the Department of Human Services⁷; who was adopted while in the permanent custody of the Department of Human Services, an international child-placing agency, a child-placing agency in this state, or a federally recognized Indian tribe; who is enrolling or is enrolled in a school that exclusively serves students experiencing homelessness; or who was in out-of-home placement with the Office of Juvenile Affairs shall ~~be exempt from the requirements of this paragraph but shall be required to meet all other eligibility requirements to participate as provided for in this section~~ not be required to have an IEP or an individualized service plan; and

2. The parent or legal guardian has obtained acceptance for admission of the student to a private school that is eligible for the program as provided in subsection H of this section and has notified the State Department of Education of the request for a scholarship. Requests to participate in the program made after December 1 shall be granted, but funding for scholarships requested after December 1 shall not be available until the beginning of the 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 in which
4 the student is enrolled, if applicable, upon receipt of the request.
5 For purposes of continuity of educational choice, the scholarship
6 shall remain in force until the student ~~returns to~~ enrolls in a
7 public school, graduates from high school, or reaches the age of
8 twenty-two (22), whichever occurs first. At any time, the parent or
9 legal guardian of the student may remove the student from the
10 private school and place the student in another private school that
11 is eligible for the program as provided in subsection H of this
12 section or place the student in a public school.

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

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

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,

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

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

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

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

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

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~~ for which the student
22 is eligible for the applicable school year. The disability weights
23 used in calculating the scholarship amount shall include all
24 disability weights which correspond to the disabilities included in

1 the multidisciplinary evaluation and eligibility group summary for
2 the student at the time the request for a scholarship is made by the
3 parent or legal guardian. The maximum scholarship amount shall be
4 calculated by the State Board of Education for each year the student
5 is participating 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. If a private school does not
12 charge tuition, the amount of the scholarship shall be the amount
13 calculated in paragraph 2 of this subsection minus up to two and
14 one-half percent (2 1/2%) of the scholarship amount which may be
15 retained by the State Department of Education as a fee for
16 administrative services rendered. The amount of any assessment fee
17 required by the private school and the amount associated with
18 providing services and therapies to address the disabilities of the
19 student may be paid from the total amount of the scholarship. The
20 amount of the scholarship shall be prorated to reflect the number of
21 days remaining in the current school year, if the scholarship
22 request is granted after the beginning of the school year;

23 4. The State Department of Education shall notify the private
24 school of the amount of the scholarship within ten (10) days after

1 receiving the request for a scholarship, when the total State Aid
2 factors have been determined for the current fiscal year. The
3 initial payment shall be made after the Department verifies
4 admission acceptance and enrollment. Quarterly payments shall be
5 made upon verification of continued enrollment and attendance at the
6 private school. Payment shall be made by the Department with an
7 individual warrant made payable to the parent or legal guardian of
8 the student and mailed by the Department to the private school that
9 the parent or legal guardian chooses. The parent or legal guardian
10 shall restrictively endorse the warrant to the private school for
11 deposit into the account of the private school;

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

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

20 7. The State Department of Education shall require an annual,
21 notarized, sworn compliance statement by participating private
22 schools certifying compliance with state laws and shall retain all
23 records received from a participating private school. The State
24

1 Department of Education shall post on its website the annual
2 compliance statement for each participating private school; and

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

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

17 2. If the Superintendent intends to deny, suspend, or revoke
18 the participation of a private school in the scholarship program,
19 the Department shall notify the private school of the proposed
20 action in writing by certified mail and regular mail to the private
21 school's address of record with the Department. The Department
22 shall also notify any parents or legal guardians of scholarship
23 students attending the private school. The notification shall
24

1 include the reasons for the proposed action and notice of the
2 timelines and procedures set forth in this subsection.

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

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

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

17 L. No liability shall arise on the part of the state, the State
18 Board of Education, the State Department of Education, or a school
19 district based on the award or use of any scholarship provided
20 through the Lindsey Nicole Henry Scholarships for Students with
21 Disabilities Program.

22 M. The inclusion of private schools within options available to
23 public school students in Oklahoma shall not expand the regulatory
24 authority of the state or any school district to impose any

1 additional regulation of private schools beyond those reasonably
2 necessary to enforce the requirements expressly set forth in this
3 section.

4 N. If the State Department of Education determines that a
5 school district prior to ~~the effective date of this act~~ August 26,
6 2011, has failed to comply with the provisions of the Lindsey Nicole
7 Henry Scholarships for Students with Disabilities Program Act and
8 has failed to make full or partial scholarship payments for eligible
9 students, the Department shall have authority to reduce the amount
10 of State Aid allocated to the school district or require the school
11 district to make repayment to the Department of State Aid
12 allocations in an amount equal to the amount of scholarship payments
13 the school district failed to make. The Department shall make
14 payment to the parent or legal guardian in the amount the school
15 district failed to make in the manner as provided for in subsection
16 J of this section.

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

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

23 2. The total number of scholarships denied;

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

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

Passed the Senate the 13th day of March, 2023.

Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____,
2023.

Presiding Officer of the House
of Representatives