

1 STATE OF OKLAHOMA

2 1st Session of the 55th Legislature (2015)

3 HOUSE BILL 2004

By: Nelson

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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 342, O.S.L. 2014 (70 O.S. Supp. 2014, Section
10 13-101.2), which relates to the Lindsey Nicole Henry
11 Scholarships for Students with Disabilities Program
12 Act; modifying eligibility criteria for students with
13 disabilities; clarifying exemption for students
14 provided services under an Individual Family Service
15 Plan; stating responsibility of parents to pay
16 tuition until scholarship funding begins; prohibiting
17 retroactive funding; making parents responsible for
18 certain expenses; deleting obsolete exemption for
19 certain students; clarifying when scholarships begin;
20 modifying private school selection process and
21 forfeiture requirements; clarifying type of document;
22 changing entity responsible for certain
23 notifications; adding definitions; providing an
24 effective date; and declaring an emergency.

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 342, O.S.L. 2014 (70 O.S. Supp.
22 2014, Section 13-101.2), is amended to read as follows:

23 Section 13-101.2 A. 1. There is hereby created the Lindsey
24 Nicole Henry Scholarships for Students with Disabilities Program.

1 The 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~~ who:

4 a. have been determined to be eligible for services under
5 Section 300.306 of the Individuals with Disabilities
6 Education Act (IDEA),

7 b. have an individualized education program (IEP) in
8 accordance with ~~the Individuals with Disabilities~~
9 ~~Education Act (IDEA) has been developed~~ Section
10 300.320 of IDEA in effect at any time prior to
11 notifying the State Department of Education of the
12 intent to participate in the Program, ~~and the~~

13 c. have an IEP is in effect in accordance with Section
14 300.323 of IDEA at the time the request for a
15 scholarship is received by the State Department of
16 Education.

17 2. Scholarships shall be awarded beginning with the 2010-2011
18 school year.

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

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

20 2. The parent or legal guardian has obtained acceptance for
21 admission of the student to a private school that is eligible for
22 the program as provided in subsection ~~H~~ G of this section and has
23 notified the State Department of Education of the request for a
24 scholarship. Requests to participate in the program made after

1 December 1 shall be granted, but funding for scholarships requested
2 after December 1 shall not be available until the beginning of the
3 next school year. It shall be the responsibility of the parent or
4 legal guardian to remit payment for tuition to the private school
5 until funding for the scholarship begins at the beginning of the
6 next school year. Funding for scholarships requested shall not be
7 retroactive. Any expenses incurred at a private school prior to a
8 determination of the eligibility of the student shall be the
9 responsibility of the parent or legal guardian. The request shall
10 be through a communication directly to the Department in a manner
11 that creates a written or electronic record of the request and the
12 date of receipt of the request. The Department shall notify the
13 school district upon receipt of the request. For purposes of
14 continuity of educational choice, the scholarship shall remain in
15 force until the student returns to a public school, graduates from
16 high school or reaches the age of twenty-two (22), whichever occurs
17 first. At any time, the parent or legal guardian of the student may
18 remove the student from the private school and place the student in
19 another private school that is eligible for the program as provided
20 in subsection ~~H~~ G of this section or place the student in a public
21 school.

22 C. ~~A student shall be eligible for a scholarship if the parent~~
23 ~~or legal guardian of the student made a request for a scholarship~~
24 ~~for the 2010-2011 school year and the student transferred to an~~

1 ~~eligible private school but was subsequently denied a scholarship~~
2 ~~because the student did not have an IEP in effect on October 1,~~
3 ~~2009, but did meet all other eligibility requirements as set forth~~
4 ~~in the Lindsey Nicole Henry Scholarships for Students with~~
5 ~~Disabilities Program Act.~~

6 ~~D.~~ A student shall not be eligible for a Lindsey Nicole Henry
7 Scholarship if the student is not having regular and direct contact
8 with the private school teachers at the physical location of the
9 private school.

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

19 ~~F.~~ E. 1. Acceptance of a Lindsey Nicole Henry Scholarship
20 shall have the same effect as a parental revocation of consent to
21 service pursuant to 20 U.S.C., Sections 1414(a)(1)(D) and 1414(C) of
22 the IDEA.

23 2. Upon acceptance of a Lindsey Nicole Henry Scholarship, the
24 parent or legal guardian shall assume full financial responsibility

1 for the education of the student, including but not limited to
2 transportation to and from the private school.

3 ~~G.~~ F. If the parent or legal guardian requests a Lindsey Nicole
4 Henry Scholarship and the student is accepted by the private school
5 pending the availability of a space for the student, the parent or
6 legal guardian of the student shall notify the State Department of
7 Education before entering the private school and before December 1
8 in order to be eligible for the scholarship during the school year
9 when a space becomes available for the student in the private
10 school. If notification is made after December 1, payment of the
11 scholarship shall not begin until the beginning of the next school
12 year.

13 ~~H.~~ G. To be eligible to participate in the Lindsey Nicole Henry
14 Scholarships for Students with Disabilities Program, a private
15 school shall notify the State Department of Education of its intent
16 to participate. The notice shall specify the grade levels and
17 services that the private school has available for students with
18 disabilities who are participating in the scholarship program. The
19 State Department of Education shall approve a private school as
20 eligible to participate in the scholarship program upon
21 determination that the private school:

22 1. Meets the accreditation requirements set by the State Board
23 of Education or another accrediting association approved by the
24 State Board of Education;

1 2. Demonstrates fiscal soundness by having been in operation
2 for one (1) school year or providing the State Department of
3 Education with a statement by a certified public accountant
4 confirming that the private school desiring to participate is
5 insured and the owner or owners have sufficient capital or credit to
6 operate the school for the upcoming year by serving the number of
7 students anticipated with expected revenues from tuition and other
8 sources that may be reasonably expected. In lieu of a statement, a
9 surety bond or letter of credit for the amount equal to the
10 scholarship funds for any quarter may be filed with the Department;

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

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

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

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

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

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

1 ~~F.~~ H. 1. Lindsey Nicole Henry Scholarship Program participants
2 shall comply with the following:

3 a. the parent or legal guardian shall select ~~the~~ a
4 private school from the list of private schools
5 approved for eligibility pursuant to subsection ~~H~~ G of
6 this section and apply for the admission of the ~~child~~
7 student,

8 b. the parent or legal guardian shall request the
9 scholarship no later than December 1 of the school
10 year during which the scholarship is requested.
11 Requests made after December 1 shall be granted but
12 funding for the scholarship shall not be available
13 until the beginning of the next school year. It shall
14 be the responsibility of the parent or legal guardian
15 to remit payment for tuition to the private school
16 until funding for the scholarship begins at the
17 beginning of the next school year. Funding for
18 scholarships requested shall not be retroactive. Any
19 expenses incurred at a private school prior to a
20 determination of the eligibility of the student shall
21 be the responsibility of the parent or legal guardian,

22 c. any student participating in the scholarship program
23 shall attend throughout the school year, unless
24 excused by the school for illness or other good cause,

1 and shall comply fully with the code of conduct for
2 the school,

3 d. the parent or legal guardian shall fully comply with
4 the parental involvement requirements of the private
5 school, unless excused by the school for illness or
6 other good cause, and

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

17 2. A ~~participant~~ parent or legal guardian who fails to comply
18 with this subsection forfeits the scholarship.

19 ~~¶~~ I. Provisions governing payment of a Lindsey Nicole Henry
20 Scholarship shall be as follows:

21 1. The State Department of Education shall calculate the total
22 cost of all scholarships for all eligible students in the state.
23 The State Department of Education shall then reserve or retain from
24 the total amount appropriated to the State Board of Education for

1 State Aid purposes and any other revenue available for allocation
2 for State Aid purposes the total cost for all scholarship payments;

3 2. The maximum scholarship granted for an eligible student with
4 disabilities shall be a calculated amount equivalent to the total
5 State Aid factors for the applicable school year multiplied by the
6 grade and disability weights generated by that student for the
7 applicable school year. The disability weights used in calculating
8 the scholarship amount shall include all disability weights which
9 correspond to the disabilities included in the ~~multidisciplinary~~
10 ~~evaluation and eligibility group summary~~ Multidisciplinary
11 Evaluation and Eligibility Group Summary (MEEGS) Form for the
12 student at the time the request for a scholarship is made by the
13 parent or legal guardian. The maximum scholarship amount shall be
14 calculated by the State Board of Education for each year the student
15 is participating in the scholarship program;

16 3. The amount of the scholarship shall be the amount calculated
17 in paragraph 2 of this subsection or the amount of tuition and fees
18 for the private school, whichever is less, minus up to two and one-
19 half percent (2 1/2%) of the scholarship amount which may be
20 retained by the State Department of Education as a fee for
21 administrative services rendered. The amount of any assessment fee
22 required by the private school and the amount associated with
23 providing services and therapies to address the disabilities of the
24 student may be paid from the total amount of the scholarship. The

1 amount of the scholarship shall be prorated to reflect the number of
2 days remaining in the current school year, if the scholarship
3 request is granted after the beginning of the school year;

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

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

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

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

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

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

19 2. If the Superintendent intends to deny, suspend, or revoke
20 the participation of a private school in the scholarship program,
21 the Special Education Services Division of the Department shall
22 notify the private school of the proposed action in writing by
23 certified mail and regular mail to the private school's address of
24 record with the Department. The Department shall also notify any

1 parents or legal guardians of scholarship students attending the
2 private school. The notification shall include the reasons for the
3 proposed action and notice of the timelines and procedures set forth
4 in this subsection.

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

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

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

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

24

1 ~~M.~~ L. The inclusion of private schools within options available
2 to public school students in Oklahoma shall not expand the
3 regulatory authority of the state or any school district to impose
4 any additional regulation of private schools beyond those reasonably
5 necessary to enforce the requirements expressly set forth in this
6 section.

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

20 N. For purposes of this section:

21 1. "Prior school year in attendance" means that the student was
22 enrolled in and reported by a school district for funding purposes
23 during the preceding school year regardless of whether or not the
24

1 student had an IEP at the time the student was counted for funding
2 purposes;

3 2. "Funding purposes during the preceding school year" means
4 the student was included in the October 1st student count submitted
5 by the school district to the Department; and

6 3. "In effect" means the date from which an IEP has been
7 developed through the duration of services made available to the
8 student in accordance with the IEP.

9 SECTION 2. This act shall become effective July 1, 2015.

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

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