

1 ENGROSSED SENATE
2 BILL NO. 126

By: Daniels of the Senate

and

Martinez of the House

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6 An Act relating to the Lindsey Nicole Henry
7 Scholarships for Students with Disabilities Program;
8 amending 70 O.S. 2011, Section 13-101.2, as last
9 amended by Section 1, Chapter 1, O.S.L. 2020 (70 O.S.
10 Supp. 2020, Section 13-101.2), which relates to
11 eligibility for the program; removing language
12 requiring a student to have spent a prior year
13 enrolled in a public school district to be eligible;
14 removing certain exemptions to the prior year
15 enrollment requirement; expanding eligibility to
16 include students who were placed by a court in
17 certain guardianship; modifying discrimination
18 prohibition to which participating private schools
19 must comply; updating reference; providing an
20 effective date; and 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:

Section 13-101.2. A. There is hereby created the Lindsey
Nicole Henry Scholarships for Students with Disabilities Program.
The Lindsey Nicole Henry Scholarships for Students with Disabilities
Program is established to provide a scholarship to a private school
of choice for students with disabilities for whom an individualized

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

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

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

1 permanent change of station orders of the parent ~~shall~~
2 ~~be exempt from the requirements of this paragraph but~~
3 ~~shall be required to meet all other eligibility~~
4 ~~requirements to participate as provided for in this~~
5 ~~section. A student who,~~

6 b. has been provided services under an Individual Family
7 Service Plan through the SoonerStart program and
8 during transition was evaluated and determined to be
9 eligible for school district services ~~shall be exempt~~
10 ~~from the requirements of this paragraph but shall be~~
11 ~~required to meet all other eligibility requirements to~~
12 ~~participate as provided for in this section. A~~
13 ~~student who,~~

14 c. was in out-of-home placement with the Department of
15 Human Services, ~~who~~ or was adopted while in the
16 permanent custody of the Department of Human Services,

17 d. was placed by a court in the guardianship of another
18 including a kinship foster home, or ~~who~~

19 e. was in out-of-home placement with the Office of
20 Juvenile Affairs ~~shall be exempt from the requirements~~
21 ~~of this paragraph but shall be required to meet all~~
22 ~~other eligibility requirements to participate as~~
23 ~~provided for in this section; and~~

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

20 C. A student shall be eligible for a scholarship if the parent
21 or legal guardian of the student made a request for a scholarship
22 for the 2010-2011 school year and the student transferred to an
23 eligible private school but was subsequently denied a scholarship
24 because the student did not have an IEP in effect on October 1,

1 2009, but did meet all other eligibility requirements as set forth
2 in the Lindsey Nicole Henry Scholarships for Students with
3 Disabilities Program Act.

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

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

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

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

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

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

19 a. meets the accreditation requirements set by the State
20 Board of Education or another accrediting association
21 approved by the State Board of Education. The State
22 Department of Education shall list on its website all
23 accrediting associations approved by the Board,
24

- 1 b. demonstrates fiscal soundness by having been in
2 operation for one (1) school year or providing the
3 State Department of Education with a statement by a
4 certified public accountant confirming that the
5 private school desiring to participate is insured and
6 the owner or owners have sufficient capital or credit
7 to operate the school for the upcoming year by serving
8 the number of students anticipated with expected
9 revenues from tuition and other sources that may be
10 reasonably expected. In lieu of a statement, a surety
11 bond or letter of credit for the amount equal to the
12 scholarship funds for any quarter may be filed with
13 the Department,
- 14 c. ~~complies with the antidiscrimination provisions of 42~~
15 ~~U.S.C., Section 2000d~~ prohibits discrimination on the
16 basis of race, color and national origin,
- 17 d. meets state and local health and safety laws and
18 codes,
- 19 e. will be academically accountable to the parent or
20 legal guardian for meeting the educational needs of
21 the student,
- 22 f. employs or contracts with teachers who hold
23 baccalaureate or higher degrees, or have at least
24 three (3) years of teaching experience in public or

1 private schools, or have special skills, knowledge, or
2 expertise that qualifies them to provide instruction
3 in subjects taught,

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

6 h. adheres to the tenets of its published disciplinary
7 procedures prior to the expulsion of a scholarship
8 student.

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

12 I. 1. Lindsey Nicole Henry Scholarship Program participants
13 shall comply with the following:

14 a. the parent or legal guardian shall select the private
15 school from the schools approved for eligibility
16 pursuant to subsection H of this section and apply for
17 the admission of the child,

18 b. the parent or legal guardian shall request the
19 scholarship no later than December 1 of the school
20 year during which the scholarship is requested,

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

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 who fails to comply with this subsection
18 forfeits the scholarship.

19 J. 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 for the student at the time
11 the request for a scholarship is made by the parent or legal
12 guardian. The maximum scholarship amount shall be calculated by the
13 State Board of Education for each year the student is participating
14 in the scholarship program;

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

1 days remaining in the current school year, if the scholarship
2 request is granted after the beginning of the school year;

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

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

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

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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. The State
5 Department of Education shall post on its website the annual
6 compliance statement for each participating private school; and

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

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

21 2. If the Superintendent intends to deny, suspend, or revoke
22 the participation of a private school in the scholarship program,
23 the Department shall notify the private school of the proposed
24 action in writing by certified mail and regular mail to the private

1 school's address of record with the Department. The Department
2 shall also notify any parents or legal guardians of scholarship
3 students attending the private school. The notification shall
4 include the reasons for the proposed action and notice of the
5 timelines and procedures set forth in this subsection.

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

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

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

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

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

7 N. If the State Department of Education determines that a
8 school district prior to ~~the effective date of this act~~ August 26,
9 2011, has failed to comply with the provisions of the Lindsey Nicole
10 Henry Scholarships for Students with Disabilities Program Act and
11 has 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 J of this section.

20 O. The State Department of Education shall annually prepare and
21 post on its website a report of Lindsey Nicole Henry Scholarships
22 for Students with Disabilities Program. The annual report shall
23 include, but not be limited to, the following information:
24

- 1 1. The total number and amount of scholarships awarded and
2 reported for each participating private school;
- 3 2. The total number of scholarships denied;
- 4 3. The total number and amount of scholarship payments
5 suspended for each participating private school; and
- 6 4. Data on participating students, disaggregated by years of
7 participation in the program, grade level, economically
8 disadvantaged status, racial and ethnic groups and disability
9 category.

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

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

15 Passed the Senate the 9th day of March, 2021.

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Presiding Officer of the Senate

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19 Passed the House of Representatives the ____ day of _____,
20 2021.

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Presiding Officer of the House
of Representatives

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