

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 SENATE BILL 360

By: Daniels

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5
6 AS INTRODUCED

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 249, O.S.L. 2017 (70
11 O.S. Supp. 2018, Section 13-101.2), which relates to
12 eligibility for the program; allowing a student who
13 has at least one parent who is incarcerated to be
14 eligible for the program; directing certain
15 requesting parent or legal guardian to submit certain
16 documentation to verify the status of certain parent;
17 updating statutory reference; and providing an
18 effective date.

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 249, O.S.L. 2017 (70 O.S. Supp.
22 2018, Section 13-101.2), is amended to read as follows:

23 Section 13-101.2. A. There is hereby created the Lindsey
24 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
education program (IEP) in accordance with the Individuals with

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

11 B. The parent or legal guardian of a public school student with
12 a disability or with at least one parent who is incarcerated
13 pursuant to subsection L of this section may exercise their parental
14 option and request to have a Lindsey Nicole Henry Scholarship
15 awarded for the child to enroll in and attend a private school in
16 accordance with this section and the scholarship shall be awarded
17 if:

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

1 who transfers to a school in this state from out of state or from a
2 foreign country pursuant to a permanent change of station orders of
3 the parent shall be exempt from the requirements of this paragraph
4 but shall be required to meet all other eligibility requirements to
5 participate as provided for in this section. A student who has been
6 provided services under an Individual Family Service Plan through
7 the SoonerStart program and during transition was evaluated and
8 determined to be eligible for school district services shall be
9 exempt from the requirements of this paragraph but shall be required
10 to meet all other eligibility requirements to participate as
11 provided for in this section. A student who was in out-of-home
12 placement with the Department of Human Services, who was adopted
13 while in the permanent custody of the Department of Human Services
14 ~~or~~, who was in out-of-home placement with the Office of Juvenile
15 Affairs or who has at least one parent who is incarcerated pursuant
16 to subsection L of this section shall be exempt from the
17 requirements of this paragraph but shall be required to meet all
18 other eligibility requirements to participate as provided for in
19 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 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. The request shall be through a communication
4 directly to the Department in a manner that creates a written or
5 electronic record of the request and the date of receipt of the
6 request. The Department shall notify the school district upon
7 receipt of the request. For purposes of continuity of educational
8 choice, the scholarship shall remain in force until the student
9 returns to a public school, graduates from high school or reaches
10 the age of twenty-two (22), whichever occurs first. At any time,
11 the parent or legal guardian of the student may remove the student
12 from the private school and place the student in another private
13 school that is eligible for the program as provided in subsection H
14 of this section or place the student in a public school.

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

23 D. A student shall not be eligible for a Lindsey Nicole Henry
24 Scholarship if the student is not having regular and direct contact

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

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

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

22 G. If the parent or legal guardian requests a Lindsey Nicole
23 Henry Scholarship and the student is accepted by the private school
24 pending the availability of a space for the student, the parent or

1 legal guardian of the student shall notify the State Department of
2 Education before entering the private school and before December 1
3 in order to be eligible for the scholarship during the school year
4 when a space becomes available for the student in the private
5 school. If notification is made after December 1, payment of the
6 scholarship shall not begin until the next school year.

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

16 1. Meets the accreditation requirements set by the State Board
17 of Education or another accrediting association approved by the
18 State Board of Education;

19 2. Demonstrates fiscal soundness by having been in operation
20 for one (1) school year or providing the State Department of
21 Education with a statement by a certified public accountant
22 confirming that the private school desiring to participate is
23 insured and the owner or owners have sufficient capital or credit to
24 operate the school for the upcoming year by serving the number of

1 students anticipated with expected revenues from tuition and other
2 sources that may be reasonably expected. In lieu of a statement, a
3 surety bond or letter of credit for the amount equal to the
4 scholarship funds for any quarter may be filed with the Department;

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

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

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

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

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

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

19 I. 1. Lindsey Nicole Henry Scholarship Program participants
20 shall comply with the following:

- 21 a. the parent or legal guardian shall select the private
22 school from the schools approved for eligibility
23 pursuant to subsection H of this section and apply for
24 the admission of the child,

- 1 b. the parent or legal guardian shall request the
2 scholarship no later than December 1 of the school
3 year during which the scholarship is requested,
4 c. any student participating in the scholarship program
5 shall attend throughout the school year, unless
6 excused by the school for illness or other good cause,
7 and shall comply fully with the code of conduct for
8 the school,
9 d. the parent or legal guardian shall fully comply with
10 the parental involvement requirements of the private
11 school, unless excused by the school for illness or
12 other good cause, and
13 e. upon issuance of a scholarship warrant, the parent or
14 legal guardian to whom the warrant is made shall
15 restrictively endorse the warrant to the private
16 school for deposit into the account of the private
17 school. The parent or legal guardian may not
18 designate any entity or individual associated with the
19 private school as the attorney in fact for the parent
20 or legal guardian to endorse a warrant. A parent or
21 legal guardian who fails to comply with this
22 subparagraph shall forfeit the scholarship.

23 2. A participant who fails to comply with this subsection
24 forfeits the scholarship.

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

3 1. The State Department of Education shall calculate the total
4 cost of all scholarships for all eligible students in the state.
5 The State Department of Education shall then reserve or retain from
6 the total amount appropriated to the State Board of Education for
7 State Aid purposes and any other revenue available for allocation
8 for State Aid purposes the total cost for all scholarship payments;

9 2. The maximum scholarship granted for an eligible student with
10 disabilities shall be a calculated amount equivalent to the total
11 State Aid factors for the applicable school year multiplied by the
12 grade and disability weights generated by that student for the
13 applicable school year. The disability weights used in calculating
14 the scholarship amount shall include all disability weights which
15 correspond to the disabilities included in the multidisciplinary
16 evaluation and eligibility group summary for the student at the time
17 the request for a scholarship is made by the parent or legal
18 guardian. The maximum scholarship amount shall be calculated by the
19 State Board of Education for each year the student is participating
20 in the scholarship program;

21 3. The amount of the scholarship shall be the amount calculated
22 in paragraph 2 of this subsection or the amount of tuition and fees
23 for the private school, whichever is less, minus up to two and one-
24 half percent (2 1/2%) of the scholarship amount which may be

1 retained by the State Department of Education as a fee for
2 administrative services rendered. The amount of any assessment fee
3 required by the private school and the amount associated with
4 providing services and therapies to address the disabilities of the
5 student may be paid from the total amount of the scholarship. The
6 amount of the scholarship shall be prorated to reflect the number of
7 days remaining in the current school year, if the scholarship
8 request is granted after the beginning of the school year;

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

22 5. The State Department of Education shall not be responsible
23 for any additional costs associated with special education and
24 related services incurred by the private school for the student

1 including the cost of teachers, equipment, material, and special
2 costs associated with the special education class;

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

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

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

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

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

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

15 4. Upon receipt of a request for a hearing, the State Board of
16 Education shall commence a hearing within sixty (60) days after the
17 receipt of the formal written request and enter an order within
18 thirty (30) days after the hearing.

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

1 L. A parent or legal guardian who requests a Lindsey Nicole
2 Henry Scholarship for a public school student who has at least one
3 parent who is incarcerated, shall provide to the State Board of
4 Education documentation verifying a parent is incarcerated in the
5 custody of the Department of Corrections, another state's prison
6 system or the Federal Bureau of Prisons including, but not limited
7 to, the active Department of Corrections inmate number.

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

19 ~~N.~~ O. 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 SECTION 2. This act shall become effective September 1, 2019.

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