

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 SENATE BILL 402

By: Simpson

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6 AS INTRODUCED

7 An Act relating to the Lindsey Nicole Henry
8 Scholarships for Students with Disabilities Program
9 Act; amending 70 O.S. 2011, Section 13-101.1, which
10 relates to providing short title; renaming act;
11 amending 70 O.S. 2011, Section 13-101.2, as last
12 amended by Section 1, Chapter 1, O.S.L. 2020 (70 O.S.
13 Supp. 2020, Section 13-101.2), which relates to
14 creation of the program; updating statutory
15 references; removing definition; expanding
16 eligibility to include students whose parents were or
17 are serving on certain active duty and students who
18 were placed in kinship homes; modifying requirement
19 for participating private schools to have certain
20 discrimination provision; modifying reference to
21 weights used to calculate certain scholarship amount;
22 updating statutory reference; providing an effective
23 date; and declaring an emergency.

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

29 SECTION 1. AMENDATORY 70 O.S. 2011, Section 13-101.1, is
30 amended to read as follows:

31 Section 13-101.1. This act shall be known and may be cited as
32 the "Lindsey Nicole Henry Scholarships for Students with
33 ~~Disabilities~~ Special Needs Program Act".

1 SECTION 2. AMENDATORY 70 O.S. 2011, Section 13-101.2, as
2 last amended by Section 1, Chapter 1, O.S.L. 2020 (70 O.S. Supp.
3 2020, Section 13-101.2), is amended to read as follows:

4 Section 13-101.2. A. There is hereby created the Lindsey
5 Nicole Henry Scholarships for Students with ~~Disabilities~~ Special
6 Needs Program. The Lindsey Nicole Henry Scholarships for Students
7 with ~~Disabilities~~ Special Needs Program is established to provide a
8 scholarship to a private school of choice for students with
9 ~~disabilities for whom an individualized education program (IEP) in~~
10 ~~accordance with the Individuals with Disabilities Education Act~~
11 ~~(IDEA) or an individualized service plan pursuant to Section 1-4-704~~
12 ~~of Title 10A of the Oklahoma Statutes has been developed at any time~~
13 ~~prior to notifying the State Department of Education of the intent~~
14 ~~to participate in the Program and the IEP is in effect at the time~~
15 ~~the request for a scholarship is received by the State Department of~~
16 ~~Education~~ special needs. Scholarships shall be awarded beginning
17 with the 2010-2011 school year.

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

- 23 1. a. The student has ~~spent the prior school year in~~
24 ~~attendance at a public school in this state. For~~

1 ~~purposes of this section, "prior school year in~~
2 ~~attendance" means that the student was enrolled in and~~
3 ~~reported by a school district for funding purposes~~
4 ~~during the preceding school year regardless of whether~~
5 ~~or not the student had an IEP at the time the student~~
6 ~~was counted for funding purposes. A an individualized~~
7 ~~education program (IEP) in accordance with the~~
8 ~~Individuals with Disabilities Act (IDEA),~~

9 b. a student has an individualized service plan pursuant
10 to Section 1-4-704 of Title 10A of the Oklahoma
11 Statutes that has been developed at any time prior to
12 notifying the State Department of Education of the
13 intent to participate in the Program,

14 c. a student who is a child of a member of has a parent
15 or legal guardian who is serving or has served in the
16 United States Armed Forces who transfers to a school
17 in this state from out of state or from a foreign
18 country pursuant to a permanent change of station
19 orders of the parent shall be exempt from the
20 requirements of this paragraph but shall be required
21 to meet all other eligibility requirements to
22 participate as provided for in this section. A
23 student who has been provided services under an
24 Individual Family Service Plan through the SoonerStart

1 ~~program and during transition was evaluated and~~
2 ~~determined to be eligible for school district services~~
3 ~~shall be exempt from the requirements of this~~
4 ~~paragraph but shall be required to meet all other~~
5 ~~eligibility requirements to participate as provided~~
6 ~~for in this section. A on active duty or is actively~~
7 ~~serving in the United States Reserves or the National~~
8 ~~Guard,~~

9 d. a student ~~who~~ was in out-of-home placement with the
10 Department of Human Services, ~~who~~

11 e. a student was placed in a kinship foster home,

12 f. a student was adopted while in the permanent custody
13 of the Department of Human Services, or ~~who~~

14 g. a student was in out-of-home placement with the Office
15 of Juvenile Affairs ~~shall be exempt from the~~
16 ~~requirements of this paragraph but shall be required~~
17 ~~to meet all other eligibility requirements to~~
18 ~~participate as provided for in this section; and~~

19 2. The parent or legal guardian has obtained acceptance for
20 admission of the student to a private school that is eligible for
21 the program as provided in subsection H of this section and has
22 notified the State Department of Education of the request for a
23 scholarship. Requests to participate in the program made after
24 December 1 shall be granted, but funding for scholarships requested

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

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

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

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~~ who meets the criteria
5 of paragraph 1 of subsection B of this section of all options
6 available pursuant to this section and inform the parent or legal
7 guardian of the availability of information about the program from
8 the State Department of Education through the toll-free telephone
9 number or website. The notification shall be provided with or
10 included in the copy of the "Parents Rights in Special Education:
11 Notice of Procedural Safeguards" document given to parents at least
12 annually or as otherwise required by law.

13 F. 1. Acceptance of a Lindsey Nicole Henry Scholarship for
14 students who meet the criteria of paragraph 1 of subsection B of
15 this section shall have the same effect as a parental revocation of
16 consent to service pursuant to 20 U.S.C., Sections 1414(a)(1)(D) and
17 1414(C) of the 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. 1. To be eligible to participate in the Lindsey Nicole
8 Henry Scholarships for Students with ~~Disabilities~~ Special Needs
9 Program, a private school shall notify the State Department of
10 Education of its intent to participate. The notice shall specify
11 the grade levels and services that the private school has available
12 for students ~~with disabilities~~ who meet the criteria of paragraph 1
13 of subsection B of this section and who are participating in the
14 scholarship program. The State Department of Education shall
15 approve a private school as eligible to participate in the
16 scholarship program upon determination that the private school:

- 17 a. meets the accreditation requirements set by the State
18 Board of Education or another accrediting association
19 approved by the State Board of Education. The State
20 Department of Education shall list on its website all
21 accrediting associations approved by the Board,
- 22 b. demonstrates fiscal soundness by having been in
23 operation for one (1) school year or providing the
24 State Department of Education with a statement by a

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

11 c. ~~complies with the antidiscrimination provisions of 42~~
12 ~~U.S.C., Section 2000d~~ has a written policy against
13 discrimination in admissions on the basis of race,
14 color or national origin,

15 d. meets state and local health and safety laws and
16 codes,

17 e. will be academically accountable to the parent or
18 legal guardian for meeting the educational needs of
19 the student,

20 f. employs or contracts with teachers who hold
21 baccalaureate or higher degrees, or have at least
22 three (3) years of teaching experience in public or
23 private schools, or have special skills, knowledge, or
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1 expertise that qualifies them to provide instruction
2 in subjects taught,

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

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

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

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

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

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

20 c. any student participating in the scholarship program
21 shall attend throughout the school year, unless
22 excused by the school for illness or other good cause,
23 and shall comply fully with the code of conduct for
24 the school,

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

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

15 2. A participant who fails to comply with this subsection
16 forfeits the scholarship.

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

19 1. The State Department of Education shall calculate the total
20 cost of all scholarships for all eligible students in the state.
21 The State Department of Education shall then reserve or retain from
22 the total amount appropriated to the State Board of Education for
23 State Aid purposes and any other revenue available for allocation
24 for State Aid purposes the total cost for all scholarship payments;

1 2. The maximum scholarship granted for ~~an eligible~~ a student
2 ~~with disabilities~~ who meets the criteria of paragraph 1 of
3 subsection B of this section shall be a calculated amount equivalent
4 to the total State Aid factors for the applicable school year
5 multiplied by the grade and ~~disability~~ pupil category weights
6 generated by that student for the applicable school year. The
7 disability weights used in calculating the scholarship amount shall
8 include all disability weights which correspond to the disabilities
9 included in the multidisciplinary evaluation and eligibility group
10 summary for the student at the time the request for a scholarship is
11 made by the parent or legal guardian. The maximum scholarship
12 amount shall be calculated by the State Board of Education for each
13 year the student is participating in the scholarship program;

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

1 the scholarship request is granted after the beginning of the school
2 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, and 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;

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~~ Special Needs 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~~ Special Needs
11 Program Act and has failed to make full or partial scholarship
12 payments for eligible students, the Department shall have authority
13 to reduce the amount of State Aid allocated to the school district
14 or require the school district to make repayment to the Department
15 of State Aid allocations in an amount equal to the amount of
16 scholarship payments the school district failed to make. The
17 Department shall make payment to the parent or legal guardian in the
18 amount the school district failed to make in the manner as provided
19 for in subsection 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~~ Special Needs Program. The annual
23 report shall include, but not be limited to, the following
24 information:

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 3. This act shall become effective July 1, 2021.

11 SECTION 4. 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.

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