

1 STATE OF OKLAHOMA

2 2nd Session of the 58th Legislature (2022)

3 COMMITTEE SUBSTITUTE
4 FOR
5 SENATE BILL NO. 1162

By: Merrick

6
7 COMMITTEE SUBSTITUTE

8 An Act relating to the Lindsey Nicole Henry
9 Scholarships for Students with Disabilities Program;
10 amending 70 O.S. 2021, Section 13-101.2, which
11 relates to eligibility for the program; providing
12 eligibility for students with an individualized
13 family service plan or Section 504 Plan; removing
14 requirement for prior year enrollment in a public
15 school; providing eligibility for certain adopted
16 students; removing deadline for requests to be
17 granted in current school year; allowing requests to
18 be granted throughout the school year; providing for
19 funding on a prorated basis; updating language;
20 authorizing designation of attorney-in-fact for
21 certain schools; modifying scholarship calculation;
22 requiring notification of scholarship amount to
23 parent or legal guardian; allowing warrant
24 endorsement by attorney-in-fact in certain
circumstances; updating reference; and providing an
effective date.

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

SECTION 1. AMENDATORY 70 O.S. 2021, 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.

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 an individualized
4 education program (IEP) or individualized family service plan (IFSP)
5 in accordance with the Individuals with Disabilities Education Act
6 (IDEA), a Section 504 Plan in accordance with the Rehabilitation Act
7 of 1973, P.L. No. 93-112, or an individualized service plan pursuant
8 to Section 1-4-704 of Title 10A of the Oklahoma Statutes has been
9 developed at any time prior to notifying the State Department of
10 Education of the intent to participate in the Program and the IEP,
11 IFSP, Section 504 Plan, or individualized service plan is in effect
12 at the time the request for a scholarship is received by the State
13 Department of Education. Scholarships shall be awarded beginning
14 with the 2010-2011 school year.

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

20 1. ~~The a. the student has spent the prior school year in~~
21 ~~attendance at a public school in this state. For~~
22 ~~purposes of this section, "prior school year in~~
23 ~~attendance" means that the student was enrolled in and~~
24 ~~reported by a school district for funding purposes~~

1 ~~during the preceding school year regardless of whether~~
2 ~~or not the student had an IEP at the time the student~~
3 ~~was counted for funding purposes. A student who has~~
4 ~~an IEP, Section 504 Plan, or individualized service~~
5 ~~plan as provided for in subsection A of this section,~~

6 b. the student is a child of a member of the United
7 States Armed Forces who transfers to a school in this
8 state from out of state or from a foreign country
9 pursuant to a permanent change of station orders of
10 the parent ~~shall be exempt from the requirements of~~
11 ~~this paragraph but shall be required to meet all other~~
12 ~~eligibility requirements to participate as provided~~
13 ~~for in this section. A student who,~~

14 c. the student has been provided services under an
15 ~~Individual Family Service Plan IFSP~~ through the
16 SoonerStart program and during transition was
17 evaluated and determined to be eligible for school
18 district services ~~shall be exempt from the~~
19 ~~requirements of this paragraph but shall be required~~
20 ~~to meet all other eligibility requirements to~~
21 ~~participate as provided for in this section. A~~
22 ~~student who,~~

23 d. the student was in out-of-home or kinship placement
24 with the Department of Human Services, ~~who;~~ was

1 adopted while in the permanent custody of the
2 Department of Human Services; or was adopted through a
3 federally recognized Indian tribe, adopted through a
4 child-placing agency, adopted internationally, or
5 adopted through private adoption, or who

6 e. the student was in out-of-home placement with the
7 Office of Juvenile Affairs ~~shall be exempt from the~~
8 ~~requirements of this paragraph but shall be required~~
9 ~~to meet all other eligibility requirements to~~
10 ~~participate as provided for in this section; and~~

11 2. The parent or legal guardian has obtained acceptance for
12 admission of the student to a private school that is eligible for
13 the program as provided in subsection H of this section and has
14 notified the State Department of Education of the request for a
15 scholarship. Requests to participate in the program ~~made after~~
16 ~~December 1~~ shall be granted, but throughout the year and funding for
17 scholarships ~~requested after December 1~~ shall ~~not~~ be available ~~until~~
18 ~~the beginning of the next school year~~ for the current school year on
19 a prorated basis. The request shall be through a communication
20 directly to the Department in a manner that creates a written or
21 electronic record of the request and the date of receipt of the
22 request. The Department shall notify the school district upon
23 receipt of the request. For purposes of continuity of educational
24 choice, the scholarship shall remain in force until the student

1 returns to a public school, graduates from high school, or reaches
2 the age of twenty-two (22), whichever occurs first. At any time,
3 the parent or legal guardian of the student may remove the student
4 from the private school and place the student in another private
5 school that is eligible for the program as provided in subsection H
6 of this section or place the student in a public school.

7 C. A student shall be eligible for a scholarship if the parent
8 or legal guardian of the student made a request for a scholarship
9 for the 2010-2011 school year and the student transferred to an
10 eligible private school but was subsequently denied a scholarship
11 because the student did not have an IEP or IFSP in effect on October
12 1, 2009, but did meet all other eligibility requirements as set
13 forth in the Lindsey Nicole Henry Scholarships for Students with
14 Disabilities Program Act.

15 D. A student shall not be eligible for a Lindsey Nicole Henry
16 Scholarship if the student is not having regular and direct contact
17 with the private school teachers at the physical location of the
18 private school.

19 E. School districts shall notify the parent or legal guardian
20 of a public school student ~~with a disability~~ who meets the criteria
21 of paragraph 1 of subsection B of this section of all options
22 available pursuant to this section and inform the parent or legal
23 guardian of the availability of information about the program from
24 the State Department of Education through the toll-free telephone

1 number or website. The notification shall be provided with or
2 included in the copy of the "Parents Rights in Special Education:
3 Notice of Procedural Safeguards" document given to parents at least
4 annually or as otherwise required by law.

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

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

13 G. If the parent or legal guardian requests a Lindsey Nicole
14 Henry Scholarship and the student is accepted by the private school
15 pending the availability of a space for the student, the parent or
16 legal guardian of the student shall notify the State Department of
17 Education before entering the private school ~~and before December 1~~
18 in order to be eligible for the scholarship during the school year
19 when a space becomes available for the student in the private
20 school. ~~If notification is made after December 1, payment of the~~
21 ~~scholarship shall not begin until the next school year.~~

22 H. 1. To be eligible to participate in the Lindsey Nicole
23 Henry Scholarships for Students with Disabilities Program, a private
24 school shall notify the State Department of Education of its intent

1 to participate. The notice shall specify the grade levels and
2 services that the private school has available for students ~~with~~
3 ~~disabilities~~ who are ~~participating~~ eligible to participate in the
4 scholarship program. The State Department of Education shall
5 approve a private school as eligible to participate in the
6 scholarship program upon determination that the private school:

7 a. meets the accreditation requirements set by the State
8 Board of Education or another accrediting association
9 approved by the State Board of Education. The State
10 Department of Education shall list on its website all
11 accrediting associations approved by the Board,

12 b. demonstrates fiscal soundness by having been in
13 operation for one (1) school year or providing the
14 State Department of Education with a statement by a
15 certified public accountant confirming that the
16 private school desiring to participate is insured and
17 the owner or owners have sufficient capital or credit
18 to operate the school for the upcoming year by serving
19 the number of students anticipated with expected
20 revenues from tuition and other sources that may be
21 reasonably expected. In lieu of a statement, a surety
22 bond or letter of credit for the amount equal to the
23 scholarship funds for any quarter may be filed with
24 the Department,

- c. complies with the antidiscrimination provisions of 42 U.S.C., Section 2000d,
- d. meets state and local health and safety laws and codes,
- e. will be academically accountable to the parent or legal guardian for meeting the educational needs of the student,
- f. employs or contracts with teachers who hold baccalaureate or higher degrees, or have at least three (3) years of teaching experience in public or private schools, or have special skills, knowledge, or expertise that qualifies them to provide instruction in subjects taught,
- g. complies with all state laws relating to general regulation of private schools, and
- h. adheres to the tenets of its published disciplinary procedures prior to the expulsion of a scholarship student.

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

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

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

1 warrant, unless the private school is an accredited
2 school that serves children and families who are
3 experiencing homelessness. A parent or legal guardian
4 who fails to comply with this subparagraph shall
5 forfeit the scholarship.

6 2. A participant who fails to comply with this subsection
7 forfeits the scholarship.

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

10 1. The State Department of Education shall calculate the total
11 cost of all scholarships for all eligible students in the state.
12 The State Department of Education shall then reserve or retain from
13 the total amount appropriated to the State Board of Education for
14 State Aid purposes and any other revenue available for allocation
15 for State Aid purposes the total cost for all scholarship payments;

16 2. The maximum scholarship granted for an eligible student ~~with~~
17 ~~disabilities~~ shall be a calculated amount equivalent to the total
18 State Aid factors for the applicable school year multiplied by the
19 grade and ~~disability~~ pupil category weights generated by that
20 student for the applicable school year. The ~~disability~~ pupil
21 category weights used in calculating the scholarship amount for a
22 student with disabilities shall include all ~~disability~~ pupil
23 category weights which correspond to the disabilities included in
24 the multidisciplinary evaluation and eligibility group summary for

1 the student at the time the request for a scholarship is made by the
2 parent or legal guardian. The maximum scholarship amount shall be
3 calculated by the State Board of Education for each year the student
4 is participating in the scholarship program;

5 3. The amount of the scholarship shall be the amount calculated
6 in paragraph 2 of this subsection or the amount of tuition and fees
7 for the private school, whichever is less, minus up to two and one-
8 half percent (2 1/2%) of the scholarship amount which may be
9 retained by the State Department of Education as a fee for
10 administrative services rendered. The amount of any assessment fee
11 required by the private school and the amount associated with
12 providing services and therapies to address the disabilities of the
13 student may be paid from the total amount of the scholarship. The
14 amount of the scholarship shall be prorated to reflect the number of
15 days remaining in the current school year, if the scholarship
16 request is granted after the beginning of the school year;

17 4. The State Department of Education shall notify the parent or
18 legal guardian and the private school of the amount of the
19 scholarship within ten (10) days after receiving the request for a
20 scholarship, when the total State Aid factors have been determined
21 for the current fiscal year. The initial payment shall be made
22 after the Department verifies admission acceptance and enrollment.
23 Quarterly payments shall be made upon verification of continued
24 enrollment and attendance at the private school. Payment shall be

1 made by the Department with an individual warrant made payable to
2 the parent or legal guardian of the student and mailed by the
3 Department to the private school that the parent or legal guardian
4 chooses. The parent or legal guardian shall restrictively endorse
5 the warrant to the private school for deposit into the account of
6 the private school. As provided in subparagraph d of paragraph 1 of
7 subsection I of this section, if the private school is an accredited
8 school that serves children and families who are experiencing
9 homelessness, the parent or legal guardian may designate an entity
10 or individual associated with the private school as the attorney-in-
11 fact for the parent or legal guardian to endorse a warrant;

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
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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

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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~~ on the Lindsey Nicole Henry
19 Scholarships for Students with Disabilities Program. The annual
20 report shall include~~7~~ but not be limited to~~7~~ the following
21 information:

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

24 2. The total number of scholarships denied;

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

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

7 SECTION 2. This act shall become effective November 1, 2022.

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