

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 SENATE BILL 358

By: Daniels

4
5 AS INTRODUCED

6 An Act relating to the Lindsey Nicole Henry
7 Scholarships for Students with Disabilities Program;
8 amending 70 O.S. 2021, Section 13-101.2, which
9 relates to eligibility for the program; removing
10 requirement for prior public school year attendance;
11 providing certain exemption to certain students;
12 modifying reference to weights to be used in certain
13 calculation; updating statutory language; providing
14 an effective date; and declaring an emergency.

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

16 SECTION 1. AMENDATORY 70 O.S. 2021, Section 13-101.2, is
17 amended to read as follows:

18 Section 13-101.2. A. There is hereby created the Lindsey
19 Nicole Henry Scholarships for Students with Disabilities Program.
20 The Lindsey Nicole Henry Scholarships for Students with Disabilities
21 Program is established to provide a scholarship to a private school
22 of choice for students with disabilities for whom an individualized
23 education program (IEP) in accordance with the Individuals with
24 Disabilities Education Act (IDEA) or an individualized service plan
pursuant to Section 1-4-704 of Title 10A of the Oklahoma Statutes
has been developed at any time prior to notifying the State
Department of Education of the intent to participate in the Program

1 and the IEP is in effect at the time the request for a scholarship
2 is received by the State Department of Education. Scholarships
3 shall be awarded beginning with the 2010-2011 school year.

4 B. The parent or legal guardian of a ~~public school~~ student with
5 a disability may exercise their parental option and request to have
6 a Lindsey Nicole Henry Scholarship awarded for the child to enroll
7 in and attend a private school in accordance with this section and
8 the scholarship shall be awarded if:

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

1 ~~to meet all other eligibility requirements to participate as~~
2 ~~provided for in this section. A an IEP or individualized service~~
3 ~~plan as provided for in subsection A of this section; provided,~~
4 ~~however, a student who was in out-of-home placement with the~~
5 ~~Department of Human Services⁷; who was adopted while in the~~
6 ~~permanent custody of the Department of Human Services, an~~
7 ~~international child-placing agency, a child-placing agency in this~~
8 ~~state, or a federally recognized Indian tribe; or who was in out-~~
9 ~~of-home placement with the Office of Juvenile Affairs shall be~~
10 ~~exempt from the requirements of this paragraph but shall be required~~
11 ~~to meet all other eligibility requirements to participate as~~
12 ~~provided for in this section not be required to have an IEP or an~~
13 ~~individualized service plan; and~~

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

1 the student is enrolled, if applicable, upon receipt of the request.

2 For purposes of continuity of educational choice, the scholarship
3 shall remain in force until the student ~~returns to~~ enrolls in a
4 public school, graduates from high school, or reaches the age of
5 twenty-two (22), whichever occurs first. At any time, the parent or
6 legal guardian of the student may remove the student from the
7 private school and place the student in another private school that
8 is eligible for the program as provided in subsection H of this
9 section or place the student in a public school.

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

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

22 E. School districts shall notify the parent or legal guardian
23 of a public school student with a disability of all options
24 available pursuant to this section and inform the parent or legal
25

1 guardian of the availability of information about the program from
2 the State Department of Education through the toll-free telephone
3 number or website. The notification shall be provided with or
4 included in the copy of the "Parents Rights in Special Education:
5 Notice of Procedural Safeguards" document given to parents at least
6 annually or as otherwise required by law.

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

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

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

1 H. 1. To be eligible to participate in the Lindsey Nicole
2 Henry Scholarships for Students with Disabilities Program, a private
3 school shall notify the State Department of Education of its intent
4 to participate. The notice shall specify the grade levels and
5 services that the private school has available for students with
6 disabilities who are participating in the scholarship program. The
7 State Department of Education shall approve a private school as
8 eligible to participate in the scholarship program upon
9 determination that the private school:

- 10 a. meets the accreditation requirements set by the State
11 Board of Education or another accrediting association
12 approved by the State Board of Education. The State
13 Department of Education shall list on its website all
14 accrediting associations approved by the Board,
- 15 b. demonstrates fiscal soundness by having been in
16 operation for one (1) school year or providing the
17 State Department of Education with a statement by a
18 certified public accountant confirming that the
19 private school desiring to participate is insured and
20 the owner or owners have sufficient capital or credit
21 to operate the school for the upcoming year by serving
22 the number of students anticipated with expected
23 revenues from tuition and other sources that may be
24 reasonably expected. In lieu of a statement, a surety

1 bond or letter of credit for the amount equal to the
2 scholarship funds for any quarter may be filed with
3 the Department,

4 c. complies with the antidiscrimination provisions of 42
5 U.S.C., Section 2000d,

6 d. meets state and local health and safety laws and
7 codes,

8 e. will be academically accountable to the parent or
9 legal guardian for meeting the educational needs of
10 the student,

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

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

19 h. adheres to the tenets of its published disciplinary
20 procedures prior to the expulsion of a scholarship
21 student.

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

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

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

1 private school as the attorney in fact for the parent
2 or legal guardian to endorse a warrant. A parent or
3 legal guardian who fails to comply with this
4 subparagraph shall forfeit the scholarship.

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

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

9 1. The State Department of Education shall calculate the total
10 cost of all scholarships for all eligible students in the state.

11 The State Department of Education shall then reserve or retain from
12 the total amount appropriated to the State Board of Education for
13 State Aid purposes and any other revenue available for allocation
14 for State Aid purposes the total cost for all scholarship payments;

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

1 calculated by the State Board of Education for each year the student
2 is participating in the scholarship program;

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

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

1 the parent or legal guardian chooses. The parent or legal guardian
2 shall restrictively endorse the warrant to the private school for
3 deposit into the account of the private school;

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

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

12 7. The State Department of Education shall require an annual,
13 notarized, sworn compliance statement by participating private
14 schools certifying compliance with state laws and shall retain all
15 records received from a participating private school. The State
16 Department of Education shall post on its website the annual
17 compliance statement for each participating private school; and

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

21 K. 1. The State Superintendent of Public Instruction shall
22 deny, suspend, or revoke the participation of a private school in
23 the scholarship program if it is determined that the private school
24 has failed to comply with the provisions of this section. However,

1 in instances in which the noncompliance is correctable within a
2 reasonable amount of time and in which the health, safety, or
3 welfare of the students is not threatened, the Superintendent may
4 issue a notice of noncompliance which shall provide the private
5 school with a time frame within which to provide evidence of
6 compliance prior to taking action to suspend or revoke participation
7 in the scholarship program.

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

17 3. The private school that is adversely affected by the
18 proposed action shall have fifteen (15) days from receipt of the
19 notice of proposed action to file with the Department a request for
20 an administrative hearing proceeding pursuant to the Administrative
21 Procedures Act.

22 4. Upon receipt of a request for a hearing, the State Board of
23 Education shall commence a hearing within sixty (60) days after the
24

1 receipt of the formal written request and enter an order within
2 thirty (30) days after the hearing.

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

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

19 N. 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 O. The State Department of Education shall annually prepare and
9 post on its website a report of Lindsey Nicole Henry Scholarships
10 for Students with Disabilities Program. The annual report shall
11 include, but not be limited to, the following information:

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

14 2. The total number of scholarships denied;

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

17 4. Data on participating students, disaggregated by years of
18 participation in the program, grade level, economically
19 disadvantaged status, racial and ethnic groups, and disability
20 category.

21 SECTION 2. This act shall become effective July 1, 2023.

22 SECTION 3. It being immediately necessary for the preservation
23 of the public peace, health, or safety, an emergency is hereby
24

1 declared to exist, by reason whereof this act shall take effect and
2 be in full force from and after its passage and approval.

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

59-1-53 EB 1/15/2023 12:29:45 PM