An Act

ENROLLED HOUSE
BILL NO. 1744

By: Nelson, Kern, Dank and Pittman of the House

and

Anderson of the Senate

An Act relating to schools; amending Section 2, Chapter 381, O.S.L. 2010 (70 O.S. Supp. 2010, Section 13-101.2), which relates to the Lindsey Nicole Henry Scholarships for Students with Disabilities Program Act; modifying scope of the program; providing an exception to certain attendance requirement for certain students; modifying certain notification requirements; requiring certain direct communications; requiring certain notification to school districts; adding age limitation; deleting provision for a change of residence; adding eligibility for certain students who made a scholarship request during certain school year; requiring regular teacher contact; requiring school districts to notify parents of the available options and information sources in a certain manner; stating effect of acceptance of a Lindsey Nicole Henry Scholarship; specifying parental responsibility upon acceptance of a scholarship; changing notification requirements; changing request requirement; prohibiting certain designation; directing the State Department of Education to make certain calculation; directing the Department to reserve or retain scholarship payments from certain amounts; modifying calculation of maximum scholarship amount; specifying use of disability weights; modifying authorization for administrative service fee; allowing for payment of an assessment fee and other certain amounts; deleting certain reporting requirement by a school district; requiring certain notification of scholarship amount; changing payment and cost responsibilities; directing the Department to

establish a toll-free number or website for certain purpose; requiring an annual sworn compliance statement; directing the Department to cross-check enrollments; providing for suspension or revocation of a private school participation approval by the State Superintendent of Public Instruction for certain purpose; providing process for denying, revoking or suspending approval; authorizing certain hearing procedures; allowing for immediate suspension under certain circumstances; modifying liability limitations; limiting regulatory authority; authorizing the Department to reduce certain payments to or require repayment by certain school districts for failure to make certain scholarship payments; creating the Special Education Statewide Cooperative Task Force; directing the Task Force to study certain issues and make recommendations; specifying certain issues; establishing membership; providing for cochairs, meetings, service, quorum, vacancies and staff support; directing certain state agencies to provide support and information; allowing for travel reimbursement; allowing the Task Force to seek certain assistance for certain purpose; requiring the Task Force to submit certain reports; and providing for noncodification.

SUBJECT: Students with disabilities

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

SECTION 1. AMENDATORY Section 2, Chapter 381, O.S.L. 2010 (70 O.S. Supp. 2010, 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 education program (IEP) in accordance with the Individuals with Disabilities Education Act (IDEA) has been developed <u>at any time</u>

prior to notifying the State Department of Education of the intent to participate in the Program and the IEP is in effect at the time the request for a scholarship is received by the State Department of Education. Scholarships shall be awarded beginning with the 2010-2011 school year.

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

1. The student has spent the prior school year in attendance at a public school in this state. For purposes of this section, "prior school year in attendance" means that the student was enrolled in and reported by a school district for funding purposes during the preceding school year regardless of whether or not the student had an IEP at the time the student was counted for funding purposes. A student who is a child of a member of the United States Armed Forces who transfers to a school in this state from out of state or from a foreign country pursuant to a permanent change of station orders of the parent shall be exempt from the requirements of this paragraph but shall be required to meet all other eligibility requirements to participate as provided for in this section; and

2. The parent or legal guardian has obtained acceptance for admission of the student to a private school that is eligible for the program as provided in subsection ~~D~~ H of this section and has notified~~, in writing,~~ the ~~school district~~ State Department of Education of the request for a scholarship ~~at least sixty (60) days prior to the date of the first scholarship payment~~ no later than December 1 of the school year during which the scholarship is requested. The request shall be through a communication directly to the Department in a manner that creates a written or electronic record of the request and the date of receipt of the request. The Department shall notify the school district upon receipt of the request. For purposes of continuity of educational choice, the scholarship shall remain in force until the student returns to a public school ~~or~~, graduates from high school or reaches the age of twenty-two (22), whichever occurs first. ~~If the residence of the student changes, the district of residence shall assume responsibility for the scholarship.~~ At any time, the parent or legal guardian of the student may remove the student from the private school and place the student in another private school that

is eligible for the program as provided in subsection ~~D~~ H of this section or place the student in a public school.

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

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

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

F. 1. Acceptance of a Lindsey Nicole Henry Scholarship shall have the same effect as a parental refusal to consent to service pursuant to 20 U.S.C., Section 614(a)(1) of the IDEA.

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

G. If the parent or legal guardian requests a Lindsey Nicole Henry Scholarship and the student is accepted by the private school pending the availability of a space for the student, the parent or legal guardian of the student shall notify the State Department of Education ~~the school district sixty (60) days prior to the first scholarship payment and~~ before entering the private school and before December 1 in order to be eligible for the scholarship during the school year when a space becomes available for the student in the private school. If notification is made after December 1,

payment of the scholarship shall not begin until the next school year.

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

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

2. Demonstrates fiscal soundness by having been in operation for one (1) school year or providing the State Department of Education with a statement by a certified public accountant confirming that the private school desiring to participate is insured and the owner or owners have sufficient capital or credit to operate the school for the upcoming year by serving the number of students anticipated with expected revenues from tuition and other sources that may be reasonably expected. In lieu of a statement, a surety bond or letter of credit for the amount equal to the scholarship funds for any quarter may be filed with the Department;

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

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

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

6. 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;

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

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

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

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

b. the parent or legal guardian shall request the scholarship ~~at least sixty (60) days prior to the date of the first scholarship payment~~ no later than December 1 of the school year during which the scholarship is requested,

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

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

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

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

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

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

2. The maximum scholarship granted for an eligible student with disabilities shall be a calculated amount equivalent to the ~~local and county revenue for the school district which is chargeable in the State Aid formula, state-dedicated revenue, and state-appropriated funds per weighted average daily membership~~ total State Aid factors for the applicable school year multiplied by the grade and disability weights generated by that student for the applicable school year. ~~The weighted average daily membership shall be determined using the grade and disability weights only.~~ The disability weights used in calculating the scholarship amount shall include all disability weights which correspond to the disabilities included in the multidisciplinary evaluation and eligibility group summary for the student at the time the request for a scholarship is made by the parent or legal guardian. The maximum scholarship amount shall be calculated by the State Board of Education for each year the student is participating in the scholarship program;

~~2.~~ 3. The amount of the scholarship shall be the amount calculated in paragraph ~~1~~ 2 of this subsection or the amount of tuition and fees for the private school, whichever is less, minus up to ~~five percent (5%)~~ two and one-half percent (2 1/2%) of the scholarship amount which may be retained by the ~~school district~~ State Department of Education as a fee for administrative services rendered. The amount of any assessment fee required by the private school and the amount associated with providing services and therapies to address the disabilities of the student may be paid from the total amount of the scholarship;

~~3. The school district shall annually report for child count and funding purposes all students who are attending a private school under the Lindsey Nicole Henry Scholarships for Students with Disabilities Program to the State Department of Education;~~

4. The State Department of Education shall notify the private school of the amount of the scholarship within ten (10) days after receiving the request for a scholarship. The initial payment shall be made after the ~~school district~~ Department verifies admission acceptance and enrollment. Quarterly payments shall be made upon

verification of continued enrollment and attendance at the private school. Payment shall be made by the ~~school district~~ Department with an individual warrant made payable to the parent or legal guardian of the student and mailed by the ~~school district~~ Department to the private school that the parent or legal guardian chooses. The parent or legal guardian shall restrictively endorse the warrant to the private school for deposit into the account of the private school; ~~and~~

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

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

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

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

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

2. If the Superintendent intends to deny, suspend, or revoke the participation of a private school in the scholarship program, the Department shall notify the private school of the proposed action in writing by certified mail and regular mail to the private school's address of record with the Department. The Department

shall also notify any parents or legal guardians of scholarship students attending the private school. The notification shall include the reasons for the proposed action and notice of the timelines and procedures set forth in this subsection.

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

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

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

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

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

N. If the State Department of Education determines that a school district prior to the effective date of this act has failed to comply with the provisions of the Lindsey Nicole Henry Scholarships for Students with Disabilities Program Act and has failed to make full or partial scholarship payments for eligible students, the Department shall have authority to reduce the amount of State Aid allocated to the school district or require the school district to make repayment to the Department of State Aid allocations in an amount equal to the amount of scholarship payments the school district failed to make. The Department shall make

payment to the parent or legal guardian in the amount the school district failed to make in the manner as provided for in subsection J of this section.

SECTION 2. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

A. There is hereby created until May 31, 2012, the Special Education Statewide Cooperative Task Force.

B. The Task Force shall study and develop a plan to provide for the delivery of special education and related services to students with disabilities for whom an individualized education program (IEP) has been developed in accordance with the Individuals with Disabilities Education Act (IDEA) through a statewide special education cooperative which will result in improved outcomes. The Task Force shall study, review and make recommendations on the following:

1. The appropriate governance and organizational structure for a statewide special education cooperative;

2. What resources are needed and available to support a statewide special education cooperative;

3. Which students should participate in the statewide special education cooperative;

4. How special education services can be improved through improved economies of scale;

5. How students will be enrolled in or provided services through the statewide special education cooperative;

6. How the services of teachers and other related personnel will be provided by the statewide special education cooperative;

7. How equipment and other resources that support and benefit students with an IEP will be provided by the statewide special education cooperative;

8. How partnerships with school districts, technology center school districts, higher education institutions, and any other public or private entities will benefit students with an IEP;

9. The relevant federal IDEA compliance issues;

10. How assessments for placing students on an IEP can be improved; and

11. Any other relevant issues.

C. The Task Force shall consist of sixteen (16) members as follows:

1. The State Superintendent of Public Instruction or designee;

2. The Secretary of Education or designee;

3. An executive director of a special education cooperative, appointed by the Governor;

4. A special education director of a special education cooperative, appointed by the Speaker of the House of Representatives;

5. A service provider of special-education-related services, appointed by the President Pro Tempore of the Senate;

6. A special education teacher, appointed by the State Superintendent of Public Instruction;

7. A parent representing the federally funded parent training and information center for Oklahoma known as the Oklahoma Parent Center, appointed by the Governor;

8. A parent representing a private association which advocates for individual with disabilities, appointed by the Speaker of the House of Representatives;

9. A person representing a sheltered workshop, appointed by the President Pro Tempore of the Senate;

10. A private employer who employees individuals with disabilities, appointed by the State Superintendent of Public Instruction;

11. A disability coordinator for a higher education institution, appointed by the Governor;

12. A representative of a technology center school district, appointed by the Speaker of the House of Representatives;

13. A representative of the federally funded protection and advocacy system for Oklahoma known as the Oklahoma Disability Law Center, appointed by the President Pro Tempore of the Senate;

14. A self advocate, appointed by the State Superintendent of Public Instruction;

15. A member of the House of Representatives, appointed by the Speaker of the House of Representatives; and

16. A member of the Senate, appointed by the President Pro Tempore of the Senate.

D. The member of the House of Representatives and the member of the Senate shall serve as cochairs of the Task Force. Appointments to the Task Force shall be made within thirty (30) days after the effective date of this act. Meetings of the Task Force shall be held at the call of either cochair of the Task Force. Members shall serve at the pleasure of their appointing authorities. A majority of the members of the Task Force shall constitute a quorum to transact business, but no vacancy shall impair the right of the remaining members to exercise all of the powers of the Task Force. A vacancy on the Task Force shall be filled by the original appointing authority. Staff support for the Task Force shall be provided by the staff of the House of Representatives, Senate and State Department of Education. The Oklahoma Department of Career and Technology Education, Oklahoma State Regents for Higher Education, Office of Disability Concerns, State Department of Rehabilitation Services, Oklahoma Health Care Authority, Department of Human Services, and the State Use Committee for the Department of Central Services shall provide support and information as requested by the Task Force.

E. Members of the Task Force shall receive no compensation for serving on the Task Force, but may receive travel reimbursement, contingent on the availability of public or private funds for this purpose.

F. The Task Force may seek the assistance of the Legislative Service Bureau or the State Board of Education to contract with an

independent consultant as necessary to fulfill the duties specified in this section contingent on the availability of funds.

G. The Task Force shall submit a preliminary report by December 31, 2011, and a final report by May 31, 2012, to the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives.

Passed the House of Representatives the 18th day of May, 2011.

Presiding Officer of the House of Representatives

Passed the Senate the 19th day of May, 2011.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Governor this 20th

day of May, **20** 11,

at 6:33 **o'clock** P **M.**

By: Jessica R. Rogers

Approved by the Governor of the State of Oklahoma the 26th **day of** May, **20** 11, **at** 11:02 **o'clock** AM.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this

26th **day of** May, **20** 11,

at 6:01 **o'clock** P. **M.**

By: Michelle R Day