

Frequently Asked Questions about the Lindsey Nicole Henry (LNH) Scholarship for Students with Disabilities

Q What is the LNH Scholarship for Students with Disabilities Program?

A The Lindsey Nicole Henry Scholarship for Students with Disabilities (70 O.S. § 13-101.2) is a new law which became effective August 26, 2011, through HB 1744. This law amended the original scholarship created by HB 3393. The scholarship was created for qualifying students with disabilities for use at a private school that is accredited by the State Board of Education or another accrediting association approved by the State Board of Education. Students with disabilities include PK-12th grade students who are documented as having Autism Spectrum Disorder, Deaf-Blindness, Developmental Delays, Emotional Disturbance, Hearing Impairment including Deafness, Intellectual Disabilities, Multiple Disabilities, Orthopedic Impairments, Other Health Impairments, Specific Learning Disability, Speech or Language Impairment, Traumatic Brain Injury, and/or Visual Impairment including Blindness.

Q Who is eligible for a LNH Scholarship?

A Any parent of a public school student with a disability who has an Individual Education Program (IEP) may receive a LNH Scholarship if the student meets the following requirements:

- The student has spent the prior school year in attendance at an Oklahoma public school, unless the child's parent or legal guardian is a member of the United States Armed Forces. Prior school year means that the student was enrolled and reported by a school district for funding purposes during the preceding year;
- The parent or legal guardian has obtained acceptance for admission of the student to a private school that is eligible for the program; and
- The parent or legal guardian completes the application process by December 1 of the year that they are seeking approval for the scholarship.

Q What is the first step in obtaining the LNH Scholarship?

A The parent or legal guardian must obtain acceptance for the child's admission to an approved private school. Once acceptance has been granted from the private school, the parent or legal guardian must complete the application process with the OSDE and send the OSDE required documentation for consideration by December 1 of the year that the scholarship will take effect. If approved, the OSDE will notify the private school and the parent or legal guardian of the calculation amount for the scholarship within ten (10) days of receipt of the completed application. The private school and the parent or legal guardian will also receive written notification within ten (10) days if the application is denied. Payment of the scholarship will not begin until the next school year if received after December 1.

Q Are private schools required to participate in the LNH Scholarship program?

A No. Private schools are not required to participate in the LNH Scholarship program; however, participation is open to all private schools that wish to take part in the program, as long as the private school meets the eligibility criteria set forth by the Act. Private schools meeting the requirements of the Act may submit an application to the Oklahoma State Board of Education for consideration. If approved, the Oklahoma State Department of Education (OSDE) will notify the private school in writing that they are approved to receive tuition payments for students who qualify for the LNH Scholarship award. Each private school must provide the OSDE with an annual notarized, sworn compliance statement certifying compliance with state laws.



OKLAHOMA STATE DEPARTMENT OF
EDUCATION

STATE SUPERVISOR

NAME ADDRESS

Legislative Educational Planning Committee
December 18, 2012
Attachment 6

Q How long does a LNH Scholarship last?

- A** The scholarship will remain in effect until the student:
- Returns to a public school;
 - Graduates from high school, or
 - Reaches the age of 22, whichever occurs first.

Q Can a LNH Scholarship be forfeited?

A Yes. There are several ways that a LNH Scholarship may be forfeited. The scholarship is forfeited when a parent or legal guardian:

- Enrolls or re-enrolls the student in a public school.
- Withdraws the student from the private school to home school the student.
- Fails to fully comply with the parental involvement requirements of the private school.
- Refuses to restrictively endorse the scholarship payment to the appropriate school for deposit into the account of the participating private school.

The scholarship is forfeited when a student:

- Does not remain in continued attendance at a participating private school throughout the school year (unless excused by the school for illness or other good cause); or
- Fails to adhere to the discipline policies of the private school.

Q: If a student who is applying for the scholarship is dismissed from receiving special education services after the parent or legal guardian files a request for the scholarship and before the student enters the private school, is the student eligible for the LNH Scholarship?

A No. If a student is dismissed from receiving special education services while enrolled in a public school, the student is not eligible for the scholarship. The child must be on a current IEP to meet the requirements of the scholarship.

Q What is the award amount for a LNH Scholarship?

The maximum scholarship amount granted for an eligible student with disabilities will be a calculated amount equivalent to the 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 maximum scholarship amount will be calculated by the State Board of Education for each year the student is participating in the scholarship program. The amount of the scholarship will be the preceding amount, less 2 ½ percent for administrative fees, or the amount of tuition and fees for the private school, whichever is less. Each year, the scholarship amount will be recalculated by the OSDE.

Q How is a LNH Scholarship payment made?

Payments for the LNH Scholarship will be made quarterly on a reimbursement basis by the OSDE, according to the following procedure:

- The private school will provide the OSDE with an annual notarized, sworn affidavit of compliance that is supplied by the OSDE, an annual statement of tuition and fees for each scholarship student upon their enrollment, and an invoice for each child at the end of each quarter that includes a detailed quarterly attendance report. The parent or legal guardian will complete a Vendor/Payee form supplied by the OSDE, and return it to the OSDE before payment is issued.
- The OSDE will cross-check the list of participating scholarship students with public school enrollments prior to each scholarship payment.
- The initial payment will be made after the OSDE verifies admission, acceptance and enrollment. The payment will be made by the OSDE with an individual warrant made payable to the parent or legal guardian of the LNH Scholarship student and mailed to the approved private school where the child attended.
- Upon issuance of the scholarship warrant, the parent or legal guardian to whom the warrant is made will restrictively endorse the warrant to the private school for deposit into the account of the private school. No entity or individual associated with the private school as the attorney in fact for the parent or legal guardian can endorse a warrant.

Q What are the responsibilities of the public school district where the LNH Scholarship student resides?

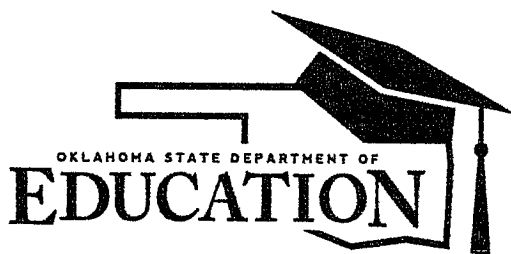
A The public school district is responsible for the following:

- *Annually make available general information about the LNH Scholarship to parents of children with disabilities and provide them with contact information to gain additional information, including an annual copy of the "Parents Rights in Special Education: Notice of Procedural Safeguards";*
- *Conduct child find activities, including initiation of the re-evaluation process, for all students with disabilities who reside in the school district;*
- *Exit all children from the district special education child count who are known to be parentally placed in a private school and receiving the LNH Scholarship after notification by the parent of acceptance of the scholarship by written confirmation or default.*


Q Who is responsible for special education services or extra costs that are incurred by the private school for the LNH Scholarship student?

A Upon acceptance of the LNH Scholarship, the parent or legal guardian shall assume full financial responsibility for the education of the student. The OSDE or the public school district will 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 a special education class.

If you have additional questions regarding the LNH Scholarship for Students with Disabilities, please contact Ms. Anita Eccard at (405) 521-4865.



TULSA WORLD

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Supreme court tosses challenge to Lindsey Nicole Henry law

BY KIM ARCHER World Staff Writer
Wednesday, November 21, 2012
11/21/2012 8:14:10 AM

Read more: Read the Oklahoma Supreme Court decision on the Lindsey Nicole Henry law.

The Oklahoma Supreme Court threw out on Tuesday two school districts' constitutional challenge of a law that allows the use of public funds to send special-needs students to private schools.

In the 2 1/2 years the law has been in effect, it has stirred controversy over whether it violates the state constitution's ban on the use of public funds by private religious institutions.

In Tuesday's ruling, the state Supreme Court said the Union and Jenks public school districts do not have standing in the case because the "school districts are not taxpayers themselves, whom this Court has long recognized have a right to challenge the illegal expenditure of public funds."

"Because the school districts are not the ones charged with the duty to provide free public education, the Legislature's withholding of certain funds, even if it is unconstitutional, does not violate a constitutionally protected interest of the school districts themselves, because they are merely the Legislature's vehicle," the ruling says.

The case began last year when Union and Jenks countersued the parents of five special-needs children to challenge the constitutionality of the law. In its ruling, the Supreme Court also said the school districts didn't sue the proper parties.

"The parents are clearly not the proper parties against whom to assert these constitutional challenges," the ruling says. "We hold that the school districts have neglected to meet the threshold standing requirement for constitutional challenges."

In a written statement, State Superintendent Janet Barresi said the ruling is a victory for education choice in Oklahoma.

"I applaud the Oklahoma Supreme Court's decision today to discontinue the challenge to the Lindsey Nicole Henry Scholarship program," she said. "This is a victory for students with disabilities throughout our state and for their families."

Rep. Jason Nelson, an Oklahoma City Republican and co-author of the law, told the Tulsa World the state Supreme Court did the right thing.

"I agree with their argument. The law was on our side. The Supreme Court has now recognized that and validated it. I think it's a shame that this happened at all," he said of the lawsuit.

Jenks Superintendent Kirby Lehman and Union Superintendent Cathy Burden noted that the decision did not address the issue of whether school vouchers are constitutional in Oklahoma.

"Rather, the court refused to rule on the constitutional issues solely on the basis of who can sue and who can be sued when challenging the constitutionality of a law," they said in a written statement.

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Both school districts will review the decision and decide whether to take any further action, the statement says.

But Nelson said the court's action ends the case.

"They don't have standing to do anything. That's what the court is saying - that it's none of their business," he said. "It's over. The program continues. The decision of the district court judge is reversed. And we're back where we started with a good law that benefits kids."

In March, Tulsa District Court Judge Rebecca Nightingale ruled that the law was unconstitutional but left it intact until an appeal was considered.

Attorneys for The Becket Fund for Religious Liberty in Washington, D.C., later filed an appeal with the state Supreme Court on behalf of the parents of the five special-needs students. The group provided its legal services for free.

Becket attorneys argued in their brief to the state Supreme Court that the law would violate the state constitution's ban against using state funds for private sectarian uses only if the aid "is used by the state to promote religion or to discriminate on the basis of religion. The scholarship act does neither. It is religiously neutral in every respect."

On Tuesday, Eric Baxter, senior counsel for the Becket Fund for Religious Liberty, said, "This is a great victory for both religious freedom and the disabled. The message from the Supreme Court today is unequivocal: These school districts should stop spending taxpayer dollars suing their most vulnerable students and focus on what they are supposed to be doing - teaching kids."

He continued, "Let's hope the school districts drop their paranoia that allowing disabled kids to go to a private religious school of their choice somehow creates an official state church for Oklahoma."

State Attorney General Scott Pruitt also released a statement late Tuesday praising the decision.

"From the beginning, we believed it was improper for these school districts to sue the parents of special needs children simply for following the law," he said. "The Lindsey Nicole Henry Scholarship Act is the law and (school) districts must follow the law."

The law was named after former Gov. Brad Henry's infant daughter who died from a rare neuromuscular disease. Henry signed the legislation into law in 2010.

House Bill 3393 timeline

June 2010: Lindsey Nicole Henry Scholarships for Students with Disabilities Act, or House Bill 3393, is signed into law.

Fall 2010: Broken Arrow, Jenks, Liberty, Tulsa and Union school boards vote not to process the scholarships.

Jan. 18, 2011: Oklahoma Attorney General Scott Pruitt threatens legal action against those school districts and individual board members if they fail to comply with the law within the week.

Jan. 24, 2011: Broken Arrow, Jenks, Liberty and Union school districts announce that they will sue Pruitt over the constitutionality of the law. They also vote to process scholarships under the law until a decision on its constitutionality is made.

April 2011: Twenty parents sue Broken Arrow, Jenks, Tulsa and Union school districts in Tulsa federal court, saying their special-needs children were denied private school scholarships in 2010-11.

May 2011: The state Legislature passes HB 1744, which transfers responsibility for administering the scholarship program from the districts to the Oklahoma State Department of Education.

July 2011: In light of that legislation, federal Chief U.S. District Judge Claire Eagan grants the parents a stay so they can pursue "administrative remedies" through the state Education Department. Eagan invites the school districts to file their challenge of HB 3393's constitutionality in state court.

September 2011: Jenks and Union school districts file a countersuit in state court to challenge the

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constitutionality of the law on behalf of all school districts. Their suit names the parents of students in each district who participated in the federal lawsuit against the schools.

November 2011: The federal lawsuit against the Broken Arrow, Jenks, Tulsa and Union school districts is dismissed at the parents' request.

March 27: Tulsa County District Judge Rebecca Nightingale strikes down the law, ruling it unconstitutional.

June 15: Attorneys for the parents appeal to the Oklahoma Supreme Court.

Tuesday: Oklahoma Supreme Court throws out the case, ruling that the school districts did not have standing to challenge the constitutionality of the law.

Nov. 20, 2012

Original Print Headline: School districts' challenge tossed

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2012 WL 5868910

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Supreme Court of Oklahoma.

INDEPENDENT SCHOOL DISTRICT NO. 5 OF TULSA COUNTY, Oklahoma, a/k/a Jenks Public Schools, and Independent School District No. 9 of Tulsa County, Oklahoma, a/k/a Union Public Schools, Plaintiffs/Appellees, v.

Russell SPRY, Stephanie Spry, Tim Tylicki, Kimberley Tylicki, Tim Fisher, Kristen Fisher, Stephan Kipskind, Stephanie Hipskind, Jerry Sneed, and Shanna Sneed, Defendants/Appellants.

Nos. 110694, 110693. | Nov. 20, 2012.

¶ 0 This cause concerns a recently enacted school voucher program for students with disabilities. In 2010, the Oklahoma Legislature passed HB 3393 which became codified at 70 O.S. Supp.2010 §§ 13-101.1 and 13-101.2, known as the **Lindsey Nicole Henry** Scholarship for Students with Disabilities Program Act. On September 2, 2011, Jenks Public Schools and Union Public Schools filed a state court lawsuit against the parents of disabled children who sought money from the school districts for private school tuition. The remedy sought was a declaratory judgment that the Act was unconstitutional and invalid. The school districts also sought a temporary and permanent injunction to keep the parents from pursuing administrative remedies against them.

Opinion

ORDER

*1 ¶ 1 The school districts argued that the Act was unconstitutional because it violated several provisions of the Oklahoma Constitution. Oral argument was requested and a multitude of allegedly interested

parties filed *amicus curiae* briefs. Because the school districts lack standing/justiciable issues to sue parents of students for the issuance of state dollars from the State Department of Education to the parents for payments to private schools, we deny the motion for oral argument and deny all applications for *amicus curiae* briefs.

¶ 2 Standing has traditionally been defined as whether a party has sufficient interest in an otherwise justiciable controversy to obtain judicial resolution of the controversy.¹ This Court has held that standing to raise issues in a proceeding must be predicated on interest that is direct, immediate, and substantial.² To establish standing, the plaintiff must show: 1) a concrete, particularized, actual or imminent injury in fact; 2) a causal connection between the injury and the alleged misconduct; and 3) a protected interest within a statutorily or constitutionally protected zone.³

¶ 3 Standing, as a jurisdictional question, may be correctly raised at any level of the judicial process or by the Court on its own motion.⁴ This Court has consistently held that standing to raise issues in a proceeding must be predicated on interest that is "direct, immediate and substantial."⁵ Standing determines whether the person is the proper party to request adjudication of a certain issue and does not decide the issue itself.⁶ The key element is whether the party whose standing is challenged has sufficient interest or stake in the outcome.⁷

¶ 4 The funds at issue are not taxes from taxpayers in the districts' county revenue streams that a county assessor is improperly reducing or disposing of, but part of the Legislature's general grant to the districts, through the State Department of Education. Because the school districts are not the ones charged with the duty to provide free public education, the Legislature's withholding of certain funds, even if it is unconstitutional, does not violate a constitutionally protected interest of the school districts themselves, because they are merely the Legislature's vehicle.

¶ 5 The school districts are not taxpayers themselves, whom this Court has long recognized have a right to challenge the illegal expenditure of public funds. *Fent v. Contingency Review Board*, 2007 OK 27,

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