



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB3388

Introduced 2/14/2020, by Sen. Laura Ellman

SYNOPSIS AS INTRODUCED:

105 ILCS 5/14-7.02

from Ch. 122, par. 14-7.02

Amends the Children with Disabilities Article of the School Code. Allows a private special education facility in this State that is a nonprofit entity and that provides special education services only to students who are referred to it by a public school district in this State to require tuition payments by a school district monthly prior to the provision of special education services in accordance with a student's individualized education program for the period that the student is enrolled in the facility pursuant to a placement contract between the facility and the student's school district. Provides that, at or before the end of each regular school term and each summer school term, the private special education facility shall refund to a school district any tuition funds collected by the facility for days that a student was not enrolled in the facility, and if, for any reason, the facility does not satisfy the requirements of the Article or any rules adopted by the State Board of Education regulating private special education facilities, then the State Board, at the request of the school district, may determine that the facility shall refund any tuition funds collected by the facility for days that it was determined by the State Board that the facility was in noncompliance with special education rules. Effective immediately.

LRB101 19998 CMG 69524 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning education.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The School Code is amended by changing Section
5 14-7.02 as follows:

6 (105 ILCS 5/14-7.02) (from Ch. 122, par. 14-7.02)

7 Sec. 14-7.02. Children attending private schools, public
8 out-of-state schools, public school residential facilities or
9 private special education facilities. The General Assembly
10 recognizes that non-public schools or special education
11 facilities provide an important service in the educational
12 system in Illinois.

13 If because of his or her disability the special education
14 program of a district is unable to meet the needs of a child
15 and the child attends a non-public school or special education
16 facility, a public out-of-state school or a special education
17 facility owned and operated by a county government unit that
18 provides special educational services required by the child and
19 is in compliance with the appropriate rules and regulations of
20 the State Superintendent of Education, the school district in
21 which the child is a resident shall pay the actual cost of
22 tuition for special education and related services provided
23 during the regular school term and during the summer school

1 term if the child's educational needs so require, excluding
2 room, board and transportation costs charged the child by that
3 non-public school or special education facility, public
4 out-of-state school or county special education facility, or
5 \$4,500 per year, whichever is less, and shall provide him any
6 necessary transportation. "Nonpublic special education
7 facility" shall include a residential facility, within or
8 without the State of Illinois, which provides special education
9 and related services to meet the needs of the child by
10 utilizing private schools or public schools, whether located on
11 the site or off the site of the residential facility.

12 The State Board of Education shall promulgate rules and
13 regulations for determining when placement in a private special
14 education facility is appropriate. Such rules and regulations
15 shall take into account the various types of services needed by
16 a child and the availability of such services to the particular
17 child in the public school. In developing these rules and
18 regulations the State Board of Education shall consult with the
19 Advisory Council on Education of Children with Disabilities and
20 hold public hearings to secure recommendations from parents,
21 school personnel, and others concerned about this matter.

22 The State Board of Education shall also promulgate rules
23 and regulations for transportation to and from a residential
24 school. Transportation to and from home to a residential school
25 more than once each school term shall be subject to prior
26 approval by the State Superintendent in accordance with the

1 rules and regulations of the State Board.

2 A private special education facility in this State that is
3 a nonprofit entity and that provides special education services
4 only to students who are referred to it by a public school
5 district in this State may require tuition payments by a school
6 district monthly prior to the provision of special education
7 services in accordance with a student's individualized
8 education program for the period that the student is enrolled
9 in the facility pursuant to a placement contract between the
10 facility and the student's school district. At or before the
11 end of each regular school term and each summer school term,
12 the private special education facility shall refund to a school
13 district any tuition funds collected by the facility for days
14 that a student was not enrolled in the facility, and if, for
15 any reason, the facility does not satisfy the requirements of
16 this Article or any rules adopted by the State Board of
17 Education regulating private special education facilities,
18 then the State Board, at the request of the school district,
19 may determine that the facility shall refund any tuition funds
20 collected by the facility for days that it was determined by
21 the State Board that the facility was in noncompliance with
22 special education rules. The facility shall refund the school
23 district following the determination by the State Board.

24 A school district making tuition payments pursuant to this
25 Section is eligible for reimbursement from the State for the
26 amount of such payments actually made in excess of the district

1 per capita tuition charge for students not receiving special
2 education services. Such reimbursement shall be approved in
3 accordance with Section 14-12.01 and each district shall file
4 its claims, computed in accordance with rules prescribed by the
5 State Board of Education, on forms prescribed by the State
6 Superintendent of Education. Data used as a basis of
7 reimbursement claims shall be for the preceding regular school
8 term and summer school term. Each school district shall
9 transmit its claims to the State Board of Education on or
10 before August 15. The State Board of Education, before
11 approving any such claims, shall determine their accuracy and
12 whether they are based upon services and facilities provided
13 under approved programs. Upon approval the State Board shall
14 cause vouchers to be prepared showing the amount due for
15 payment of reimbursement claims to school districts, for
16 transmittal to the State Comptroller on the 30th day of
17 September, December, and March, respectively, and the final
18 voucher, no later than June 20. If the money appropriated by
19 the General Assembly for such purpose for any year is
20 insufficient, it shall be apportioned on the basis of the
21 claims approved.

22 No child shall be placed in a special education program
23 pursuant to this Section if the tuition cost for special
24 education and related services increases more than 10 percent
25 over the tuition cost for the previous school year or exceeds
26 \$4,500 per year unless such costs have been approved by the

1 Illinois Purchased Care Review Board. The Illinois Purchased
2 Care Review Board shall consist of the following persons, or
3 their designees: the Directors of Children and Family Services,
4 Public Health, Public Aid, and the Governor's Office of
5 Management and Budget; the Secretary of Human Services; the
6 State Superintendent of Education; and such other persons as
7 the Governor may designate. The Review Board shall also consist
8 of one non-voting member who is an administrator of a private,
9 nonpublic, special education school. The Review Board shall
10 establish rules and regulations for its determination of
11 allowable costs and payments made by local school districts for
12 special education, room and board, and other related services
13 provided by non-public schools or special education facilities
14 and shall establish uniform standards and criteria which it
15 shall follow. The Review Board shall approve the usual and
16 customary rate or rates of a special education program that (i)
17 is offered by an out-of-state, non-public provider of
18 integrated autism specific educational and autism specific
19 residential services, (ii) offers 2 or more levels of
20 residential care, including at least one locked facility, and
21 (iii) serves 12 or fewer Illinois students.

22 In determining rates based on allowable costs, the Review
23 Board shall consider any wage increases awarded by the General
24 Assembly to front line personnel defined as direct support
25 persons, aides, front-line supervisors, qualified intellectual
26 disabilities professionals, nurses, and non-administrative

1 support staff working in service settings in community-based
2 settings within the State and adjust customary rates or rates
3 of a special education program to be equitable to the wage
4 increase awarded to similar staff positions in a community
5 residential setting. Any wage increase awarded by the General
6 Assembly to front line personnel defined as direct support
7 persons, aides, front-line supervisors, qualified intellectual
8 disabilities professionals, nurses, and non-administrative
9 support staff working in community-based settings within the
10 State, including the \$0.75 per hour increase contained in
11 Public Act 100-23 and the \$0.50 per hour increase included in
12 Public Act 100-23, shall also be a basis for any facility
13 covered by this Section to appeal its rate before the Review
14 Board under the process defined in Title 89, Part 900, Section
15 340 of the Illinois Administrative Code. Illinois
16 Administrative Code Title 89, Part 900, Section 342 shall be
17 updated to recognize wage increases awarded to community-based
18 settings to be a basis for appeal. However, any wage increase
19 that is captured upon appeal from a previous year shall not be
20 counted by the Review Board as revenue for the purpose of
21 calculating a facility's future rate.

22 Any definition used by the Review Board in administrative
23 rule or policy to define "related organizations" shall include
24 any and all exceptions contained in federal law or regulation
25 as it pertains to the federal definition of "related
26 organizations".

1 The Review Board shall establish uniform definitions and
2 criteria for accounting separately by special education, room
3 and board and other related services costs. The Board shall
4 also establish guidelines for the coordination of services and
5 financial assistance provided by all State agencies to assure
6 that no otherwise qualified child with a disability receiving
7 services under Article 14 shall be excluded from participation
8 in, be denied the benefits of or be subjected to discrimination
9 under any program or activity provided by any State agency.

10 The Review Board shall review the costs for special
11 education and related services provided by non-public schools
12 or special education facilities and shall approve or disapprove
13 such facilities in accordance with the rules and regulations
14 established by it with respect to allowable costs.

15 The State Board of Education shall provide administrative
16 and staff support for the Review Board as deemed reasonable by
17 the State Superintendent of Education. This support shall not
18 include travel expenses or other compensation for any Review
19 Board member other than the State Superintendent of Education.

20 The Review Board shall seek the advice of the Advisory
21 Council on Education of Children with Disabilities on the rules
22 and regulations to be promulgated by it relative to providing
23 special education services.

24 If a child has been placed in a program in which the actual
25 per pupil costs of tuition for special education and related
26 services based on program enrollment, excluding room, board and

1 transportation costs, exceed \$4,500 and such costs have been
2 approved by the Review Board, the district shall pay such total
3 costs which exceed \$4,500. A district making such tuition
4 payments in excess of \$4,500 pursuant to this Section shall be
5 responsible for an amount in excess of \$4,500 equal to the
6 district per capita tuition charge and shall be eligible for
7 reimbursement from the State for the amount of such payments
8 actually made in excess of the districts per capita tuition
9 charge for students not receiving special education services.

10 If a child has been placed in an approved individual
11 program and the tuition costs including room and board costs
12 have been approved by the Review Board, then such room and
13 board costs shall be paid by the appropriate State agency
14 subject to the provisions of Section 14-8.01 of this Act. Room
15 and board costs not provided by a State agency other than the
16 State Board of Education shall be provided by the State Board
17 of Education on a current basis. In no event, however, shall
18 the State's liability for funding of these tuition costs begin
19 until after the legal obligations of third party payors have
20 been subtracted from such costs. If the money appropriated by
21 the General Assembly for such purpose for any year is
22 insufficient, it shall be apportioned on the basis of the
23 claims approved. Each district shall submit estimated claims to
24 the State Superintendent of Education. Upon approval of such
25 claims, the State Superintendent of Education shall direct the
26 State Comptroller to make payments on a monthly basis. The

1 frequency for submitting estimated claims and the method of
2 determining payment shall be prescribed in rules and
3 regulations adopted by the State Board of Education. Such
4 current state reimbursement shall be reduced by an amount equal
5 to the proceeds which the child or child's parents are eligible
6 to receive under any public or private insurance or assistance
7 program. Nothing in this Section shall be construed as
8 relieving an insurer or similar third party from an otherwise
9 valid obligation to provide or to pay for services provided to
10 a child with a disability.

11 If it otherwise qualifies, a school district is eligible
12 for the transportation reimbursement under Section 14-13.01
13 and for the reimbursement of tuition payments under this
14 Section whether the non-public school or special education
15 facility, public out-of-state school or county special
16 education facility, attended by a child who resides in that
17 district and requires special educational services, is within
18 or outside of the State of Illinois. However, a district is not
19 eligible to claim transportation reimbursement under this
20 Section unless the district certifies to the State
21 Superintendent of Education that the district is unable to
22 provide special educational services required by the child for
23 the current school year.

24 Nothing in this Section authorizes the reimbursement of a
25 school district for the amount paid for tuition of a child
26 attending a non-public school or special education facility,

1 public out-of-state school or county special education
2 facility unless the school district certifies to the State
3 Superintendent of Education that the special education program
4 of that district is unable to meet the needs of that child
5 because of his disability and the State Superintendent of
6 Education finds that the school district is in substantial
7 compliance with Section 14-4.01. However, if a child is
8 unilaterally placed by a State agency or any court in a
9 non-public school or special education facility, public
10 out-of-state school, or county special education facility, a
11 school district shall not be required to certify to the State
12 Superintendent of Education, for the purpose of tuition
13 reimbursement, that the special education program of that
14 district is unable to meet the needs of a child because of his
15 or her disability.

16 Any educational or related services provided, pursuant to
17 this Section in a non-public school or special education
18 facility or a special education facility owned and operated by
19 a county government unit shall be at no cost to the parent or
20 guardian of the child. However, current law and practices
21 relative to contributions by parents or guardians for costs
22 other than educational or related services are not affected by
23 this amendatory Act of 1978.

24 Reimbursement for children attending public school
25 residential facilities shall be made in accordance with the
26 provisions of this Section.

1 Notwithstanding any other provision of law, any school
2 district receiving a payment under this Section or under
3 Section 14-7.02b, 14-13.01, or 29-5 of this Code may classify
4 all or a portion of the funds that it receives in a particular
5 fiscal year or from general State aid pursuant to Section
6 18-8.05 of this Code as funds received in connection with any
7 funding program for which it is entitled to receive funds from
8 the State in that fiscal year (including, without limitation,
9 any funding program referenced in this Section), regardless of
10 the source or timing of the receipt. The district may not
11 classify more funds as funds received in connection with the
12 funding program than the district is entitled to receive in
13 that fiscal year for that program. Any classification by a
14 district must be made by a resolution of its board of
15 education. The resolution must identify the amount of any
16 payments or general State aid to be classified under this
17 paragraph and must specify the funding program to which the
18 funds are to be treated as received in connection therewith.
19 This resolution is controlling as to the classification of
20 funds referenced therein. A certified copy of the resolution
21 must be sent to the State Superintendent of Education. The
22 resolution shall still take effect even though a copy of the
23 resolution has not been sent to the State Superintendent of
24 Education in a timely manner. No classification under this
25 paragraph by a district shall affect the total amount or timing
26 of money the district is entitled to receive under this Code.

1 No classification under this paragraph by a district shall in
2 any way relieve the district from or affect any requirements
3 that otherwise would apply with respect to that funding
4 program, including any accounting of funds by source, reporting
5 expenditures by original source and purpose, reporting
6 requirements, or requirements of providing services.

7 (Source: P.A. 100-587, eff. 6-4-18; 101-10, eff. 6-5-19.)

8 Section 99. Effective date. This Act takes effect upon
9 becoming law.