



Rep. Daniel Didech

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10200HB4365ham001

LRB102 23289 RJT 36617 a

1 AMENDMENT TO HOUSE BILL 4365

2 AMENDMENT NO. _____. Amend House Bill 4365 by replacing
3 everything after the enacting clause with the following:

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.

10 (a) The General Assembly recognizes that non-public
11 schools or special education facilities provide an important
12 service in the educational system in Illinois.

13 (b) If a student's individualized education program (IEP)
14 team determines that because of his or her disability the
15 special education program of a district is unable to meet the
16 needs of the a child and the child attends a non-public school

1 or special education facility, a public out-of-state school or
2 a special education facility owned and operated by a county
3 government unit that provides special educational services
4 required by the child and is in compliance with the
5 appropriate rules and regulations of the State Superintendent
6 of Education, the school district in which the child is a
7 resident shall pay the actual cost of tuition for special
8 education and related services provided during the regular
9 school term and during the summer school term if the child's
10 educational needs so require, excluding room, board and
11 transportation costs charged the child by that non-public
12 school or special education facility, public out-of-state
13 school or county special education facility, or \$4,500 per
14 year, whichever is less, and shall provide him any necessary
15 transportation. "Nonpublic special education facility" shall
16 include a residential facility, within or without the State of
17 Illinois, which provides special education and related
18 services to meet the needs of the child by utilizing private
19 schools or public schools, whether located on the site or off
20 the site of the residential facility. Resident district
21 financial responsibility and reimbursement applies for both
22 nonpublic special education facilities that are approved by
23 the State Board of Education pursuant to 23 Ill. Adm. Code 401
24 or other applicable laws or rules and for emergency placements
25 in nonpublic special education facilities that are not
26 approved by the State Board of Education pursuant to 23 Ill.

1 Adm. Code 401 or other applicable laws or rules, subject to the
2 requirements of this Section.

3 (c) Prior to the placement of a child in an out-of-state
4 special education residential facility, the school district
5 must refer to the child or the child's parent or guardian the
6 option to place the child in a special education residential
7 facility located within this State, if any, that provides
8 treatment and services comparable to those provided by the
9 out-of-state special education residential facility. The
10 school district must review annually the placement of a child
11 in an out-of-state special education residential facility. As
12 a part of the review, the school district must refer to the
13 child or the child's parent or guardian the option to place the
14 child in a comparable special education residential facility
15 located within this State, if any.

16 (d) Payments shall be made by the resident school district
17 to the entity providing the educational services, whether the
18 entity is the nonpublic special education facility or the
19 school district wherein the facility is located, no less than
20 once per quarter, unless otherwise agreed to in writing by the
21 parties.

22 (e) A school district may place a student in a nonpublic
23 special education facility providing educational services, but
24 not approved by the State Board of Education pursuant to 23
25 Ill. Adm. Code 401 or other applicable laws or rules, provided
26 that the State Board of Education provides an emergency and

1 student-specific approval for placement. The State Board of
2 Education shall promptly, within 10 days after the request,
3 approve a request for emergency and student-specific approval
4 for placement if the following have been demonstrated to the
5 State Board of Education:

6 (1) the facility demonstrates appropriate licensure of
7 teachers for the student population;

8 (2) the facility demonstrates age-appropriate
9 curriculum;

10 (3) the facility provides enrollment and attendance
11 data;

12 (4) the facility demonstrates the ability to implement
13 the child's IEP; and

14 (5) the school district demonstrates that it made good
15 faith efforts to place the student in an approved
16 facility, but no approved facility has accepted the
17 student or has availability for immediate placement of the
18 student.

19 A resident school district may also submit such proof to the
20 State Board of Education as may be required for its student.

21 The State Board of Education may not unreasonably withhold
22 approval once satisfactory proof is provided to the State
23 Board.

24 (f) If an impartial due process hearing officer who is
25 contracted by the State Board of Education pursuant to this
26 Article orders placement of a student with a disability in a

1 residential facility that is not approved by the State Board
2 of Education, then, for purposes of this Section, the facility
3 shall be deemed approved for placement and school district
4 payments and State reimbursements shall be made accordingly.

5 (g) Emergency placement in a facility approved pursuant to
6 subsection (e) or (f) may continue to be utilized so long as
7 (i) the student's IEP team determines annually that such
8 placement continues to be appropriate to meet the student's
9 needs and (ii) at least every 3 years following the student's
10 placement, the IEP team reviews appropriate placements
11 approved by the State Board of Education pursuant to 23 Ill.
12 Adm. Code 401 or other applicable laws or rules to determine
13 whether there are any approved placements that can meet the
14 student's needs, have accepted the student, and have
15 availability for placement of the student.

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

1 The State Board of Education shall also promulgate rules
2 and regulations for transportation to and from a residential
3 school. Transportation to and from home to a residential
4 school more than once each school term shall be subject to
5 prior approval by the State Superintendent in accordance with
6 the rules and regulations of the State Board.

7 (i) A school district making tuition payments pursuant to
8 this Section is eligible for reimbursement from the State for
9 the amount of such payments actually made in excess of the
10 district per capita tuition charge for students not receiving
11 special education services. Such reimbursement shall be
12 approved in accordance with Section 14-12.01 and each district
13 shall file its claims, computed in accordance with rules
14 prescribed by the State Board of Education, on forms
15 prescribed by the State Superintendent of Education. Data used
16 as a basis of reimbursement claims shall be for the preceding
17 regular school term and summer school term. Each school
18 district shall transmit its claims to the State Board of
19 Education on or before August 15. The State Board of
20 Education, before approving any such claims, shall determine
21 their accuracy and whether they are based upon services and
22 facilities provided under approved programs. Upon approval the
23 State Board shall cause vouchers to be prepared showing the
24 amount due for payment of reimbursement claims to school
25 districts, for transmittal to the State Comptroller on the
26 30th day of September, December, and March, respectively, and

1 the final voucher, no later than June 20. If the money
2 appropriated by the General Assembly for such purpose for any
3 year is insufficient, it shall be apportioned on the basis of
4 the claims approved.

5 (j) No child shall be placed in a special education
6 program pursuant to this Section if the tuition cost for
7 special education and related services increases more than 10
8 percent over the tuition cost for the previous school year or
9 exceeds \$4,500 per year unless such costs have been approved
10 by the Illinois Purchased Care Review Board. The Illinois
11 Purchased Care Review Board shall consist of the following
12 persons, or their designees: the Directors of Children and
13 Family Services, Public Health, Public Aid, and the Governor's
14 Office of Management and Budget; the Secretary of Human
15 Services; the State Superintendent of Education; and such
16 other persons as the Governor may designate. The Review Board
17 shall also consist of one non-voting member who is an
18 administrator of a private, nonpublic, special education
19 school. The Review Board shall establish rules and regulations
20 for its determination of allowable costs and payments made by
21 local school districts for special education, room and board,
22 and other related services provided by non-public schools or
23 special education facilities and shall establish uniform
24 standards and criteria which it shall follow. The Review Board
25 shall approve the usual and customary rate or rates of a
26 special education program that (i) is offered by an

1 out-of-state, non-public provider of integrated autism
2 specific educational and autism specific residential services,
3 (ii) offers 2 or more levels of residential care, including at
4 least one locked facility, and (iii) serves 12 or fewer
5 Illinois students.

6 (k) In determining rates based on allowable costs, the
7 Review Board shall consider any wage increases awarded by the
8 General Assembly to front line personnel defined as direct
9 support persons, aides, front-line supervisors, qualified
10 intellectual disabilities professionals, nurses, and
11 non-administrative support staff working in service settings
12 in community-based settings within the State and adjust
13 customary rates or rates of a special education program to be
14 equitable to the wage increase awarded to similar staff
15 positions in a community residential setting. Any wage
16 increase awarded by the General Assembly to front line
17 personnel defined as direct support persons, aides, front-line
18 supervisors, qualified intellectual disabilities
19 professionals, nurses, and non-administrative support staff
20 working in community-based settings within the State,
21 including the \$0.75 per hour increase contained in Public Act
22 100-23 and the \$0.50 per hour increase included in Public Act
23 100-23, shall also be a basis for any facility covered by this
24 Section to appeal its rate before the Review Board under the
25 process defined in Title 89, Part 900, Section 340 of the
26 Illinois Administrative Code. Illinois Administrative Code

1 Title 89, Part 900, Section 342 shall be updated to recognize
2 wage increases awarded to community-based settings to be a
3 basis for appeal. However, any wage increase that is captured
4 upon appeal from a previous year shall not be counted by the
5 Review Board as revenue for the purpose of calculating a
6 facility's future rate.

7 (l) Any definition used by the Review Board in
8 administrative rule or policy to define "related
9 organizations" shall include any and all exceptions contained
10 in federal law or regulation as it pertains to the federal
11 definition of "related organizations".

12 (m) The Review Board shall establish uniform definitions
13 and criteria for accounting separately by special education,
14 room and board and other related services costs. The Board
15 shall also establish guidelines for the coordination of
16 services and financial assistance provided by all State
17 agencies to assure that no otherwise qualified child with a
18 disability receiving services under Article 14 shall be
19 excluded from participation in, be denied the benefits of or
20 be subjected to discrimination under any program or activity
21 provided by any State agency.

22 (n) The Review Board shall review the costs for special
23 education and related services provided by non-public schools
24 or special education facilities and shall approve or
25 disapprove such facilities in accordance with the rules and
26 regulations established by it with respect to allowable costs.

1 (o) The State Board of Education shall provide
2 administrative and staff support for the Review Board as
3 deemed reasonable by the State Superintendent of Education.
4 This support shall not include travel expenses or other
5 compensation for any Review Board member other than the State
6 Superintendent of Education.

7 (p) The Review Board shall seek the advice of the Advisory
8 Council on Education of Children with Disabilities on the
9 rules and regulations to be promulgated by it relative to
10 providing special education services.

11 (q) If a child has been placed in a program in which the
12 actual per pupil costs of tuition for special education and
13 related services based on program enrollment, excluding room,
14 board and transportation costs, exceed \$4,500 and such costs
15 have been approved by the Review Board, the district shall pay
16 such total costs which exceed \$4,500. A district making such
17 tuition payments in excess of \$4,500 pursuant to this Section
18 shall be responsible for an amount in excess of \$4,500 equal to
19 the district per capita tuition charge and shall be eligible
20 for reimbursement from the State for the amount of such
21 payments actually made in excess of the districts per capita
22 tuition charge for students not receiving special education
23 services.

24 (r) If a child has been placed in an approved individual
25 program and the tuition costs including room and board costs
26 have been approved by the Review Board, then such room and

1 board costs shall be paid by the appropriate State agency
2 subject to the provisions of Section 14-8.01 of this Act. Room
3 and board costs not provided by a State agency other than the
4 State Board of Education shall be provided by the State Board
5 of Education on a current basis. In no event, however, shall
6 the State's liability for funding of these tuition costs begin
7 until after the legal obligations of third party payors have
8 been subtracted from such costs. If the money appropriated by
9 the General Assembly for such purpose for any year is
10 insufficient, it shall be apportioned on the basis of the
11 claims approved. Each district shall submit estimated claims
12 to the State Superintendent of Education. Upon approval of
13 such claims, the State Superintendent of Education shall
14 direct the State Comptroller to make payments on a monthly
15 basis. The frequency for submitting estimated claims and the
16 method of determining payment shall be prescribed in rules and
17 regulations adopted by the State Board of Education. Such
18 current state reimbursement shall be reduced by an amount
19 equal to the proceeds which the child or child's parents are
20 eligible to receive under any public or private insurance or
21 assistance program. Nothing in this Section shall be construed
22 as relieving an insurer or similar third party from an
23 otherwise valid obligation to provide or to pay for services
24 provided to a child with a disability.

25 (s) If it otherwise qualifies, a school district is
26 eligible for the transportation reimbursement under Section

1 14-13.01 and for the reimbursement of tuition payments under
2 this Section whether the non-public school or special
3 education facility, public out-of-state school or county
4 special education facility, attended by a child who resides in
5 that district and requires special educational services, is
6 within or outside of the State of Illinois. However, a
7 district is not eligible to claim transportation reimbursement
8 under this Section unless the district certifies to the State
9 Superintendent of Education that the district is unable to
10 provide special educational services required by the child for
11 the current school year.

12 (t) Nothing in this Section authorizes the reimbursement
13 of a school district for the amount paid for tuition of a child
14 attending a non-public school or special education facility,
15 public out-of-state school or county special education
16 facility unless the school district certifies to the State
17 Superintendent of Education that the special education program
18 of that district is unable to meet the needs of that child
19 because of his disability and the State Superintendent of
20 Education finds that the school district is in substantial
21 compliance with Section 14-4.01. However, if a child is
22 unilaterally placed by a State agency or any court in a
23 non-public school or special education facility, public
24 out-of-state school, or county special education facility, a
25 school district shall not be required to certify to the State
26 Superintendent of Education, for the purpose of tuition

1 reimbursement, that the special education program of that
2 district is unable to meet the needs of a child because of his
3 or her disability.

4 (u) Any educational or related services provided, pursuant
5 to this Section in a non-public school or special education
6 facility or a special education facility owned and operated by
7 a county government unit shall be at no cost to the parent or
8 guardian of the child. However, current law and practices
9 relative to contributions by parents or guardians for costs
10 other than educational or related services are not affected by
11 this amendatory Act of 1978.

12 (v) Reimbursement for children attending public school
13 residential facilities shall be made in accordance with the
14 provisions of this Section.

15 (w) Notwithstanding any other provision of law, any school
16 district receiving a payment under this Section or under
17 Section 14-7.02b, 14-13.01, or 29-5 of this Code may classify
18 all or a portion of the funds that it receives in a particular
19 fiscal year or from general State aid pursuant to Section
20 18-8.05 of this Code as funds received in connection with any
21 funding program for which it is entitled to receive funds from
22 the State in that fiscal year (including, without limitation,
23 any funding program referenced in this Section), regardless of
24 the source or timing of the receipt. The district may not
25 classify more funds as funds received in connection with the
26 funding program than the district is entitled to receive in

1 that fiscal year for that program. Any classification by a
2 district must be made by a resolution of its board of
3 education. The resolution must identify the amount of any
4 payments or general State aid to be classified under this
5 paragraph and must specify the funding program to which the
6 funds are to be treated as received in connection therewith.
7 This resolution is controlling as to the classification of
8 funds referenced therein. A certified copy of the resolution
9 must be sent to the State Superintendent of Education. The
10 resolution shall still take effect even though a copy of the
11 resolution has not been sent to the State Superintendent of
12 Education in a timely manner. No classification under this
13 paragraph by a district shall affect the total amount or
14 timing of money the district is entitled to receive under this
15 Code. No classification under this paragraph by a district
16 shall in any way relieve the district from or affect any
17 requirements that otherwise would apply with respect to that
18 funding program, including any accounting of funds by source,
19 reporting expenditures by original source and purpose,
20 reporting requirements, or requirements of providing services.
21 (Source: P.A. 101-10, eff. 6-5-19; 102-254, eff. 8-6-21.)

22 Section 99. Effective date. This Act takes effect upon
23 becoming law."