



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB0559

Introduced 2/23/2021, 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.

LRB102 16107 CMG 21481 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
19 and is in compliance with the appropriate rules and
20 regulations of the State Superintendent of Education, the
21 school district in which the child is a resident shall pay the
22 actual cost of tuition for special education and related
23 services provided during the regular school term and during

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

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

24 The State Board of Education shall also promulgate rules
25 and regulations for transportation to and from a residential
26 school. Transportation to and from home to a residential

1 school more than once each school term shall be subject to
2 prior approval by the State Superintendent in accordance with
3 the rules and regulations of the State Board.

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

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

25 No child shall be placed in a special education program
26 pursuant to this Section if the tuition cost for special

1 education and related services increases more than 10 percent
2 over the tuition cost for the previous school year or exceeds
3 \$4,500 per year unless such costs have been approved by the
4 Illinois Purchased Care Review Board. The Illinois Purchased
5 Care Review Board shall consist of the following persons, or
6 their designees: the Directors of Children and Family
7 Services, Public Health, Public Aid, and the Governor's Office
8 of Management and Budget; the Secretary of Human Services; the
9 State Superintendent of Education; and such other persons as
10 the Governor may designate. The Review Board shall also
11 consist of one non-voting member who is an administrator of a
12 private, nonpublic, special education school. The Review Board
13 shall establish rules and regulations for its determination of
14 allowable costs and payments made by local school districts
15 for special education, room and board, and other related
16 services provided by non-public schools or special education
17 facilities and shall establish uniform standards and criteria
18 which it shall follow. The Review Board shall approve the
19 usual and customary rate or rates of a special education
20 program that (i) is offered by an out-of-state, non-public
21 provider of integrated autism specific educational and autism
22 specific residential services, (ii) offers 2 or more levels of
23 residential care, including at least one locked facility, and
24 (iii) serves 12 or fewer Illinois students.

25 In determining rates based on allowable costs, the Review
26 Board shall consider any wage increases awarded by the General

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

25 Any definition used by the Review Board in administrative
26 rule or policy to define "related organizations" shall include

1 any and all exceptions contained in federal law or regulation
2 as it pertains to the federal definition of "related
3 organizations".

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

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

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

24 The Review Board shall seek the advice of the Advisory
25 Council on Education of Children with Disabilities on the
26 rules and regulations to be promulgated by it relative to

1 providing special education services.

2 If a child has been placed in a program in which the actual
3 per pupil costs of tuition for special education and related
4 services based on program enrollment, excluding room, board
5 and transportation costs, exceed \$4,500 and such costs have
6 been approved by the Review Board, the district shall pay such
7 total costs which exceed \$4,500. A district making such
8 tuition payments in excess of \$4,500 pursuant to this Section
9 shall be responsible for an amount in excess of \$4,500 equal to
10 the district per capita tuition charge and shall be eligible
11 for reimbursement from the State for the amount of such
12 payments actually made in excess of the districts per capita
13 tuition charge for students not receiving special education
14 services.

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

1 insufficient, it shall be apportioned on the basis of the
2 claims approved. Each district shall submit estimated claims
3 to the State Superintendent of Education. Upon approval of
4 such claims, the State Superintendent of Education shall
5 direct the State Comptroller to make payments on a monthly
6 basis. The frequency for submitting estimated claims and the
7 method of determining payment shall be prescribed in rules and
8 regulations adopted by the State Board of Education. Such
9 current state reimbursement shall be reduced by an amount
10 equal to the proceeds which the child or child's parents are
11 eligible to receive under any public or private insurance or
12 assistance program. Nothing in this Section shall be construed
13 as relieving an insurer or similar third party from an
14 otherwise valid obligation to provide or to pay for services
15 provided to a child with a disability.

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

1 provide special educational services required by the child for
2 the current school year.

3 Nothing in this Section authorizes the reimbursement of a
4 school district for the amount paid for tuition of a child
5 attending a non-public school or special education facility,
6 public out-of-state school or county special education
7 facility unless the school district certifies to the State
8 Superintendent of Education that the special education program
9 of that district is unable to meet the needs of that child
10 because of his disability and the State Superintendent of
11 Education finds that the school district is in substantial
12 compliance with Section 14-4.01. However, if a child is
13 unilaterally placed by a State agency or any court in a
14 non-public school or special education facility, public
15 out-of-state school, or county special education facility, a
16 school district shall not be required to certify to the State
17 Superintendent of Education, for the purpose of tuition
18 reimbursement, that the special education program of that
19 district is unable to meet the needs of a child because of his
20 or her disability.

21 Any educational or related services provided, pursuant to
22 this Section in a non-public school or special education
23 facility or a special education facility owned and operated by
24 a county government unit shall be at no cost to the parent or
25 guardian of the child. However, current law and practices
26 relative to contributions by parents or guardians for costs

1 other than educational or related services are not affected by
2 this amendatory Act of 1978.

3 Reimbursement for children attending public school
4 residential facilities shall be made in accordance with the
5 provisions of this Section.

6 Notwithstanding any other provision of law, any school
7 district receiving a payment under this Section or under
8 Section 14-7.02b, 14-13.01, or 29-5 of this Code may classify
9 all or a portion of the funds that it receives in a particular
10 fiscal year or from general State aid pursuant to Section
11 18-8.05 of this Code as funds received in connection with any
12 funding program for which it is entitled to receive funds from
13 the State in that fiscal year (including, without limitation,
14 any funding program referenced in this Section), regardless of
15 the source or timing of the receipt. The district may not
16 classify more funds as funds received in connection with the
17 funding program than the district is entitled to receive in
18 that fiscal year for that program. Any classification by a
19 district must be made by a resolution of its board of
20 education. The resolution must identify the amount of any
21 payments or general State aid to be classified under this
22 paragraph and must specify the funding program to which the
23 funds are to be treated as received in connection therewith.
24 This resolution is controlling as to the classification of
25 funds referenced therein. A certified copy of the resolution
26 must be sent to the State Superintendent of Education. The

1 resolution shall still take effect even though a copy of the
2 resolution has not been sent to the State Superintendent of
3 Education in a timely manner. No classification under this
4 paragraph by a district shall affect the total amount or
5 timing of money the district is entitled to receive under this
6 Code. No classification under this paragraph by a district
7 shall in any way relieve the district from or affect any
8 requirements that otherwise would apply with respect to that
9 funding program, including any accounting of funds by source,
10 reporting expenditures by original source and purpose,
11 reporting requirements, or requirements of providing services.
12 (Source: P.A. 100-587, eff. 6-4-18; 101-10, eff. 6-5-19.)

13 Section 99. Effective date. This Act takes effect upon
14 becoming law.