



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB4979

Introduced 2/18/2020, by Rep. Katie Stuart and Barbara Hernandez

SYNOPSIS AS INTRODUCED:

105 ILCS 5/14-7.02
105 ILCS 5/14-7.05

from Ch. 122, par. 14-7.02

Amends the Children with Disabilities Article of the School Code. Provides that prior to the placement of a child in an out-of-state special education residential facility, the school district, Illinois placing agency, or court must offer to the child or the child's parent or guardian the option to place the child in a special education residential facility located within this State that provides treatment and services comparable to those provided by the out-of-state facility. Requires the school district, Illinois placing agency, or court to review annually the placement of a child in an out-of-state special education residential facility and to offer placement in a comparable facility located within this State. Effective immediately.

LRB101 17461 CMG 66871 b

FISCAL NOTE ACT
MAY APPLY

STATE MANDATES
ACT MAY REQUIRE
REIMBURSEMENT

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 Sections
5 14-7.02 and 14-7.05 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 Prior to the placement of a child in an out-of-state
13 special education residential facility, the school district
14 must offer to the child or the child's parent or guardian the
15 option to place the child in a special education residential
16 facility located within this State that provides treatment and
17 services comparable to those provided by the out-of-state
18 special education residential facility. The school district
19 must review annually the placement of a child in an
20 out-of-state special education residential facility. As a part
21 of the review, the school district must offer to the child or
22 the child's parent or guardian the option to place the child in
23 a comparable special education residential facility located
24 within this State.

25 The State Board of Education shall promulgate rules and
26 regulations for determining when placement in a private special

1 education facility is appropriate. Such rules and regulations
2 shall take into account the various types of services needed by
3 a child and the availability of such services to the particular
4 child in the public school. In developing these rules and
5 regulations the State Board of Education shall consult with the
6 Advisory Council on Education of Children with Disabilities and
7 hold public hearings to secure recommendations from parents,
8 school personnel, and others concerned about this matter.

9 The State Board of Education shall also promulgate rules
10 and regulations for transportation to and from a residential
11 school. Transportation to and from home to a residential school
12 more than once each school term shall be subject to prior
13 approval by the State Superintendent in accordance with the
14 rules and regulations of the State Board.

15 A school district making tuition payments pursuant to this
16 Section is eligible for reimbursement from the State for the
17 amount of such payments actually made in excess of the district
18 per capita tuition charge for students not receiving special
19 education services. Such reimbursement shall be approved in
20 accordance with Section 14-12.01 and each district shall file
21 its claims, computed in accordance with rules prescribed by the
22 State Board of Education, on forms prescribed by the State
23 Superintendent of Education. Data used as a basis of
24 reimbursement claims shall be for the preceding regular school
25 term and summer school term. Each school district shall
26 transmit its claims to the State Board of Education on or

1 before August 15. The State Board of Education, before
2 approving any such claims, shall determine their accuracy and
3 whether they are based upon services and facilities provided
4 under approved programs. Upon approval the State Board shall
5 cause vouchers to be prepared showing the amount due for
6 payment of reimbursement claims to school districts, for
7 transmittal to the State Comptroller on the 30th day of
8 September, December, and March, respectively, and the final
9 voucher, no later than June 20. If the money appropriated by
10 the General Assembly for such purpose for any year is
11 insufficient, it shall be apportioned on the basis of the
12 claims approved.

13 No child shall be placed in a special education program
14 pursuant to this Section if the tuition cost for special
15 education and related services increases more than 10 percent
16 over the tuition cost for the previous school year or exceeds
17 \$4,500 per year unless such costs have been approved by the
18 Illinois Purchased Care Review Board. The Illinois Purchased
19 Care Review Board shall consist of the following persons, or
20 their designees: the Directors of Children and Family Services,
21 Public Health, Public Aid, and the Governor's Office of
22 Management and Budget; the Secretary of Human Services; the
23 State Superintendent of Education; and such other persons as
24 the Governor may designate. The Review Board shall also consist
25 of one non-voting member who is an administrator of a private,
26 nonpublic, special education school. The Review Board shall

1 establish rules and regulations for its determination of
2 allowable costs and payments made by local school districts for
3 special education, room and board, and other related services
4 provided by non-public schools or special education facilities
5 and shall establish uniform standards and criteria which it
6 shall follow. The Review Board shall approve the usual and
7 customary rate or rates of a special education program that (i)
8 is offered by an out-of-state, non-public provider of
9 integrated autism specific educational and autism specific
10 residential services, (ii) offers 2 or more levels of
11 residential care, including at least one locked facility, and
12 (iii) serves 12 or fewer Illinois students.

13 In determining rates based on allowable costs, the Review
14 Board shall consider any wage increases awarded by the General
15 Assembly to front line personnel defined as direct support
16 persons, aides, front-line supervisors, qualified intellectual
17 disabilities professionals, nurses, and non-administrative
18 support staff working in service settings in community-based
19 settings within the State and adjust customary rates or rates
20 of a special education program to be equitable to the wage
21 increase awarded to similar staff positions in a community
22 residential setting. Any wage increase awarded by the General
23 Assembly to front line personnel defined as direct support
24 persons, aides, front-line supervisors, qualified intellectual
25 disabilities professionals, nurses, and non-administrative
26 support staff working in community-based settings within the

1 State, including the \$0.75 per hour increase contained in
2 Public Act 100-23 and the \$0.50 per hour increase included in
3 Public Act 100-23, shall also be a basis for any facility
4 covered by this Section to appeal its rate before the Review
5 Board under the process defined in Title 89, Part 900, Section
6 340 of the Illinois Administrative Code. Illinois
7 Administrative Code Title 89, Part 900, Section 342 shall be
8 updated to recognize wage increases awarded to community-based
9 settings to be a basis for appeal. However, any wage increase
10 that is captured upon appeal from a previous year shall not be
11 counted by the Review Board as revenue for the purpose of
12 calculating a facility's future rate.

13 Any definition used by the Review Board in administrative
14 rule or policy to define "related organizations" shall include
15 any and all exceptions contained in federal law or regulation
16 as it pertains to the federal definition of "related
17 organizations".

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

1 The Review Board shall review the costs for special
2 education and related services provided by non-public schools
3 or special education facilities and shall approve or disapprove
4 such facilities in accordance with the rules and regulations
5 established by it with respect to allowable costs.

6 The State Board of Education shall provide administrative
7 and staff support for the Review Board as deemed reasonable by
8 the State Superintendent of Education. This support shall not
9 include travel expenses or other compensation for any Review
10 Board member other than the State Superintendent of Education.

11 The Review Board shall seek the advice of the Advisory
12 Council on Education of Children with Disabilities on the rules
13 and regulations to be promulgated by it relative to providing
14 special education services.

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

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

1 a child with a disability.

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

15 Nothing in this Section authorizes the reimbursement of a
16 school district for the amount paid for tuition of a child
17 attending a non-public school or special education facility,
18 public out-of-state school or county special education
19 facility unless the school district certifies to the State
20 Superintendent of Education that the special education program
21 of that district is unable to meet the needs of that child
22 because of his disability and the State Superintendent of
23 Education finds that the school district is in substantial
24 compliance with Section 14-4.01. However, if a child is
25 unilaterally placed by a State agency or any court in a
26 non-public school or special education facility, public

1 out-of-state school, or county special education facility, a
2 school district shall not be required to certify to the State
3 Superintendent of Education, for the purpose of tuition
4 reimbursement, that the special education program of that
5 district is unable to meet the needs of a child because of his
6 or her disability.

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

15 Reimbursement for children attending public school
16 residential facilities shall be made in accordance with the
17 provisions of this Section.

18 Notwithstanding any other provision of law, any school
19 district receiving a payment under this Section or under
20 Section 14-7.02b, 14-13.01, or 29-5 of this Code may classify
21 all or a portion of the funds that it receives in a particular
22 fiscal year or from general State aid pursuant to Section
23 18-8.05 of this Code as funds received in connection with any
24 funding program for which it is entitled to receive funds from
25 the State in that fiscal year (including, without limitation,
26 any funding program referenced in this Section), regardless of

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

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

1 Sec. 14-7.05. Placement in residential facility; payment
2 of educational costs. For any student with a disability in a
3 residential facility placement made or paid for by an Illinois
4 public State agency or made by any court in this State, the
5 school district of residence as determined pursuant to this
6 Article is responsible for the costs of educating the child and
7 shall be reimbursed for those costs in accordance with this
8 Code. Subject to this Section and relevant State appropriation,
9 the resident district's financial responsibility and
10 reimbursement must be calculated in accordance with the
11 provisions of Section 14-7.02 of this Code. In those instances
12 in which a district receives a block grant pursuant to Article
13 1D of this Code, the district's financial responsibility is
14 limited to the actual educational costs of the placement, which
15 must be paid by the district from its block grant
16 appropriation. Resident district financial responsibility and
17 reimbursement applies for both residential facilities that are
18 approved by the State Board of Education and non-approved
19 facilities, subject to the requirements of this Section. The
20 Illinois placing agency or court remains responsible for
21 funding the residential portion of the placement and for
22 notifying the resident district prior to the placement, except
23 in emergency situations. The residential facility in which the
24 student is placed shall notify the resident district of the
25 student's enrollment as soon as practicable after the
26 placement. Failure of the placing agency or court to notify the

1 resident district prior to the placement does not absolve the
2 resident district of financial responsibility for the
3 educational costs of the placement; however, the resident
4 district shall not become financially responsible unless and
5 until it receives written notice of the placement by either the
6 placing agency, court, or residential facility. The placing
7 agency or parent shall request an individualized education
8 program (IEP) meeting from the resident district if the
9 placement would entail additional educational services beyond
10 the student's current IEP. The district of residence shall
11 retain control of the IEP process, and any changes to the IEP
12 must be done in compliance with the federal Individuals with
13 Disabilities Education Act.

14 Prior to the placement of a child in an out-of-state
15 special education residential facility, the placing agency or
16 court must offer to the child or the child's parent or guardian
17 the option to place the child in a special education
18 residential facility located within this State that provides
19 treatment and services comparable to those provided by the
20 out-of-state special education residential facility. The
21 placing agency or court must review annually the placement of a
22 child in an out-of-state special education residential
23 facility. As a part of the review, the placing agency or court
24 must offer to the child or the child's parent or guardian the
25 option to place the child in a comparable special education
26 residential facility located within this State.

1 Payments shall be made by the resident district to the
2 entity providing the educational services, whether the entity
3 is the residential facility or the school district wherein the
4 facility is located, no less than once per quarter unless
5 otherwise agreed to in writing by the parties.

6 A residential facility providing educational services
7 within the facility, but not approved by the State Board of
8 Education, is required to demonstrate proof to the State Board
9 of (i) appropriate certification of teachers for the student
10 population, (ii) age-appropriate curriculum, (iii) enrollment
11 and attendance data, and (iv) the ability to implement the
12 child's IEP. A school district is under no obligation to pay
13 such a residential facility unless and until such proof is
14 provided to the State Board's satisfaction.

15 When a dispute arises over the determination of the
16 district of residence under this Section, any person or entity,
17 including without limitation a school district or residential
18 facility, may make a written request for a residency decision
19 to the State Superintendent of Education, who, upon review of
20 materials submitted and any other items of information he or
21 she may request for submission, shall issue his or her decision
22 in writing. The decision of the State Superintendent of
23 Education is final.

24 (Source: P.A. 95-844, eff. 8-15-08; 95-938, eff. 8-29-08.)

25 Section 99. Effective date. This Act takes effect upon
26 becoming law.