



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB1757

Introduced 2/15/2019, by Sen. Jennifer Bertino-Tarrant

SYNOPSIS AS INTRODUCED:

105 ILCS 5/14-7.02	from Ch. 122, par. 14-7.02
105 ILCS 5/14-7.02b	
105 ILCS 5/14-8.01	from Ch. 122, par. 14-8.01

Amends the Children with Disabilities Article of the School Code. Provides after June 30, 2024, no payments may be made by a school district for amounts in excess of \$4,500 for children who have been placed in a program in which the actual per pupil costs of tuition for special education and related services based on program enrollment exceed \$4,500. With regard to funding for children requiring special education services, provides that for individual students with disabilities whose program costs exceed 2 (rather than 4) times the district's per capita tuition rate, the costs in excess of 2 (rather than 4) times the district's per capita rate must be paid by the State Board of Education from funds made available under a provision in the Code regarding special education facilities (rather than from unexpended IDEA discretionary funds). With regard to the supervision of special education buildings and facilities, provides that beginning with Fiscal Year 2020 through Fiscal Year 2025, the State must fund all necessary expenses related to educating children with excess costs who attend certain public schools and for Fiscal Year 2026 and each fiscal year thereafter, all costs in excess of 2 times a district's per capita tuition charge for educating children who attend certain schools and programs must be reimbursed by the State. Effective July 1, 2019.

LRB101 10245 AXK 55349 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, 14-7.02b, and 14-8.01 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 school district making tuition payments pursuant to this
3 Section is eligible for reimbursement from the State for the
4 amount of such payments actually made in excess of the district
5 per capita tuition charge for students not receiving special
6 education services. Such reimbursement shall be approved in
7 accordance with Section 14-12.01 and each district shall file
8 its claims, computed in accordance with rules prescribed by the
9 State Board of Education, on forms prescribed by the State
10 Superintendent of Education. Data used as a basis of
11 reimbursement claims shall be for the preceding regular school
12 term and summer school term. Each school district shall
13 transmit its claims to the State Board of Education on or
14 before August 15. The State Board of Education, before
15 approving any such claims, shall determine their accuracy and
16 whether they are based upon services and facilities provided
17 under approved programs. Upon approval the State Board shall
18 cause vouchers to be prepared showing the amount due for
19 payment of reimbursement claims to school districts, for
20 transmittal to the State Comptroller on the 30th day of
21 September, December, and March, respectively, and the final
22 voucher, no later than June 20. If the money appropriated by
23 the General Assembly for such purpose for any year is
24 insufficient, it shall be apportioned on the basis of the
25 claims approved.

26 No child shall be placed in a special education program

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

26 In determining rates based on allowable costs, the Review

1 Board shall consider any wage increases awarded by the General
2 Assembly to front line personnel defined as direct support
3 persons, aides, front-line supervisors, qualified intellectual
4 disabilities professionals, nurses, and non-administrative
5 support staff working in service settings in community-based
6 settings within the State and adjust customary rates or rates
7 of a special education program to be equitable to the wage
8 increase awarded to similar staff positions in a community
9 residential setting. Any wage increase awarded by the General
10 Assembly to front line personnel defined as direct support
11 persons, aides, front-line supervisors, qualified intellectual
12 disabilities professionals, nurses, and non-administrative
13 support staff working in community-based settings within the
14 State shall also be a basis for any facility covered by this
15 Section to appeal its rate before the Review Board under the
16 process defined in Title 89, Part 900, Section 340 of the
17 Illinois Administrative Code. Illinois Administrative Code
18 Title 89, Part 900, Section 342 shall be updated to recognize
19 wage increases awarded to community-based settings to be a
20 basis for appeal.

21 The Review Board shall establish uniform definitions and
22 criteria for accounting separately by special education, room
23 and board and other related services costs. The Board shall
24 also establish guidelines for the coordination of services and
25 financial assistance provided by all State agencies to assure
26 that no otherwise qualified child with a disability receiving

1 services under Article 14 shall be excluded from participation
2 in, be denied the benefits of or be subjected to discrimination
3 under any program or activity provided by any State agency.

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

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

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

18 If a child has been placed in a program in which the actual
19 per pupil costs of tuition for special education and related
20 services based on program enrollment, excluding room, board and
21 transportation costs, exceed \$4,500 and such costs have been
22 approved by the Review Board, the district shall pay such total
23 costs which exceed \$4,500. A district making such tuition
24 payments in excess of \$4,500 pursuant to this Section shall be
25 responsible for an amount in excess of \$4,500 equal to the
26 district per capita tuition charge and shall be eligible for

1 reimbursement from the State for the amount of such payments
2 actually made in excess of the districts per capita tuition
3 charge for students not receiving special education services.
4 However, no payments may be made by a school district for these
5 purposes after June 30, 2024.

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

1 to the proceeds which the child or child's parents are eligible
2 to receive under any public or private insurance or assistance
3 program. Nothing in this Section shall be construed as
4 relieving an insurer or similar third party from an otherwise
5 valid obligation to provide or to pay for services provided to
6 a child with a disability.

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

20 Nothing in this Section authorizes the reimbursement of a
21 school district for the amount paid for tuition of a child
22 attending a non-public school or special education facility,
23 public out-of-state school or county special education
24 facility unless the school district certifies to the State
25 Superintendent of Education that the special education program
26 of that district is unable to meet the needs of that child

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

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

20 Reimbursement for children attending public school
21 residential facilities shall be made in accordance with the
22 provisions of this Section.

23 Notwithstanding any other provision of law, any school
24 district receiving a payment under this Section or under
25 Section 14-7.02b, 14-13.01, or 29-5 of this Code may classify
26 all or a portion of the funds that it receives in a particular

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

1 expenditures by original source and purpose, reporting
2 requirements, or requirements of providing services.

3 (Source: P.A. 99-78, eff. 7-20-15; 99-143, eff. 7-27-15;
4 100-587, eff. 6-4-18.)

5 (105 ILCS 5/14-7.02b)

6 Sec. 14-7.02b. Funding for children requiring special
7 education services. Payments to school districts for children
8 requiring special education services documented in their
9 individualized education program regardless of the program
10 from which these services are received, excluding children
11 claimed under Sections 14-7.02 and 14-7.03 of this Code, shall
12 be made in accordance with this Section. Funds received under
13 this Section may be used only for the provision of special
14 educational facilities and services as defined in Section
15 14-1.08 of this Code.

16 The appropriation for fiscal year 2005 through fiscal year
17 2017 shall be based upon the IDEA child count of all students
18 in the State, excluding students claimed under Sections 14-7.02
19 and 14-7.03 of this Code, on December 1 of the fiscal year 2
20 years preceding, multiplied by 17.5% of the general State aid
21 foundation level of support established for that fiscal year
22 under Section 18-8.05 of this Code.

23 Beginning with fiscal year 2005 and through fiscal year
24 2007, individual school districts shall not receive payments
25 under this Section totaling less than they received under the

1 funding authorized under Section 14-7.02a of this Code during
2 fiscal year 2004, pursuant to the provisions of Section
3 14-7.02a as they were in effect before the effective date of
4 this amendatory Act of the 93rd General Assembly. This base
5 level funding shall be computed first.

6 Beginning with fiscal year 2008 through fiscal year 2017,
7 individual school districts must not receive payments under
8 this Section totaling less than they received in fiscal year
9 2007. This funding shall be computed last and shall be a
10 separate calculation from any other calculation set forth in
11 this Section. This amount is exempt from the requirements of
12 Section 1D-1 of this Code.

13 Through fiscal year 2017, an amount equal to 85% of the
14 funds remaining in the appropriation shall be allocated to
15 school districts based upon the district's average daily
16 attendance reported for purposes of Section 18-8.05 of this
17 Code for the preceding school year. Fifteen percent of the
18 funds remaining in the appropriation shall be allocated to
19 school districts based upon the district's low income eligible
20 pupil count used in the calculation of general State aid under
21 Section 18-8.05 of this Code for the same fiscal year. One
22 hundred percent of the funds computed and allocated to
23 districts under this Section shall be distributed and paid to
24 school districts.

25 For individual students with disabilities whose program
26 costs exceed 2 ~~4~~ times the district's per capita tuition rate

1 as calculated under Section 10-20.12a of this Code, the costs
2 in excess of 2 ~~4~~ times the district's per capita tuition rate
3 shall be paid by the State Board of Education from funds made
4 available under ~~unexpended IDEA discretionary funds originally~~
5 ~~designated for room and board reimbursement pursuant to~~ Section
6 14-8.01 of this Code. The amount of tuition for these children
7 shall be determined by the actual cost of maintaining classes
8 for these children, using the per capita cost formula set forth
9 in Section 14-7.01 of this Code, with the program and cost
10 being pre-approved by the State Superintendent of Education.
11 Reimbursement for individual students with disabilities whose
12 program costs exceed 2 ~~4~~ times the district's per capita
13 tuition rate shall be claimed beginning with costs encumbered
14 for the 2019-2020 ~~2004-2005~~ school year and thereafter.

15 The State Board of Education shall prepare vouchers equal
16 to one-fourth the amount allocated to districts, for
17 transmittal to the State Comptroller on the 30th day of
18 September, December, and March, respectively, and the final
19 voucher, no later than June 20. The Comptroller shall make
20 payments pursuant to this Section to school districts as soon
21 as possible after receipt of vouchers. If the money
22 appropriated from the General Assembly for such purposes for
23 any year is insufficient, it shall be apportioned on the basis
24 of the payments due to school districts.

25 Nothing in this Section shall be construed to decrease or
26 increase the percentage of all special education funds that are

1 allocated annually under Article 1D of this Code or to alter
2 the requirement that a school district provide special
3 education services.

4 Nothing in this amendatory Act of the 93rd General Assembly
5 shall eliminate any reimbursement obligation owed as of the
6 effective date of this amendatory Act of the 93rd General
7 Assembly to a school district with in excess of 500,000
8 inhabitants.

9 Except for reimbursement for individual students with
10 disabilities whose program costs exceed 2 ~~4~~ times the
11 district's per capita tuition rate, no funding shall be
12 provided to school districts under this Section after fiscal
13 year 2017.

14 In fiscal year 2018 and each fiscal year thereafter, all
15 funding received by a school district from the State pursuant
16 to Section 18-8.15 of this Code that is attributable to
17 students requiring special education services must be used for
18 special education services authorized under this Code.

19 (Source: P.A. 100-465, eff. 8-31-17.)

20 (105 ILCS 5/14-8.01) (from Ch. 122, par. 14-8.01)

21 Sec. 14-8.01. Supervision of special education buildings
22 and facilities. All special educational facilities, building
23 programs, housing, and all educational programs for the types
24 of children with disabilities defined in Section 14-1.02 shall
25 be under the supervision of and subject to the approval of the

1 State Board of Education.

2 All special education facilities, building programs, and
3 housing shall comply with the building code authorized by
4 Section 2-3.12.

5 All educational programs for children with disabilities as
6 defined in Section 14-1.02 administered by any State agency
7 shall be under the general supervision of the State Board of
8 Education. Such supervision shall be limited to insuring that
9 such educational programs meet standards jointly developed and
10 agreed to by both the State Board of Education and the
11 operating State agency, including standards for educational
12 personnel.

13 Any State agency providing special educational programs
14 for children with disabilities as defined in Section 14-1.02
15 shall promulgate rules and regulations, in consultation with
16 the State Board of Education and pursuant to the Illinois
17 Administrative Procedure Act as now or hereafter amended, to
18 insure that all such programs comply with this Section and
19 Section 14-8.02.

20 No otherwise qualified child with a disability receiving
21 special education and related services under Article 14 shall
22 solely by reason of his or her disability be excluded from the
23 participation in or be denied the benefits of or be subjected
24 to discrimination under any program or activity provided by a
25 State agency.

26 State agencies providing special education and related

1 services, including room and board, either directly or through
2 grants or purchases of services shall continue to provide these
3 services according to current law and practice. Room and board
4 costs not provided by a State agency other than the State Board
5 of Education shall be provided by the State Board of Education
6 to the extent of available funds. An amount equal to one-half
7 of the State education agency's share of IDEA PART B federal
8 monies, or so much thereof as may actually be needed, shall
9 annually be appropriated to pay for the additional costs of
10 providing for room and board for those children placed pursuant
11 to Section 14-7.02 of this Code and, after all such room and
12 board costs are paid, for similar expenditures for children
13 served pursuant to Section 14-7.02 or 14-7.02b of this Code.
14 Any such excess room and board funds must first be directed to
15 those school districts with students costing in excess of 4
16 times the district's per capita tuition charge and then to
17 community based programs that serve as alternatives to
18 residential placements.

19 Beginning with Fiscal Year 1997 and continuing through
20 Fiscal Year 2000, 100% of the former Chapter I, Section 89-313
21 federal funds shall be allocated by the State Board of
22 Education in the same manner as IDEA, PART B "flow through"
23 funding to local school districts, joint agreements, and
24 special education cooperatives for the maintenance of
25 instructional and related support services to students with
26 disabilities. However, beginning with Fiscal Year 1998, the

1 total IDEA Part B discretionary funds available to the State
2 Board of Education shall not exceed the maximum permissible
3 under federal law or 20% of the total federal funds available
4 to the State, whichever is less. After all room and board
5 payments and similar expenditures are made by the State Board
6 of Education as required by this Section, the State Board of
7 Education may use the remaining funds for administration and
8 for providing discretionary activities. However, the State
9 Board of Education may use no more than 25% of its available
10 IDEA Part B discretionary funds for administrative services.

11 Beginning with Fiscal Year 2020 through Fiscal Year 2025,
12 the State must fund all necessary expenses related to educating
13 children with excess costs who attend public schools under
14 Section 14-7.02b. For Fiscal Year 2026 and each fiscal year
15 thereafter, all costs in excess of 2 times a district's per
16 capita tuition charge for educating children who attend schools
17 and programs described in Sections 14-7.02 and 14-7.02b must be
18 reimbursed by the State.

19 Special education and related services included in the
20 child's individualized educational program which are not
21 provided by another State agency shall be included in the
22 special education and related services provided by the State
23 Board of Education and the local school district.

24 The State Board of Education with the advice of the
25 Advisory Council shall prescribe the standards and make the
26 necessary rules and regulations for special education programs

1 administered by local school boards, including but not limited
2 to establishment of classes, training requirements of teachers
3 and other professional personnel, eligibility and admission of
4 pupils, the curriculum, class size limitation, building
5 programs, housing, transportation, special equipment and
6 instructional supplies, and the applications for claims for
7 reimbursement. The State Board of Education shall promulgate
8 rules and regulations for annual evaluations of the
9 effectiveness of all special education programs and annual
10 evaluation by the local school district of the individualized
11 educational program for each child for whom it provides special
12 education services.

13 A school district is responsible for the provision of
14 educational services for all school age children residing
15 within its boundaries excluding any student placed under the
16 provisions of Section 14-7.02 or any student with a disability
17 whose parent or guardian lives outside of the State of Illinois
18 as described in Section 14-1.11.

19 (Source: P.A. 99-143, eff. 7-27-15.)

20 Section 99. Effective date. This Act takes effect July 1,
21 2019.