



## 102ND GENERAL ASSEMBLY

### State of Illinois

2021 and 2022

HB0041

Introduced 1/14/2021, by Rep. Katie Stuart

#### 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.

LRB102 03862 CMG 13876 b

FISCAL NOTE ACT  
MAY APPLY

STATE MANDATES  
ACT MAY REQUIRE  
REIMBURSEMENT

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

26 The State Board of Education shall promulgate rules and

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

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

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

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

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

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

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

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

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

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

1 in, be denied the benefits of or be subjected to  
2 discrimination under any program or activity provided by any  
3 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  
7 disapprove such facilities in accordance with the rules and  
8 regulations 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  
16 rules and regulations to be promulgated by it relative to  
17 providing 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  
21 and transportation costs, exceed \$4,500 and such costs have  
22 been approved by the Review Board, the district shall pay such  
23 total costs which exceed \$4,500. A district making such  
24 tuition payments in excess of \$4,500 pursuant to this Section  
25 shall be responsible for an amount in excess of \$4,500 equal to  
26 the district per capita tuition charge and shall be eligible



1 for reimbursement from the State for the amount of such  
2 payments actually made in excess of the districts per capita  
3 tuition charge for students not receiving special education  
4 services.

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

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

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

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

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

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

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

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

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

1 reporting requirements, or requirements of providing services.  
2 (Source: P.A. 100-587, eff. 6-4-18; 101-10, eff. 6-5-19.)

3 (105 ILCS 5/14-7.05)

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

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

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

1 facility. As a part of the review, the placing agency or court  
2 must offer to the child or the child's parent or guardian the  
3 option to place the child in a comparable special education  
4 residential facility located within this State.

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

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

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

1 Superintendent of Education is final.

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

3 Section 99. Effective date. This Act takes effect upon  
4 becoming law.