

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.

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

13 (b) If a student's individualized education program (IEP)
14 team determines that because of his or her disability the
15 special education program of a district is unable to meet the
16 needs of the a child and the child attends a non-public school
17 or special education facility, a public out-of-state school or
18 a special education facility owned and operated by a county
19 government unit that provides special educational services
20 required by the child and is in compliance with the
21 appropriate rules and regulations of the State Superintendent
22 of Education, the school district in which the child is a
23 resident shall pay the actual cost of tuition for special

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

22 (c) Prior to the placement of a child in an out-of-state
23 special education residential facility, the school district
24 must refer to the child or the child's parent or guardian the
25 option to place the child in a special education residential
26 facility located within this State, if any, that provides

1 treatment and services comparable to those provided by the
2 out-of-state special education residential facility. The
3 school district must review annually the placement of a child
4 in an out-of-state special education residential facility. As
5 a part of the review, the school district must refer to the
6 child or the child's parent or guardian the option to place the
7 child in a comparable special education residential facility
8 located within this State, if any.

9 (d) Payments shall be made by the resident school district
10 to the entity providing the educational services, whether the
11 entity is the nonpublic special education facility or the
12 school district wherein the facility is located, no less than
13 once per quarter, unless otherwise agreed to in writing by the
14 parties.

15 (e) A school district may place a student in a nonpublic
16 special education facility providing educational services, but
17 not approved by the State Board of Education pursuant to 23
18 Ill. Adm. Code 401 or other applicable laws or rules, provided
19 that the State Board of Education provides an emergency and
20 student-specific approval for placement. The State Board of
21 Education shall promptly, within 10 days after the request,
22 approve a request for emergency and student-specific approval
23 for placement if the following have been demonstrated to the
24 State Board of Education:

25 (1) the facility demonstrates appropriate licensure of
26 teachers for the student population;

1 (2) the facility demonstrates age-appropriate
2 curriculum;

3 (3) the facility provides enrollment and attendance
4 data;

5 (4) the facility demonstrates the ability to implement
6 the child's IEP; and

7 (5) the school district demonstrates that it made good
8 faith efforts to place the student in an approved
9 facility, but no approved facility has accepted the
10 student or has availability for immediate placement of the
11 student.

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

14 The State Board of Education may not unreasonably withhold
15 approval once satisfactory proof is provided to the State
16 Board.

17 (f) If an impartial due process hearing officer who is
18 contracted by the State Board of Education pursuant to this
19 Article orders placement of a student with a disability in a
20 residential facility that is not approved by the State Board
21 of Education, then, for purposes of this Section, the facility
22 shall be deemed approved for placement and school district
23 payments and State reimbursements shall be made accordingly.

24 (g) Emergency placement in a facility approved pursuant to
25 subsection (e) or (f) may continue to be utilized so long as

26 (i) the student's IEP team determines annually that such

1 placement continues to be appropriate to meet the student's
2 needs and (ii) at least every 3 years following the student's
3 placement, the IEP team reviews appropriate placements
4 approved by the State Board of Education pursuant to 23 Ill.
5 Adm. Code 401 or other applicable laws or rules to determine
6 whether there are any approved placements that can meet the
7 student's needs, have accepted the student, and have
8 availability for placement of the student.

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

20 The State Board of Education shall also promulgate rules
21 and regulations for transportation to and from a residential
22 school. Transportation to and from home to a residential
23 school more than once each school term shall be subject to
24 prior approval by the State Superintendent in accordance with
25 the rules and regulations of the State Board.

26 (i) A school district making tuition payments pursuant to

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

24 (j) No child shall be placed in a special education
25 program pursuant to this Section if the tuition cost for
26 special education and related services increases more than 10

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

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

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

26 (1) Any definition used by the Review Board in

1 administrative rule or policy to define "related
2 organizations" shall include any and all exceptions contained
3 in federal law or regulation as it pertains to the federal
4 definition of "related organizations".

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

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

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

26 (p) The Review Board shall seek the advice of the Advisory

1 Council on Education of Children with Disabilities on the
2 rules and regulations to be promulgated by it relative to
3 providing special education services.

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

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

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

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

1 under this Section unless the district certifies to the State
2 Superintendent of Education that the district is unable to
3 provide special educational services required by the child for
4 the current school year.

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

23 (u) Any educational or related services provided, pursuant
24 to this Section in a non-public school or special education
25 facility or a special education facility owned and operated by
26 a county government unit shall be at no cost to the parent or

1 guardian of the child. However, current law and practices
2 relative to contributions by parents or guardians for costs
3 other than educational or related services are not affected by
4 this amendatory Act of 1978.

5 (v) Reimbursement for children attending public school
6 residential facilities shall be made in accordance with the
7 provisions of this Section.

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

1 funds referenced therein. A certified copy of the resolution
2 must be sent to the State Superintendent of Education. The
3 resolution shall still take effect even though a copy of the
4 resolution has not been sent to the State Superintendent of
5 Education in a timely manner. No classification under this
6 paragraph by a district shall affect the total amount or
7 timing of money the district is entitled to receive under this
8 Code. No classification under this paragraph by a district
9 shall in any way relieve the district from or affect any
10 requirements that otherwise would apply with respect to that
11 funding program, including any accounting of funds by source,
12 reporting expenditures by original source and purpose,
13 reporting requirements, or requirements of providing services.
14 (Source: P.A. 101-10, eff. 6-5-19; 102-254, eff. 8-6-21.)

15 Section 99. Effective date. This Act takes effect upon
16 becoming law.