



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB3606

Introduced 2/9/2024, by Sen. Meg Loughran Cappel

SYNOPSIS AS INTRODUCED:

105 ILCS 5/14-1.08	from Ch. 122, par. 14-1.08
105 ILCS 5/14-1.08a new	
105 ILCS 5/14-7.02	from Ch. 122, par. 14-7.02

Amends the Children with Disabilities Article of the School Code. Provides that the term "special educational facilities and services" includes private special schools (instead of special schools) and separate public special education day schools. Provides that if a child has been placed in a separate public special education day school, a school district making tuition payments in excess of \$4,500 shall be responsible for an amount in excess of \$4,500 equal to 2 times the district's per capita tuition charge and shall be eligible for reimbursement from the State for the amount of such payments actually made in excess of 2 times the district's per capita tuition charge for students not receiving special education services. Requires a certification and finding to be made for reimbursement of a school district of the amount paid for tuition of a child attending a public special education facility.

LRB103 38969 RJT 69106 b

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 14-1.08 and 14-7.02 and by adding Section 14-1.08a as follows:

6 (105 ILCS 5/14-1.08) (from Ch. 122, par. 14-1.08)

7 Sec. 14-1.08. Special educational facilities and services.

8 "Special educational facilities and services" includes private
9 special schools, separate public special education day
10 schools, special classes, special housing, including
11 residential facilities, special instruction, special reader
12 service, braillists and typists for children with visual
13 disabilities, sign language interpreters, transportation,
14 maintenance, instructional material, therapy, professional
15 consultant services, medical services only for diagnostic and
16 evaluation purposes provided by a physician licensed to
17 practice medicine in all its branches to determine a child's
18 need for special education and related services, psychological
19 services, school social worker services, special
20 administrative services, salaries of all required special
21 personnel, and other special educational services, including
22 special equipment for use in the classroom, required by the
23 child because of his disability if such services or special

1 equipment are approved by the State Superintendent of
2 Education and the child is eligible therefor under this
3 Article and the regulations of the State Board of Education.

4 (Source: P.A. 89-397, eff. 8-20-95.)

5 (105 ILCS 5/14-1.08a new)

6 Sec. 14-1.08a. Separate public special education day
7 school. "Separate public special education day school" means a
8 separate special education program or facility that is
9 established by a school district, public school, regional
10 office of education, or special education cooperative
11 exclusively to meet the needs of special education students
12 who cannot be educated in the general school environment and
13 that provides services comparable to a private special
14 education school.

15 (105 ILCS 5/14-7.02) (from Ch. 122, par. 14-7.02)

16 Sec. 14-7.02. Children attending private special education
17 schools, separate public special education day schools, public
18 out-of-state schools, public school residential facilities, or
19 private special education facilities.

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

23 (b) If a student's individualized education program (IEP)
24 team determines that because of his or her disability the

1 special education program of a district is unable to meet the
2 needs of the child and the child attends a non-public school or
3 special education facility, a public out-of-state school or a
4 special education facility owned and operated by a county
5 government unit that provides special educational services
6 required by the child and is in compliance with the
7 appropriate rules and regulations of the State Superintendent
8 of Education, the school district in which the child is a
9 resident shall pay the actual cost of tuition for special
10 education and related services provided during the regular
11 school term and during the summer school term if the child's
12 educational needs so require, excluding room, board and
13 transportation costs charged the child by that non-public
14 school or special education facility, public out-of-state
15 school or county special education facility, or \$4,500 per
16 year, whichever is less, and shall provide him any necessary
17 transportation. "Nonpublic special education facility" shall
18 include a residential facility, within or without the State of
19 Illinois, which provides special education and related
20 services to meet the needs of the child by utilizing private
21 schools or public schools, whether located on the site or off
22 the site of the residential facility. Resident district
23 financial responsibility and reimbursement applies for both
24 nonpublic special education facilities that are approved by
25 the State Board of Education pursuant to 23 Ill. Adm. Code 401
26 or other applicable laws or rules and for emergency

1 residential placements in nonpublic special education
2 facilities that are not approved by the State Board of
3 Education pursuant to 23 Ill. Adm. Code 401 or other
4 applicable laws or rules, subject to the requirements of this
5 Section.

6 (c) Prior to the placement of a child in an out-of-state
7 special education residential facility, the school district
8 must refer to the child or the child's parent or guardian the
9 option to place the child in a special education residential
10 facility located within this State, if any, that provides
11 treatment and services comparable to those provided by the
12 out-of-state special education residential facility. The
13 school district must review annually the placement of a child
14 in an out-of-state special education residential facility. As
15 a part of the review, the school district must refer to the
16 child or the child's parent or guardian the option to place the
17 child in a comparable special education residential facility
18 located within this State, if any.

19 (c-5) Before a provider that operates a nonpublic special
20 education facility terminates a student's placement in that
21 facility, the provider must request an IEP meeting from the
22 contracting school district. If the provider elects to
23 terminate the student's placement following the IEP meeting,
24 the provider must give written notice to this effect to the
25 parent or guardian, the contracting public school district,
26 and the State Board of Education no later than 20 business days

1 before the date of termination, unless the health and safety
2 of any student are endangered. The notice must include the
3 detailed reasons for the termination and any actions taken to
4 address the reason for the termination.

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

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

22 (1) the facility demonstrates appropriate licensure of
23 teachers for the student population;

24 (2) the facility demonstrates age-appropriate
25 curriculum;

26 (3) the facility provides enrollment and attendance

1 data;

2 (4) the facility demonstrates the ability to implement
3 the child's IEP; and

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

9 A resident school district may also submit such proof to the
10 State Board of Education as may be required for its student.
11 The State Board of Education may not unreasonably withhold
12 approval once satisfactory proof is provided to the State
13 Board.

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

21 (g) Emergency residential placement in a facility approved
22 pursuant to subsection (e) or (f) may continue to be utilized
23 so long as (i) the student's IEP team determines annually that
24 such placement continues to be appropriate to meet the
25 student's needs and (ii) at least every 3 years following the
26 student's residential placement, the IEP team reviews

1 appropriate placements approved by the State Board of
2 Education pursuant to 23 Ill. Adm. Code 401 or other
3 applicable laws or rules to determine whether there are any
4 approved placements that can meet the student's needs, have
5 accepted the student, and have availability for placement of
6 the student.

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

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

24 (i) A school district making tuition payments pursuant to
25 this Section is eligible for reimbursement from the State for
26 the amount of such payments actually made in excess of the

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

22 (j) No child shall be placed in a special education
23 program pursuant to this Section if the tuition cost for
24 special education and related services increases more than 10
25 percent over the tuition cost for the previous school year or
26 exceeds \$4,500 per year unless such costs have been approved

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

23 (k) In determining rates based on allowable costs, the
24 Review Board shall consider any wage increases awarded by the
25 General Assembly to front line personnel defined as direct
26 support persons, aides, front-line supervisors, qualified

1 intellectual disabilities professionals, nurses, and
2 non-administrative support staff working in service settings
3 in community-based settings within the State and adjust
4 customary rates or rates of a special education program to be
5 equitable to the wage increase awarded to similar staff
6 positions in a community residential setting. Any wage
7 increase awarded by the General Assembly to front line
8 personnel defined as direct support persons, aides, front-line
9 supervisors, qualified intellectual disabilities
10 professionals, nurses, and non-administrative support staff
11 working in community-based settings within the State,
12 including the \$0.75 per hour increase contained in Public Act
13 100-23 and the \$0.50 per hour increase included in Public Act
14 100-23, 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. However, any wage increase that is captured
21 upon appeal from a previous year shall not be counted by the
22 Review Board as revenue for the purpose of calculating a
23 facility's future rate.

24 (1) Any definition used by the Review Board in
25 administrative rule or policy to define "related
26 organizations" shall include any and all exceptions contained

1 in federal law or regulation as it pertains to the federal
2 definition of "related organizations".

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

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

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

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

1 providing special education services.

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

23 (r) If a child has been placed in an approved individual
24 program and the tuition costs including room and board costs
25 have been approved by the Review Board, then such room and
26 board costs shall be paid by the appropriate State agency

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

24 (s) If it otherwise qualifies, a school district is
25 eligible for the transportation reimbursement under Section
26 14-13.01 and for the reimbursement of tuition payments under

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

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

1 reimbursement, that the special education program of that
2 district is unable to meet the needs of a child because of his
3 or her disability.

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

12 (v) Reimbursement for children attending public school
13 residential facilities shall be made in accordance with the
14 provisions of this Section.

15 (w) Notwithstanding any other provision of law, any school
16 district receiving a payment under this Section or under
17 Section 14-7.02b, 14-13.01, or 29-5 of this Code may classify
18 all or a portion of the funds that it receives in a particular
19 fiscal year or from general State aid pursuant to Section
20 18-8.05 of this Code as funds received in connection with any
21 funding program for which it is entitled to receive funds from
22 the State in that fiscal year (including, without limitation,
23 any funding program referenced in this Section), regardless of
24 the source or timing of the receipt. The district may not
25 classify more funds as funds received in connection with the
26 funding program than the district is entitled to receive in

1 that fiscal year for that program. Any classification by a
2 district must be made by a resolution of its board of
3 education. The resolution must identify the amount of any
4 payments or general State aid to be classified under this
5 paragraph and must specify the funding program to which the
6 funds are to be treated as received in connection therewith.
7 This resolution is controlling as to the classification of
8 funds referenced therein. A certified copy of the resolution
9 must be sent to the State Superintendent of Education. The
10 resolution shall still take effect even though a copy of the
11 resolution has not been sent to the State Superintendent of
12 Education in a timely manner. No classification under this
13 paragraph by a district shall affect the total amount or
14 timing of money the district is entitled to receive under this
15 Code. No classification under this paragraph by a district
16 shall in any way relieve the district from or affect any
17 requirements that otherwise would apply with respect to that
18 funding program, including any accounting of funds by source,
19 reporting expenditures by original source and purpose,
20 reporting requirements, or requirements of providing services.
21 (Source: P.A. 102-254, eff. 8-6-21; 102-703, eff. 4-22-22;
22 103-175, eff. 6-30-23; 103-546, eff. 8-11-23; revised
23 8-30-23.)