



**Illinois State Board of Education**  
**Special Education Department**  
**Frequently Asked Questions:**  
**Public Act 102-0172**  
**and**  
**Public Act 102-0173**

This document is intended to provide non-regulatory guidance on the subject matter listed above. For specific questions, please contact the Illinois State Board of Education.

**Dr. Carmen I. Ayala, State Superintendent**

**Revised September 2021**

# Frequently Asked Questions:

## Public Act 102-0172 and Public Act 102-0173

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## **A. Public Act 102-0172 (House Bill 40)**

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Section 5. The School Code is amended by changing Section 14-1.02 as follows:

(105 ILCS 5/14-1.02) from Ch. 122, par. 14-1.02)

Section 14-1.02. Children with disabilities. "Children with disabilities" means children between the ages of 3 and 21 for whom it is determined, through definitions and procedures described in the Illinois Rules and Regulations to Govern the Organization and Administration of Special Education, that special education services are needed. An eligible student who requires continued public school educational experience to facilitate his or her successful transition and integration into adult life is eligible for such services through age 21 inclusive, which, for purposes of this Article, means the day before the student's 22<sup>nd</sup> birthday, unless his or her 22<sup>nd</sup> birthday occurs during the school year, in which case he or she is eligible for such services through the end of the school year. An Individualized Education Program (IEP) must be written and agreed upon by appropriate school personnel and parents or their representatives for any child receiving special education.

### **A-1: How long may an eligible student receive services?**

An eligible student who requires continued public school educational experience to facilitate his or her successful transition and integration into adult life is eligible for such services through age 21 inclusive, which, for the purposes of this Act, means the day before the student's 22<sup>nd</sup> birthday, unless his or her 22<sup>nd</sup> birthday occurs during the school year, in which case he or she is eligible for such services through the end of the school year.

School year is determined to be the regular school term that is specified in the regular school calendar as adopted by the serving entity. If the student's 22<sup>nd</sup> birthday is after the start date of the regular school term, then the student may continue to be eligible to receive services until the last date of that regular school term. Regular school term does not include summer school or extended school year calendars.

### **A-2: Is there any impact on personnel licensure?**

All staff who hold a Learning Behavior Specialist (LBS) I, LBS II, or School Service Personnel endorsement will be considered appropriately licensed to serve students with disabilities as defined in Public Act 102-0172.

**A-3: Do age range grouping requirements apply?**

Age range requirements under 23 IAC 226.720(b) that state, “The age range of students within a special education grouping shall not exceed four years at the elementary level and six years at the secondary level” remain in effect. Districts that are unable to meet the age range are required to submit an age range deviation application to ISBE for approval. Applications are expected to be submitted prior to implementation of a classroom out of compliance. The application is located at [34-38C-deviation-classroom-age.pdf \(isbe.net\)](#).

Nonpublic therapeutic day schools and residential facilities that are unable to meet the age range pursuant to 23 IAC 401.140(b) should submit an age range deviation waiver form to ISBE for approval. The form is located at <https://www.isbe.net/Documents/Deviation-Request-App.pdf>.

**A-4: How are placements in nonpublic special education private facilities affected?**

ISBE-approved educational-only nonpublic special education private facilities located in Illinois will be approved to serve students with disabilities who turn age 22 for the remainder of the regular school term. Because licensing of residential facilities in Illinois is approved by other state agencies, only those residential-only or combination facilities that are deemed to meet licensing requirements to serve students with disabilities who turn age 22 during the regular school term will be available for ISBE approval. For out-of-state facilities, age ranges to be served are determined by the respective states’ educational and residential licensing bodies.

Districts should closely monitor whether a nonpublic special education private facility meets the age range requirements and plan appropriate transitions before a student approaches his or her 22<sup>nd</sup> birthday. Districts are required to submit reintegration plans as part of the Form 34-37 Request for Approval of Room and Board Reimbursement. This plan should address the district’s proposal to ensure the student will receive appropriate services through the regular school term as discussed at the student’s IEP meeting. The school district is required to provide a free and appropriate public education (FAPE) as long as the student remains eligible.

**A-5: What funding sources can be used to pay for services under this Act?**

States and Local Education Agencies (LEAs) may only expend Individuals with Disabilities Education Act (IDEA) Part B funds in accordance with the applicable provisions of 34 CFR Part 300, which apply only to students inclusive of age 21. Thus, IDEA funds cannot be used to provide services beyond the age of 21.

Districts may use state Evidence-Based Funding (EBF) and other local funding sources to pay for services provided to eligible students. For students receiving services pursuant to 105 ILCS 5/14-7.02, 105 ILCS 5/14-7.03, and 105 ILCS 5/14-13.01(b), reimbursement using state funds would be allowed for students who turn 22 if the requirements in the Act are met.

#### *Private Facility Reimbursement*

105 ILCS 5/14-7.02 provides provisions for reimbursement for children attending private schools, public out-of-state schools, public school residential facilities, and private special education facilities. This Section refers to a child's "disability"; therefore, students defined as having a disability under this Act would be eligible for reimbursement under 105 ILCS 5/14-7.02. Districts can continue to submit claims for private facility tuition reimbursement for students under this Act.

#### *Room and Board Reimbursement*

105 ILCS 5/14-7.02 requires "Room and board costs not provided by a state agency other than the State Board of Education shall be provided by the State Board of Education on a current basis." 105 ILCS 5/14-8.01 further clarifies, "Room and board costs not provided by a state agency other than the State Board of Education shall be provided by the State Board of Education to the extent of available funds." 105 ILCS 5/14-8.01 further provides that IDEA Part B funds shall be annually appropriated to pay for the additional costs of room and board. Since IDEA Part B funds are not allowable beyond age 21, room and board reimbursement claims would no longer be permissible for payment after the student reaches age 22.

#### *Excess Cost Reimbursement*

Excess cost reimbursement will not be permissible for students age 22 since 105 ILCS 5/14-7.02(b) explicitly states such funds are paid from IDEA funds: "For individual students with disabilities whose program costs exceed four times the district's per capita tuition rate as calculated under Section 10-20.12a of this Code, the costs in excess of four times the district's per capita tuition rate shall be paid by the State Board of Education from unexpended IDEA discretionary funds originally designated for room and board reimbursement pursuant to Section 14-8.01 of this Code ..."

#### *Special Transportation Reimbursement*

The language in 105 ILCS 5/14-13.01(b) on special education transportation reimbursement expressly refers to 14-1.02; therefore, services through the end of the regular term would be eligible for special education transportation reimbursement.

### *Special Education Orphanage Reimbursement*

Special education orphanage reimbursement under 105 ILCS 5/14-7.03 shall only be provided if the eligibility of the students can be verified by the State Board of Education as youth in care by the Department of Children and Family Services or “the student is attending classes on the site of orphanages or children’s homes, foster family homes, other state agencies, or state residential units for children with disabilities in which the school districts is a participating member of a joint agreement, or if the children from the orphanage, children’s homes, foster family homes, other state agencies, or state residential unites attend classes by the school district.”

## **B. Public Act 102-0173 (House Bill 2748)**

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Section 5. The School Code is amended by adding Section 14-17 as follows:

(105 ILCS 5/14-17 new)

Section 14-17. COVID-19 recovery postsecondary transition recovery eligibility.

(a) If a student with an IEP reaches the age of 22 during the time in which the student's in-person instruction, services, or activities are suspended for a period of three months or more during the school year as a result of the COVID-19 pandemic, the student is eligible for such services up to the end of the regular 2021-22 school year.

(b) This Section does not apply to any student who is no longer a resident of the school district that was responsible for the student's IEP at the time the student reached the student's 22<sup>nd</sup> birthday.

(c) The IEP goals in effect when the student reached the student's 22<sup>nd</sup> birthday shall be resumed unless there is an agreement that the goals should be revised to appropriately meet the student's current transition needs.

(d) If a student was in a private therapeutic day or residential program when the student reached the student's 22<sup>nd</sup> birthday, the school district is not required to resume that program if the student has aged out of the program or the funding for supporting the student's placement in the facility is no longer available.

(e) Within 30 days after the effective date of this amendatory Act of the 102<sup>nd</sup> General Assembly, each school district shall provide notification of the availability of services under this Section to each student covered by this Section by regular mail sent to the last known address of the student or the student's parent or guardian.

**B-1: Which students does this amendatory Act apply to?**

This Act applies to students with an IEP who reached the age of 22 during the time in which the student’s in-person instruction, services, or activities were suspended for a period of three months or more during the school year as a result of the COVID 19 pandemic regardless if the student aged out or was provided a diploma or certificate of completion, or already received compensatory services. This Act does not apply to any student who is no longer a resident of the school district, as defined in Article 14 of the School Code, that was responsible for the student's IEP at the time the student reached the student's 22<sup>nd</sup> birthday.

**B-2: How are the “three months or more during the school year” determined? REVISED September 7, 2021**

Per the requirements of Section 1.10 of the Illinois Statute on Statutes (5 ILCS 70/1.10), the term “month” means a calendar month unless otherwise qualified by terms such “business” or “school.” Therefore, “three months” means three calendar months.

In addition, because the Act references a “period” of three months, this is determined to mean three **consecutive** months. *In circumstances where there were not three consecutive months of suspension of in-person instruction, services, or activities, but the cumulative suspension of in-person instruction in a regular school term far exceeded three months, districts should make an individual determination as to the impact on the student’s ability to progress toward his/her IEP goals and the need to offer the student the opportunity to return for the 2021-22 school year.*

School year is determined to be the regular school term that is specified in the regular school calendar as adopted by the serving entity. The regular school calendar does not include summer school or extended school year calendars.

Finally, “Act of God” days are periods in which instruction is suspended; therefore, Act of God days (such as those created under Executive Order at the onset of the pandemic) should be counted as part of the three-month period described by the Act.

**B-3: What constitutes as “a result of the COVID-19 pandemic”?**

Any suspension of in-person instruction, services, or activities that were due to the inability of the school district to offer in-person instruction due to a Gubernatorial Executive Order or to a decision made by the local school board and guidance from local public health officials would constitute being “a result of the COVID-19 pandemic.”



In cases where school closures are the result of multiple reasons -- and one reason is due to the COVID-19 pandemic -- such days should be counted in the calculation of in-person instruction, services, or activities suspended for a period of three months or more.

**B-4: Do all the students who turned 22 qualify under the Act regardless of whether the birthday was during school attendance time or during school recess time? – REVISED September 7, 2021**

No. The Act refers to students who turn “22 during the time in which” in-person services are suspended, which means students who have reached 22 during a three-month period or more of when in-person instruction, services, or activities were suspended during the regular school term. If a student’s birthday was not during the three-month period or more, then the student is not entitled to services under this Act. If a school district did not undergo a full three-month period or more of suspended in-person instruction, services, or activities prior to a summer recess, then the student turning 22 during the summer recess would not be entitled to services under this Act.

*The above determination was meant to ensure that students who turned 22 while their in-person instruction was disrupted would be eligible to return for the 2021-22 school year. However, individual determinations for eligibility may be required when evidence shows that a student had their in-person instruction suspended for three or more months prior to the student becoming age 22 during the time of the pandemic. The intent of the Act is to ensure that any student whose education was impacted by the pandemic prior to aging out, graduating, or receiving a certificate of completion due to turning age 22 is provided the opportunity to receive recovery services during the 2021-22 school year.*

**B-5: What constitutes suspension of in-person instruction, services, or activities”? What activities are included - school-based and after school? How does hybrid instruction factor into the suspension?**

The Act refers to suspension of “in-person instruction, services, or activities ...” There are no qualifications in the Act to cover contingencies, such as hybrid learning, etc. Thus, if the district can identify any component of the student’s in-person, IEP-based activities (including instruction and services) that were not provided in-person for a consecutive three-month period or more, then the student would be eligible for services.

Activities that are not instructional in nature, such as after-school activities, are not contemplated by the Act and do not constitute a suspension of in-person instruction, services, or activities, unless such activities are to be provided under the student’s IEP.

Changes in service delivery provided in-person, such as vocational experiences in the community provided by alternative means, would not constitute a suspension of in-person services so long as comparable services were provided in-person and in accordance with the student's IEP.

**B-6: When districts offered in-person services and parents opted for remote learning, is that interpreted as a suspension of in-person services?**

The language of the Act contemplates service interruptions that were prompted by the state and/or school district. Thus, if the school district offered to provide services in-person and in accordance with the student's IEP, the district would not be required to extend eligibility due to the parents' and student's election to pursue remote learning in place of available in-person instruction, services, and activities.

**B-7: What services and activities must be provided to eligible students and for how long?**

Special education services during the 2021-22 school year should be comparable to services described on the most recent IEP developed for in-person services, unless the district, student, and/or parent agree upon different IEP goals that would impact services. The Act does not require activities not listed as special education services to be provided. However, it is recommended that once a student is enrolled in the district that the student has access to the same services and activities as general education students, if appropriate.

Students eligible under this Act should receive services through the end of the regular 2021-22 school year.

**B-8: What goals should be addressed under this Act?**

"The IEP goals in effect when the student reached the student's 22<sup>nd</sup> birthday shall be resumed unless there is an agreement that the goals should be revised to appropriately meet the student's current transition needs." The school staff who provide special education services, student, and/or parents and guardians should work together to determine if the goals should be revised. If there is not agreement on revising the IEP goals, then the IEP goals in effect when the student reached the student's 22<sup>nd</sup> birthday will remain in place.

If previous IEP goals were met, the student, school staff who provide special education services, and/or parent should meet to determine if the goals require revision.

**B-9: Are districts required to convene IEP meetings?**

No. The student, school staff that provide special education services, and/or parent, should meet to discuss the IEP goals in effect when the student turned 22 years old if the goals require revision to appropriately address changes in the student's transition needs. If no revisions or modifications are needed, the IEP goals in effect when the student reached the student's 22<sup>nd</sup> birthday shall be resumed; a meeting is not required. Districts should take the necessary steps to facilitate the student's and/or parents' understanding of and participation in a meeting to discuss IEP goals and special education services.

**B-10: Are districts required to conduct a reevaluation of students who receive services under this Act?**

Reevaluations are not required for students with an IEP who receive an extension of services up to the end of the regular 2021-22 school year pursuant to this Act.

**B-11: What are the requirements for serving students who were in residential and therapeutic day?**

"If a student was in a private therapeutic day or residential program when the student reached the student's 22<sup>nd</sup> birthday, the school district is not required to resume that program for the student if the student has aged out of the program or the funding for supporting the student's placement in the facility is no longer available." The student, school staff that provide special education services, and/or the parent should meet to determine options for alternative services to meet the IEP goals.

**B-12: What are the notification requirements under this Act?**

"Within 30 days after the effective date of this amendatory Act of the 102<sup>nd</sup> General Assembly, each school district shall provide notification of the availability of services under this Section to each student covered by this Section by regular mail sent to the last known address of the student or the student's parent or guardian."

Districts are only required to send notice once within 30 days after the effective date of Public Act 102-0173. Districts should keep a record of the date when the notice was sent by regular mail and keep copies of the letters that were sent with the address that was used. Districts may choose to include language in their notice that a failure to respond will be deemed a refusal of services. It is strongly recommended that a minimum 30-day response period should be provided to parents. Notices should be written in a language understandable to the general public and

provided in the native language of the student and/or parent or other mode of communication used by the student and/or parent, unless it is not feasible to do so.

**B-13: After providing required notice to students who can receive these services, when should services commence?**

Services should commence at the beginning of the 2021-22 school year following re-enrollment of the student into the district after receipt of the notification. The district should follow regular enrollment procedures for students that will receive services under this Section.

**B-14: What if the parents decline in-person service or request remote learning for the 2021-22 school year?**

If the district has fulfilled its notification requirements under this Act and the parent has declined the offer of in-person services for the 2021-22 school year, the district has no further obligation to provide services to the student.

**B-15: Is there an obligation to provide FAPE and procedural safeguards to qualifying students during the 2021-22 school year? Could a student/parent file for due process if dissatisfied with the services provided? – REVISED September 7, 2021**

It is recommended that the districts provide FAPE for students under this Section. Students and/or parents should first request meetings with the district if they have concerns regarding the services that are being provided. *If further concerns persist and the parent/guardian believes that the district has violated the provisions of the Act, they may submit a written, signed state complaint. Information on filing a state complaint is found at <https://www.isbe.net/Pages/Special-Education-Complaint-Investigation-Process.aspx>.*

**B-16: How does this Act impact students who have already transitioned to adult services or are on waitlists for adult services, such as through the Illinois Department of Human Services Division of Rehabilitation Services (DRS) or other state agencies? - REVISED September 7, 2021**

Districts should contact their local DRS office to discuss impacts on a case-by-case basis. Districts should ensure an appropriate release of information is completed before making such contact. *In addition, parent/guardians and/or students who are their own guardian should also initiate their own contact with the local DRS or Prioritization for Urgency of Need for Services office to determine how a return to school will impact any adult services or benefits they are currently receiving.*

**B-17: What documentation should a district complete for re-enrollment of students served under this Act and how does re-enrollment impact data collection?**

Districts should re-enroll students into the Student Information System as 12th- graders and submit an entry into the IEP-Student Tracking and Reporting (I-STAR) system per instructions included in the I-STAR Student Approval Manual for 2021-22. Systems will be set up to accept students who were previously exited.

For the purposes of Public Act 102-0173, students served are not considered “children with disabilities” as defined in 105 ILCS 5/14-1.02; therefore, they should not be included in child count calculations or other data collections. Re-enrollment will not impact data collection for graduation and drop out.

**B-18: What funding sources can be used to pay for services provided under this Act?**

For the purposes of this Act, students served are not considered “children with disabilities” as defined in 105 ILCS 5/14-1.02. Therefore, students receiving services under this Act would not be entitled to state reimbursement pursuant to 105 ILCS 5/14-7.02, 105 ILCS 5/14-7.02b, 105 ILCS 5/14-7.03, and 105 ILCS 5/14-13.01(b). Districts may use state EBF and other local funding sources to pay for services under this Act.

Districts cannot use IDEA Part B funds, including IDEA Part B funds provided under the American Rescue Plan, for services provided pursuant to this Act; however, there are circumstances under which use of Elementary and Secondary School Emergency Relief (ESSER) funds and Governor’s Emergency Education Relief (GEER) funds may be appropriate. An LEA may use ESSER and GEER funds for any activity authorized by Perkins V, according to the [U. S. Department of Education’s May 2021 Frequently Asked Questions on ESSER and GEER](#) (Question C-18 on page 41 and Question C-22 on page 43). These activities could include, for example, adjusting curriculum to account for the academic impact of lost instructional time or to cover technical skills that could not be addressed during remote instruction; implementing simulated work-based learning or school-based enterprises to replace work-based learning opportunities that are no longer available in the community due to the COVID-19 pandemic; and supporting students who graduated high school in the class of 2020 or 2021 (i.e., during the pandemic) but have not yet successfully transitioned to college or careers by providing, for example, college or career counseling, assistance with college applications, entry into job training programs, job training, postsecondary counseling and related services, and financial literacy. Per Question C-21 on page 42, an LEA may also use ESSER and GEER funds for any activity authorized by the Adult Education and Family Literacy Act, which is Title II of the Workforce Innovation and Opportunity Act. These activities could include conducting outreach activities to re-enroll eligible adults who may have

discontinued their attendance due to the COVID-19 pandemic and providing career counseling for eligible adults who suffered job loss as a result of the COVID-19 pandemic.

**B-19: Will professional educator licenses be impacted by this Act?**

All staff who hold an LBS I, LBS II, or School Service Personnel endorsement will be considered appropriately licensed to serve students under this Act.