

**SB0087**



**94TH GENERAL ASSEMBLY**

**State of Illinois**

**2005 and 2006**

**SB0087**

Introduced 1/26/2005, by Sen. Susan Garrett

**SYNOPSIS AS INTRODUCED:**

105 ILCS 5/14-8.02  
30 ILCS 805/8.29 new

from Ch. 122, par. 14-8.02

Amends the School Code. In a provision concerning the notification of a child's possible eligibility to receive services from the Illinois School for the Deaf or the Illinois School for the Visually Impaired, requires the school district to further notify parents and guardians of eligible children of the existence of other, local facilities that provide services similar to these schools and the services that the facilities provide. Amends the State Mandates Act to require implementation without reimbursement. Effective immediately.

LRB094 06594 RAS 36686 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 Section  
5 14-8.02 as follows:

6 (105 ILCS 5/14-8.02) (from Ch. 122, par. 14-8.02)

7 Sec. 14-8.02. Identification, Evaluation and Placement of  
8 Children.

9 (a) The State Board of Education shall make rules under  
10 which local school boards shall determine the eligibility of  
11 children to receive special education. Such rules shall ensure  
12 that a free appropriate public education be available to all  
13 children with disabilities as defined in Section 14-1.02. The  
14 State Board of Education shall require local school districts  
15 to administer non-discriminatory procedures or tests to  
16 limited English proficiency students coming from homes in which  
17 a language other than English is used to determine their  
18 eligibility to receive special education. The placement of low  
19 English proficiency students in special education programs and  
20 facilities shall be made in accordance with the test results  
21 reflecting the student's linguistic, cultural and special  
22 education needs. For purposes of determining the eligibility of  
23 children the State Board of Education shall include in the  
24 rules definitions of "case study", "staff conference",  
25 "individualized educational program", and "qualified  
26 specialist" appropriate to each category of children with  
27 disabilities as defined in this Article. For purposes of  
28 determining the eligibility of children from homes in which a  
29 language other than English is used, the State Board of  
30 Education, no later than September 1, 1993, shall include in  
31 the rules definitions for "qualified bilingual specialists"  
32 and "linguistically and culturally appropriate individualized

1 educational programs". In this Section, "parent" includes a  
2 foster parent.

3 (b) No child shall be eligible for special education  
4 facilities except with a carefully completed case study fully  
5 reviewed by professional personnel in a multidisciplinary  
6 staff conference and only upon the recommendation of qualified  
7 specialists or a qualified bilingual specialist, if available.  
8 At the conclusion of the multidisciplinary staff conference,  
9 the parent or guardian of the child shall be given a copy of  
10 the multidisciplinary conference summary report and  
11 recommendations, which includes options considered, and be  
12 informed of their right to obtain an independent educational  
13 evaluation if they disagree with the evaluation findings  
14 conducted or obtained by the school district. If the school  
15 district's evaluation is shown to be inappropriate, the school  
16 district shall reimburse the parent for the cost of the  
17 independent evaluation. The State Board of Education shall,  
18 with advice from the State Advisory Council on Education of  
19 Children with Disabilities on the inclusion of specific  
20 independent educational evaluators, prepare a list of  
21 suggested independent educational evaluators. The State Board  
22 of Education shall include on the list clinical psychologists  
23 licensed pursuant to the Clinical Psychologist Licensing Act.  
24 Such psychologists shall not be paid fees in excess of the  
25 amount that would be received by a school psychologist for  
26 performing the same services. The State Board of Education  
27 shall supply school districts with such list and make the list  
28 available to parents at their request. School districts shall  
29 make the list available to parents at the time they are  
30 informed of their right to obtain an independent educational  
31 evaluation. However, the school district may initiate an  
32 impartial due process hearing under this Section within 5 days  
33 of any written parent or guardian request for an independent  
34 educational evaluation to show that its evaluation is  
35 appropriate. If the final decision is that the evaluation is  
36 appropriate, the parent still has a right to an independent

1 educational evaluation, but not at public expense. An  
2 independent educational evaluation at public expense must be  
3 completed within 30 days of a parent or guardian written  
4 request unless the school district initiates an impartial due  
5 process hearing or the parent or guardian or school district  
6 offers reasonable grounds to show that such 30 day time period  
7 should be extended. If the due process hearing decision  
8 indicates that the parent or guardian is entitled to an  
9 independent educational evaluation, it must be completed  
10 within 30 days of the decision unless the parent or guardian or  
11 the school district offers reasonable grounds to show that such  
12 30 day period should be extended. If a parent disagrees with  
13 the summary report or recommendations of the multidisciplinary  
14 conference or the findings of any educational evaluation which  
15 results therefrom, the school district shall not proceed with a  
16 placement based upon such evaluation and the child shall remain  
17 in his or her regular classroom setting. No child shall be  
18 eligible for admission to a special class for the educable  
19 mentally disabled or for the trainable mentally disabled except  
20 with a psychological evaluation and recommendation by a school  
21 psychologist. Consent shall be obtained from the parent or  
22 guardian of a child before any evaluation is conducted. If  
23 consent is not given by the parent or guardian or if the parent  
24 or guardian disagrees with the findings of the evaluation, then  
25 the school district may initiate an impartial due process  
26 hearing under this Section. The school district may evaluate  
27 the child if that is the decision resulting from the impartial  
28 due process hearing and the decision is not appealed or if the  
29 decision is affirmed on appeal. The determination of  
30 eligibility shall be made within 60 school days from the date  
31 of referral by school authorities for evaluation by the  
32 district or date of application for admittance by the parent or  
33 guardian of the child. In those instances when students are  
34 referred for evaluation with fewer than 60 pupil attendance  
35 days left in the school year, the eligibility determination  
36 shall be made prior to the first day of the following school

1 year. After a child has been determined to be eligible for a  
2 special education class, such child must be placed in the  
3 appropriate program pursuant to the individualized educational  
4 program by or no later than the beginning of the next school  
5 semester. The appropriate program pursuant to the  
6 individualized educational program of students whose native  
7 tongue is a language other than English shall reflect the  
8 special education, cultural and linguistic needs. No later than  
9 September 1, 1993, the State Board of Education shall establish  
10 standards for the development, implementation and monitoring  
11 of appropriate bilingual special individualized educational  
12 programs. The State Board of Education shall further  
13 incorporate appropriate monitoring procedures to verify  
14 implementation of these standards. The district shall indicate  
15 to the parent or guardian and the State Board of Education the  
16 nature of the services the child will receive for the regular  
17 school term while waiting placement in the appropriate special  
18 education class.

19 If the child is deaf, hard of hearing, blind, or visually  
20 impaired and he or she might be eligible to receive services  
21 from the Illinois School for the Deaf or the Illinois School  
22 for the Visually Impaired, the school district shall notify the  
23 parents or guardian, in writing, of the existence of these  
24 schools and other, local facilities that provide similar  
25 services and the services that these schools and other  
26 facilities ~~they~~ provide. This notification shall include  
27 without limitation information on school services, school  
28 admissions criteria, and school contact information.

29 If the student may be eligible to participate in the  
30 Home-Based Support Services Program for Mentally Disabled  
31 Adults authorized under the Developmental Disability and  
32 Mental Disability Services Act upon becoming an adult, the  
33 student's individualized education program shall include plans  
34 for (i) determining the student's eligibility for those  
35 home-based services, (ii) enrolling the student in the program  
36 of home-based services, and (iii) developing a plan for the

1 student's most effective use of the home-based services after  
2 the student becomes an adult and no longer receives special  
3 educational services under this Article. The plans developed  
4 under this paragraph shall include specific actions to be taken  
5 by specified individuals, agencies, or officials.

6 (c) In the development of the individualized education  
7 program for a student who is functionally blind, it shall be  
8 presumed that proficiency in Braille reading and writing is  
9 essential for the student's satisfactory educational progress.  
10 For purposes of this subsection, the State Board of Education  
11 shall determine the criteria for a student to be classified as  
12 functionally blind. Students who are not currently identified  
13 as functionally blind who are also entitled to Braille  
14 instruction include: (i) those whose vision loss is so severe  
15 that they are unable to read and write at a level comparable to  
16 their peers solely through the use of vision, and (ii) those  
17 who show evidence of progressive vision loss that may result in  
18 functional blindness. Each student who is functionally blind  
19 shall be entitled to Braille reading and writing instruction  
20 that is sufficient to enable the student to communicate with  
21 the same level of proficiency as other students of comparable  
22 ability. Instruction should be provided to the extent that the  
23 student is physically and cognitively able to use Braille.  
24 Braille instruction may be used in combination with other  
25 special education services appropriate to the student's  
26 educational needs. The assessment of each student who is  
27 functionally blind for the purpose of developing the student's  
28 individualized education program shall include documentation  
29 of the student's strengths and weaknesses in Braille skills.  
30 Each person assisting in the development of the individualized  
31 education program for a student who is functionally blind shall  
32 receive information describing the benefits of Braille  
33 instruction. The individualized education program for each  
34 student who is functionally blind shall specify the appropriate  
35 learning medium or media based on the assessment report.

36 (d) To the maximum extent appropriate, the placement shall

1 provide the child with the opportunity to be educated with  
2 children who are not disabled; provided that children with  
3 disabilities who are recommended to be placed into regular  
4 education classrooms are provided with supplementary services  
5 to assist the children with disabilities to benefit from the  
6 regular classroom instruction and are included on the teacher's  
7 regular education class register. Subject to the limitation of  
8 the preceding sentence, placement in special classes, separate  
9 schools or other removal of the disabled child from the regular  
10 educational environment shall occur only when the nature of the  
11 severity of the disability is such that education in the  
12 regular classes with the use of supplementary aids and services  
13 cannot be achieved satisfactorily. The placement of limited  
14 English proficiency students with disabilities shall be in  
15 non-restrictive environments which provide for integration  
16 with non-disabled peers in bilingual classrooms. By January  
17 1993 and annually thereafter, school districts shall report  
18 data on students from non-English speaking backgrounds  
19 receiving special education and related services in public and  
20 private facilities as prescribed in Section 2-3.30. If there is  
21 a disagreement between parties involved regarding the special  
22 education placement of any child, either in-state or  
23 out-of-state, the placement is subject to impartial due process  
24 procedures described in Article 10 of the Rules and Regulations  
25 to Govern the Administration and Operation of Special  
26 Education.

27 (e) No child who comes from a home in which a language  
28 other than English is the principal language used may be  
29 assigned to any class or program under this Article until he  
30 has been given, in the principal language used by the child and  
31 used in his home, tests reasonably related to his cultural  
32 environment. All testing and evaluation materials and  
33 procedures utilized for evaluation and placement shall not be  
34 linguistically, racially or culturally discriminatory.

35 (f) Nothing in this Article shall be construed to require  
36 any child to undergo any physical examination or medical

1 treatment whose parents or guardian object thereto on the  
2 grounds that such examination or treatment conflicts with his  
3 religious beliefs.

4 (g) School boards or their designee shall provide to the  
5 parents or guardian of a child prior written notice of any  
6 decision (a) proposing to initiate or change, or (b) refusing  
7 to initiate or change, the identification, evaluation, or  
8 educational placement of the child or the provision of a free  
9 appropriate public education to their child, and the reasons  
10 therefor. Such written notification shall also inform the  
11 parent or guardian of the opportunity to present complaints  
12 with respect to any matter relating to the educational  
13 placement of the student, or the provision of a free  
14 appropriate public education and to have an impartial due  
15 process hearing on the complaint. The notice shall inform the  
16 parents or guardian in the parents' or guardian's native  
17 language, unless it is clearly not feasible to do so, of their  
18 rights and all procedures available pursuant to this Act and  
19 federal law 94-142; it shall be the responsibility of the State  
20 Superintendent to develop uniform notices setting forth the  
21 procedures available under this Act and federal law 94-142 to  
22 be used by all school boards. The notice shall also inform the  
23 parents or guardian of the availability upon request of a list  
24 of free or low-cost legal and other relevant services available  
25 locally to assist parents or guardians in initiating an  
26 impartial due process hearing. Any parent or guardian who is  
27 deaf, or does not normally communicate using spoken English,  
28 who participates in a meeting with a representative of a local  
29 educational agency for the purposes of developing an  
30 individualized educational program shall be entitled to the  
31 services of an interpreter.

32 (h) A Level I due process hearing, hereinafter referred as  
33 the hearing, shall be conducted upon the request of the parents  
34 or guardian or local school board by an impartial hearing  
35 officer appointed as follows: If the request is made through  
36 the local school district, within 5 school days of receipt of

1 the request, the local school district shall forward the  
2 request to the State Superintendent. Within 5 days after  
3 receiving this request of hearing, the State Board of Education  
4 shall provide a list of 5 prospective, impartial hearing  
5 officers. The State Board of Education, by rule or regulation,  
6 shall establish criteria for determining which persons can be  
7 included on such a list of prospective hearing officers. No one  
8 on the list may be a resident of the school district. No more  
9 than 2 of the 5 prospective hearing officers shall be gainfully  
10 employed by or administratively connected with any school  
11 district, or any joint agreement or cooperative program in  
12 which school districts participate. In addition, no more than 2  
13 of the 5 prospective hearing officers shall be gainfully  
14 employed by or administratively connected with private  
15 providers of special education services. The State Board of  
16 Education shall actively recruit applicants for hearing  
17 officer positions. The board and the parents or guardian or  
18 their legal representatives within 5 days shall alternately  
19 strike one name from the list until only one name remains. The  
20 parents or guardian shall have the right to proceed first with  
21 the striking. The per diem allowance for the hearing officer  
22 shall be established and paid by the State Board of Education.  
23 The hearing shall be closed to the public except that the  
24 parents or guardian may require that the hearing be public. The  
25 hearing officer shall not be an employee of the school  
26 district, an employee in any joint agreement or cooperative  
27 program in which the district participates, or any other agency  
28 or organization that is directly involved in the diagnosis,  
29 education or care of the student or the State Board of  
30 Education. All impartial hearing officers shall be adequately  
31 trained in federal and state law, rules and regulations and  
32 case law regarding special education. The State Board of  
33 Education shall use resources from within and outside the  
34 agency for the purposes of conducting this training. The  
35 impartial hearing officer shall have the authority to require  
36 additional information or evidence where he or she deems it

1 necessary to make a complete record and may order an  
2 independent evaluation of the child, the cost of said  
3 evaluation to be paid by the local school district. Such  
4 hearing shall not be considered adversary in nature, but shall  
5 be directed toward bringing out all facts necessary for the  
6 impartial hearing officer to render an informed decision. The  
7 State Board of Education shall, with the advice and approval of  
8 the Advisory Council on Education of Children with  
9 Disabilities, promulgate rules and regulations to establish  
10 the qualifications of the hearing officers and the rules and  
11 procedure for such hearings. The school district shall present  
12 evidence that the special education needs of the child have  
13 been appropriately identified and that the special education  
14 program and related services proposed to meet the needs of the  
15 child are adequate, appropriate and available. Any party to the  
16 hearing shall have the right to: (a) be represented by counsel  
17 and be accompanied and advised by individuals with special  
18 knowledge or training with respect to the problems of children  
19 with disabilities at the party's own expense; (b) present  
20 evidence and confront and cross-examine witnesses; (c)  
21 prohibit the introduction of any evidence at the hearing that  
22 has not been disclosed to that party at least 5 days before the  
23 hearing; (d) obtain a written or electronic verbatim record of  
24 the hearing; (e) obtain written findings of fact and a written  
25 decision. The student shall be allowed to attend the hearing  
26 unless the hearing officer finds that attendance is not in the  
27 child's best interest or detrimental to the child. The hearing  
28 officer shall specify in the findings the reasons for denying  
29 attendance by the student. The hearing officer, or the State  
30 Superintendent in connection with State level hearings, may  
31 subpoena and compel the attendance of witnesses and the  
32 production of evidence reasonably necessary to the resolution  
33 of the hearing. The subpoena may be issued upon request of any  
34 party. The State Board of Education and the school board shall  
35 share equally the costs of providing a written or electronic  
36 record of the proceedings. Such record shall be transcribed and

1 transmitted to the State Superintendent no later than 10 days  
2 after receipt of notice of appeal. The hearing officer shall  
3 render a decision and shall submit a copy of the findings of  
4 fact and decision to the parent or guardian and to the local  
5 school board within 10 school days after the conclusion of the  
6 hearing. The hearing officer may continue the hearing in order  
7 to obtain additional information, and, at the conclusion of the  
8 hearing, shall issue a decision based on the record which  
9 specifies the special education and related services which  
10 shall be provided to the child in accordance with the child's  
11 needs. The hearing officer's decision shall be binding upon the  
12 local school board and the parent unless such decision is  
13 appealed pursuant to the provisions of this Section.

14 (i) Any party aggrieved by the decision may appeal the  
15 hearing officer's decision to the State Board of Education and  
16 shall serve copies of the notice of such appeal on the State  
17 Superintendent and on all other parties. The review referred to  
18 in this Section shall be known as the Level II review. The  
19 State Board of Education shall provide a list of 5 prospective,  
20 impartial reviewing officers. No reviewing officer shall be an  
21 employee of the State Board of Education or gainfully employed  
22 by or administratively connected with the school district,  
23 joint agreement or cooperative program which is a party to this  
24 review. Each person on the list shall be accredited by a  
25 national arbitration organization. The per diem allowance for  
26 the review officers shall be paid by the State Board of  
27 Education and may not exceed \$250. All reviewing officers on  
28 the list provided by the State Board of Education shall be  
29 trained in federal and state law, rules and regulations and  
30 case law regarding special education. The State Board of  
31 Education shall use resources from within and outside the  
32 agency for the purposes of conducting this training. No one on  
33 the list may be a resident of the school district. The board  
34 and the parents or guardian or other legal representatives  
35 within 5 days shall alternately strike one name from the list  
36 until only one name remains. The parents or guardian shall have

1 the right to proceed first with the striking. The reviewing  
2 officer so selected shall conduct an impartial review of the  
3 Level I hearing and may issue subpoenas requiring the  
4 attendance of witnesses at such review. The parties to the  
5 appeal shall be afforded the opportunity to present oral  
6 argument and additional evidence at the review. Upon completion  
7 of the review the reviewing officer shall render a decision and  
8 shall provide a copy of the decision to all parties.

9 (j) No later than 30 days after receipt of notice of  
10 appeal, a final decision shall be reached and a copy mailed to  
11 each of the parties. A reviewing officer may grant specific  
12 extensions of time beyond the 30-day deadline at the request of  
13 either party. If a Level II hearing is convened the final  
14 decision of a Level II hearing officer shall occur no more than  
15 30 days following receipt of a notice of appeal, unless an  
16 extension of time is granted by the hearing officer at the  
17 request of either party. The State Board of Education shall  
18 establish rules and regulations delineating the standards to be  
19 used in determining whether the reviewing officer shall grant  
20 such extensions. Each hearing and each review involving oral  
21 argument must be conducted at a time and place which are  
22 reasonably convenient to the parents and the child involved.

23 (k) Any party aggrieved by the decision of the reviewing  
24 officer, including the parent or guardian, shall have the right  
25 to bring a civil action with respect to the complaint presented  
26 pursuant to this Section, which action may be brought in any  
27 circuit court of competent jurisdiction within 120 days after a  
28 copy of the decision is mailed to the party as provided in  
29 subsection (j). The civil action provided above shall not be  
30 exclusive of any rights or causes of action otherwise  
31 available. The commencement of a civil action under subsection  
32 (k) of this Section shall operate as a supersedeas. In any  
33 action brought under this Section the court shall receive the  
34 records of the administrative proceedings, shall hear  
35 additional evidence at the request of a party, and basing its  
36 decision on the preponderance of the evidence shall grant such

1 relief as the court determines is appropriate. In any instance  
2 where a school district willfully disregards applicable  
3 regulations or statutes regarding a child covered by this  
4 Article, and which disregard has been detrimental to the child,  
5 the school district shall be liable for any reasonable  
6 attorney's fees incurred by the parent or guardian in  
7 connection with proceedings under this Section.

8 (l) During the pendency of any proceedings conducted  
9 pursuant to this Section, unless the State Superintendent of  
10 Education, or the school district and the parents or guardian  
11 otherwise agree, the student shall remain in the then current  
12 educational placement of such student, or if applying for  
13 initial admission to the school district, shall, with the  
14 consent of the parents or guardian, be placed in the school  
15 district program until all such proceedings have been  
16 completed. The costs for any special education and related  
17 services or placement incurred following 60 school days after  
18 the initial request for evaluation shall be borne by the school  
19 district if such services or placement are in accordance with  
20 the final determination as to the special education and related  
21 services or placement which must be provided to the child,  
22 provided however that in said 60 day period there have been no  
23 delays caused by the child's parent or guardian.

24 (m) Whenever (i) the parents or guardian of a child of the  
25 type described in Section 14-1.02 are not known or are  
26 unavailable or (ii) the child is a ward of the State residing  
27 in a residential facility, a person shall be assigned to serve  
28 as surrogate parent for the child in matters relating to the  
29 identification, evaluation, and educational placement of the  
30 child and the provision of a free appropriate public education  
31 to the child. Surrogate parents shall be assigned by the State  
32 Superintendent of Education. The State Board of Education shall  
33 promulgate rules and regulations establishing qualifications  
34 of such persons and their responsibilities and the procedures  
35 to be followed in making such assignments. Such surrogate  
36 parents shall not be employees of the school district, an

1 agency created by joint agreement under Section 10-22.31, an  
2 agency involved in the education or care of the student, or the  
3 State Board of Education. For a child who is a ward of the  
4 State residing in a residential facility, the surrogate parent  
5 may be an employee of a nonpublic agency that provides only  
6 non-educational care. Services of any person assigned as  
7 surrogate parent shall terminate if the parent or guardian  
8 becomes available unless otherwise requested by the parents or  
9 guardian. The assignment of a person as surrogate parent at no  
10 time supersedes, terminates, or suspends the parents' or  
11 guardian's legal authority relative to the child. Any person  
12 participating in good faith as surrogate parent on behalf of  
13 the child before school officials or a hearing officer shall  
14 have immunity from civil or criminal liability that otherwise  
15 might result by reason of such participation, except in cases  
16 of willful and wanton misconduct.

17 (n) At all stages of the hearing the hearing officer shall  
18 require that interpreters be made available by the local school  
19 district for persons who are deaf or for persons whose normally  
20 spoken language is other than English.

21 (o) Whenever a person refuses to comply with any subpoena  
22 issued under this Section, the circuit court of the county in  
23 which such hearing is pending, on application of the State  
24 Superintendent of Education or the party who requested issuance  
25 of the subpoena may compel obedience by attachment proceedings  
26 as for contempt, as in a case of disobedience of the  
27 requirements of a subpoena from such court for refusal to  
28 testify therein.

29 (Source: P.A. 93-282, eff. 7-22-03.)

30 Section 90. The State Mandates Act is amended by adding  
31 Section 8.29 as follows:

32 (30 ILCS 805/8.29 new)

33 Sec. 8.29. Exempt mandate. Notwithstanding Sections 6 and 8  
34 of this Act, no reimbursement by the State is required for the

1 implementation of any mandate created by this amendatory Act of  
2 the 94th General Assembly.

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