



Sen. Susan Garrett

Filed: 3/1/2005

09400SB0087sam001

LRB094 06594 RAS 42670 a

1 AMENDMENT TO SENATE BILL 87

2 AMENDMENT NO. _____. Amend Senate Bill 87 by replacing
3 everything after the enacting clause with the following:

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",

1 "individualized educational program", and "qualified
2 specialist" appropriate to each category of children with
3 disabilities as defined in this Article. For purposes of
4 determining the eligibility of children from homes in which a
5 language other than English is used, the State Board of
6 Education, no later than September 1, 1993, shall include in
7 the rules definitions for "qualified bilingual specialists"
8 and "linguistically and culturally appropriate individualized
9 educational programs". In this Section, "parent" includes a
10 foster parent.

11 (b) No child shall be eligible for special education
12 facilities except with a carefully completed case study fully
13 reviewed by professional personnel in a multidisciplinary
14 staff conference and only upon the recommendation of qualified
15 specialists or a qualified bilingual specialist, if available.
16 At the conclusion of the multidisciplinary staff conference,
17 the parent or guardian of the child shall be given a copy of
18 the multidisciplinary conference summary report and
19 recommendations, which includes options considered, and be
20 informed of their right to obtain an independent educational
21 evaluation if they disagree with the evaluation findings
22 conducted or obtained by the school district. If the school
23 district's evaluation is shown to be inappropriate, the school
24 district shall reimburse the parent for the cost of the
25 independent evaluation. The State Board of Education shall,
26 with advice from the State Advisory Council on Education of
27 Children with Disabilities on the inclusion of specific
28 independent educational evaluators, prepare a list of
29 suggested independent educational evaluators. The State Board
30 of Education shall include on the list clinical psychologists
31 licensed pursuant to the Clinical Psychologist Licensing Act.
32 Such psychologists shall not be paid fees in excess of the
33 amount that would be received by a school psychologist for
34 performing the same services. The State Board of Education

1 shall supply school districts with such list and make the list
2 available to parents at their request. School districts shall
3 make the list available to parents at the time they are
4 informed of their right to obtain an independent educational
5 evaluation. However, the school district may initiate an
6 impartial due process hearing under this Section within 5 days
7 of any written parent or guardian request for an independent
8 educational evaluation to show that its evaluation is
9 appropriate. If the final decision is that the evaluation is
10 appropriate, the parent still has a right to an independent
11 educational evaluation, but not at public expense. An
12 independent educational evaluation at public expense must be
13 completed within 30 days of a parent or guardian written
14 request unless the school district initiates an impartial due
15 process hearing or the parent or guardian or school district
16 offers reasonable grounds to show that such 30 day time period
17 should be extended. If the due process hearing decision
18 indicates that the parent or guardian is entitled to an
19 independent educational evaluation, it must be completed
20 within 30 days of the decision unless the parent or guardian or
21 the school district offers reasonable grounds to show that such
22 30 day period should be extended. If a parent disagrees with
23 the summary report or recommendations of the multidisciplinary
24 conference or the findings of any educational evaluation which
25 results therefrom, the school district shall not proceed with a
26 placement based upon such evaluation and the child shall remain
27 in his or her regular classroom setting. No child shall be
28 eligible for admission to a special class for the educable
29 mentally disabled or for the trainable mentally disabled except
30 with a psychological evaluation and recommendation by a school
31 psychologist. Consent shall be obtained from the parent or
32 guardian of a child before any evaluation is conducted. If
33 consent is not given by the parent or guardian or if the parent
34 or guardian disagrees with the findings of the evaluation, then

1 the school district may initiate an impartial due process
2 hearing under this Section. The school district may evaluate
3 the child if that is the decision resulting from the impartial
4 due process hearing and the decision is not appealed or if the
5 decision is affirmed on appeal. The determination of
6 eligibility shall be made within 60 school days from the date
7 of referral by school authorities for evaluation by the
8 district or date of application for admittance by the parent or
9 guardian of the child. In those instances when students are
10 referred for evaluation with fewer than 60 pupil attendance
11 days left in the school year, the eligibility determination
12 shall be made prior to the first day of the following school
13 year. After a child has been determined to be eligible for a
14 special education class, such child must be placed in the
15 appropriate program pursuant to the individualized educational
16 program by or no later than the beginning of the next school
17 semester. The appropriate program pursuant to the
18 individualized educational program of students whose native
19 tongue is a language other than English shall reflect the
20 special education, cultural and linguistic needs. No later than
21 September 1, 1993, the State Board of Education shall establish
22 standards for the development, implementation and monitoring
23 of appropriate bilingual special individualized educational
24 programs. The State Board of Education shall further
25 incorporate appropriate monitoring procedures to verify
26 implementation of these standards. The district shall indicate
27 to the parent or guardian and the State Board of Education the
28 nature of the services the child will receive for the regular
29 school term while waiting placement in the appropriate special
30 education class.

31 If the child is deaf, hard of hearing, blind, or visually
32 impaired and he or she might be eligible to receive services
33 from the Illinois School for the Deaf or the Illinois School
34 for the Visually Impaired, the school district shall notify the

1 parents or guardian, in writing, of the existence of these
2 schools and the services they provide and shall make a
3 reasonable effort to inform the parents or guardian of the
4 existence of other, local schools that provide similar services
5 and the services that these other schools provide. This
6 notification shall include without limitation information on
7 school services, school admissions criteria, and school
8 contact information.

9 If the student may be eligible to participate in the
10 Home-Based Support Services Program for Mentally Disabled
11 Adults authorized under the Developmental Disability and
12 Mental Disability Services Act upon becoming an adult, the
13 student's individualized education program shall include plans
14 for (i) determining the student's eligibility for those
15 home-based services, (ii) enrolling the student in the program
16 of home-based services, and (iii) developing a plan for the
17 student's most effective use of the home-based services after
18 the student becomes an adult and no longer receives special
19 educational services under this Article. The plans developed
20 under this paragraph shall include specific actions to be taken
21 by specified individuals, agencies, or officials.

22 (c) In the development of the individualized education
23 program for a student who is functionally blind, it shall be
24 presumed that proficiency in Braille reading and writing is
25 essential for the student's satisfactory educational progress.
26 For purposes of this subsection, the State Board of Education
27 shall determine the criteria for a student to be classified as
28 functionally blind. Students who are not currently identified
29 as functionally blind who are also entitled to Braille
30 instruction include: (i) those whose vision loss is so severe
31 that they are unable to read and write at a level comparable to
32 their peers solely through the use of vision, and (ii) those
33 who show evidence of progressive vision loss that may result in
34 functional blindness. Each student who is functionally blind

1 shall be entitled to Braille reading and writing instruction
2 that is sufficient to enable the student to communicate with
3 the same level of proficiency as other students of comparable
4 ability. Instruction should be provided to the extent that the
5 student is physically and cognitively able to use Braille.
6 Braille instruction may be used in combination with other
7 special education services appropriate to the student's
8 educational needs. The assessment of each student who is
9 functionally blind for the purpose of developing the student's
10 individualized education program shall include documentation
11 of the student's strengths and weaknesses in Braille skills.
12 Each person assisting in the development of the individualized
13 education program for a student who is functionally blind shall
14 receive information describing the benefits of Braille
15 instruction. The individualized education program for each
16 student who is functionally blind shall specify the appropriate
17 learning medium or media based on the assessment report.

18 (d) To the maximum extent appropriate, the placement shall
19 provide the child with the opportunity to be educated with
20 children who are not disabled; provided that children with
21 disabilities who are recommended to be placed into regular
22 education classrooms are provided with supplementary services
23 to assist the children with disabilities to benefit from the
24 regular classroom instruction and are included on the teacher's
25 regular education class register. Subject to the limitation of
26 the preceding sentence, placement in special classes, separate
27 schools or other removal of the disabled child from the regular
28 educational environment shall occur only when the nature of the
29 severity of the disability is such that education in the
30 regular classes with the use of supplementary aids and services
31 cannot be achieved satisfactorily. The placement of limited
32 English proficiency students with disabilities shall be in
33 non-restrictive environments which provide for integration
34 with non-disabled peers in bilingual classrooms. By January

1 1993 and annually thereafter, school districts shall report
2 data on students from non-English speaking backgrounds
3 receiving special education and related services in public and
4 private facilities as prescribed in Section 2-3.30. If there is
5 a disagreement between parties involved regarding the special
6 education placement of any child, either in-state or
7 out-of-state, the placement is subject to impartial due process
8 procedures described in Article 10 of the Rules and Regulations
9 to Govern the Administration and Operation of Special
10 Education.

11 (e) No child who comes from a home in which a language
12 other than English is the principal language used may be
13 assigned to any class or program under this Article until he
14 has been given, in the principal language used by the child and
15 used in his home, tests reasonably related to his cultural
16 environment. All testing and evaluation materials and
17 procedures utilized for evaluation and placement shall not be
18 linguistically, racially or culturally discriminatory.

19 (f) Nothing in this Article shall be construed to require
20 any child to undergo any physical examination or medical
21 treatment whose parents or guardian object thereto on the
22 grounds that such examination or treatment conflicts with his
23 religious beliefs.

24 (g) School boards or their designee shall provide to the
25 parents or guardian of a child prior written notice of any
26 decision (a) proposing to initiate or change, or (b) refusing
27 to initiate or change, the identification, evaluation, or
28 educational placement of the child or the provision of a free
29 appropriate public education to their child, and the reasons
30 therefor. Such written notification shall also inform the
31 parent or guardian of the opportunity to present complaints
32 with respect to any matter relating to the educational
33 placement of the student, or the provision of a free
34 appropriate public education and to have an impartial due

1 process hearing on the complaint. The notice shall inform the
2 parents or guardian in the parents' or guardian's native
3 language, unless it is clearly not feasible to do so, of their
4 rights and all procedures available pursuant to this Act and
5 federal law 94-142; it shall be the responsibility of the State
6 Superintendent to develop uniform notices setting forth the
7 procedures available under this Act and federal law 94-142 to
8 be used by all school boards. The notice shall also inform the
9 parents or guardian of the availability upon request of a list
10 of free or low-cost legal and other relevant services available
11 locally to assist parents or guardians in initiating an
12 impartial due process hearing. Any parent or guardian who is
13 deaf, or does not normally communicate using spoken English,
14 who participates in a meeting with a representative of a local
15 educational agency for the purposes of developing an
16 individualized educational program shall be entitled to the
17 services of an interpreter.

18 (h) A Level I due process hearing, hereinafter referred as
19 the hearing, shall be conducted upon the request of the parents
20 or guardian or local school board by an impartial hearing
21 officer appointed as follows: If the request is made through
22 the local school district, within 5 school days of receipt of
23 the request, the local school district shall forward the
24 request to the State Superintendent. Within 5 days after
25 receiving this request of hearing, the State Board of Education
26 shall provide a list of 5 prospective, impartial hearing
27 officers. The State Board of Education, by rule or regulation,
28 shall establish criteria for determining which persons can be
29 included on such a list of prospective hearing officers. No one
30 on the list may be a resident of the school district. No more
31 than 2 of the 5 prospective hearing officers shall be gainfully
32 employed by or administratively connected with any school
33 district, or any joint agreement or cooperative program in
34 which school districts participate. In addition, no more than 2

1 of the 5 prospective hearing officers shall be gainfully
2 employed by or administratively connected with private
3 providers of special education services. The State Board of
4 Education shall actively recruit applicants for hearing
5 officer positions. The board and the parents or guardian or
6 their legal representatives within 5 days shall alternately
7 strike one name from the list until only one name remains. The
8 parents or guardian shall have the right to proceed first with
9 the striking. The per diem allowance for the hearing officer
10 shall be established and paid by the State Board of Education.
11 The hearing shall be closed to the public except that the
12 parents or guardian may require that the hearing be public. The
13 hearing officer shall not be an employee of the school
14 district, an employee in any joint agreement or cooperative
15 program in which the district participates, or any other agency
16 or organization that is directly involved in the diagnosis,
17 education or care of the student or the State Board of
18 Education. All impartial hearing officers shall be adequately
19 trained in federal and state law, rules and regulations and
20 case law regarding special education. The State Board of
21 Education shall use resources from within and outside the
22 agency for the purposes of conducting this training. The
23 impartial hearing officer shall have the authority to require
24 additional information or evidence where he or she deems it
25 necessary to make a complete record and may order an
26 independent evaluation of the child, the cost of said
27 evaluation to be paid by the local school district. Such
28 hearing shall not be considered adversary in nature, but shall
29 be directed toward bringing out all facts necessary for the
30 impartial hearing officer to render an informed decision. The
31 State Board of Education shall, with the advice and approval of
32 the Advisory Council on Education of Children with
33 Disabilities, promulgate rules and regulations to establish
34 the qualifications of the hearing officers and the rules and

1 procedure for such hearings. The school district shall present
2 evidence that the special education needs of the child have
3 been appropriately identified and that the special education
4 program and related services proposed to meet the needs of the
5 child are adequate, appropriate and available. Any party to the
6 hearing shall have the right to: (a) be represented by counsel
7 and be accompanied and advised by individuals with special
8 knowledge or training with respect to the problems of children
9 with disabilities at the party's own expense; (b) present
10 evidence and confront and cross-examine witnesses; (c)
11 prohibit the introduction of any evidence at the hearing that
12 has not been disclosed to that party at least 5 days before the
13 hearing; (d) obtain a written or electronic verbatim record of
14 the hearing; (e) obtain written findings of fact and a written
15 decision. The student shall be allowed to attend the hearing
16 unless the hearing officer finds that attendance is not in the
17 child's best interest or detrimental to the child. The hearing
18 officer shall specify in the findings the reasons for denying
19 attendance by the student. The hearing officer, or the State
20 Superintendent in connection with State level hearings, may
21 subpoena and compel the attendance of witnesses and the
22 production of evidence reasonably necessary to the resolution
23 of the hearing. The subpoena may be issued upon request of any
24 party. The State Board of Education and the school board shall
25 share equally the costs of providing a written or electronic
26 record of the proceedings. Such record shall be transcribed and
27 transmitted to the State Superintendent no later than 10 days
28 after receipt of notice of appeal. The hearing officer shall
29 render a decision and shall submit a copy of the findings of
30 fact and decision to the parent or guardian and to the local
31 school board within 10 school days after the conclusion of the
32 hearing. The hearing officer may continue the hearing in order
33 to obtain additional information, and, at the conclusion of the
34 hearing, shall issue a decision based on the record which

1 specifies the special education and related services which
2 shall be provided to the child in accordance with the child's
3 needs. The hearing officer's decision shall be binding upon the
4 local school board and the parent unless such decision is
5 appealed pursuant to the provisions of this Section.

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

1 of the review the reviewing officer shall render a decision and
2 shall provide a copy of the decision to all parties.

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

17 (k) Any party aggrieved by the decision of the reviewing
18 officer, including the parent or guardian, shall have the right
19 to bring a civil action with respect to the complaint presented
20 pursuant to this Section, which action may be brought in any
21 circuit court of competent jurisdiction within 120 days after a
22 copy of the decision is mailed to the party as provided in
23 subsection (j). The civil action provided above shall not be
24 exclusive of any rights or causes of action otherwise
25 available. The commencement of a civil action under subsection
26 (k) of this Section shall operate as a supersedeas. In any
27 action brought under this Section the court shall receive the
28 records of the administrative proceedings, shall hear
29 additional evidence at the request of a party, and basing its
30 decision on the preponderance of the evidence shall grant such
31 relief as the court determines is appropriate. In any instance
32 where a school district willfully disregards applicable
33 regulations or statutes regarding a child covered by this
34 Article, and which disregard has been detrimental to the child,

1 the school district shall be liable for any reasonable
2 attorney's fees incurred by the parent or guardian in
3 connection with proceedings under this Section.

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

20 (m) Whenever (i) the parents or guardian of a child of the
21 type described in Section 14-1.02 are not known or are
22 unavailable or (ii) the child is a ward of the State residing
23 in a residential facility, a person shall be assigned to serve
24 as surrogate parent for the child in matters relating to the
25 identification, evaluation, and educational placement of the
26 child and the provision of a free appropriate public education
27 to the child. Surrogate parents shall be assigned by the State
28 Superintendent of Education. The State Board of Education shall
29 promulgate rules and regulations establishing qualifications
30 of such persons and their responsibilities and the procedures
31 to be followed in making such assignments. Such surrogate
32 parents shall not be employees of the school district, an
33 agency created by joint agreement under Section 10-22.31, an
34 agency involved in the education or care of the student, or the

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

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

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

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

28 Section 99. Effective date. This Act takes effect upon
29 becoming law."