



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

HB3555

Introduced 2/28/2007, by Rep. Robert W. Pritchard

#### SYNOPSIS AS INTRODUCED:

105 ILCS 5/14-8.02

from Ch. 122, par. 14-8.02

Amends the School Code. Makes a technical change in a Section concerning the identification, evaluation, and placement of children in special education programs.

LRB095 06940 NHT 27059 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 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 ~~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

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

12 (b) No child shall be eligible for special education  
13 facilities except with a carefully completed case study fully  
14 reviewed by professional personnel in a multidisciplinary  
15 staff conference and only upon the recommendation of qualified  
16 specialists or a qualified bilingual specialist, if available.  
17 At the conclusion of the multidisciplinary staff conference,  
18 the parent or guardian of the child shall be given a copy of  
19 the multidisciplinary conference summary report and  
20 recommendations, which includes options considered, and be  
21 informed of their right to obtain an independent educational  
22 evaluation if they disagree with the evaluation findings  
23 conducted or obtained by the school district. If the school  
24 district's evaluation is shown to be inappropriate, the school  
25 district shall reimburse the parent for the cost of the  
26 independent evaluation. The State Board of Education shall,

1 with advice from the State Advisory Council on Education of  
2 Children with Disabilities on the inclusion of specific  
3 independent educational evaluators, prepare a list of  
4 suggested independent educational evaluators. The State Board  
5 of Education shall include on the list clinical psychologists  
6 licensed pursuant to the Clinical Psychologist Licensing Act.  
7 Such psychologists shall not be paid fees in excess of the  
8 amount that would be received by a school psychologist for  
9 performing the same services. The State Board of Education  
10 shall supply school districts with such list and make the list  
11 available to parents at their request. School districts shall  
12 make the list available to parents at the time they are  
13 informed of their right to obtain an independent educational  
14 evaluation. However, the school district may initiate an  
15 impartial due process hearing under this Section within 5 days  
16 of any written parent or guardian request for an independent  
17 educational evaluation to show that its evaluation is  
18 appropriate. If the final decision is that the evaluation is  
19 appropriate, the parent still has a right to an independent  
20 educational evaluation, but not at public expense. An  
21 independent educational evaluation at public expense must be  
22 completed within 30 days of a parent or guardian written  
23 request unless the school district initiates an impartial due  
24 process hearing or the parent or guardian or school district  
25 offers reasonable grounds to show that such 30 day time period  
26 should be extended. If the due process hearing decision

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

1 referred for evaluation with fewer than 60 pupil attendance  
2 days left in the school year, the eligibility determination  
3 shall be made prior to the first day of the following school  
4 year. After a child has been determined to be eligible for a  
5 special education class, such child must be placed in the  
6 appropriate program pursuant to the individualized educational  
7 program by or no later than the beginning of the next school  
8 semester. The appropriate program pursuant to the  
9 individualized educational program of students whose native  
10 tongue is a language other than English shall reflect the  
11 special education, cultural and linguistic needs. No later than  
12 September 1, 1993, the State Board of Education shall establish  
13 standards for the development, implementation and monitoring  
14 of appropriate bilingual special individualized educational  
15 programs. The State Board of Education shall further  
16 incorporate appropriate monitoring procedures to verify  
17 implementation of these standards. The district shall indicate  
18 to the parent or guardian and the State Board of Education the  
19 nature of the services the child will receive for the regular  
20 school term while waiting placement in the appropriate special  
21 education class.

22 If the child is deaf, hard of hearing, blind, or visually  
23 impaired and he or she might be eligible to receive services  
24 from the Illinois School for the Deaf or the Illinois School  
25 for the Visually Impaired, the school district shall notify the  
26 parents or guardian, in writing, of the existence of these

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

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

21 (c) In the development of the individualized education  
22 program for a student who is functionally blind, it shall be  
23 presumed that proficiency in Braille reading and writing is  
24 essential for the student's satisfactory educational progress.  
25 For purposes of this subsection, the State Board of Education  
26 shall determine the criteria for a student to be classified as

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

25 (d) To the maximum extent appropriate, the placement shall  
26 provide the child with the opportunity to be educated with



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

26 (e) No child who comes from a home in which a language

1 other than English is the principal language used may be  
2 assigned to any class or program under this Article until he  
3 has been given, in the principal language used by the child and  
4 used in his home, tests reasonably related to his cultural  
5 environment. All testing and evaluation materials and  
6 procedures utilized for evaluation and placement shall not be  
7 linguistically, racially or culturally discriminatory.

8 (f) Nothing in this Article shall be construed to require  
9 any child to undergo any physical examination or medical  
10 treatment whose parents or guardian object thereto on the  
11 grounds that such examination or treatment conflicts with his  
12 religious beliefs.

13 (g) School boards or their designee shall provide to the  
14 parents or guardian of a child prior written notice of any  
15 decision (a) proposing to initiate or change, or (b) refusing  
16 to initiate or change, the identification, evaluation, or  
17 educational placement of the child or the provision of a free  
18 appropriate public education to their child, and the reasons  
19 therefor. Such written notification shall also inform the  
20 parent or guardian of the opportunity to present complaints  
21 with respect to any matter relating to the educational  
22 placement of the student, or the provision of a free  
23 appropriate public education and to have an impartial due  
24 process hearing on the complaint. The notice shall inform the  
25 parents or guardian in the parents' or guardian's native  
26 language, unless it is clearly not feasible to do so, of their

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

15 (h) A Level I due process hearing, hereinafter referred as  
16 the hearing, shall be conducted upon the request of the parents  
17 or guardian or local school board by an impartial hearing  
18 officer appointed as follows: If the request is made through  
19 the local school district, within 5 school days of receipt of  
20 the request, the local school district shall forward the  
21 request to the State Superintendent. Within 5 days after  
22 receiving this request of hearing, the State Board of Education  
23 shall provide a list of 5 prospective, impartial hearing  
24 officers. The State Board of Education, by rule or regulation,  
25 shall establish criteria for determining which persons can be  
26 included on such a list of prospective hearing officers. No one

1 on the list may be a resident of the school district. No more  
2 than 2 of the 5 prospective hearing officers shall be gainfully  
3 employed by or administratively connected with any school  
4 district, or any joint agreement or cooperative program in  
5 which school districts participate. In addition, no more than 2  
6 of the 5 prospective hearing officers shall be gainfully  
7 employed by or administratively connected with private  
8 providers of special education services. The State Board of  
9 Education shall actively recruit applicants for hearing  
10 officer positions. The board and the parents or guardian or  
11 their legal representatives within 5 days shall alternately  
12 strike one name from the list until only one name remains. The  
13 parents or guardian shall have the right to proceed first with  
14 the striking. The per diem allowance for the hearing officer  
15 shall be established and paid by the State Board of Education.  
16 The hearing shall be closed to the public except that the  
17 parents or guardian may require that the hearing be public. The  
18 hearing officer shall not be an employee of the school  
19 district, an employee in any joint agreement or cooperative  
20 program in which the district participates, or any other agency  
21 or organization that is directly involved in the diagnosis,  
22 education or care of the student or the State Board of  
23 Education. All impartial hearing officers shall be adequately  
24 trained in federal and state law, rules and regulations and  
25 case law regarding special education. The State Board of  
26 Education shall use resources from within and outside the

1 agency for the purposes of conducting this training. The  
2 impartial hearing officer shall have the authority to require  
3 additional information or evidence where he or she deems it  
4 necessary to make a complete record and may order an  
5 independent evaluation of the child, the cost of said  
6 evaluation to be paid by the local school district. Such  
7 hearing shall not be considered adversary in nature, but shall  
8 be directed toward bringing out all facts necessary for the  
9 impartial hearing officer to render an informed decision. The  
10 State Board of Education shall, with the advice and approval of  
11 the Advisory Council on Education of Children with  
12 Disabilities, promulgate rules and regulations to establish  
13 the qualifications of the hearing officers and the rules and  
14 procedure for such hearings. The school district shall present  
15 evidence that the special education needs of the child have  
16 been appropriately identified and that the special education  
17 program and related services proposed to meet the needs of the  
18 child are adequate, appropriate and available. Any party to the  
19 hearing shall have the right to: (a) be represented by counsel  
20 and be accompanied and advised by individuals with special  
21 knowledge or training with respect to the problems of children  
22 with disabilities at the party's own expense; (b) present  
23 evidence and confront and cross-examine witnesses; (c)  
24 prohibit the introduction of any evidence at the hearing that  
25 has not been disclosed to that party at least 5 days before the  
26 hearing; (d) obtain a written or electronic verbatim record of

1 the hearing; (e) obtain written findings of fact and a written  
2 decision. The student shall be allowed to attend the hearing  
3 unless the hearing officer finds that attendance is not in the  
4 child's best interest or detrimental to the child. The hearing  
5 officer shall specify in the findings the reasons for denying  
6 attendance by the student. The hearing officer, or the State  
7 Superintendent in connection with State level hearings, may  
8 subpoena and compel the attendance of witnesses and the  
9 production of evidence reasonably necessary to the resolution  
10 of the hearing. The subpoena may be issued upon request of any  
11 party. The State Board of Education and the school board shall  
12 share equally the costs of providing a written or electronic  
13 record of the proceedings. Such record shall be transcribed and  
14 transmitted to the State Superintendent no later than 10 days  
15 after receipt of notice of appeal. The hearing officer shall  
16 render a decision and shall submit a copy of the findings of  
17 fact and decision to the parent or guardian and to the local  
18 school board within 10 school days after the conclusion of the  
19 hearing. The hearing officer may continue the hearing in order  
20 to obtain additional information, and, at the conclusion of the  
21 hearing, shall issue a decision based on the record which  
22 specifies the special education and related services which  
23 shall be provided to the child in accordance with the child's  
24 needs. The hearing officer's decision shall be binding upon the  
25 local school board and the parent unless such decision is  
26 appealed pursuant to the provisions of this Section.

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

1 attendance of witnesses at such review. The parties to the  
2 appeal shall be afforded the opportunity to present oral  
3 argument and additional evidence at the review. Upon completion  
4 of the review the reviewing officer shall render a decision and  
5 shall provide a copy of the decision to all parties.

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

20 (k) Any party aggrieved by the decision of the reviewing  
21 officer, including the parent or guardian, shall have the right  
22 to bring a civil action with respect to the complaint presented  
23 pursuant to this Section, which action may be brought in any  
24 circuit court of competent jurisdiction within 120 days after a  
25 copy of the decision is mailed to the party as provided in  
26 subsection (j). The civil action provided above shall not be



1 exclusive of any rights or causes of action otherwise  
2 available. The commencement of a civil action under subsection  
3 (k) of this Section shall operate as a supersedeas. In any  
4 action brought under this Section the court shall receive the  
5 records of the administrative proceedings, shall hear  
6 additional evidence at the request of a party, and basing its  
7 decision on the preponderance of the evidence shall grant such  
8 relief as the court determines is appropriate. In any instance  
9 where a school district willfully disregards applicable  
10 regulations or statutes regarding a child covered by this  
11 Article, and which disregard has been detrimental to the child,  
12 the school district shall be liable for any reasonable  
13 attorney's fees incurred by the parent or guardian in  
14 connection with proceedings under this Section.

15 (1) During the pendency of any proceedings conducted  
16 pursuant to this Section, unless the State Superintendent of  
17 Education, or the school district and the parents or guardian  
18 otherwise agree, the student shall remain in the then current  
19 educational placement of such student, or if applying for  
20 initial admission to the school district, shall, with the  
21 consent of the parents or guardian, be placed in the school  
22 district program until all such proceedings have been  
23 completed. The costs for any special education and related  
24 services or placement incurred following 60 school days after  
25 the initial request for evaluation shall be borne by the school  
26 district if such services or placement are in accordance with

1 the final determination as to the special education and related  
2 services or placement which must be provided to the child,  
3 provided however that in said 60 day period there have been no  
4 delays caused by the child's parent or guardian.

5 (m) Whenever (i) the parents or guardian of a child of the  
6 type described in Section 14-1.02 are not known or are  
7 unavailable or (ii) the child is a ward of the State residing  
8 in a residential facility, a person shall be assigned to serve  
9 as surrogate parent for the child in matters relating to the  
10 identification, evaluation, and educational placement of the  
11 child and the provision of a free appropriate public education  
12 to the child. Surrogate parents shall be assigned by the State  
13 Superintendent of Education. The State Board of Education shall  
14 promulgate rules and regulations establishing qualifications  
15 of such persons and their responsibilities and the procedures  
16 to be followed in making such assignments. Such surrogate  
17 parents shall not be employees of the school district, an  
18 agency created by joint agreement under Section 10-22.31, an  
19 agency involved in the education or care of the student, or the  
20 State Board of Education. For a child who is a ward of the  
21 State residing in a residential facility, the surrogate parent  
22 may be an employee of a nonpublic agency that provides only  
23 non-educational care. Services of any person assigned as  
24 surrogate parent shall terminate if the parent or guardian  
25 becomes available unless otherwise requested by the parents or  
26 guardian. The assignment of a person as surrogate parent at no

1 time supersedes, terminates, or suspends the parents' or  
2 guardian's legal authority relative to the child. Any person  
3 participating in good faith as surrogate parent on behalf of  
4 the child before school officials or a hearing officer shall  
5 have immunity from civil or criminal liability that otherwise  
6 might result by reason of such participation, except in cases  
7 of willful and wanton misconduct.

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

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

20 (Source: P.A. 93-282, eff. 7-22-03; 94-376, eff. 7-29-05.)