

SB3541



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB3541

Introduced 2/8/2012, by Sen. Heather A. Steans

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.

LRB097 16975 NHT 62166 b

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 ~~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 shall include in the rules definitions for "qualified
8 bilingual specialists" and "linguistically and culturally
9 appropriate individualized educational programs". For purposes
10 of this Section, as well as Sections 14-8.02a, 14-8.02b, and
11 14-8.02c of this Code, "parent" means a parent as defined in
12 the federal Individuals with Disabilities Education Act (20
13 U.S.C. 1401(23)).

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

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

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

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

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

1 inform the parents of the existence of other, local schools
2 that provide similar services and the services that these other
3 schools provide. This notification shall include without
4 limitation information on school services, school admissions
5 criteria, and school contact information.

6 In the development of the individualized education program
7 for a student who has a disability on the autism spectrum
8 (which includes autistic disorder, Asperger's disorder,
9 pervasive developmental disorder not otherwise specified,
10 childhood disintegrative disorder, and Rett Syndrome, as
11 defined in the Diagnostic and Statistical Manual of Mental
12 Disorders, fourth edition (DSM-IV, 2000)), the IEP team shall
13 consider all of the following factors:

14 (1) The verbal and nonverbal communication needs of the
15 child.

16 (2) The need to develop social interaction skills and
17 proficiencies.

18 (3) The needs resulting from the child's unusual
19 responses to sensory experiences.

20 (4) The needs resulting from resistance to
21 environmental change or change in daily routines.

22 (5) The needs resulting from engagement in repetitive
23 activities and stereotyped movements.

24 (6) The need for any positive behavioral
25 interventions, strategies, and supports to address any
26 behavioral difficulties resulting from autism spectrum

1 disorder.

2 (7) Other needs resulting from the child's disability
3 that impact progress in the general curriculum, including
4 social and emotional development.

5 Public Act 95-257 does not create any new entitlement to a
6 service, program, or benefit, but must not affect any
7 entitlement to a service, program, or benefit created by any
8 other law.

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

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

26 (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. Annually,
17 each January, school districts shall report data on students
18 from non-English speaking backgrounds receiving special
19 education and related services in public and private facilities
20 as prescribed in Section 2-3.30. If there is a disagreement
21 between parties involved regarding the special education
22 placement of any child, either in-state or out-of-state, the
23 placement is subject to impartial due process procedures
24 described in Article 10 of the Rules and Regulations to Govern
25 the Administration and Operation of Special 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 object thereto on the grounds that such
11 examination or treatment conflicts with his religious beliefs.

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

1 2004 (Public Law 108-446); it shall be the responsibility of
2 the State Superintendent to develop uniform notices setting
3 forth the procedures available under this Act and the federal
4 Individuals with Disabilities Education Improvement Act of
5 2004 (Public Law 108-446) to be used by all school boards. The
6 notice shall also inform the parents of the availability upon
7 request of a list of free or low-cost legal and other relevant
8 services available locally to assist parents in initiating an
9 impartial due process hearing. Any parent who is deaf, or does
10 not normally communicate using spoken English, who
11 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 (g-5) For purposes of this subsection (g-5), "qualified
16 professional" means an individual who holds credentials to
17 evaluate the child in the domain or domains for which an
18 evaluation is sought or an intern working under the direct
19 supervision of a qualified professional, including a master's
20 or doctoral degree candidate.

21 To ensure that a parent can participate fully and
22 effectively with school personnel in the development of
23 appropriate educational and related services for his or her
24 child, the parent, an independent educational evaluator, or a
25 qualified professional retained by or on behalf of a parent or
26 child must be afforded reasonable access to educational

1 facilities, personnel, classrooms, and buildings and to the
2 child as provided in this subsection (g-5). The requirements of
3 this subsection (g-5) apply to any public school facility,
4 building, or program and to any facility, building, or program
5 supported in whole or in part by public funds. Prior to
6 visiting a school, school building, or school facility, the
7 parent, independent educational evaluator, or qualified
8 professional may be required by the school district to inform
9 the building principal or supervisor in writing of the proposed
10 visit, the purpose of the visit, and the approximate duration
11 of the visit. The visitor and the school district shall arrange
12 the visit or visits at times that are mutually agreeable.
13 Visitors shall comply with school safety, security, and
14 visitation policies at all times. School district visitation
15 policies must not conflict with this subsection (g-5). Visitors
16 shall be required to comply with the requirements of applicable
17 privacy laws, including those laws protecting the
18 confidentiality of education records such as the federal Family
19 Educational Rights and Privacy Act and the Illinois School
20 Student Records Act. The visitor shall not disrupt the
21 educational process.

22 (1) A parent must be afforded reasonable access of
23 sufficient duration and scope for the purpose of observing
24 his or her child in the child's current educational
25 placement, services, or program or for the purpose of
26 visiting an educational placement or program proposed for

1 the child.

2 (2) An independent educational evaluator or a
3 qualified professional retained by or on behalf of a parent
4 or child must be afforded reasonable access of sufficient
5 duration and scope for the purpose of conducting an
6 evaluation of the child, the child's performance, the
7 child's current educational program, placement, services,
8 or environment, or any educational program, placement,
9 services, or environment proposed for the child, including
10 interviews of educational personnel, child observations,
11 assessments, tests or assessments of the child's
12 educational program, services, or placement or of any
13 proposed educational program, services, or placement. If
14 one or more interviews of school personnel are part of the
15 evaluation, the interviews must be conducted at a mutually
16 agreed upon time, date, and place that do not interfere
17 with the school employee's school duties. The school
18 district may limit interviews to personnel having
19 information relevant to the child's current educational
20 services, program, or placement or to a proposed
21 educational service, program, or placement.

22 (h) (Blank).

23 (i) (Blank).

24 (j) (Blank).

25 (k) (Blank).

26 (l) (Blank).

1 (m) (Blank).

2 (n) (Blank).

3 (o) (Blank).

4 (Source: P.A. 95-257, eff. 1-1-08; 95-876, eff. 8-21-08;

5 96-657, eff. 8-25-09.)