

HB3679



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB3679

Introduced 2/17/2023, by Rep. Harry Benton

SYNOPSIS AS INTRODUCED:

105 ILCS 5/14-8.02

from Ch. 122, par. 14-8.02

Amends the Children With Disabilities Article of the School Code. Provides that in the development of the individualized education program for a student, if during the initial development of the individualized education program is recognized that the student's needs are unlikely to change, the individualized education program shall continue without the need for the student's IEP team to meet until either the student or the parent requests a change in the student's individualized education program.

LRB103 30443 RJT 56875 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 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 English learners coming from homes in which a language other
17 than English is used to determine their eligibility to receive
18 special education. The placement of low English proficiency
19 students in special education programs and facilities shall be
20 made in accordance with the test results reflecting the
21 student's linguistic, cultural and special education needs.
22 For purposes of determining the eligibility of children the
23 State Board of Education shall include in the rules

1 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
8 "qualified bilingual specialists" and "linguistically and
9 culturally appropriate individualized educational programs".
10 For purposes of this Section, as well as Sections 14-8.02a,
11 14-8.02b, and 14-8.02c of this Code, "parent" means a parent
12 as defined in the federal Individuals with Disabilities
13 Education Act (20 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 and, if the child is in the legal
21 custody of the Department of Children and Family Services, the
22 Department's Office of Education and Transition Services shall
23 be given a copy of the multidisciplinary conference summary
24 report and recommendations, which includes options considered,
25 and, in the case of the parent, be informed of his or her right
26 to obtain an independent educational evaluation if he or she

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

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

1 eligibility shall be made and the IEP meeting shall be
2 completed within 60 school days from the date of written
3 parental consent. In those instances when written parental
4 consent is obtained with fewer than 60 pupil attendance days
5 left in the school year, the eligibility determination shall
6 be made and the IEP meeting shall be completed prior to the
7 first day of the following school year. Special education and
8 related services must be provided in accordance with the
9 student's IEP no later than 10 school attendance days after
10 notice is provided to the parents pursuant to Section 300.503
11 of Title 34 of the Code of Federal Regulations and
12 implementing rules adopted by the State Board of Education.
13 The appropriate program pursuant to the individualized
14 educational program of students whose native tongue is a
15 language other than English shall reflect the special
16 education, cultural and linguistic needs. No later than
17 September 1, 1993, the State Board of Education shall
18 establish standards for the development, implementation and
19 monitoring of appropriate bilingual special individualized
20 educational programs. The State Board of Education shall
21 further incorporate appropriate monitoring procedures to
22 verify implementation of these standards. The district shall
23 indicate to the parent, the State Board of Education, and, if
24 applicable, the Department's Office of Education and
25 Transition Services the nature of the services the child will
26 receive for the regular school term while awaiting placement

1 in the appropriate special education class. At the child's
2 initial IEP meeting and at each annual review meeting, the
3 child's IEP team shall provide the child's parent or guardian
4 and, if applicable, the Department's Office of Education and
5 Transition Services with a written notification that informs
6 the parent or guardian or the Department's Office of Education
7 and Transition Services that the IEP team is required to
8 consider whether the child requires assistive technology in
9 order to receive free, appropriate public education. The
10 notification must also include a toll-free telephone number
11 and internet address for the State's assistive technology
12 program.

13 In the development of the individualized education program
14 for a student, if during the initial development of the
15 individualized education program is recognized that the
16 student's needs are unlikely to change, the individualized
17 education program shall continue without the need for the
18 student's IEP team to meet until either the student or the
19 parent requests a change in the student's individualized
20 education program.

21 If the child is deaf, hard of hearing, blind, or visually
22 impaired or has an orthopedic impairment or physical
23 disability and he or she might be eligible to receive services
24 from the Illinois School for the Deaf, the Illinois School for
25 the Visually Impaired, or the Illinois Center for
26 Rehabilitation and Education-Roosevelt, the school district

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

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

17 (1) The verbal and nonverbal communication needs of
18 the child.

19 (2) The need to develop social interaction skills and
20 proficiencies.

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

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

25 (5) The needs resulting from engagement in repetitive
26 activities and stereotyped movements.

1 (6) The need for any positive behavioral
2 interventions, strategies, and supports to address any
3 behavioral difficulties resulting from autism spectrum
4 disorder.

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

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

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

25 (c) In the development of the individualized education
26 program for a student who is functionally blind, it shall be

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

1 individualized education program for each student who is
2 functionally blind shall specify the appropriate learning
3 medium or media based on the assessment report.

4 (d) To the maximum extent appropriate, the placement shall
5 provide the child with the opportunity to be educated with
6 children who do not have a disability; provided that children
7 with disabilities who are recommended to be placed into
8 regular education classrooms are provided with supplementary
9 services to assist the children with disabilities to benefit
10 from the regular classroom instruction and are included on the
11 teacher's regular education class register. Subject to the
12 limitation of the preceding sentence, placement in special
13 classes, separate schools or other removal of the child with a
14 disability from the regular educational environment shall
15 occur only when the nature of the severity of the disability is
16 such that education in the regular classes with the use of
17 supplementary aids and services cannot be achieved
18 satisfactorily. The placement of English learners with
19 disabilities shall be in non-restrictive environments which
20 provide for integration with peers who do not have
21 disabilities in bilingual classrooms. Annually, each January,
22 school districts shall report data on students from
23 non-English speaking backgrounds receiving special education
24 and related services in public and private facilities as
25 prescribed in Section 2-3.30. If there is a disagreement
26 between parties involved regarding the special education

1 placement of any child, either in-state or out-of-state, the
2 placement is subject to impartial due process procedures
3 described in Article 10 of the Rules and Regulations to Govern
4 the Administration and Operation of Special Education.

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

13 (f) Nothing in this Article shall be construed to require
14 any child to undergo any physical examination or medical
15 treatment whose parents object thereto on the grounds that
16 such examination or treatment conflicts with his religious
17 beliefs.

18 (g) School boards or their designee shall provide to the
19 parents of a child or, if applicable, the Department of
20 Children and Family Services' Office of Education and
21 Transition Services prior written notice of any decision (a)
22 proposing to initiate or change, or (b) refusing to initiate
23 or change, the identification, evaluation, or educational
24 placement of the child or the provision of a free appropriate
25 public education to their child, and the reasons therefor. For
26 a parent, such written notification shall also inform the

1 parent of the opportunity to present complaints with respect
2 to any matter relating to the educational placement of the
3 student, or the provision of a free appropriate public
4 education and to have an impartial due process hearing on the
5 complaint. The notice shall inform the parents in the parents'
6 native language, unless it is clearly not feasible to do so, of
7 their rights and all procedures available pursuant to this Act
8 and the federal Individuals with Disabilities Education
9 Improvement Act of 2004 (Public Law 108-446); it shall be the
10 responsibility of the State Superintendent to develop uniform
11 notices setting forth the procedures available under this Act
12 and the federal Individuals with Disabilities Education
13 Improvement Act of 2004 (Public Law 108-446) to be used by all
14 school boards. The notice shall also inform the parents of the
15 availability upon request of a list of free or low-cost legal
16 and other relevant services available locally to assist
17 parents in initiating an impartial due process hearing. The
18 State Superintendent shall revise the uniform notices required
19 by this subsection (g) to reflect current law and procedures
20 at least once every 2 years. Any parent who is deaf or does not
21 normally communicate using spoken English and who participates
22 in a meeting with a representative of a local educational
23 agency for the purposes of developing an individualized
24 educational program or attends a multidisciplinary conference
25 shall be entitled to the services of an interpreter. The State
26 Board of Education must adopt rules to establish the criteria,

1 standards, and competencies for a bilingual language
2 interpreter who attends an individualized education program
3 meeting under this subsection to assist a parent who has
4 limited English proficiency.

5 (g-5) For purposes of this subsection (g-5), "qualified
6 professional" means an individual who holds credentials to
7 evaluate the child in the domain or domains for which an
8 evaluation is sought or an intern working under the direct
9 supervision of a qualified professional, including a master's
10 or doctoral degree candidate.

11 To ensure that a parent can participate fully and
12 effectively with school personnel in the development of
13 appropriate educational and related services for his or her
14 child, the parent, an independent educational evaluator, or a
15 qualified professional retained by or on behalf of a parent or
16 child must be afforded reasonable access to educational
17 facilities, personnel, classrooms, and buildings and to the
18 child as provided in this subsection (g-5). The requirements
19 of this subsection (g-5) apply to any public school facility,
20 building, or program and to any facility, building, or program
21 supported in whole or in part by public funds. Prior to
22 visiting a school, school building, or school facility, the
23 parent, independent educational evaluator, or qualified
24 professional may be required by the school district to inform
25 the building principal or supervisor in writing of the
26 proposed visit, the purpose of the visit, and the approximate

1 duration of the visit. The visitor and the school district
2 shall arrange the visit or visits at times that are mutually
3 agreeable. Visitors shall comply with school safety, security,
4 and visitation policies at all times. School district
5 visitation policies must not conflict with this subsection
6 (g-5). Visitors shall be required to comply with the
7 requirements of applicable privacy laws, including those laws
8 protecting the confidentiality of education records such as
9 the federal Family Educational Rights and Privacy Act and the
10 Illinois School Student Records Act. The visitor shall not
11 disrupt the educational process.

12 (1) A parent must be afforded reasonable access of
13 sufficient duration and scope for the purpose of observing
14 his or her child in the child's current educational
15 placement, services, or program or for the purpose of
16 visiting an educational placement or program proposed for
17 the child.

18 (2) An independent educational evaluator or a
19 qualified professional retained by or on behalf of a
20 parent or child must be afforded reasonable access of
21 sufficient duration and scope for the purpose of
22 conducting an evaluation of the child, the child's
23 performance, the child's current educational program,
24 placement, services, or environment, or any educational
25 program, placement, services, or environment proposed for
26 the child, including interviews of educational personnel,

1 child observations, assessments, tests or assessments of
2 the child's educational program, services, or placement or
3 of any proposed educational program, services, or
4 placement. If one or more interviews of school personnel
5 are part of the evaluation, the interviews must be
6 conducted at a mutually agreed upon time, date, and place
7 that do not interfere with the school employee's school
8 duties. The school district may limit interviews to
9 personnel having information relevant to the child's
10 current educational services, program, or placement or to
11 a proposed educational service, program, or placement.

12 (Source: P.A. 101-124, eff. 1-1-20; 102-199, eff. 7-1-22;
13 102-264, eff. 8-6-21; 102-558, eff. 8-20-21; 102-813, eff.
14 5-13-22; 102-1072, eff. 6-10-22.)