

SB2468



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

SB2468

Introduced 1/30/2018, by Sen. David Koehler

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. With regard to individualized education programs, provides that if a child's individualized education program team determines that the child does not require assistive technology services or devices, the team shall include a statement in the child's program that informs the child's parent or guardian of the decision and the basis for the decision. Effective immediately.

LRB100 17523 AXK 32693 b

FISCAL NOTE ACT
MAY APPLY

STATE MANDATES
ACT MAY REQUIRE
REIMBURSEMENT

A BILL FOR

1 AN ACT concerning education.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The School Code is amended by changing Section
5 14-8.02 as follows:

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

7 Sec. 14-8.02. Identification, evaluation, and placement of
8 children.

9 (a) The State Board of Education shall make rules under
10 which local school boards shall determine the eligibility of
11 children to receive special education. Such rules shall ensure
12 that a free appropriate public education be available to all
13 children with disabilities as defined in Section 14-1.02. The
14 State Board of Education shall require local school districts
15 to administer non-discriminatory procedures or tests to
16 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 definitions

1 of "case study", "staff conference", "individualized
2 educational program", and "qualified specialist" appropriate
3 to each category of children with disabilities as defined in
4 this Article. For purposes of determining the eligibility of
5 children from homes in which a language other than English is
6 used, the State Board of Education shall include in the rules
7 definitions for "qualified bilingual specialists" and
8 "linguistically and culturally appropriate individualized
9 educational programs". For purposes of this Section, as well as
10 Sections 14-8.02a, 14-8.02b, and 14-8.02c of this Code,
11 "parent" means a parent as defined in the federal Individuals
12 with Disabilities Education Act (20 U.S.C. 1401(23)).

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

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

1 process hearing decision indicates that the parent is entitled
2 to an independent educational evaluation, it must be completed
3 within 30 days of the decision unless the parent or the school
4 district offers reasonable grounds to show that such 30 day
5 period should be extended. If a parent disagrees with the
6 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 children with a
12 mental disability who are educable or for children with a
13 mental disability who are trainable except with a psychological
14 evaluation and recommendation by a school psychologist.
15 Consent shall be obtained from the parent of a child before any
16 evaluation is conducted. If consent is not given by the parent
17 or if the parent disagrees with the findings of the evaluation,
18 then 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 and the IEP meeting shall be
24 completed within 60 school days from the date of written
25 parental consent. In those instances when written parental
26 consent is obtained with fewer than 60 pupil attendance days

1 left in the school year, the eligibility determination shall be
2 made and the IEP meeting shall be completed prior to the first
3 day of the following school year. Special education and related
4 services must be provided in accordance with the student's IEP
5 no later than 10 school attendance days after notice is
6 provided to the parents pursuant to Section 300.503 of Title 34
7 of the Code of Federal Regulations and implementing rules
8 adopted by the State Board of Education. The appropriate
9 program pursuant to the individualized educational program of
10 students whose native tongue is a language other than English
11 shall reflect the special education, cultural and linguistic
12 needs. No later than September 1, 1993, the State Board of
13 Education shall establish standards for the development,
14 implementation and monitoring of appropriate bilingual special
15 individualized educational programs. The State Board of
16 Education shall further incorporate appropriate monitoring
17 procedures to verify implementation of these standards. The
18 district shall indicate to the parent and the State Board of
19 Education the nature of the services the child will receive for
20 the regular school term while waiting placement in the
21 appropriate special education class. If the child's IEP team
22 determines that the child does not require assistive technology
23 services or devices, as defined under Section 1401 of the
24 federal Individuals with Disabilities Education Act (20 U.S.C.
25 1401), the team shall include a statement in the child's IEP
26 that informs the child's parent or guardian of the decision and

1 the basis for the decision.

2 If the child is deaf, hard of hearing, blind, or visually
3 impaired and he or she might be eligible to receive services
4 from the Illinois School for the Deaf or the Illinois School
5 for the Visually Impaired, the school district shall notify the
6 parents, in writing, of the existence of these schools and the
7 services they provide and shall make a reasonable effort to
8 inform the parents of the existence of other, local schools
9 that provide similar services and the services that these other
10 schools provide. This notification shall include without
11 limitation information on school services, school admissions
12 criteria, and school contact information.

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

21 (1) The verbal and nonverbal communication needs of the
22 child.

23 (2) The need to develop social interaction skills and
24 proficiencies.

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

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

3 (5) The needs resulting from engagement in repetitive
4 activities and stereotyped movements.

5 (6) The need for any positive behavioral
6 interventions, strategies, and supports to address any
7 behavioral difficulties resulting from autism spectrum
8 disorder.

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

12 Public Act 95-257 does not create any new entitlement to a
13 service, program, or benefit, but must not affect any
14 entitlement to a service, program, or benefit created by any
15 other law.

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

1 under this paragraph shall include specific actions to be taken
2 by specified individuals, agencies, or officials.

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

1 Each person assisting in the development of the individualized
2 education program for a student who is functionally blind shall
3 receive information describing the benefits of Braille
4 instruction. The individualized education program for each
5 student who is functionally blind shall specify the appropriate
6 learning medium or media based on the assessment report.

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

1 prescribed in Section 2-3.30. If there is a disagreement
2 between parties involved regarding the special education
3 placement of any child, either in-state or out-of-state, the
4 placement is subject to impartial due process procedures
5 described in Article 10 of the Rules and Regulations to Govern
6 the Administration and Operation of Special Education.

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

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

19 (g) School boards or their designee shall provide to the
20 parents of a child prior written notice of any decision (a)
21 proposing to initiate or change, or (b) refusing to initiate or
22 change, the identification, evaluation, or educational
23 placement of the child or the provision of a free appropriate
24 public education to their child, and the reasons therefor. Such
25 written notification shall also inform the parent of the
26 opportunity to present complaints with respect to any matter

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

24 (g-5) For purposes of this subsection (g-5), "qualified
25 professional" means an individual who holds credentials to
26 evaluate the child in the domain or domains for which an

1 evaluation is sought or an intern working under the direct
2 supervision of a qualified professional, including a master's
3 or doctoral degree candidate.

4 To ensure that a parent can participate fully and
5 effectively with school personnel in the development of
6 appropriate educational and related services for his or her
7 child, the parent, an independent educational evaluator, or a
8 qualified professional retained by or on behalf of a parent or
9 child must be afforded reasonable access to educational
10 facilities, personnel, classrooms, and buildings and to the
11 child as provided in this subsection (g-5). The requirements of
12 this subsection (g-5) apply to any public school facility,
13 building, or program and to any facility, building, or program
14 supported in whole or in part by public funds. Prior to
15 visiting a school, school building, or school facility, the
16 parent, independent educational evaluator, or qualified
17 professional may be required by the school district to inform
18 the building principal or supervisor in writing of the proposed
19 visit, the purpose of the visit, and the approximate duration
20 of the visit. The visitor and the school district shall arrange
21 the visit or visits at times that are mutually agreeable.
22 Visitors shall comply with school safety, security, and
23 visitation policies at all times. School district visitation
24 policies must not conflict with this subsection (g-5). Visitors
25 shall be required to comply with the requirements of applicable
26 privacy laws, including those laws protecting the

1 confidentiality of education records such as the federal Family
2 Educational Rights and Privacy Act and the Illinois School
3 Student Records Act. The visitor shall not disrupt the
4 educational process.

5 (1) A parent must be afforded reasonable access of
6 sufficient duration and scope for the purpose of observing
7 his or her child in the child's current educational
8 placement, services, or program or for the purpose of
9 visiting an educational placement or program proposed for
10 the child.

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

1 district may limit interviews to personnel having
2 information relevant to the child's current educational
3 services, program, or placement or to a proposed
4 educational service, program, or placement.

5 (h) (Blank).

6 (i) (Blank).

7 (j) (Blank).

8 (k) (Blank).

9 (l) (Blank).

10 (m) (Blank).

11 (n) (Blank).

12 (o) (Blank).

13 (Source: P.A. 99-30, eff. 7-10-15; 99-143, eff. 7-27-15;
14 99-642, eff. 7-28-16; 100-122, eff. 8-18-17; revised 9-25-17.)

15 Section 99. Effective date. This Act takes effect upon
16 becoming law.