

SB0079



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB0079

Introduced 1/31/2007, by Sen. Susan Garrett

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 who has a disability on the autism spectrum, the IEP team shall consider and shall specifically address certain factors. Provides that consideration of these factors shall result in the clarification of a school district's responsibility to deliver appropriate educational services for children with disabilities on the autism spectrum, but shall not be construed to require or mandate any specific services. Effective January 1, 2008.

LRB095 04474 NHT 24521 b

FISCAL NOTE ACT
MAY APPLY

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

17 (1) The verbal and nonverbal communication needs of the
18 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 Consideration of these factors shall result in the
9 clarification of a school district's responsibility to deliver
10 appropriate educational services for children with
11 disabilities on the autism spectrum, but must not be construed
12 to require or mandate any specific services. This amendatory
13 Act of the 95th General Assembly does not create any new
14 entitlement to a service, program, or benefit, but must not
15 affect any entitlement to a service, program, or benefit
16 created by any other law.

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

1 educational services under this Article. The plans developed
2 under this paragraph shall include specific actions to be taken
3 by specified individuals, agencies, or officials.

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

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

8 (d) To the maximum extent appropriate, the placement shall
9 provide the child with the opportunity to be educated with
10 children who are not disabled; provided that children with
11 disabilities who are recommended to be placed into regular
12 education classrooms are provided with supplementary services
13 to assist the children with disabilities to benefit from the
14 regular classroom instruction and are included on the teacher's
15 regular education class register. Subject to the limitation of
16 the preceding sentence, placement in special classes, separate
17 schools or other removal of the disabled child from the regular
18 educational environment shall occur only when the nature of the
19 severity of the disability is such that education in the
20 regular classes with the use of supplementary aids and services
21 cannot be achieved satisfactorily. The placement of limited
22 English proficiency students with disabilities shall be in
23 non-restrictive environments which provide for integration
24 with non-disabled peers in bilingual classrooms. By January
25 1993 and annually thereafter, school districts shall report
26 data on students from non-English speaking backgrounds

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

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

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

22 (g) School boards or their designee shall provide to the
23 parents or guardian of a child prior written notice of any
24 decision (a) proposing to initiate or change, or (b) refusing
25 to initiate or change, the identification, evaluation, or
26 educational placement of the child or the provision of a free

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

24 (h) A Level I due process hearing, hereinafter referred as
25 the hearing, shall be conducted upon the request of the parents
26 or guardian or local school board by an impartial hearing

1 officer appointed as follows: If the request is made through
2 the local school district, within 5 school days of receipt of
3 the request, the local school district shall forward the
4 request to the State Superintendent. Within 5 days after
5 receiving this request of hearing, the State Board of Education
6 shall provide a list of 5 prospective, impartial hearing
7 officers. The State Board of Education, by rule or regulation,
8 shall establish criteria for determining which persons can be
9 included on such a list of prospective hearing officers. No one
10 on the list may be a resident of the school district. No more
11 than 2 of the 5 prospective hearing officers shall be gainfully
12 employed by or administratively connected with any school
13 district, or any joint agreement or cooperative program in
14 which school districts participate. In addition, no more than 2
15 of the 5 prospective hearing officers shall be gainfully
16 employed by or administratively connected with private
17 providers of special education services. The State Board of
18 Education shall actively recruit applicants for hearing
19 officer positions. The board and the parents or guardian or
20 their legal representatives within 5 days shall alternately
21 strike one name from the list until only one name remains. The
22 parents or guardian shall have the right to proceed first with
23 the striking. The per diem allowance for the hearing officer
24 shall be established and paid by the State Board of Education.
25 The hearing shall be closed to the public except that the
26 parents or guardian may require that the hearing be public. The

1 hearing officer shall not be an employee of the school
2 district, an employee in any joint agreement or cooperative
3 program in which the district participates, or any other agency
4 or organization that is directly involved in the diagnosis,
5 education or care of the student or the State Board of
6 Education. All impartial hearing officers shall be adequately
7 trained in federal and state law, rules and regulations and
8 case law regarding special education. The State Board of
9 Education shall use resources from within and outside the
10 agency for the purposes of conducting this training. The
11 impartial hearing officer shall have the authority to require
12 additional information or evidence where he or she deems it
13 necessary to make a complete record and may order an
14 independent evaluation of the child, the cost of said
15 evaluation to be paid by the local school district. Such
16 hearing shall not be considered adversary in nature, but shall
17 be directed toward bringing out all facts necessary for the
18 impartial hearing officer to render an informed decision. The
19 State Board of Education shall, with the advice and approval of
20 the Advisory Council on Education of Children with
21 Disabilities, promulgate rules and regulations to establish
22 the qualifications of the hearing officers and the rules and
23 procedure for such hearings. The school district shall present
24 evidence that the special education needs of the child have
25 been appropriately identified and that the special education
26 program and related services proposed to meet the needs of the

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

1 school board within 10 school days after the conclusion of the
2 hearing. The hearing officer may continue the hearing in order
3 to obtain additional information, and, at the conclusion of the
4 hearing, shall issue a decision based on the record which
5 specifies the special education and related services which
6 shall be provided to the child in accordance with the child's
7 needs. The hearing officer's decision shall be binding upon the
8 local school board and the parent unless such decision is
9 appealed pursuant to the provisions of this Section.

10 (i) Any party aggrieved by the decision may appeal the
11 hearing officer's decision to the State Board of Education and
12 shall serve copies of the notice of such appeal on the State
13 Superintendent and on all other parties. The review referred to
14 in this Section shall be known as the Level II review. The
15 State Board of Education shall provide a list of 5 prospective,
16 impartial reviewing officers. No reviewing officer shall be an
17 employee of the State Board of Education or gainfully employed
18 by or administratively connected with the school district,
19 joint agreement or cooperative program which is a party to this
20 review. Each person on the list shall be accredited by a
21 national arbitration organization. The per diem allowance for
22 the review officers shall be paid by the State Board of
23 Education and may not exceed \$250. All reviewing officers on
24 the list provided by the State Board of Education shall be
25 trained in federal and state law, rules and regulations and
26 case law regarding special education. The State Board of

1 Education shall use resources from within and outside the
2 agency for the purposes of conducting this training. No one on
3 the list may be a resident of the school district. The board
4 and the parents or guardian or other legal representatives
5 within 5 days shall alternately strike one name from the list
6 until only one name remains. The parents or guardian shall have
7 the right to proceed first with the striking. The reviewing
8 officer so selected shall conduct an impartial review of the
9 Level I hearing and may issue subpoenas requiring the
10 attendance of witnesses at such review. The parties to the
11 appeal shall be afforded the opportunity to present oral
12 argument and additional evidence at the review. Upon completion
13 of the review the reviewing officer shall render a decision and
14 shall provide a copy of the decision to all parties.

15 (j) No later than 30 days after receipt of notice of
16 appeal, a final decision shall be reached and a copy mailed to
17 each of the parties. A reviewing officer may grant specific
18 extensions of time beyond the 30-day deadline at the request of
19 either party. If a Level II hearing is convened the final
20 decision of a Level II hearing officer shall occur no more than
21 30 days following receipt of a notice of appeal, unless an
22 extension of time is granted by the hearing officer at the
23 request of either party. The State Board of Education shall
24 establish rules and regulations delineating the standards to be
25 used in determining whether the reviewing officer shall grant
26 such extensions. Each hearing and each review involving oral

1 argument must be conducted at a time and place which are
2 reasonably convenient to the parents and the child involved.

3 (k) Any party aggrieved by the decision of the reviewing
4 officer, including the parent or guardian, shall have the right
5 to bring a civil action with respect to the complaint presented
6 pursuant to this Section, which action may be brought in any
7 circuit court of competent jurisdiction within 120 days after a
8 copy of the decision is mailed to the party as provided in
9 subsection (j). The civil action provided above shall not be
10 exclusive of any rights or causes of action otherwise
11 available. The commencement of a civil action under subsection
12 (k) of this Section shall operate as a supersedeas. In any
13 action brought under this Section the court shall receive the
14 records of the administrative proceedings, shall hear
15 additional evidence at the request of a party, and basing its
16 decision on the preponderance of the evidence shall grant such
17 relief as the court determines is appropriate. In any instance
18 where a school district willfully disregards applicable
19 regulations or statutes regarding a child covered by this
20 Article, and which disregard has been detrimental to the child,
21 the school district shall be liable for any reasonable
22 attorney's fees incurred by the parent or guardian in
23 connection with proceedings under this Section.

24 (l) During the pendency of any proceedings conducted
25 pursuant to this Section, unless the State Superintendent of
26 Education, or the school district and the parents or guardian

1 otherwise agree, the student shall remain in the then current
2 educational placement of such student, or if applying for
3 initial admission to the school district, shall, with the
4 consent of the parents or guardian, be placed in the school
5 district program until all such proceedings have been
6 completed. The costs for any special education and related
7 services or placement incurred following 60 school days after
8 the initial request for evaluation shall be borne by the school
9 district if such services or placement are in accordance with
10 the final determination as to the special education and related
11 services or placement which must be provided to the child,
12 provided however that in said 60 day period there have been no
13 delays caused by the child's parent or guardian.

14 (m) Whenever (i) the parents or guardian of a child of the
15 type described in Section 14-1.02 are not known or are
16 unavailable or (ii) the child is a ward of the State residing
17 in a residential facility, a person shall be assigned to serve
18 as surrogate parent for the child in matters relating to the
19 identification, evaluation, and educational placement of the
20 child and the provision of a free appropriate public education
21 to the child. Surrogate parents shall be assigned by the State
22 Superintendent of Education. The State Board of Education shall
23 promulgate rules and regulations establishing qualifications
24 of such persons and their responsibilities and the procedures
25 to be followed in making such assignments. Such surrogate
26 parents shall not be employees of the school district, an

1 agency created by joint agreement under Section 10-22.31, an
2 agency involved in the education or care of the student, or the
3 State Board of Education. For a child who is a ward of the
4 State residing in a residential facility, the surrogate parent
5 may be an employee of a nonpublic agency that provides only
6 non-educational care. Services of any person assigned as
7 surrogate parent shall terminate if the parent or guardian
8 becomes available unless otherwise requested by the parents or
9 guardian. The assignment of a person as surrogate parent at no
10 time supersedes, terminates, or suspends the parents' or
11 guardian's legal authority relative to the child. Any person
12 participating in good faith as surrogate parent on behalf of
13 the child before school officials or a hearing officer shall
14 have immunity from civil or criminal liability that otherwise
15 might result by reason of such participation, except in cases
16 of willful and wanton misconduct.

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

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

1 requirements of a subpoena from such court for refusal to
2 testify therein.

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

4 Section 99. Effective date. This Act takes effect January
5 1, 2008.