

AN ACT concerning education.

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

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

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

Sec. 14-8.02. Identification, Evaluation and Placement of Children.

(a) The State Board of Education shall make rules under which local school boards shall determine the eligibility of children to receive special education. Such rules shall ensure that a free appropriate public education be available to all children with disabilities as defined in Section 14-1.02. The State Board of Education shall require local school districts to administer non-discriminatory procedures or tests to limited English proficiency students coming from homes in which a language other than English is used to determine their eligibility to receive special education. The placement of low English proficiency students in special education programs and facilities shall be made in accordance with the test results reflecting the student's linguistic, cultural and special education needs. For purposes of determining the eligibility of children the State Board of Education shall include in the rules definitions of "case study", "staff conference", "individualized educational program", and "qualified specialist" appropriate to each category of children with disabilities as defined in this Article. For purposes of determining the eligibility of children from homes in which a language other than English is used, the State Board of Education, no later than September 1, 1993, shall include in the rules definitions for "qualified bilingual specialists" and "linguistically and culturally appropriate individualized

educational programs". In this Section, "parent" includes a foster parent.

(b) No child shall be eligible for special education facilities except with a carefully completed case study fully reviewed by professional personnel in a multidisciplinary staff conference and only upon the recommendation of qualified specialists or a qualified bilingual specialist, if available. At the conclusion of the multidisciplinary staff conference, the parent or guardian of the child shall be given a copy of the multidisciplinary conference summary report and recommendations, which includes options considered, and be informed of their right to obtain an independent educational evaluation if they disagree with the evaluation findings conducted or obtained by the school district. If the school district's evaluation is shown to be inappropriate, the school district shall reimburse the parent for the cost of the independent evaluation. The State Board of Education shall, with advice from the State Advisory Council on Education of Children with Disabilities on the inclusion of specific independent educational evaluators, prepare a list of suggested independent educational evaluators. The State Board of Education shall include on the list clinical psychologists licensed pursuant to the Clinical Psychologist Licensing Act. Such psychologists shall not be paid fees in excess of the amount that would be received by a school psychologist for performing the same services. The State Board of Education shall supply school districts with such list and make the list available to parents at their request. School districts shall make the list available to parents at the time they are informed of their right to obtain an independent educational evaluation. However, the school district may initiate an impartial due process hearing under this Section within 5 days of any written parent or guardian request for an independent educational evaluation to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, the parent still has a right to an independent

educational evaluation, but not at public expense. An independent educational evaluation at public expense must be completed within 30 days of a parent or guardian written request unless the school district initiates an impartial due process hearing or the parent or guardian or school district offers reasonable grounds to show that such 30 day time period should be extended. If the due process hearing decision indicates that the parent or guardian is entitled to an independent educational evaluation, it must be completed within 30 days of the decision unless the parent or guardian or the school district offers reasonable grounds to show that such 30 day period should be extended. If a parent disagrees with the summary report or recommendations of the multidisciplinary conference or the findings of any educational evaluation which results therefrom, the school district shall not proceed with a placement based upon such evaluation and the child shall remain in his or her regular classroom setting. No child shall be eligible for admission to a special class for the educable mentally disabled or for the trainable mentally disabled except with a psychological evaluation and recommendation by a school psychologist. Consent shall be obtained from the parent or guardian of a child before any evaluation is conducted. If consent is not given by the parent or guardian or if the parent or guardian disagrees with the findings of the evaluation, then the school district may initiate an impartial due process hearing under this Section. The school district may evaluate the child if that is the decision resulting from the impartial due process hearing and the decision is not appealed or if the decision is affirmed on appeal. The determination of eligibility shall be made within 60 school days from the date of referral by school authorities for evaluation by the district or date of application for admittance by the parent or guardian of the child. In those instances when students are referred for evaluation with fewer than 60 pupil attendance days left in the school year, the eligibility determination shall be made prior to the first day of the following school

year. After a child has been determined to be eligible for a special education class, such child must be placed in the appropriate program pursuant to the individualized educational program by or no later than the beginning of the next school semester. The appropriate program pursuant to the individualized educational program of students whose native tongue is a language other than English shall reflect the special education, cultural and linguistic needs. No later than September 1, 1993, the State Board of Education shall establish standards for the development, implementation and monitoring of appropriate bilingual special individualized educational programs. The State Board of Education shall further incorporate appropriate monitoring procedures to verify implementation of these standards. The district shall indicate to the parent or guardian and the State Board of Education the nature of the services the child will receive for the regular school term while waiting placement in the appropriate special education class.

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

If the student may be eligible to participate in the Home-Based Support Services Program for Mentally Disabled Adults authorized under the Developmental Disability and Mental Disability Services Act upon becoming an adult, the student's individualized education program shall include plans for (i) determining the student's eligibility for those

home-based services, (ii) enrolling the student in the program of home-based services, and (iii) developing a plan for the student's most effective use of the home-based services after the student becomes an adult and no longer receives special educational services under this Article. The plans developed under this paragraph shall include specific actions to be taken by specified individuals, agencies, or officials.

(c) In the development of the individualized education program for a student who is functionally blind, it shall be presumed that proficiency in Braille reading and writing is essential for the student's satisfactory educational progress. For purposes of this subsection, the State Board of Education shall determine the criteria for a student to be classified as functionally blind. Students who are not currently identified as functionally blind who are also entitled to Braille instruction include: (i) those whose vision loss is so severe that they are unable to read and write at a level comparable to their peers solely through the use of vision, and (ii) those who show evidence of progressive vision loss that may result in functional blindness. Each student who is functionally blind shall be entitled to Braille reading and writing instruction that is sufficient to enable the student to communicate with the same level of proficiency as other students of comparable ability. Instruction should be provided to the extent that the student is physically and cognitively able to use Braille. Braille instruction may be used in combination with other special education services appropriate to the student's educational needs. The assessment of each student who is functionally blind for the purpose of developing the student's individualized education program shall include documentation of the student's strengths and weaknesses in Braille skills. Each person assisting in the development of the individualized education program for a student who is functionally blind shall receive information describing the benefits of Braille instruction. The individualized education program for each student who is functionally blind shall specify the appropriate

learning medium or media based on the assessment report.

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

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

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

(g) School boards or their designee shall provide to the parents or guardian of a child prior written notice of any decision (a) proposing to initiate or change, or (b) refusing to initiate or change, the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to their child, and the reasons therefor. Such written notification shall also inform the parent or guardian of the opportunity to present complaints with respect to any matter relating to the educational placement of the student, or the provision of a free appropriate public education and to have an impartial due process hearing on the complaint. The notice shall inform the parents or guardian in the parents' or guardian's native language, unless it is clearly not feasible to do so, of their rights and all procedures available pursuant to this Act and federal law 94-142; it shall be the responsibility of the State Superintendent to develop uniform notices setting forth the procedures available under this Act and federal law 94-142 to be used by all school boards. The notice shall also inform the parents or guardian of the availability upon request of a list of free or low-cost legal and other relevant services available locally to assist parents or guardians in initiating an impartial due process hearing. Any parent or guardian who is deaf, or does not normally communicate using spoken English, who participates in a meeting with a representative of a local educational agency for the purposes of developing an individualized educational program shall be entitled to the services of an interpreter.

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

officer appointed as follows: If the request is made through the local school district, within 5 school days of receipt of the request, the local school district shall forward the request to the State Superintendent. Within 5 days after receiving this request of hearing, the State Board of Education shall provide a list of 5 prospective, impartial hearing officers. The State Board of Education, by rule or regulation, shall establish criteria for determining which persons can be included on such a list of prospective hearing officers. No one on the list may be a resident of the school district. No more than 2 of the 5 prospective hearing officers shall be gainfully employed by or administratively connected with any school district, or any joint agreement or cooperative program in which school districts participate. In addition, no more than 2 of the 5 prospective hearing officers shall be gainfully employed by or administratively connected with private providers of special education services. The State Board of Education shall actively recruit applicants for hearing officer positions. The board and the parents or guardian or their legal representatives within 5 days shall alternately strike one name from the list until only one name remains. The parents or guardian shall have the right to proceed first with the striking. The per diem allowance for the hearing officer shall be established and paid by the State Board of Education. The hearing shall be closed to the public except that the parents or guardian may require that the hearing be public. The hearing officer shall not be an employee of the school district, an employee in any joint agreement or cooperative program in which the district participates, or any other agency or organization that is directly involved in the diagnosis, education or care of the student or the State Board of Education. All impartial hearing officers shall be adequately trained in federal and state law, rules and regulations and case law regarding special education. The State Board of Education shall use resources from within and outside the agency for the purposes of conducting this training. The

impartial hearing officer shall have the authority to require additional information or evidence where he or she deems it necessary to make a complete record and may order an independent evaluation of the child, the cost of said evaluation to be paid by the local school district. Such hearing shall not be considered adversary in nature, but shall be directed toward bringing out all facts necessary for the impartial hearing officer to render an informed decision. The State Board of Education shall, with the advice and approval of the Advisory Council on Education of Children with Disabilities, promulgate rules and regulations to establish the qualifications of the hearing officers and the rules and procedure for such hearings. The school district shall present evidence that the special education needs of the child have been appropriately identified and that the special education program and related services proposed to meet the needs of the child are adequate, appropriate and available. Any party to the hearing shall have the right to: (a) be represented by counsel and be accompanied and advised by individuals with special knowledge or training with respect to the problems of children with disabilities at the party's own expense; (b) present evidence and confront and cross-examine witnesses; (c) prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least 5 days before the hearing; (d) obtain a written or electronic verbatim record of the hearing; (e) obtain written findings of fact and a written decision. The student shall be allowed to attend the hearing unless the hearing officer finds that attendance is not in the child's best interest or detrimental to the child. The hearing officer shall specify in the findings the reasons for denying attendance by the student. The hearing officer, or the State Superintendent in connection with State level hearings, may subpoena and compel the attendance of witnesses and the production of evidence reasonably necessary to the resolution of the hearing. The subpoena may be issued upon request of any party. The State Board of Education and the school board shall

share equally the costs of providing a written or electronic record of the proceedings. Such record shall be transcribed and transmitted to the State Superintendent no later than 10 days after receipt of notice of appeal. The hearing officer shall render a decision and shall submit a copy of the findings of fact and decision to the parent or guardian and to the local school board within 10 school days after the conclusion of the hearing. The hearing officer may continue the hearing in order to obtain additional information, and, at the conclusion of the hearing, shall issue a decision based on the record which specifies the special education and related services which shall be provided to the child in accordance with the child's needs. The hearing officer's decision shall be binding upon the local school board and the parent unless such decision is appealed pursuant to the provisions of this Section.

(i) Any party aggrieved by the decision may appeal the hearing officer's decision to the State Board of Education and shall serve copies of the notice of such appeal on the State Superintendent and on all other parties. The review referred to in this Section shall be known as the Level II review. The State Board of Education shall provide a list of 5 prospective, impartial reviewing officers. No reviewing officer shall be an employee of the State Board of Education or gainfully employed by or administratively connected with the school district, joint agreement or cooperative program which is a party to this review. Each person on the list shall be accredited by a national arbitration organization. The per diem allowance for the review officers shall be paid by the State Board of Education and may not exceed \$250. All reviewing officers on the list provided by the State Board of Education shall be trained in federal and state law, rules and regulations and case law regarding special education. The State Board of Education shall use resources from within and outside the agency for the purposes of conducting this training. No one on the list may be a resident of the school district. The board and the parents or guardian or other legal representatives

within 5 days shall alternately strike one name from the list until only one name remains. The parents or guardian shall have the right to proceed first with the striking. The reviewing officer so selected shall conduct an impartial review of the Level I hearing and may issue subpoenas requiring the attendance of witnesses at such review. The parties to the appeal shall be afforded the opportunity to present oral argument and additional evidence at the review. Upon completion of the review the reviewing officer shall render a decision and shall provide a copy of the decision to all parties.

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

(k) Any party aggrieved by the decision of the reviewing officer, including the parent or guardian, shall have the right to bring a civil action with respect to the complaint presented pursuant to this Section, which action may be brought in any circuit court of competent jurisdiction within 120 days after a copy of the decision is mailed to the party as provided in subsection (j). The civil action provided above shall not be exclusive of any rights or causes of action otherwise available. The commencement of a civil action under subsection (k) of this Section shall operate as a supersedeas. In any action brought under this Section the court shall receive the records of the administrative proceedings, shall hear

additional evidence at the request of a party, and basing its decision on the preponderance of the evidence shall grant such relief as the court determines is appropriate. In any instance where a school district willfully disregards applicable regulations or statutes regarding a child covered by this Article, and which disregard has been detrimental to the child, the school district shall be liable for any reasonable attorney's fees incurred by the parent or guardian in connection with proceedings under this Section.

(1) During the pendency of any proceedings conducted pursuant to this Section, unless the State Superintendent of Education, or the school district and the parents or guardian otherwise agree, the student shall remain in the then current educational placement of such student, or if applying for initial admission to the school district, shall, with the consent of the parents or guardian, be placed in the school district program until all such proceedings have been completed. The costs for any special education and related services or placement incurred following 60 school days after the initial request for evaluation shall be borne by the school district if such services or placement are in accordance with the final determination as to the special education and related services or placement which must be provided to the child, provided however that in said 60 day period there have been no delays caused by the child's parent or guardian.

(m) Whenever (i) the parents or guardian of a child of the type described in Section 14-1.02 are not known or are unavailable or (ii) the child is a ward of the State residing in a residential facility, a person shall be assigned to serve as surrogate parent for the child in matters relating to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education to the child. Surrogate parents shall be assigned by the State Superintendent of Education. The State Board of Education shall promulgate rules and regulations establishing qualifications of such persons and their responsibilities and the procedures

to be followed in making such assignments. Such surrogate parents shall not be employees of the school district, an agency created by joint agreement under Section 10-22.31, an agency involved in the education or care of the student, or the State Board of Education. For a child who is a ward of the State residing in a residential facility, the surrogate parent may be an employee of a nonpublic agency that provides only non-educational care. Services of any person assigned as surrogate parent shall terminate if the parent or guardian becomes available unless otherwise requested by the parents or guardian. The assignment of a person as surrogate parent at no time supersedes, terminates, or suspends the parents' or guardian's legal authority relative to the child. Any person participating in good faith as surrogate parent on behalf of the child before school officials or a hearing officer shall have immunity from civil or criminal liability that otherwise might result by reason of such participation, except in cases of willful and wanton misconduct.

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

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

(Source: P.A. 93-282, eff. 7-22-03.)

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