

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
5 Section 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
8 of 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
12 ensure that a free appropriate public education be available
13 to all children with disabilities as defined in Section
14 14-1.02. The State Board of Education shall require local
15 school districts to administer non-discriminatory procedures
16 or tests to limited English proficiency students coming from
17 homes in which a language other than English is used to
18 determine their eligibility to receive special education.
19 The placement of low English proficiency students in special
20 education programs and facilities shall be made in accordance
21 with the test results reflecting the student's linguistic,
22 cultural and special education needs. For purposes of
23 determining the eligibility of children the State Board of
24 Education shall include in the rules definitions of "case
25 study", "staff conference", "individualized educational
26 program", and "qualified specialist" appropriate to each
27 category of children with disabilities as defined in this
28 Article. For purposes of determining the eligibility of
29 children from homes in which a language other than English is
30 used, the State Board of Education, no later than September
31 1, 1993, shall include in the rules definitions for

1 "qualified bilingual specialists" and "linguistically and
2 culturally appropriate individualized educational programs".
3 In this Section, "parent" includes a foster parent.

4 (b) No child shall be eligible for special education
5 facilities except with a carefully completed case study fully
6 reviewed by professional personnel in a multidisciplinary
7 staff conference and only upon the recommendation of
8 qualified specialists or a qualified bilingual specialist, if
9 available. At the conclusion of the multidisciplinary staff
10 conference, the parent or guardian of the child shall be
11 given a copy of the multidisciplinary conference summary
12 report and recommendations, which includes options
13 considered, and be informed of their right to obtain an
14 independent educational evaluation if they disagree with the
15 evaluation findings conducted or obtained by the school
16 district. If the school district's evaluation is shown to be
17 inappropriate, the school district shall reimburse the parent
18 for the cost of the independent evaluation. The State Board
19 of Education shall, with advice from the State Advisory
20 Council on Education of Children with Disabilities on the
21 inclusion of specific independent educational evaluators,
22 prepare a list of suggested independent educational
23 evaluators. The State Board of Education shall include on the
24 list clinical psychologists licensed pursuant to the Clinical
25 Psychologist Licensing Act. Such psychologists shall not be
26 paid fees in excess of the amount that would be received by a
27 school psychologist for performing the same services. The
28 State Board of Education shall supply school districts with
29 such list and make the list available to parents at their
30 request. School districts shall make the list available to
31 parents at the time they are informed of their right to
32 obtain an independent educational evaluation. However, the
33 school district may initiate an impartial due process hearing
34 under this Section within 5 days of any written parent or

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

1 be made within 60 school days from the date of referral by
2 school authorities for evaluation by the district or date of
3 application for admittance by the parent or guardian of the
4 child. "Date of referral", as used in this subsection (b),
5 means the date on which an evaluation is requested, and any
6 rule to the contrary is void. In those instances when
7 students are referred for evaluation with fewer than 60 pupil
8 attendance days left in the school year, the eligibility
9 determination shall be made prior to the first day of the
10 following school year. After a child has been determined to
11 be eligible for a special education class, such child must be
12 placed in the appropriate program pursuant to the
13 individualized educational program by or no later than the
14 beginning of the next school semester. The appropriate
15 program pursuant to the individualized educational program of
16 students whose native tongue is a language other than English
17 shall reflect the special education, cultural and linguistic
18 needs. No later than September 1, 1993, the State Board of
19 Education shall establish standards for the development,
20 implementation and monitoring of appropriate bilingual
21 special individualized educational programs. The State Board
22 of Education shall further incorporate appropriate monitoring
23 procedures to verify implementation of these standards. The
24 district shall indicate to the parent or guardian and the
25 State Board of Education the nature of the services the child
26 will receive for the regular school term while waiting
27 placement in the appropriate special education class.

28 If the student may be eligible to participate in the
29 Home-Based Support Services Program for Mentally Disabled
30 Adults authorized under the Developmental Disability and
31 Mental Disability Services Act upon becoming an adult, the
32 student's individualized education program shall include
33 plans for (i) determining the student's eligibility for those
34 home-based services, (ii) enrolling the student in the

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

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

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

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

34 (e) No child who comes from a home in which a language

1 other than English is the principal language used may be
2 assigned to any class or program under this Article until he
3 has been given, in the principal language used by the child
4 and used in his home, tests reasonably related to his
5 cultural environment. All testing and evaluation materials
6 and procedures utilized for evaluation and placement shall
7 not be linguistically, racially or culturally discriminatory.

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

13 (g) School boards or their designee shall provide to the
14 parents or guardian of a child prior written notice of any
15 decision (a) proposing to initiate or change, or (b) refusing
16 to initiate or change, the identification, evaluation, or
17 educational placement of the child or the provision of a free
18 appropriate public education to their child, and the reasons
19 therefor. Such written notification shall also inform the
20 parent or guardian of the opportunity to present complaints
21 with respect to any matter relating to the educational
22 placement of the student, or the provision of a free
23 appropriate public education and to have an impartial due
24 process hearing on the complaint. The notice shall inform
25 the parents or guardian in the parents' or guardian's native
26 language, unless it is clearly not feasible to do so, of
27 their rights and all procedures available pursuant to this
28 Act and federal law 94-142; it shall be the responsibility of
29 the State Superintendent to develop uniform notices setting
30 forth the procedures available under this Act and federal law
31 94-142 to be used by all school boards. The notice shall
32 also inform the parents or guardian of the availability upon
33 request of a list of free or low-cost legal and other
34 relevant services available locally to assist parents or

1 guardians in initiating an impartial due process hearing.
2 Any parent or guardian who is deaf, or does not normally
3 communicate using spoken English, who participates in a
4 meeting with a representative of a local educational agency
5 for the purposes of developing an individualized educational
6 program shall be entitled to the services of an interpreter.

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

1 be closed to the public except that the parents or guardian
2 may require that the hearing be public. The hearing officer
3 shall not be an employee of the school district, an employee
4 in any joint agreement or cooperative program in which the
5 district participates, or any other agency or organization
6 that is directly involved in the diagnosis, education or care
7 of the student or the State Board of Education. All impartial
8 hearing officers shall be adequately trained in federal and
9 state law, rules and regulations and case law regarding
10 special education. The State Board of Education shall use
11 resources from within and outside the agency for the purposes
12 of conducting this training. The impartial hearing officer
13 shall have the authority to require additional information or
14 evidence where he or she deems it necessary to make a
15 complete record and may order an independent evaluation of
16 the child, the cost of said evaluation to be paid by the
17 local school district. Such hearing shall not be considered
18 adversary in nature, but shall be directed toward bringing
19 out all facts necessary for the impartial hearing officer to
20 render an informed decision. The State Board of Education
21 shall, with the advice and approval of the Advisory Council
22 on Education of Children with Disabilities, promulgate rules
23 and regulations to establish the qualifications of the
24 hearing officers and the rules and procedure for such
25 hearings. The school district shall present evidence that
26 the special education needs of the child have been
27 appropriately identified and that the special education
28 program and related services proposed to meet the needs of
29 the child are adequate, appropriate and available. Any party
30 to the hearing shall have the right to: (a) be represented by
31 counsel and be accompanied and advised by individuals with
32 special knowledge or training with respect to the problems of
33 children with disabilities at the party's own expense; (b)
34 present evidence and confront and cross-examine witnesses;

1 (c) prohibit the introduction of any evidence at the hearing
2 that has not been disclosed to that party at least 5 days
3 before the hearing; (d) obtain a written or electronic
4 verbatim record of the hearing; (e) obtain written findings
5 of fact and a written decision. The student shall be allowed
6 to attend the hearing unless the hearing officer finds that
7 attendance is not in the child's best interest or detrimental
8 to the child. The hearing officer shall specify in the
9 findings the reasons for denying attendance by the student.
10 The hearing officer, or the State Superintendent in
11 connection with State level hearings, may subpoena and compel
12 the attendance of witnesses and the production of evidence
13 reasonably necessary to the resolution of the hearing. The
14 subpoena may be issued upon request of any party. The State
15 Board of Education and the school board shall share equally
16 the costs of providing a written or electronic record of the
17 proceedings. Such record shall be transcribed and transmitted
18 to the State Superintendent no later than 10 days after
19 receipt of notice of appeal. The hearing officer shall
20 render a decision and shall submit a copy of the findings of
21 fact and decision to the parent or guardian and to the local
22 school board within 10 school days after the conclusion of
23 the hearing. The hearing officer may continue the hearing in
24 order to obtain additional information, and, at the
25 conclusion of the hearing, shall issue a decision based on
26 the record which specifies the special education and related
27 services which shall be provided to the child in accordance
28 with the child's needs. The hearing officer's decision shall
29 be binding upon the local school board and the parent unless
30 such decision is appealed pursuant to the provisions of this
31 Section.

32 (i) Any party aggrieved by the decision may appeal the
33 hearing officer's decision to the State Board of Education
34 and shall serve copies of the notice of such appeal on the

1 State Superintendent and on all other parties. The review
2 referred to in this Section shall be known as the Level II
3 review. The State Board of Education shall provide a list of
4 5 prospective, impartial reviewing officers. No reviewing
5 officer shall be an employee of the State Board of Education
6 or gainfully employed by or administratively connected with
7 the school district, joint agreement or cooperative program
8 which is a party to this review. Each person on the list
9 shall be accredited by a national arbitration organization.
10 The per diem allowance for the review officers shall be paid
11 by the State Board of Education and may not exceed \$250. All
12 reviewing officers on the list provided by the State Board of
13 Education shall be trained in federal and state law, rules
14 and regulations and case law regarding special education.
15 The State Board of Education shall use resources from within
16 and outside the agency for the purposes of conducting this
17 training. No one on the list may be a resident of the school
18 district. The board and the parents or guardian or other
19 legal representatives within 5 days shall alternately strike
20 one name from the list until only one name remains. The
21 parents or guardian shall have the right to proceed first
22 with the striking. The reviewing officer so selected shall
23 conduct an impartial review of the Level I hearing and may
24 issue subpoenas requiring the attendance of witnesses at such
25 review. The parties to the appeal shall be afforded the
26 opportunity to present oral argument and additional evidence
27 at the review. Upon completion of the review the reviewing
28 officer shall render a decision and shall provide a copy of
29 the decision to all parties.

30 (j) No later than 30 days after receipt of notice of
31 appeal, a final decision shall be reached and a copy mailed
32 to each of the parties. A reviewing officer may grant
33 specific extensions of time beyond the 30-day deadline at the
34 request of either party. If a Level II hearing is convened

1 the final decision of a Level II hearing officer shall occur
2 no more than 30 days following receipt of a notice of appeal,
3 unless an extension of time is granted by the hearing officer
4 at the request of either party. The State Board of Education
5 shall establish rules and regulations delineating the
6 standards to be used in determining whether the reviewing
7 officer shall grant such extensions. Each hearing and each
8 review involving oral argument must be conducted at a time
9 and place which are reasonably convenient to the parents and
10 the child involved.

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

33 (l) During the pendency of any proceedings conducted
34 pursuant to this Section, unless the State Superintendent of

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

16 (m) Whenever (i) the parents or guardian of a child of
17 the type described in Section 14-1.02 are not known or are
18 unavailable or (ii) the child is a ward of the State residing
19 in a residential facility, a person shall be assigned to
20 serve as surrogate parent for the child in matters relating
21 to the identification, evaluation, and educational placement
22 of the child and the provision of a free appropriate public
23 education to the child. Surrogate parents shall be assigned
24 by the State Superintendent of Education. The State Board of
25 Education shall promulgate rules and regulations establishing
26 qualifications of such persons and their responsibilities and
27 the procedures to be followed in making such assignments.
28 Such surrogate parents shall not be employees of the school
29 district, an agency created by joint agreement under Section
30 10-22.31, an agency involved in the education or care of the
31 student, or the State Board of Education. For a child who is
32 a ward of the State residing in a residential facility, the
33 surrogate parent may be an employee of a nonpublic agency
34 that provides only non-educational care. Services of any

1 person assigned as surrogate parent shall terminate if the
2 parent or guardian becomes available unless otherwise
3 requested by the parents or guardian. The assignment of a
4 person as surrogate parent at no time supersedes, terminates,
5 or suspends the parents' or guardian's legal authority
6 relative to the child. Any person participating in good
7 faith as surrogate parent on behalf of the child before
8 school officials or a hearing officer shall have immunity
9 from civil or criminal liability that otherwise might result
10 by reason of such participation, except in cases of willful
11 and wanton misconduct.

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

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

24 (Source: P.A. 91-784, eff. 6-9-00.)

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