

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
24 rules definitions of "case study", "staff conference",
25 "individualized educational program", and "qualified
26 specialist" appropriate to each category of children with
27 disabilities as defined in this Article. For purposes of
28 determining the eligibility of children from homes in which a
29 language other than English is used, the State Board of
30 Education, no later than September 1, 1993, shall include in
31 the rules definitions for "qualified bilingual specialists"
32 and "linguistically and culturally appropriate individualized

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

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

1 educational evaluation, but not at public expense. An
2 independent educational evaluation at public expense must be
3 completed within 30 days of a parent or guardian written
4 request unless the school district initiates an impartial due
5 process hearing or the parent or guardian or school district
6 offers reasonable grounds to show that such 30 day time period
7 should be extended. If the due process hearing decision
8 indicates that the parent or guardian is entitled to an
9 independent educational evaluation, it must be completed
10 within 30 days of the decision unless the parent or guardian or
11 the school district offers reasonable grounds to show that such
12 30 day period should be extended. If a parent disagrees with
13 the summary report or recommendations of the multidisciplinary
14 conference or the findings of any educational evaluation which
15 results therefrom, the school district shall not proceed with a
16 placement based upon such evaluation and the child shall remain
17 in his or her regular classroom setting. No child shall be
18 eligible for admission to a special class for the educable
19 mentally disabled or for the trainable mentally disabled except
20 with a psychological evaluation and recommendation by a school
21 psychologist. Consent shall be obtained from the parent or
22 guardian of a child before any evaluation is conducted. If
23 consent is not given by the parent or guardian or if the parent
24 or guardian disagrees with the findings of the evaluation, then
25 the school district may initiate an impartial due process
26 hearing under this Section. The school district may evaluate
27 the child if that is the decision resulting from the impartial
28 due process hearing and the decision is not appealed or if the
29 decision is affirmed on appeal. The determination of
30 eligibility shall be made within 60 school days from the date
31 of referral by school authorities for evaluation by the
32 district or date of application for admittance by the parent or
33 guardian of the child. In those instances when students are
34 referred for evaluation with fewer than 60 pupil attendance
35 days left in the school year, the eligibility determination
36 shall be made prior to the first day of the following school

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

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

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

1 home-based services, (ii) enrolling the student in the program
2 of home-based services, and (iii) developing a plan for the
3 student's most effective use of the home-based services after
4 the student becomes an adult and no longer receives special
5 educational services under this Article. The plans developed
6 under this paragraph shall include specific actions to be taken
7 by specified individuals, 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 progress.
12 For purposes of this subsection, the State Board of Education
13 shall determine the criteria for a student to be classified as
14 functionally blind. Students who are not currently identified
15 as functionally blind who are also entitled to Braille
16 instruction include: (i) those whose vision loss is so severe
17 that they are unable to read and write at a level comparable to
18 their peers solely through the use of vision, and (ii) those
19 who show evidence of progressive vision loss that may result in
20 functional blindness. Each student who is functionally blind
21 shall be entitled to Braille reading and writing instruction
22 that is sufficient to enable the student to communicate with
23 the same level of proficiency as other students of comparable
24 ability. Instruction should be provided to the extent that the
25 student is physically and cognitively able to use Braille.
26 Braille instruction may be used in combination with other
27 special education services appropriate to the student's
28 educational needs. The assessment of each student who is
29 functionally blind for the purpose of developing the student's
30 individualized education program shall include documentation
31 of the student's strengths and weaknesses in Braille skills.
32 Each person assisting in the development of the individualized
33 education program for a student who is functionally blind shall
34 receive information describing the benefits of Braille
35 instruction. The individualized education program for each
36 student who is functionally blind shall specify the appropriate

1 learning medium or media based on the assessment report.

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

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

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

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

34 (h) A Level I due process hearing, hereinafter referred as
35 the hearing, shall be conducted upon the request of the parents
36 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
27 hearing officer shall not be an employee of the school
28 district, an employee in any joint agreement or cooperative
29 program in which the district participates, or any other agency
30 or organization that is directly involved in the diagnosis,
31 education or care of the student or the State Board of
32 Education. All impartial hearing officers shall be adequately
33 trained in federal and state law, rules and regulations and
34 case law regarding special education. The State Board of
35 Education shall use resources from within and outside the
36 agency for the purposes of conducting this training. The

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

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

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

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

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

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

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

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

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

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

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

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

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

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