

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

26 If the child is deaf, hard of hearing, blind, or visually
27 impaired and he or she might be eligible to receive services
28 from the Illinois School for the Deaf or the Illinois School
29 for the Visually Impaired, the school district shall notify
30 the parents or guardian, in writing, of the existence of
31 these schools and the services they provide. This
32 notification shall include without limitation information on
33 school services, school admissions criteria, and school
34 contact information.

1 If the student may be eligible to participate in the
2 Home-Based Support Services Program for Mentally Disabled
3 Adults authorized under the Developmental Disability and
4 Mental Disability Services Act upon becoming an adult, the
5 student's individualized education program shall include
6 plans for (i) determining the student's eligibility for those
7 home-based services, (ii) enrolling the student in the
8 program of home-based services, and (iii) developing a plan
9 for the student's most effective use of the home-based
10 services after the student becomes an adult and no longer
11 receives special educational services under this Article.
12 The plans developed under this paragraph shall include
13 specific actions to be taken by specified individuals,
14 agencies, or officials.

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

1 education services appropriate to the student's educational
2 needs. The assessment of each student who is functionally
3 blind for the purpose of developing the student's
4 individualized education program shall include documentation
5 of the student's strengths and weaknesses in Braille skills.
6 Each person assisting in the development of the
7 individualized education program for a student who is
8 functionally blind shall receive information describing the
9 benefits of Braille instruction. The individualized
10 education program for each student who is functionally blind
11 shall specify the appropriate learning medium or media based
12 on the assessment report.

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

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

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

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

20 (g) School boards or their designee shall provide to the
21 parents or guardian of a child prior written notice of any
22 decision (a) proposing to initiate or change, or (b) refusing
23 to initiate or change, the identification, evaluation, or
24 educational placement of the child or the provision of a free
25 appropriate public education to their child, and the reasons
26 therefor. Such written notification shall also inform the
27 parent or guardian of the opportunity to present complaints
28 with respect to any matter relating to the educational
29 placement of the student, or the provision of a free
30 appropriate public education and to have an impartial due
31 process hearing on the complaint. The notice shall inform
32 the parents or guardian in the parents' or guardian's native
33 language, unless it is clearly not feasible to do so, of
34 their rights and all procedures available pursuant to this

1 Act and federal law 94-142; it shall be the responsibility of
2 the State Superintendent to develop uniform notices setting
3 forth the procedures available under this Act and federal law
4 94-142 to be used by all school boards. The notice shall
5 also inform the parents or guardian of the availability upon
6 request of a list of free or low-cost legal and other
7 relevant services available locally to assist parents or
8 guardians in initiating an impartial due process hearing.
9 Any parent or guardian who is deaf, or does not normally
10 communicate using spoken English, who participates in a
11 meeting with a representative of a local educational agency
12 for the purposes of developing an individualized educational
13 program shall be entitled to the services of an interpreter.

14 (h) A Level I due process hearing, hereinafter referred
15 as the hearing, shall be conducted upon the request of the
16 parents or guardian or local school board by an impartial
17 hearing officer appointed as follows: If the request is made
18 through the local school district, within 5 school days of
19 receipt of the request, the local school district shall
20 forward the request to the State Superintendent. Within 5
21 days after receiving this request of hearing, the State Board
22 of Education shall provide a list of 5 prospective, impartial
23 hearing officers. The State Board of Education, by rule or
24 regulation, shall establish criteria for determining which
25 persons can be included on such a list of prospective hearing
26 officers. No one on the list may be a resident of the school
27 district. No more than 2 of the 5 prospective hearing
28 officers shall be gainfully employed by or administratively
29 connected with any school district, or any joint agreement or
30 cooperative program in which school districts participate.
31 In addition, no more than 2 of the 5 prospective hearing
32 officers shall be gainfully employed by or administratively
33 connected with private providers of special education
34 services. The State Board of Education shall actively

1 recruit applicants for hearing officer positions. The board
2 and the parents or guardian or their legal representatives
3 within 5 days shall alternately strike one name from the list
4 until only one name remains. The parents or guardian shall
5 have the right to proceed first with the striking. The per
6 diem allowance for the hearing officer shall be established
7 and paid by the State Board of Education. The hearing shall
8 be closed to the public except that the parents or guardian
9 may require that the hearing be public. The hearing officer
10 shall not be an employee of the school district, an employee
11 in any joint agreement or cooperative program in which the
12 district participates, or any other agency or organization
13 that is directly involved in the diagnosis, education or care
14 of the student or the State Board of Education. All impartial
15 hearing officers shall be adequately trained in federal and
16 state law, rules and regulations and case law regarding
17 special education. The State Board of Education shall use
18 resources from within and outside the agency for the purposes
19 of conducting this training. The impartial hearing officer
20 shall have the authority to require additional information or
21 evidence where he or she deems it necessary to make a
22 complete record and may order an independent evaluation of
23 the child, the cost of said evaluation to be paid by the
24 local school district. Such hearing shall not be considered
25 adversary in nature, but shall be directed toward bringing
26 out all facts necessary for the impartial hearing officer to
27 render an informed decision. The State Board of Education
28 shall, with the advice and approval of the Advisory Council
29 on Education of Children with Disabilities, promulgate rules
30 and regulations to establish the qualifications of the
31 hearing officers and the rules and procedure for such
32 hearings. The school district shall present evidence that
33 the special education needs of the child have been
34 appropriately identified and that the special education

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

1 with the child's needs. The hearing officer's decision shall
2 be binding upon the local school board and the parent unless
3 such decision is appealed pursuant to the provisions of this
4 Section.

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

1 officer shall render a decision and shall provide a copy of
2 the decision to all parties.

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

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

1 regarding a child covered by this Article, and which
2 disregard has been detrimental to the child, the school
3 district shall be liable for any reasonable attorney's fees
4 incurred by the parent or guardian in connection with
5 proceedings under this Section.

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

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

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

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

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

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

32 Section 90. The State Mandates Act is amended by adding
33 Section 8.27 as follows:

1 (30 ILCS 805/8.27 new)
2 Sec. 8.27. Exempt mandate. Notwithstanding Sections 6
3 and 8 of this Act, no reimbursement by the State is required
4 for the implementation of any mandate created by this
5 amendatory Act of the 93rd General Assembly.

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