

1 AN ACT concerning education.

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

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

6 (105 ILCS 5/14-8.02) (from Ch. 122, par. 14-8.02)

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

9 (a) The State Board of Education shall make rules under
10 which local school boards shall determine the eligibility of
11 children to receive special education. Such rules shall ensure
12 that a free appropriate public education be available to all
13 children with disabilities as defined in Section 14-1.02. The
14 State Board of Education shall require local school districts
15 to administer non-discriminatory procedures or tests to
16 limited English proficiency students coming from homes in which
17 a language other than English is used to determine their
18 eligibility to receive special education. The placement of low
19 English proficiency students in special education programs and
20 facilities shall be made in accordance with the test results
21 reflecting the student's linguistic, cultural and special
22 education needs. For purposes of determining the eligibility of
23 children the State Board of Education shall include in the

1 rules definitions of "case study", "staff conference",
2 "individualized educational program", and "qualified
3 specialist" appropriate to each category of children with
4 disabilities as defined in this Article. For purposes of
5 determining the eligibility of children from homes in which a
6 language other than English is used, the State Board of
7 Education, no later than September 1, 1993, shall include in
8 the rules definitions for "qualified bilingual specialists"
9 and "linguistically and culturally appropriate individualized
10 educational programs". In this Section, "parent" includes a
11 foster parent.

12 (b) No child shall be eligible for special education
13 facilities except with a carefully completed case study fully
14 reviewed by professional personnel in a multidisciplinary
15 staff conference and only upon the recommendation of qualified
16 specialists or a qualified bilingual specialist, if available.
17 At the conclusion of the multidisciplinary staff conference,
18 the parent or guardian of the child shall be given a copy of
19 the multidisciplinary conference summary report and
20 recommendations, which includes options considered, and be
21 informed of their right to obtain an independent educational
22 evaluation if they disagree with the evaluation findings
23 conducted or obtained by the school district. If the school
24 district's evaluation is shown to be inappropriate, the school
25 district shall reimburse the parent for the cost of the
26 independent evaluation. The State Board of Education shall,

1 with advice from the State Advisory Council on Education of
2 Children with Disabilities on the inclusion of specific
3 independent educational evaluators, prepare a list of
4 suggested independent educational evaluators. The State Board
5 of Education shall include on the list clinical psychologists
6 licensed pursuant to the Clinical Psychologist Licensing Act.
7 Such psychologists shall not be paid fees in excess of the
8 amount that would be received by a school psychologist for
9 performing the same services. The State Board of Education
10 shall supply school districts with such list and make the list
11 available to parents at their request. School districts shall
12 make the list available to parents at the time they are
13 informed of their right to obtain an independent educational
14 evaluation. However, the school district may initiate an
15 impartial due process hearing under this Section within 5 days
16 of any written parent or guardian request for an independent
17 educational evaluation to show that its evaluation is
18 appropriate. If the final decision is that the evaluation is
19 appropriate, the parent still has a right to an independent
20 educational evaluation, but not at public expense. An
21 independent educational evaluation at public expense must be
22 completed within 30 days of a parent or guardian written
23 request unless the school district initiates an impartial due
24 process hearing or the parent or guardian or school district
25 offers reasonable grounds to show that such 30 day time period
26 should be extended. If the due process hearing decision

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

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

22 If the child is deaf, hard of hearing, blind, or visually
23 impaired and he or she might be eligible to receive services
24 from the Illinois School for the Deaf or the Illinois School
25 for the Visually Impaired, the school district shall notify the
26 parents or guardian, in writing, of the existence of these

1 schools and the services they provide and shall make a
2 reasonable effort to inform the parents or guardian of the
3 existence of other, local schools that provide similar services
4 and the services that these other schools provide. This
5 notification shall include without limitation information on
6 school services, school admissions criteria, and school
7 contact information.

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

16 (1) The verbal and nonverbal communication needs of the
17 child.

18 (2) The need to develop social interaction skills and
19 proficiencies.

20 (3) The needs resulting from the child's unusual
21 responses to sensory experiences.

22 (4) The needs resulting from resistance to
23 environmental change or change in daily routines.

24 (5) The needs resulting from engagement in repetitive
25 activities and stereotyped movements.

26 (6) The need for any positive behavioral

1 interventions, strategies, and supports to address any
2 behavioral difficulties resulting from autism spectrum
3 disorder.

4 (7) Other needs resulting from the child's disability
5 that impact progress in the general curriculum, including
6 social and emotional development.

7 This amendatory Act of the 95th General Assembly does not
8 create any new entitlement to a service, program, or benefit,
9 but must not affect any entitlement to a service, program, or
10 benefit created by any other law.

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

24 (c) In the development of the individualized education
25 program for a student who is functionally blind, it shall be
26 presumed that proficiency in Braille reading and writing is

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

1 to Govern the Administration and Operation of Special
2 Education.

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

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

16 (g) School boards or their designee shall provide to the
17 parents or guardian of a child prior written notice of any
18 decision (a) proposing to initiate or change, or (b) refusing
19 to initiate or change, the identification, evaluation, or
20 educational placement of the child or the provision of a free
21 appropriate public education to their child, and the reasons
22 therefor. Such written notification shall also inform the
23 parent or guardian of the opportunity to present complaints
24 with respect to any matter relating to the educational
25 placement of the student, or the provision of a free
26 appropriate public education and to have an impartial due

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

18 (h) A Level I due process hearing, hereinafter referred as
19 the hearing, shall be conducted upon the request of the parents
20 or guardian or local school board by an impartial hearing
21 officer appointed as follows: If the request is made through
22 the local school district, within 5 school days of receipt of
23 the request, the local school district shall forward the
24 request to the State Superintendent. Within 5 days after
25 receiving this request of hearing, the State Board of Education
26 shall provide a list of 5 prospective, impartial hearing

1 officers. The State Board of Education, by rule or regulation,
2 shall establish criteria for determining which persons can be
3 included on such a list of prospective hearing officers. No one
4 on the list may be a resident of the school district. No more
5 than 2 of the 5 prospective hearing officers shall be gainfully
6 employed by or administratively connected with any school
7 district, or any joint agreement or cooperative program in
8 which school districts participate. In addition, no more than 2
9 of the 5 prospective hearing officers shall be gainfully
10 employed by or administratively connected with private
11 providers of special education services. The State Board of
12 Education shall actively recruit applicants for hearing
13 officer positions. The board and the parents or guardian or
14 their legal representatives within 5 days shall alternately
15 strike one name from the list until only one name remains. The
16 parents or guardian shall have the right to proceed first with
17 the striking. The per diem allowance for the hearing officer
18 shall be established and paid by the State Board of Education.
19 The hearing shall be closed to the public except that the
20 parents or guardian may require that the hearing be public. The
21 hearing officer shall not be an employee of the school
22 district, an employee in any joint agreement or cooperative
23 program in which the district participates, or any other agency
24 or organization that is directly involved in the diagnosis,
25 education or care of the student or the State Board of
26 Education. All impartial hearing officers shall be adequately

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

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

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

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

1 the right to proceed first with the striking. The reviewing
2 officer so selected shall conduct an impartial review of the
3 Level I hearing and may issue subpoenas requiring the
4 attendance of witnesses at such review. The parties to the
5 appeal shall be afforded the opportunity to present oral
6 argument and additional evidence at the review. Upon completion
7 of the review the reviewing officer shall render a decision and
8 shall provide a copy of the decision to all parties.

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

23 (k) Any party aggrieved by the decision of the reviewing
24 officer, including the parent or guardian, shall have the right
25 to bring a civil action with respect to the complaint presented
26 pursuant to this Section, which action may be brought in any

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

18 (1) During the pendency of any proceedings conducted
19 pursuant to this Section, unless the State Superintendent of
20 Education, or the school district and the parents or guardian
21 otherwise agree, the student shall remain in the then current
22 educational placement of such student, or if applying for
23 initial admission to the school district, shall, with the
24 consent of the parents or guardian, be placed in the school
25 district program until all such proceedings have been
26 completed. The costs for any special education and related

1 services or placement incurred following 60 school days after
2 the initial request for evaluation shall be borne by the school
3 district if such services or placement are in accordance with
4 the final determination as to the special education and related
5 services or placement which must be provided to the child,
6 provided however that in said 60 day period there have been no
7 delays caused by the child's parent or guardian.

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

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

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

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

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

24 Section 99. Effective date. This Act takes effect January
25 1, 2008.