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FILE NO. 84-012

SCHOOLS AND SCHOOL DISTRICTS:  
Powers of the Illinois State Advisory  
Council on the Education of Handicapped  
Children

L. D. Vuillemot, Chairman  
Illinois State Advisory Council on the  
Education of Handicapped Children  
100 North First Street  
Springfield, Illinois 62777

Dear Mr. Vuillemot:

I have your letter wherein you inquire whether, under section 14-8.02 of The School Code (Ill. Rev. Stat. 1983, ch. 122, par. 14-8.02), the Illinois State Advisory Council on the Education of Handicapped Children [Advisory Council] is authorized to approve or disapprove proposed rules and regulations of the State Board of Education governing the qualifications of hearing officers and the rules and procedures for due process

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hearings. For the reasons hereinafter stated, it is my opinion that the Advisory Council is authorized to approve or disapprove the proposed rules and regulations in question.

The Advisory Council was created by and functions pursuant to section 14-3.01 of The School Code (Ill. Rev. Stat. 1983, ch. 122, par. 14-3.01), which provides in part:

" \* \* \*

The State Board of Education shall seek the advice of the Advisory Council regarding all rules or regulations related to the education of handicapped children to be promulgated by it. The State Board shall seek the advice of the Advisory Council on modifications or additions to comprehensive plans submitted under Section 14-4.01. Additionally, the Advisory Council shall; (a) advise the General Assembly, the Governor and the State board on the unmet needs in the education of handicapped children, (b) assist the State Board in developing and reporting data and evaluations which may assist the United States Commissioner of Education in the performance of his responsibilities under the Education of the Handicapped Act, (c) advise the State Board relative to qualifications for hearing officers and the rules and procedures for hearings conducted under Section 14-8.02 of this Act, and (d) comment publicly on any rules or regulations proposed by the State regarding the education of handicapped children and the procedures for distribution of funds under this Act.

\* \* \*

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(Emphasis added.)

Section 14-8.02 of The School Code sets forth procedures by which, inter alia, handicapped children are to be identified, evaluated, and placed in appropriate educational

programs or facilities. Included among the procedures contained in section 14-8.02 is a complaint process by which the parents or guardians of a handicapped child, or a local school board, may appeal any matter relating to the educational placement of, or the provision of a free appropriate public education to, a student, and receive an impartial due process hearing. Section 14-8.02 further provides:

" \* \* \*

\* \* \* The State Board of Education shall, with the advice and approval of the Advisory Council on Education of Handicapped Children, promulgate rules and regulations to establish the qualifications of the hearing officers and the rules and procedure for such hearings. \* \* \*

\* \* \*

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(Emphasis added.)

The term "approval" ordinarily implies the exercise of discretion and judgment followed by final affirmative action. (Gustafson v. Wethersfield Township High School (1943), 319 Ill. App. 255, 260; Ill. Att'y Gen. Op. No. 83-020, issued October 11, 1983, at 5-6; 1981 Ill. Att'y Gen. Op. 43, 46; see also Hammer v. Jefferson Oil & Gas Co. (1962), 38 Ill. App. 2d 136, 138; Oahe Conservancy Subdistrict v. Janklow (S. Ct. S.D. 1981), 308 N.W.2d 559, 561-62; Louis M. Herman Co. v. Gallagher Electrical Co. (S. Ct. Mass. 1956), 138 N.E.2d 120, 122; Brown v. Cranston (App. Ct. Cal. 1963), 29 Cal. Rptr. 725, 730.) As was stated in Gustafson v. Wethersfield Township High School (1943), 319 Ill. App. 255, 259-60:

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\* \* \*

To approve means to pronounce good or proper \* \* \*. It carries with it the exercise of judgment and discretion. \* \* \* It is generally considered that when the approval of a distinct officer or body of officers is made necessary to validate, consummate or make effective by law the act of another, it is the intention of the legislature that such officer or board of officers should be vested with the option and discretion to sanction officially or disapprove the act submitted to him or them. This situation involves the exercise of discretion and adjudication. \* \* \*

\* \* \*


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There is nothing in the context of section 14-8.02 of The School Code to indicate that the term "approval" is intended to be given other than its ordinary meaning. To the contrary, it is noteworthy that although the Advisory Council is given general authority to advise the State Board of Education on all rules and regulations pertaining to the education of handicapped children (Ill. Rev. Stat. 1983, ch. 122, par. 14-3.01), the State Board of Education is specifically empowered to promulgate rules and regulations under subsection 14-8.02(g) of The School Code only with the "advice and approval" of the Advisory Council. Given the ordinary import of the term "approval", it is my opinion that the Illinois State Advisory Council on the Education of Handicapped Children is authorized to approve or disapprove proposed rules and regulations of the State Board of Education governing the

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qualifications of hearing officers and the rules and procedures  
for due process hearings under section 14-8.02 of The School  
Code.

Very truly yours,



A T T O R N E Y G E N E R A L