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Illinois State Board of Education Legal Department Memorandum
Subject: Home Schooling and Requirements of the School Code\

The Illinois compulsory attendance law (Section 26-1 et seq. of the School Code) requires that whoever has custody or control of any child between the ages of 7 and 17 years shall cause such child to attend public school. However, the courts have ruled that home schools are a permissible alternative to public schooling. The compulsory attendance law provides an exception for "Any child attending a private or parochial school where children are taught the branches of education taught to children of corresponding age and grade in the public schools, and where the instruction of the child in the branches of education is in the English language¹/₂." 105 ILCS 5/26-1. The Illinois Supreme Court held in *People v. Levisen*, 404 Ill. 574, 90 N.E.2d 213 (1950), that the term "private school", in this context, includes home schooling if the teacher is competent, the required subjects are taught, and the student receives an education at least equivalent to public schooling. The Illinois General Assembly and State Board of Education have not established any specific regulation regarding home instruction of children: *Levisen* is followed when questions arise regarding this issue.

In a more recent decision, *Scoma v. Chicago Board of Education*, 391 F. Supp. 452 (N.D. Ill. 1974), the court emphasized that the burden of proof rests with the parents to establish that the plan of home instruction which they are providing to their children meets the state requirements. The regional superintendent of schools has the responsibility for monitoring compliance with the compulsory attendance law. In so doing, the regional superintendent may expect the parents who seek to educate their children at home to establish that they are providing instruction that is at least commensurate with the standards of the public schools. The parents may be expected to document the subjects taught which must include "branches of learning" taught in the public school, the time frame in which instruction will be offered, and the competency of the parent or other instructor (s). It is not necessary that the instructor have a teacher's certificate. The parents may also be expected to establish by written examinations or by some other method that the child's level of achievement is comparable to that of the child's peers of corresponding age and grade level.

If the regional superintendent is dissatisfied with the parents' ability and/or willingness to establish that home instruction in a specific instance satisfies the requirements of state law, the regional superintendent may request that regional or school district truant officer to investigate to see that the child is in compliance with the compulsory attendance law. Truant officers are peace officers empowered to conduct investigations, enforce the compulsory attendance law and to refer matters of non-compliance to the courts.

Section 26-1 of the School Code (105 ILCS 5/26-1), as effective September 10, 1986:

§ 26-1. Compulsory school age-Exemptions. Whoever has custody or control of any child between the ages of 7 and 17 years shall cause such child to attend some public school in the district wherein the child resides the entire time it is in session during the regular school term, except as provided in Section 10-19.1; Provided, that the following children shall not be required to attend the public schools:

1. Any child attending a private or a parochial school where children are taught the branches of education taught to children of corresponding age and grade in the public schools, and where the instruction of the child in the branches of education is in the English language;
2. Any child who is physically or mentally unable to attend school, such disability being certified to the county or district truant officer by a competent physician or a Christian Science practitioner residing in this State and listed in the Christian Science Journal; or who is excused for temporary absence for cause by the principal or teacher of the school which the child attends; the exemptions in this paragraph (2) do not apply to any female who is pregnant or the mother of one or more children, except where a female is unable to attend school due to a complication arising from her pregnancy and the existence of such complication is certified to the county or district truant officer by a competent physician.
3. Any child necessarily and lawfully employed according to the provisions of the law regulating child labor may be excused from attendance at school by the county superintendent of schools or the superintendent of the public school which the child should be attending, on certification of the facts by and the recommendation of the school board of the public school district in which the child resides. In districts having part time continuation schools, children so excused shall attend such schools at least 8 hours each week;
4. Any child over 12 and under 14 years of age while in attendance at confirmation classes;
5. Any child absent from a public school on a particular day or days or at a particular time of day for the reason that he is unable to attend classes or to participate in any examination, study or work requirements on a particular day or days or at a particular time of day, because the tenets of his religion forbid secular activity on a particular day or days or at a particular time of day. Each school board shall prescribe rules and regulations relative to absences for religious holidays including, but not limited to, a list or religious holidays on which it shall be mandatory to excuse a child; but nothing in this paragraph 5 shall be construed to limit the right of any school board, at its discretion, to excuse an absence on any other day by reason of the observance of a religious holiday. A school board may require the parent or guardian of a child who is to be excused from attending school due to the observance of a religious holiday to give notice, not exceeding 5 days, of the child's absence to the school principal or other school personnel. Any child excused from attending school under this paragraph 5 shall not be required to submit a written excuse for such absence after returning to school. (Source: P.A. 84-1338.)