

HB2618



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB2618

by Rep. Robyn Gabel

SYNOPSIS AS INTRODUCED:

105 ILCS 5/14-8.02a

Amends the Children with Disabilities Article of the School Code. For parties who agree to not use mediation during a challenge, provides that a parent shall have 10 days after a party declines to use mediation to file a request for a due process hearing to allow the student to remain in his or her present educational placement. Effective immediately.

LRB100 07312 MLM 17373 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

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 14-8.02a as follows:

6 (105 ILCS 5/14-8.02a)

7 Sec. 14-8.02a. Impartial due process hearing; civil
8 action.

9 (a) This Section shall apply to all impartial due process
10 hearings requested on or after July 1, 2005. Impartial due
11 process hearings requested before July 1, 2005 shall be
12 governed by the rules described in Public Act 89-652.

13 (a-5) For purposes of this Section and Section 14-8.02b of
14 this Code, days shall be computed in accordance with Section
15 1.11 of the Statute on Statutes.

16 (b) The State Board of Education shall establish an
17 impartial due process hearing system in accordance with this
18 Section and may, with the advice and approval of the Advisory
19 Council on Education of Children with Disabilities, promulgate
20 rules and regulations consistent with this Section to establish
21 the rules and procedures for due process hearings.

22 (c) (Blank).

23 (d) (Blank).

1 (e) (Blank).

2 (f) An impartial due process hearing shall be convened upon
3 the request of a parent, student if at least 18 years of age or
4 emancipated, or a school district. A school district shall make
5 a request in writing to the State Board of Education and
6 promptly mail a copy of the request to the parents or student
7 (if at least 18 years of age or emancipated) at the parent's or
8 student's last known address. A request made by the parent or
9 student shall be made in writing to the superintendent of the
10 school district where the student resides. The superintendent
11 shall forward the request to the State Board of Education
12 within 5 days after receipt of the request. The request shall
13 be filed no more than 2 years following the date the person or
14 school district knew or should have known of the event or
15 events forming the basis for the request. The request shall, at
16 a minimum, contain all of the following:

17 (1) The name of the student, the address of the
18 student's residence, and the name of the school the student
19 is attending.

20 (2) In the case of homeless children (as defined under
21 the federal McKinney-Vento Homeless Assistance Act (42
22 U.S.C. 11434a(2)), available contact information for the
23 student and the name of the school the student is
24 attending.

25 (3) A description of the nature of the problem relating
26 to the actual or proposed placement, identification,

1 services, or evaluation of the student, including facts
2 relating to the problem.

3 (4) A proposed resolution of the problem to the extent
4 known and available to the party at the time.

5 (f-5) Within 3 days after receipt of the hearing request,
6 the State Board of Education shall appoint a due process
7 hearing officer using a rotating appointment system and shall
8 notify the hearing officer of his or her appointment.

9 For a school district other than a school district located
10 in a municipality having a population exceeding 500,000, a
11 hearing officer who is a current resident of the school
12 district, special education cooperative, or other public
13 entity involved in the hearing shall recuse himself or herself.
14 A hearing officer who is a former employee of the school
15 district, special education cooperative, or other public
16 entity involved in the hearing shall immediately disclose the
17 former employment to the parties and shall recuse himself or
18 herself, unless the parties otherwise agree in writing. A
19 hearing officer having a personal or professional interest that
20 may conflict with his or her objectivity in the hearing shall
21 disclose the conflict to the parties and shall recuse himself
22 or herself unless the parties otherwise agree in writing. For
23 purposes of this subsection an assigned hearing officer shall
24 be considered to have a conflict of interest if, at any time
25 prior to the issuance of his or her written decision, he or she
26 knows or should know that he or she may receive remuneration

1 from a party to the hearing within 3 years following the
2 conclusion of the due process hearing.

3 A party to a due process hearing shall be permitted one
4 substitution of hearing officer as a matter of right, in
5 accordance with procedures established by the rules adopted by
6 the State Board of Education under this Section. The State
7 Board of Education shall randomly select and appoint another
8 hearing officer within 3 days after receiving notice that the
9 appointed hearing officer is ineligible to serve or upon
10 receiving a proper request for substitution of hearing officer.
11 If a party withdraws its request for a due process hearing
12 after a hearing officer has been appointed, that hearing
13 officer shall retain jurisdiction over a subsequent hearing
14 that involves the same parties and is requested within one year
15 from the date of withdrawal of the previous request, unless
16 that hearing officer is unavailable.

17 Any party may raise facts that constitute a conflict of
18 interest for the hearing officer at any time before or during
19 the hearing and may move for recusal.

20 (g) Impartial due process hearings shall be conducted
21 pursuant to this Section and any rules and regulations
22 promulgated by the State Board of Education consistent with
23 this Section and other governing laws and regulations. The
24 hearing shall address only those issues properly raised in the
25 hearing request under subsection (f) of this Section or, if
26 applicable, in the amended hearing request under subsection

1 (g-15) of this Section. The hearing shall be closed to the
2 public unless the parents request that the hearing be open to
3 the public. The parents involved in the hearing shall have the
4 right to have the student who is the subject of the hearing
5 present. The hearing shall be held at a time and place which
6 are reasonably convenient to the parties involved. Upon the
7 request of a party, the hearing officer shall hold the hearing
8 at a location neutral to the parties if the hearing officer
9 determines that there is no cost for securing the use of the
10 neutral location. Once appointed, the impartial due process
11 hearing officer shall not communicate with the State Board of
12 Education or its employees concerning the hearing, except that,
13 where circumstances require, communications for administrative
14 purposes that do not deal with substantive or procedural
15 matters or issues on the merits are authorized, provided that
16 the hearing officer promptly notifies all parties of the
17 substance of the communication as a matter of record.

18 (g-5) Unless the school district has previously provided
19 prior written notice to the parent or student (if at least 18
20 years of age or emancipated) regarding the subject matter of
21 the hearing request, the school district shall, within 10 days
22 after receiving a hearing request initiated by a parent or
23 student (if at least 18 years of age or emancipated), provide a
24 written response to the request that shall include all of the
25 following:

26 (1) An explanation of why the school district proposed

1 or refused to take the action or actions described in the
2 hearing request.

3 (2) A description of other options the IEP team
4 considered and the reasons why those options were rejected.

5 (3) A description of each evaluation procedure,
6 assessment, record, report, or other evidence the school
7 district used as the basis for the proposed or refused
8 action or actions.

9 (4) A description of the factors that are or were
10 relevant to the school district's proposed or refused
11 action or actions.

12 (g-10) When the hearing request has been initiated by a
13 school district, within 10 days after receiving the request,
14 the parent or student (if at least 18 years of age or
15 emancipated) shall provide the school district with a response
16 that specifically addresses the issues raised in the school
17 district's hearing request. The parent's or student's response
18 shall be provided in writing, unless he or she is illiterate or
19 has a disability that prevents him or her from providing a
20 written response. The parent's or student's response may be
21 provided in his or her native language, if other than English.
22 In the event that illiteracy or another disabling condition
23 prevents the parent or student from providing a written
24 response, the school district shall assist the parent or
25 student in providing the written response.

26 (g-15) Within 15 days after receiving notice of the hearing

1 request, the non-requesting party may challenge the
2 sufficiency of the request by submitting its challenge in
3 writing to the hearing officer. Within 5 days after receiving
4 the challenge to the sufficiency of the request, the hearing
5 officer shall issue a determination of the challenge in writing
6 to the parties. In the event that the hearing officer upholds
7 the challenge, the party who requested the hearing may, with
8 the consent of the non-requesting party or hearing officer,
9 file an amended request. Amendments are permissible for the
10 purpose of raising issues beyond those in the initial hearing
11 request. In addition, the party who requested the hearing may
12 amend the request once as a matter of right by filing the
13 amended request within 5 days after filing the initial request.
14 An amended request, other than an amended request as a matter
15 of right, shall be filed by the date determined by the hearing
16 officer, but in no event any later than 5 days prior to the
17 date of the hearing. If an amended request, other than an
18 amended request as a matter of right, raises issues that were
19 not part of the initial request, the applicable timeline for a
20 hearing, including the timeline under subsection (g-20) of this
21 Section, shall recommence.

22 (g-20) Within 15 days after receiving a request for a
23 hearing from a parent or student (if at least 18 years of age
24 or emancipated) or, in the event that the school district
25 requests a hearing, within 15 days after initiating the
26 request, the school district shall convene a resolution meeting

1 with the parent and relevant members of the IEP team who have
2 specific knowledge of the facts contained in the request for
3 the purpose of resolving the problem that resulted in the
4 request. The resolution meeting shall include a representative
5 of the school district who has decision-making authority on
6 behalf of the school district. Unless the parent is accompanied
7 by an attorney at the resolution meeting, the school district
8 may not include an attorney representing the school district.

9 The resolution meeting may not be waived unless agreed to
10 in writing by the school district and the parent or student (if
11 at least 18 years of age or emancipated) or the parent or
12 student (if at least 18 years of age or emancipated) and the
13 school district agree in writing to utilize mediation in place
14 of the resolution meeting. If either party fails to cooperate
15 in the scheduling or convening of the resolution meeting, the
16 hearing officer may order an extension of the timeline for
17 completion of the resolution meeting or, upon the motion of a
18 party and at least 7 days after ordering the non-cooperating
19 party to cooperate, order the dismissal of the hearing request
20 or the granting of all relief set forth in the request, as
21 appropriate.

22 In the event that the school district and the parent or
23 student (if at least 18 years of age or emancipated) agree to a
24 resolution of the problem that resulted in the hearing request,
25 the terms of the resolution shall be committed to writing and
26 signed by the parent or student (if at least 18 years of age or

1 emancipated) and the representative of the school district with
2 decision-making authority. The agreement shall be legally
3 binding and shall be enforceable in any State or federal court
4 of competent jurisdiction. In the event that the parties
5 utilize the resolution meeting process, the process shall
6 continue until no later than the 30th day following the receipt
7 of the hearing request by the non-requesting party (or as
8 properly extended by order of the hearing officer) to resolve
9 the issues underlying the request, at which time the timeline
10 for completion of the impartial due process hearing shall
11 commence. The State Board of Education may, by rule, establish
12 additional procedures for the conduct of resolution meetings.

13 (g-25) If mutually agreed to in writing, the parties to a
14 hearing request may request State-sponsored mediation as a
15 substitute for the resolution process described in subsection
16 (g-20) of this Section or may utilize mediation at the close of
17 the resolution process if all issues underlying the hearing
18 request have not been resolved through the resolution process.

19 (g-30) If mutually agreed to in writing, the parties to a
20 hearing request may waive the resolution process described in
21 subsection (g-20) of this Section. Upon signing a written
22 agreement to waive the resolution process, the parties shall be
23 required to forward the written waiver to the hearing officer
24 appointed to the case within 2 business days following the
25 signing of the waiver by the parties. The timeline for the
26 impartial due process hearing shall commence on the date of the

1 signing of the waiver by the parties.

2 (g-35) The timeline for completing the impartial due
3 process hearing, as set forth in subsection (h) of this
4 Section, shall be initiated upon the occurrence of any one of
5 the following events:

6 (1) The unsuccessful completion of the resolution
7 process as described in subsection (g-20) of this Section.

8 (2) The mutual agreement of the parties to waive the
9 resolution process as described in subsection (g-25) or
10 (g-30) of this Section.

11 (g-40) The hearing officer shall convene a prehearing
12 conference no later than 14 days before the scheduled date for
13 the due process hearing for the general purpose of aiding in
14 the fair, orderly, and expeditious conduct of the hearing. The
15 hearing officer shall provide the parties with written notice
16 of the prehearing conference at least 7 days in advance of the
17 conference. The written notice shall require the parties to
18 notify the hearing officer by a date certain whether they
19 intend to participate in the prehearing conference. The hearing
20 officer may conduct the prehearing conference in person or by
21 telephone. Each party shall at the prehearing conference (1)
22 disclose whether it is represented by legal counsel or intends
23 to retain legal counsel; (2) clarify matters it believes to be
24 in dispute in the case and the specific relief being sought;
25 (3) disclose whether there are any additional evaluations for
26 the student that it intends to introduce into the hearing

1 record that have not been previously disclosed to the other
2 parties; (4) disclose a list of all documents it intends to
3 introduce into the hearing record, including the date and a
4 brief description of each document; and (5) disclose the names
5 of all witnesses it intends to call to testify at the hearing.
6 The hearing officer shall specify the order of presentation to
7 be used at the hearing. If the prehearing conference is held by
8 telephone, the parties shall transmit the information required
9 in this paragraph in such a manner that it is available to all
10 parties at the time of the prehearing conference. The State
11 Board of Education may, by rule, establish additional
12 procedures for the conduct of prehearing conferences.

13 (g-45) The impartial due process hearing officer shall not
14 initiate or participate in any ex parte communications with the
15 parties, except to arrange the date, time, and location of the
16 prehearing conference, due process hearing, or other status
17 conferences convened at the discretion of the hearing officer
18 and to receive confirmation of whether a party intends to
19 participate in the prehearing conference.

20 (g-50) The parties shall disclose and provide to each other
21 any evidence which they intend to submit into the hearing
22 record no later than 5 days before the hearing. Any party to a
23 hearing has the right to prohibit the introduction of any
24 evidence at the hearing that has not been disclosed to that
25 party at least 5 days before the hearing. The party requesting
26 a hearing shall not be permitted at the hearing to raise issues

1 that were not raised in the party's initial or amended request,
2 unless otherwise permitted in this Section.

3 (g-55) All reasonable efforts must be made by the parties
4 to present their respective cases at the hearing within a
5 cumulative period of 7 days. When scheduling hearing dates, the
6 hearing officer shall schedule the final day of the hearing no
7 more than 30 calendar days after the first day of the hearing
8 unless good cause is shown. This subsection (g-55) shall not be
9 applied in a manner that (i) denies any party to the hearing a
10 fair and reasonable allocation of time and opportunity to
11 present its case in its entirety or (ii) deprives any party to
12 the hearing of the safeguards accorded under the federal
13 Individuals with Disabilities Education Improvement Act of
14 2004 (Public Law 108-446), regulations promulgated under the
15 Individuals with Disabilities Education Improvement Act of
16 2004, or any other applicable law. The school district shall
17 present evidence that the special education needs of the child
18 have been appropriately identified and that the special
19 education program and related services proposed to meet the
20 needs of the child are adequate, appropriate, and available.
21 Any party to the hearing shall have the right to (1) be
22 represented by counsel and be accompanied and advised by
23 individuals with special knowledge or training with respect to
24 the problems of children with disabilities, at the party's own
25 expense; (2) present evidence and confront and cross-examine
26 witnesses; (3) move for the exclusion of witnesses from the

1 hearing until they are called to testify, provided, however,
2 that this provision may not be invoked to exclude the
3 individual designated by a party to assist that party or its
4 representative in the presentation of the case; (4) obtain a
5 written or electronic verbatim record of the proceedings within
6 30 days of receipt of a written request from the parents by the
7 school district; and (5) obtain a written decision, including
8 findings of fact and conclusions of law, within 10 days after
9 the conclusion of the hearing. If at issue, the school district
10 shall present evidence that it has properly identified and
11 evaluated the nature and severity of the student's suspected or
12 identified disability and that, if the student has been or
13 should have been determined eligible for special education and
14 related services, that it is providing or has offered a free
15 appropriate public education to the student in the least
16 restrictive environment, consistent with procedural safeguards
17 and in accordance with an individualized educational program.
18 At any time prior to the conclusion of the hearing, the
19 impartial due process hearing officer shall have the authority
20 to require additional information and order independent
21 evaluations for the student at the expense of the school
22 district. The State Board of Education and the school district
23 shall share equally the costs of providing a written or
24 electronic verbatim record of the proceedings. Any party may
25 request that the due process hearing officer issue a subpoena
26 to compel the testimony of witnesses or the production of

1 documents relevant to the resolution of the hearing. Whenever a
2 person refuses to comply with any subpoena issued under this
3 Section, the circuit court of the county in which that hearing
4 is pending, on application of the impartial hearing officer or
5 the party requesting the issuance of the subpoena, may compel
6 compliance through the contempt powers of the court in the same
7 manner as if the requirements of a subpoena issued by the court
8 had been disobeyed.

9 (h) The impartial hearing officer shall issue a written
10 decision, including findings of fact and conclusions of law,
11 within 10 days after the conclusion of the hearing and send by
12 certified mail a copy of the decision to the parents or student
13 (if the student requests the hearing), the school district, the
14 director of special education, legal representatives of the
15 parties, and the State Board of Education. Unless the hearing
16 officer has granted specific extensions of time at the request
17 of a party, a final decision, including the clarification of a
18 decision requested under this subsection, shall be reached and
19 mailed to the parties named above not later than 45 days after
20 the initiation of the timeline for conducting the hearing, as
21 described in subsection (g-35) of this Section. The decision
22 shall specify the educational and related services that shall
23 be provided to the student in accordance with the student's
24 needs and the timeline for which the school district shall
25 submit evidence to the State Board of Education to demonstrate
26 compliance with the hearing officer's decision in the event

1 that the decision orders the school district to undertake
2 corrective action. The hearing officer shall retain
3 jurisdiction for the sole purpose of considering a request for
4 clarification of the final decision submitted in writing by a
5 party to the impartial hearing officer within 5 days after
6 receipt of the decision. A copy of the request for
7 clarification shall specify the portions of the decision for
8 which clarification is sought and shall be mailed to all
9 parties of record and to the State Board of Education. The
10 request shall operate to stay implementation of those portions
11 of the decision for which clarification is sought, pending
12 action on the request by the hearing officer, unless the
13 parties otherwise agree. The hearing officer shall issue a
14 clarification of the specified portion of the decision or issue
15 a partial or full denial of the request in writing within 10
16 days of receipt of the request and mail copies to all parties
17 to whom the decision was mailed. This subsection does not
18 permit a party to request, or authorize a hearing officer to
19 entertain, reconsideration of the decision itself. The statute
20 of limitations for seeking review of the decision shall be
21 tolled from the date the request is submitted until the date
22 the hearing officer acts upon the request. The hearing
23 officer's decision shall be binding upon the school district
24 and the parents unless a civil action is commenced.

25 (i) Any party to an impartial due process hearing aggrieved
26 by the final written decision of the impartial due process

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

22 (j) During the pendency of any administrative or judicial
23 proceeding conducted pursuant to this Section, including
24 mediation (if the school district or other public entity
25 voluntarily agrees to participate in mediation), unless the
26 school district and the parents or student (if at least 18

1 years of age or emancipated) otherwise agree, the student shall
2 remain in his or her present educational placement and continue
3 in his or her present eligibility status and special education
4 and related services, if any. If mediation fails to resolve the
5 dispute between the parties, or if the parties do not agree to
6 use mediation, the parent (or student if 18 years of age or
7 older or emancipated) shall have 10 days after the mediation
8 concludes, or after a party declines to use mediation, to file
9 a request for a due process hearing in order to continue to
10 invoke the "stay-put" provisions of this subsection (j). If
11 applying for initial admission to the school district, the
12 student shall, with the consent of the parents (if the student
13 is not at least 18 years of age or emancipated), be placed in
14 the school district program until all such proceedings have
15 been completed. The costs for any special education and related
16 services or placement incurred following 60 school days after
17 the initial request for evaluation shall be borne by the school
18 district if the services or placement is in accordance with the
19 final determination as to the special education and related
20 services or placement that must be provided to the child,
21 provided that during that 60 day period there have been no
22 delays caused by the child's parent.

23 (k) Whenever the parents of a child of the type described
24 in Section 14-1.02 are not known, are unavailable, or the child
25 is a ward of the State, a person shall be assigned to serve as
26 surrogate parent for the child in matters relating to the

1 identification, evaluation, and educational placement of the
2 child and the provision of a free appropriate public education
3 to the child. Persons shall be assigned as surrogate parents by
4 the State Superintendent of Education. The State Board of
5 Education shall promulgate rules and regulations establishing
6 qualifications of those persons and their responsibilities and
7 the procedures to be followed in making assignments of persons
8 as surrogate parents. Surrogate parents shall not be employees
9 of the school district, an agency created by joint agreement
10 under Section 10-22.31, an agency involved in the education or
11 care of the student, or the State Board of Education. Services
12 of any person assigned as surrogate parent shall terminate if
13 the parent becomes available unless otherwise requested by the
14 parents. The assignment of a person as surrogate parent at no
15 time supersedes, terminates, or suspends the parents' legal
16 authority relative to the child. Any person participating in
17 good faith as surrogate parent on behalf of the child before
18 school officials or a hearing officer shall have immunity from
19 civil or criminal liability that otherwise might result by
20 reason of that participation, except in cases of willful and
21 wanton misconduct.

22 (l) At all stages of the hearing the hearing officer shall
23 require that interpreters be made available by the school
24 district for persons who are deaf or for persons whose normally
25 spoken language is other than English.

26 (m) If any provision of this Section or its application to

1 any person or circumstance is held invalid, the invalidity of
2 that provision or application does not affect other provisions
3 or applications of the Section that can be given effect without
4 the invalid application or provision, and to this end the
5 provisions of this Section are severable, unless otherwise
6 provided by this Section.

7 (Source: P.A. 98-383, eff. 8-16-13.)

8 Section 99. Effective date. This Act takes effect upon
9 becoming law.