



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB0628

Introduced 2/6/2009, by Rep. Harry Osterman

SYNOPSIS AS INTRODUCED:

105 ILCS 5/14-8.02
105 ILCS 5/14-8.02a

from Ch. 122, par. 14-8.02

Amends the Children with Disabilities Article of the School Code. Provides that a private evaluator or expert retained by or on behalf a parent or guardian shall be afforded reasonable and unimpeded access to educational personnel, facilities, classrooms, and buildings and to the child for the purpose of conducting any appropriate interviews, observations, assessments, tests, or evaluations of the child and of the child's current or proposed educational program, placement, and educational environment. Provides that a parent or guardian shall be afforded reasonable and unimpeded access to observe the child in his or her current or proposed educational program, placement, and educational environment. Provides that a parent or guardian who is a prevailing party in an impartial due process hearing or in a civil action may recover from an opposing party reasonable expert witness costs if the expert witness contributed to the relief obtained by the parent or guardian. Effective immediately.

LRB096 07454 NHT 17546 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 Sections
5 14-8.02 and 14-8.02a 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 shall include in the rules definitions for "qualified
8 bilingual specialists" and "linguistically and culturally
9 appropriate individualized educational programs". For purposes
10 of this Section, as well as Sections 14-8.02a, 14-8.02b, and
11 14-8.02c of this Code, "parent" means a parent as defined in
12 the federal Individuals with Disabilities Education Act (20
13 U.S.C. 1401(23)).

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

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

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

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

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

1 inform the parents of the existence of other, local schools
2 that provide similar services and the services that these other
3 schools provide. This notification shall include without
4 limitation information on school services, school admissions
5 criteria, and school contact information.

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

14 (1) The verbal and nonverbal communication needs of the
15 child.

16 (2) The need to develop social interaction skills and
17 proficiencies.

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

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

22 (5) The needs resulting from engagement in repetitive
23 activities and stereotyped movements.

24 (6) The need for any positive behavioral
25 interventions, strategies, and supports to address any
26 behavioral difficulties resulting from autism spectrum

1 disorder.

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

5 Public Act 95-257 does not create any new entitlement to a
6 service, program, or benefit, but must not affect any
7 entitlement to a service, program, or benefit created by any
8 other law.

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

22 (c) In the development of the individualized education
23 program for a student who is functionally blind, it shall be
24 presumed that proficiency in Braille reading and writing is
25 essential for the student's satisfactory educational progress.
26 For purposes of this subsection, the State Board of Education

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

26 (d) To the maximum extent appropriate, the placement shall

1 provide the child with the opportunity to be educated with
2 children who are not disabled; provided that children with
3 disabilities who are recommended to be placed into regular
4 education classrooms are provided with supplementary services
5 to assist the children with disabilities to benefit from the
6 regular classroom instruction and are included on the teacher's
7 regular education class register. Subject to the limitation of
8 the preceding sentence, placement in special classes, separate
9 schools or other removal of the disabled child from the regular
10 educational environment shall occur only when the nature of the
11 severity of the disability is such that education in the
12 regular classes with the use of supplementary aids and services
13 cannot be achieved satisfactorily. The placement of limited
14 English proficiency students with disabilities shall be in
15 non-restrictive environments which provide for integration
16 with non-disabled peers in bilingual classrooms. Annually,
17 each January, school districts shall report data on students
18 from non-English speaking backgrounds receiving special
19 education and related services in public and private facilities
20 as prescribed in Section 2-3.30. If there is a disagreement
21 between parties involved regarding the special education
22 placement of any child, either in-state or out-of-state, the
23 placement is subject to impartial due process procedures
24 described in Article 10 of the Rules and Regulations to Govern
25 the Administration and Operation of Special Education.

26 (e) No child who comes from a home in which a language

1 other than English is the principal language used may be
2 assigned to any class or program under this Article until he
3 has been given, in the principal language used by the child and
4 used in his home, tests reasonably related to his cultural
5 environment. All testing and evaluation materials and
6 procedures utilized for evaluation and placement shall not be
7 linguistically, racially or culturally discriminatory.

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

12 (g) School boards or their designee shall provide to the
13 parents of a child prior written notice of any decision (a)
14 proposing to initiate or change, or (b) refusing to initiate or
15 change, the identification, evaluation, or educational
16 placement of the child or the provision of a free appropriate
17 public education to their child, and the reasons therefor. Such
18 written notification shall also inform the parent of the
19 opportunity to present complaints with respect to any matter
20 relating to the educational placement of the student, or the
21 provision of a free appropriate public education and to have an
22 impartial due process hearing on the complaint. The notice
23 shall inform the parents in the parents' native language,
24 unless it is clearly not feasible to do so, of their rights and
25 all procedures available pursuant to this Act and the federal
26 Individuals with Disabilities Education Improvement Act of

1 2004 (Public Law 108-446); it shall be the responsibility of
2 the State Superintendent to develop uniform notices setting
3 forth the procedures available under this Act and the federal
4 Individuals with Disabilities Education Improvement Act of
5 2004 (Public Law 108-446) to be used by all school boards. The
6 notice shall also inform the parents of the availability upon
7 request of a list of free or low-cost legal and other relevant
8 services available locally to assist parents in initiating an
9 impartial due process hearing. Any parent who is deaf, or does
10 not normally communicate using spoken English, who
11 participates in a meeting with a representative of a local
12 educational agency for the purposes of developing an
13 individualized educational program shall be entitled to the
14 services of an interpreter.

15 (g-5) A private evaluator or expert retained by or on
16 behalf of a parent or guardian for the purpose of conducting a
17 private evaluation of a child, a child's current or proposed
18 educational program or placement, or the child's current or
19 proposed learning environment shall be afforded reasonable and
20 unimpeded access to educational personnel, facilities,
21 classrooms, and buildings and to the child for the purpose of
22 conducting any appropriate interviews, observations,
23 assessments, tests, or evaluations of the child and of the
24 child's current educational program, placement, and
25 educational environment or any proposed educational program,
26 placement, or environment. A parent or guardian shall be

1 afforded reasonable and unimpeded access to observe the child
2 in his or her educational program, placement, and educational
3 environment or to observe a proposed educational program,
4 placement, or educational environment. Interviews,
5 observations, assessments, tests, or evaluations conducted
6 pursuant to this subsection (q-5) shall be arranged at mutually
7 agreeable times. Visitors shall comply with school safety and
8 security policies and shall make every effort not to disrupt
9 the educational process.

10 (h) (Blank).

11 (i) (Blank).

12 (j) (Blank).

13 (k) (Blank).

14 (l) (Blank).

15 (m) (Blank).

16 (n) (Blank).

17 (o) (Blank).

18 (Source: P.A. 94-376, eff. 7-29-05; 94-1100, eff. 2-2-07;
19 95-257, eff. 1-1-08; 95-876, eff. 8-21-08.)

20 (105 ILCS 5/14-8.02a)

21 Sec. 14-8.02a. Impartial due process hearing; civil
22 action.

23 (a) This Section shall apply to all impartial due process
24 hearings requested on or after July 1, 2005. Impartial due
25 process hearings requested before July 1, 2005 shall be

1 governed by the rules described in Public Act 89-652.

2 (a-5) For purposes of this Section and Section 14-8.02b of
3 this Code, days shall be computed in accordance with Section
4 1.11 of the Statute on Statutes.

5 (b) The State Board of Education shall establish an
6 impartial due process hearing system in accordance with this
7 Section and may, with the advice and approval of the Advisory
8 Council on Education of Children with Disabilities, promulgate
9 rules and regulations consistent with this Section to establish
10 the rules and procedures for due process hearings.

11 (c) (Blank).

12 (d) (Blank).

13 (e) (Blank).

14 (f) An impartial due process hearing shall be convened upon
15 the request of a parent, student if at least 18 years of age or
16 emancipated, or a school district. A school district shall make
17 a request in writing to the State Board of Education and
18 promptly mail a copy of the request to the parents or student
19 (if at least 18 years of age or emancipated) at the parent's or
20 student's last known address. A request made by the parent or
21 student shall be made in writing to the superintendent of the
22 school district where the student resides. The superintendent
23 shall forward the request to the State Board of Education
24 within 5 days after receipt of the request. The request shall
25 be filed no more than 2 years following the date the person or
26 school district knew or should have known of the event or

1 events forming the basis for the request. The request shall, at
2 a minimum, contain all of the following:

3 (1) The name of the student, the address of the
4 student's residence, and the name of the school the student
5 is attending.

6 (2) In the case of homeless children (as defined under
7 the federal McKinney-Vento Homeless Assistance Act (42
8 U.S.C. 11434a(2)), available contact information for the
9 student and the name of the school the student is
10 attending.

11 (3) A description of the nature of the problem relating
12 to the actual or proposed placement, identification,
13 services, or evaluation of the student, including facts
14 relating to the problem.

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

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

21 For a school district other than a school district located
22 in a municipality having a population exceeding 500,000, a
23 hearing officer who is a current resident of the school
24 district, special education cooperative, or other public
25 entity involved in the hearing shall recuse himself or herself.
26 A hearing officer who is a former employee of the school

1 district, special education cooperative, or other public
2 entity involved in the hearing shall immediately disclose the
3 former employment to the parties and shall recuse himself or
4 herself, unless the parties otherwise agree in writing. A
5 hearing officer having a personal or professional interest that
6 may conflict with his or her objectivity in the hearing shall
7 disclose the conflict to the parties and shall recuse himself
8 or herself unless the parties otherwise agree in writing. For
9 purposes of this subsection an assigned hearing officer shall
10 be considered to have a conflict of interest if, at any time
11 prior to the issuance of his or her written decision, he or she
12 knows or should know that he or she may receive remuneration
13 from a party to the hearing within 3 years following the
14 conclusion of the due process hearing.

15 A party to a due process hearing shall be permitted one
16 substitution of hearing officer as a matter of right, in
17 accordance with procedures established by the rules adopted by
18 the State Board of Education under this Section. The State
19 Board of Education shall randomly select and appoint another
20 hearing officer within 3 days after receiving notice that the
21 appointed hearing officer is ineligible to serve or upon
22 receiving a proper request for substitution of hearing officer.
23 If a party withdraws its request for a due process hearing
24 after a hearing officer has been appointed, that hearing
25 officer shall retain jurisdiction over a subsequent hearing
26 that involves the same parties and is requested within one year

1 from the date of withdrawal of the previous request, unless
2 that hearing officer is unavailable.

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

6 (g) Impartial due process hearings shall be conducted
7 pursuant to this Section and any rules and regulations
8 promulgated by the State Board of Education consistent with
9 this Section and other governing laws and regulations. The
10 hearing shall address only those issues properly raised in the
11 hearing request under subsection (f) of this Section or, if
12 applicable, in the amended hearing request under subsection
13 (g-15) of this Section. The hearing shall be closed to the
14 public unless the parents request that the hearing be open to
15 the public. The parents involved in the hearing shall have the
16 right to have the student who is the subject of the hearing
17 present. The hearing shall be held at a time and place which
18 are reasonably convenient to the parties involved. Upon the
19 request of a party, the hearing officer shall hold the hearing
20 at a location neutral to the parties if the hearing officer
21 determines that there is no cost for securing the use of the
22 neutral location. Once appointed, the impartial due process
23 hearing officer shall not communicate with the State Board of
24 Education or its employees concerning the hearing, except that,
25 where circumstances require, communications for administrative
26 purposes that do not deal with substantive or procedural

1 matters or issues on the merits are authorized, provided that
2 the hearing officer promptly notifies all parties of the
3 substance of the communication as a matter of record.

4 (g-5) Unless the school district has previously provided
5 prior written notice to the parent or student (if at least 18
6 years of age or emancipated) regarding the subject matter of
7 the hearing request, the school district shall, within 10 days
8 after receiving a hearing request initiated by a parent or
9 student (if at least 18 years of age or emancipated), provide a
10 written response to the request that shall include all of the
11 following:

12 (1) An explanation of why the school district proposed
13 or refused to take the action or actions described in the
14 hearing request.

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

17 (3) A description of each evaluation procedure,
18 assessment, record, report, or other evidence the school
19 district used as the basis for the proposed or refused
20 action or actions.

21 (4) A description of the factors that are or were
22 relevant to the school district's proposed or refused
23 action or actions.

24 (g-10) When the hearing request has been initiated by a
25 school district, within 10 days after receiving the request,
26 the parent or student (if at least 18 years of age or

1 emancipated) shall provide the school district with a response
2 that specifically addresses the issues raised in the school
3 district's hearing request. The parent's or student's response
4 shall be provided in writing, unless he or she is illiterate or
5 has a disability that prevents him or her from providing a
6 written response. The parent's or student's response may be
7 provided in his or her native language, if other than English.
8 In the event that illiteracy or another disabling condition
9 prevents the parent or student from providing a written
10 response, the school district shall assist the parent or
11 student in providing the written response.

12 (g-15) Within 15 days after receiving notice of the hearing
13 request, the non-requesting party may challenge the
14 sufficiency of the request by submitting its challenge in
15 writing to the hearing officer. Within 5 days after receiving
16 the challenge to the sufficiency of the request, the hearing
17 officer shall issue a determination of the challenge in writing
18 to the parties. In the event that the hearing officer upholds
19 the challenge, the party who requested the hearing may, with
20 the consent of the non-requesting party or hearing officer,
21 file an amended request. Amendments are permissible for the
22 purpose of raising issues beyond those in the initial hearing
23 request. In addition, the party who requested the hearing may
24 amend the request once as a matter of right by filing the
25 amended request within 5 days after filing the initial request.
26 An amended request, other than an amended request as a matter

1 of right, shall be filed by the date determined by the hearing
2 officer, but in no event any later than 5 days prior to the
3 date of the hearing. If an amended request, other than an
4 amended request as a matter of right, raises issues that were
5 not part of the initial request, the applicable timeline for a
6 hearing, including the timeline under subsection (g-20) of this
7 Section, shall recommence.

8 (g-20) Within 15 days after receiving a request for a
9 hearing from a parent or student (if at least 18 years of age
10 or emancipated) or, in the event that the school district
11 requests a hearing, within 15 days after initiating the
12 request, the school district shall convene a resolution meeting
13 with the parent and relevant members of the IEP team who have
14 specific knowledge of the facts contained in the request for
15 the purpose of resolving the problem that resulted in the
16 request. The resolution meeting shall include a representative
17 of the school district who has decision-making authority on
18 behalf of the school district. Unless the parent is accompanied
19 by an attorney at the resolution meeting, the school district
20 may not include an attorney representing the school district.

21 The resolution meeting may not be waived unless agreed to
22 in writing by the school district and the parent or student (if
23 at least 18 years of age or emancipated) or the parent or
24 student (if at least 18 years of age or emancipated) and the
25 school district agree in writing to utilize mediation in place
26 of the resolution meeting. If either party fails to cooperate

1 in the scheduling or convening of the resolution meeting, the
2 hearing officer may order an extension of the timeline for
3 completion of the resolution meeting or, upon the motion of a
4 party and at least 7 days after ordering the non-cooperating
5 party to cooperate, order the dismissal of the hearing request
6 or the granting of all relief set forth in the request, as
7 appropriate.

8 In the event that the school district and the parent or
9 student (if at least 18 years of age or emancipated) agree to a
10 resolution of the problem that resulted in the hearing request,
11 the terms of the resolution shall be committed to writing and
12 signed by the parent or student (if at least 18 years of age or
13 emancipated) and the representative of the school district with
14 decision-making authority. The agreement shall be legally
15 binding and shall be enforceable in any State or federal court
16 of competent jurisdiction. In the event that the parties
17 utilize the resolution meeting process, the process shall
18 continue until no later than the 30th day following the receipt
19 of the hearing request by the non-requesting party (or as
20 properly extended by order of the hearing officer) to resolve
21 the issues underlying the request, at which time the timeline
22 for completion of the impartial due process hearing shall
23 commence. The State Board of Education may, by rule, establish
24 additional procedures for the conduct of resolution meetings.

25 (g-25) If mutually agreed to in writing, the parties to a
26 hearing request may request State-sponsored mediation as a

1 substitute for the resolution process described in subsection
2 (g-20) of this Section or may utilize mediation at the close of
3 the resolution process if all issues underlying the hearing
4 request have not been resolved through the resolution process.

5 (g-30) If mutually agreed to in writing, the parties to a
6 hearing request may waive the resolution process described in
7 subsection (g-20) of this Section. Upon signing a written
8 agreement to waive the resolution process, the parties shall be
9 required to forward the written waiver to the hearing officer
10 appointed to the case within 2 business days following the
11 signing of the waiver by the parties. The timeline for the
12 impartial due process hearing shall commence on the date of the
13 signing of the waiver by the parties.

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

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

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

23 (g-40) The hearing officer shall convene a prehearing
24 conference no later than 14 days before the scheduled date for
25 the due process hearing for the general purpose of aiding in
26 the fair, orderly, and expeditious conduct of the hearing. The

1 hearing officer shall provide the parties with written notice
2 of the prehearing conference at least 7 days in advance of the
3 conference. The written notice shall require the parties to
4 notify the hearing officer by a date certain whether they
5 intend to participate in the prehearing conference. The hearing
6 officer may conduct the prehearing conference in person or by
7 telephone. Each party shall at the prehearing conference (1)
8 disclose whether it is represented by legal counsel or intends
9 to retain legal counsel; (2) clarify matters it believes to be
10 in dispute in the case and the specific relief being sought;
11 (3) disclose whether there are any additional evaluations for
12 the student that it intends to introduce into the hearing
13 record that have not been previously disclosed to the other
14 parties; (4) disclose a list of all documents it intends to
15 introduce into the hearing record, including the date and a
16 brief description of each document; and (5) disclose the names
17 of all witnesses it intends to call to testify at the hearing.
18 The hearing officer shall specify the order of presentation to
19 be used at the hearing. If the prehearing conference is held by
20 telephone, the parties shall transmit the information required
21 in this paragraph in such a manner that it is available to all
22 parties at the time of the prehearing conference. The State
23 Board of Education may, by rule, establish additional
24 procedures for the conduct of prehearing conferences.

25 (g-45) The impartial due process hearing officer shall not
26 initiate or participate in any ex parte communications with the

1 parties, except to arrange the date, time, and location of the
2 prehearing conference, due process hearing, or other status
3 conferences convened at the discretion of the hearing officer
4 and to receive confirmation of whether a party intends to
5 participate in the prehearing conference.

6 (g-50) The parties shall disclose and provide to each other
7 any evidence which they intend to submit into the hearing
8 record no later than 5 days before the hearing. Any party to a
9 hearing has the right to prohibit the introduction of any
10 evidence at the hearing that has not been disclosed to that
11 party at least 5 days before the hearing. The party requesting
12 a hearing shall not be permitted at the hearing to raise issues
13 that were not raised in the party's initial or amended request,
14 unless otherwise permitted in this Section.

15 (g-55) All reasonable efforts must be made by the parties
16 to present their respective cases at the hearing within a
17 cumulative period of 7 days. When scheduling hearing dates, the
18 hearing officer shall schedule the final day of the hearing no
19 more than 30 calendar days after the first day of the hearing
20 unless good cause is shown. This subsection (g-55) shall not be
21 applied in a manner that (i) denies any party to the hearing a
22 fair and reasonable allocation of time and opportunity to
23 present its case in its entirety or (ii) deprives any party to
24 the hearing of the safeguards accorded under the federal
25 Individuals with Disabilities Education Improvement Act of
26 2004 (Public Law 108-446), regulations promulgated under the

1 Individuals with Disabilities Education Improvement Act of
2 2004, or any other applicable law. The school district shall
3 present evidence that the special education needs of the child
4 have been appropriately identified and that the special
5 education program and related services proposed to meet the
6 needs of the child are adequate, appropriate, and available.
7 Any party to the hearing shall have the right to (1) be
8 represented by counsel and be accompanied and advised by
9 individuals with special knowledge or training with respect to
10 the problems of children with disabilities, at the party's own
11 expense; (2) present evidence and confront and cross-examine
12 witnesses; (3) move for the exclusion of witnesses from the
13 hearing until they are called to testify, provided, however,
14 that this provision may not be invoked to exclude the
15 individual designated by a party to assist that party or its
16 representative in the presentation of the case; (4) obtain a
17 written or electronic verbatim record of the proceedings within
18 30 days of receipt of a written request from the parents by the
19 school district; and (5) obtain a written decision, including
20 findings of fact and conclusions of law, within 10 days after
21 the conclusion of the hearing. If at issue, the school district
22 shall present evidence that it has properly identified and
23 evaluated the nature and severity of the student's suspected or
24 identified disability and that, if the student has been or
25 should have been determined eligible for special education and
26 related services, that it is providing or has offered a free

1 appropriate public education to the student in the least
2 restrictive environment, consistent with procedural safeguards
3 and in accordance with an individualized educational program.
4 At any time prior to the conclusion of the hearing, the
5 impartial due process hearing officer shall have the authority
6 to require additional information and order independent
7 evaluations for the student at the expense of the school
8 district. The State Board of Education and the school district
9 shall share equally the costs of providing a written or
10 electronic verbatim record of the proceedings. Any party may
11 request that the due process hearing officer issue a subpoena
12 to compel the testimony of witnesses or the production of
13 documents relevant to the resolution of the hearing. Whenever a
14 person refuses to comply with any subpoena issued under this
15 Section, the circuit court of the county in which that hearing
16 is pending, on application of the impartial hearing officer or
17 the party requesting the issuance of the subpoena, may compel
18 compliance through the contempt powers of the court in the same
19 manner as if the requirements of a subpoena issued by the court
20 had been disobeyed.

21 (h) The impartial hearing officer shall issue a written
22 decision, including findings of fact and conclusions of law,
23 within 10 days after the conclusion of the hearing and send by
24 certified mail a copy of the decision to the parents or student
25 (if the student requests the hearing), the school district, the
26 director of special education, legal representatives of the

1 parties, and the State Board of Education. Unless the hearing
2 officer has granted specific extensions of time at the request
3 of a party, a final decision, including the clarification of a
4 decision requested under this subsection, shall be reached and
5 mailed to the parties named above not later than 45 days after
6 the initiation of the timeline for conducting the hearing, as
7 described in subsection (g-35) of this Section. The decision
8 shall specify the educational and related services that shall
9 be provided to the student in accordance with the student's
10 needs and the timeline for which the school district shall
11 submit evidence to the State Board of Education to demonstrate
12 compliance with the hearing officer's decision in the event
13 that the decision orders the school district to undertake
14 corrective action. The hearing officer shall retain
15 jurisdiction for the sole purpose of considering a request for
16 clarification of the final decision submitted in writing by a
17 party to the impartial hearing officer within 5 days after
18 receipt of the decision. A copy of the request for
19 clarification shall specify the portions of the decision for
20 which clarification is sought and shall be mailed to all
21 parties of record and to the State Board of Education. The
22 request shall operate to stay implementation of those portions
23 of the decision for which clarification is sought, pending
24 action on the request by the hearing officer, unless the
25 parties otherwise agree. The hearing officer shall issue a
26 clarification of the specified portion of the decision or issue

1 a partial or full denial of the request in writing within 10
2 days of receipt of the request and mail copies to all parties
3 to whom the decision was mailed. This subsection does not
4 permit a party to request, or authorize a hearing officer to
5 entertain, reconsideration of the decision itself. The statute
6 of limitations for seeking review of the decision shall be
7 tolled from the date the request is submitted until the date
8 the hearing officer acts upon the request. The hearing
9 officer's decision shall be binding upon the school district
10 and the parents unless a civil action is commenced.

11 (i) Any party to an impartial due process hearing aggrieved
12 by the final written decision of the impartial due process
13 hearing officer shall have the right to commence a civil action
14 with respect to the issues presented in the impartial due
15 process hearing. That civil action shall be brought in any
16 court of competent jurisdiction within 120 days after a copy of
17 the decision of the impartial due process hearing officer is
18 mailed to the party as provided in subsection (h). The civil
19 action authorized by this subsection shall not be exclusive of
20 any rights or causes of action otherwise available. The
21 commencement of a civil action under this subsection shall
22 operate as a supersedeas. In any action brought under this
23 subsection the Court shall receive the records of the impartial
24 due process hearing, shall hear additional evidence at the
25 request of a party, and, basing its decision on the
26 preponderance of the evidence, shall grant such relief as the

1 court determines is appropriate. In any instance where a school
2 district willfully disregards applicable regulations or
3 statutes regarding a child covered by this Article, and which
4 disregard has been detrimental to the child, the school
5 district shall be liable for any reasonable attorney's fees
6 incurred by the parent in connection with proceedings under
7 this Section.

8 (i-5) A parent or guardian who is a prevailing party in an
9 impartial due process hearing, including an expedited due
10 process hearing under Section 14-8.02b of this Code, or in a
11 civil action under subsection (i) of this Section may recover
12 from an opposing party reasonable expert witness costs if the
13 expert witness contributed to the relief obtained by the parent
14 or guardian. Recoverable expert witness costs shall include the
15 reasonable cost of any necessary transportation, appropriate
16 interviews, observations, assessments, tests, evaluations,
17 record reviews, and written reports necessary for the
18 preparation of the parent's or guardian's case in the hearing
19 or trial and the cost of the expert's appearance and testimony
20 in the hearing or trial. For purposes of this subsection (i-5),
21 "prevailing party" means a parent or guardian who obtains
22 significant relief as a result of a due process hearing
23 decision, court judgment or order, consent decree, or private
24 settlement of a pending due process hearing or civil action
25 upon a determination that the due process complaint or civil
26 action was the catalyst for the private settlement. An action

1 to recover expert witness costs must be commenced within 120
2 days from (i) receipt of the final decision of the due process
3 hearing officer, (ii) the entry date of the consent decree,
4 court judgment, or court order, or (iii) the date of the
5 private settlement, whichever is applicable.

6 (j) During the pendency of any administrative or judicial
7 proceeding conducted pursuant to this Section, unless the
8 school district and the parents or student (if at least 18
9 years of age or emancipated) otherwise agree, the student shall
10 remain in his or her present educational placement and continue
11 in his or her present eligibility status and special education
12 and related services, if any. If the hearing officer orders a
13 change in the eligibility status, educational placement, or
14 special education and related services of the student, that
15 change shall not be implemented until 30 days have elapsed
16 following the date the hearing officer's decision is mailed to
17 the parties in order to allow any party aggrieved by the
18 decision to commence a civil action to stay implementation of
19 the decision. If applying for initial admission to the school
20 district, the student shall, with the consent of the parents
21 (if the student is not at least 18 years of age or
22 emancipated), be placed in the school district program until
23 all such proceedings have been completed. The costs for any
24 special education and related services or placement incurred
25 following 60 school days after the initial request for
26 evaluation shall be borne by the school district if the

1 services or placement is in accordance with the final
2 determination as to the special education and related services
3 or placement that must be provided to the child, provided that
4 during that 60 day period there have been no delays caused by
5 the child's parent.

6 (k) Whenever the parents of a child of the type described
7 in Section 14-1.02 are not known, are unavailable, or the child
8 is a ward of the State, a person shall be assigned to serve as
9 surrogate parent for the child in matters relating to the
10 identification, evaluation, and educational placement of the
11 child and the provision of a free appropriate public education
12 to the child. Persons shall be assigned as surrogate parents by
13 the State Superintendent of Education. The State Board of
14 Education shall promulgate rules and regulations establishing
15 qualifications of those persons and their responsibilities and
16 the procedures to be followed in making assignments of persons
17 as surrogate parents. Surrogate parents shall not be employees
18 of the school district, an agency created by joint agreement
19 under Section 10-22.31, an agency involved in the education or
20 care of the student, or the State Board of Education. Services
21 of any person assigned as surrogate parent shall terminate if
22 the parent becomes available unless otherwise requested by the
23 parents . The assignment of a person as surrogate parent at no
24 time supersedes, terminates, or suspends the parents' legal
25 authority relative to the child. Any person participating in
26 good faith as surrogate parent on behalf of the child before

1 school officials or a hearing officer shall have immunity from
2 civil or criminal liability that otherwise might result by
3 reason of that participation, except in cases of willful and
4 wanton misconduct.

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

9 (m) If any provision of this Section or its application to
10 any person or circumstance is held invalid, the invalidity of
11 that provision or application does not affect other provisions
12 or applications of the Section that can be given effect without
13 the invalid application or provision, and to this end the
14 provisions of this Section are severable, unless otherwise
15 provided by this Section.

16 (Source: P.A. 94-1100, eff. 2-2-07.)

17 Section 99. Effective date. This Act takes effect upon
18 becoming law.