



**93RD GENERAL ASSEMBLY**  
**State of Illinois**  
**2003 and 2004**

Introduced 02/09/04, by Roger L. Eddy

**SYNOPSIS AS INTRODUCED:**

5 ILCS 100/5-170 new

Amends the Illinois Administrative Procedure Act. Provides that the special education rule of the Illinois State Board of Education (ISBE) concerning an expedited due process hearing is changed by operation of law. Provides that ISBE may amend the rule only by general rulemaking under the Act. Effective January 1, 2005.

LRB093 19948 NHT 45692 b

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 Illinois Administrative Procedure Act is  
5 amended by adding Section 5-170 as follows:

6 (5 ILCS 100/5-170 new)

7 Sec. 5-170. Illinois State Board of Education special  
8 education rules. Notwithstanding any other provision of this  
9 Act or any other law to the contrary, the following special  
10 education rule of the Illinois State Board of Education (ISBE)  
11 in Part 226 of Title 23 of the Illinois Administrative Code is  
12 amended to read as follows by operation of law. This rule, as  
13 set forth in this Section, takes effect on the effective date  
14 of this amendatory Act of the 93rd General Assembly and may be  
15 amended by ISBE only by general rulemaking as provided in  
16 Section 5-40 of this Act.

17 Section 226.655. Expedited Due Process Hearing. Requests  
18 for expedited due process hearings shall be made in accordance  
19 with Section 14-8.02b of the School Code.

20 (a) The State Board of Education shall arrange for an  
21 expedited hearing when:

22 (1) The local school district requests such a hearing  
23 because school personnel maintain that it is dangerous for  
24 the child to be in the current placement.

25 (2) The parent requests such a hearing because the  
26 parent disagrees with the district's placement decision  
27 when a child is moved to an interim alternative educational  
28 setting for a weapon or drug violation.

29 (3) The parent requests such a hearing because the  
30 parent disagrees with the district's determination that a  
31 child's behavior was not a manifestation of the child's

1       disability.

2       (b) During the pendency of an expedited hearing, the  
3 child's placement shall be the interim alternative educational  
4 setting that was determined appropriate by the IEP Team.

5       (c) The hearing officer shall determine:

6           (1) In a case where a school district has requested the  
7 hearing because school personnel maintain it is dangerous  
8 for the child to be in the current placement, whether the  
9 child shall be placed in the proposed alternative  
10 educational setting;

11           (2) In a case where a parent requests a hearing because  
12 the parent disagrees with the district's placement  
13 decision when a child is moved to an interim alternative  
14 educational setting for a weapon or drug violation, whether  
15 the interim alternative educational placement: (A) is  
16 selected so as to enable the child to continue to progress  
17 in the general curriculum, although in another setting, and  
18 to continue to receive those services and modifications,  
19 including those services described in the child's current  
20 IEP, that will enable the child to meet the goals set out  
21 in that IEP; and (B) includes services and modifications  
22 that address the behavior and are designed to prevent the  
23 behavior from reoccurring; or

24           (3) When the parent requests such a hearing because the  
25 parent disagrees with the district's determination that  
26 the child's behavior was not a manifestation of the child's  
27 disability, whether the local school district has  
28 demonstrated that the child's behavior was not a  
29 manifestation of the child's disability. (See Section  
30 226.410 of this Part).

31       (d) The hearing officer shall consider the following  
32 factors in determining whether an interim alternative  
33 placement is appropriate:

34           (1) Whether the local school district has demonstrated  
35 by substantial evidence (i.e., beyond a preponderance of  
36 the evidence) that maintaining the current placement of the

1 child is substantially likely to result in injury to the  
2 child or to others;

3 (2) Whether the child's current placement is  
4 appropriate;

5 (3) Whether the district has made reasonable efforts to  
6 minimize the risk of harm in the child's current placement,  
7 including the use of supplementary aids and services; and

8 (4) Whether the interim alternative educational  
9 setting will permit full implementation of the student's  
10 IEP and includes services and modifications designed to  
11 prevent the undesired behavior from recurring.

12 (e) If all the conditions set forth in subsection (d) of  
13 this Section are met, the hearing officer shall order a change  
14 in the child's placement to an appropriate interim alternative  
15 educational setting for not more than 45 days.

16 (1) This new alternative educational setting shall be  
17 identified by the IEP Team as provided in Section  
18 226.400(h) of this Part.

19 (2) If the district demonstrates that the student is  
20 substantially likely to injure himself or herself or others  
21 if returned to the placement that was used prior to the  
22 student's removal, the hearing officer may order that the  
23 student remain in the interim setting for subsequent  
24 periods of up to 45 days each.

25 (f) An expedited hearing shall result in a decision within  
26 ten school days after the request for the hearing, unless the  
27 parents and the local school district agree otherwise.

28 Section 99. Effective date. This Act takes effect January  
29 1, 2005.