

HB3523



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB3523

Introduced 2/28/2007, by Rep. Robert W. Pritchard

SYNOPSIS AS INTRODUCED:

105 ILCS 5/14-8.02a

Amends the Children with Disabilities Article of the School Code. Makes a technical change in a Section concerning the establishment of an impartial due process hearing system.

LRB095 06941 NHT 27060 b

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 (rather than the ~~the~~ impartial due process
10 procedures of subsections (h) through (o) of Section 14-8.02,
11 which shall continue to apply only to those impartial due
12 process hearings that are requested under this Article before
13 July 1, 1997) shall apply to all impartial due process hearings
14 requested on or after July 1, 1997.

15 (b) The State Board of Education shall establish an
16 impartial due process hearing system, including a corps of
17 hearing officers, in accordance with this Section and shall,
18 with the advice and approval of the Advisory Council on
19 Education of Children with Disabilities, promulgate rules and
20 regulations consistent with this Section to establish the
21 qualifications of hearing officers and the rules and procedures
22 for due process hearings. The State Board of Education shall
23 recruit candidates for due process hearing officers who meet

1 the criteria set forth in this Section. Candidates shall be
2 screened by a 7-member Screening Committee consisting of the
3 following: the Attorney General, or his or her designee; the
4 State Superintendent of Education, or his or her designee; 3
5 members appointed by the State Superintendent of Education, one
6 of whom shall be a parent of a student eligible for special
7 education, another of whom shall be a director of special
8 education for an Illinois school district or special education
9 joint agreement, and the other of whom shall be an adult with a
10 disability; and 2 members appointed by the Attorney General,
11 one of whom shall be a parent of a student eligible for special
12 education and the other of whom shall be an experienced special
13 education hearing officer who is not a candidate for
14 appointment under this Section. The members of the Screening
15 Committee shall be appointed no later than 60 days following
16 the effective date of this amendatory Act of 1996. The
17 chairperson of the Advisory Council on Education of Children
18 with Disabilities or his or her designee shall serve on the
19 Screening Committee as an ex-officio non-voting member. Three
20 members of the Screening Committee shall be appointed for
21 initial terms of 2 years, and 4 members shall be appointed for
22 initial terms of 3 years, by using a lottery system. Subsequent
23 appointments and reappointments shall be for terms for 3 years.
24 The Screening Committee shall elect a chairperson from among
25 its voting members. Members of the Screening Committee shall
26 serve without compensation but shall be reimbursed by the State

1 Board of Education for their expenses. The Screening Committee
2 shall review applications and supporting information,
3 interview candidates, and recommend applicants to the Advisory
4 Council on Education of Children with Disabilities based upon
5 objective criteria it develops and makes available to the
6 public. The number of candidates recommended shall equal 150%
7 of the number deemed necessary by the State Board of Education.

8 (c) The application process shall require each applicant to
9 provide a comprehensive disclosure of his or her professional
10 background and work experience. Applicants must hold at least a
11 masters level degree, a juris doctor degree, or a bachelors
12 degree with relevant experience. Current employees of the State
13 Board of Education, local school districts, special education
14 cooperatives, regional service areas or centers, regional
15 educational cooperatives, state-operated elementary and
16 secondary schools, or private providers of special education
17 facilities or programs shall be disqualified from serving as
18 impartial due process hearing officers. Nothing in this Section
19 shall be construed to prohibit retired school personnel and
20 part-time contractual school personnel who serve in a
21 consulting capacity from serving as hearing officers.
22 Applications by individuals on the State Board of Education's
23 list of eligible Level I due process hearing officers or Level
24 II review officers when the initial recruitment of due process
25 hearing officers is conducted under this Section shall be
26 considered if they meet the qualifications under this

1 subsection.

2 (d) The State Board of Education shall, through a
3 competitive application process, enter into a contract with an
4 outside entity to establish and conduct mandatory training
5 programs for impartial due process hearing officers and an
6 annual evaluation of each impartial due process hearing officer
7 that shall include a written evaluation report. The invitation
8 for applications shall set forth minimum qualifications for
9 eligible applicants. Each contract under this subsection may be
10 renewed on an annual basis subject to appropriations. The State
11 Board of Education shall conduct a new competitive application
12 process at least once every 3 years after the initial contract
13 is granted. The Screening Committee established pursuant to
14 subsection (b) of this Section shall review the training
15 proposals and forward them, with recommendations in rank order,
16 to the State Board of Education. All impartial hearing officer
17 candidates recommended to the Advisory Council on Education of
18 Children with Disabilities shall successfully complete initial
19 and all follow-up trainings, as established by the contract
20 between the State Board of Education and the training entity,
21 in order to be eligible to serve as an impartial due process
22 hearing officer. The training curriculum shall include, at a
23 minimum, instruction in federal and State law, rules, and
24 regulations, federal regulatory interpretations and court
25 decisions regarding special education and relevant general
26 education issues, diagnostic procedures, information about

1 disabilities, and techniques for conducting effective and
2 impartial hearings, including order of presentation. The
3 training shall be conducted in an unbiased manner by education
4 and legal experts, including qualified individuals from
5 outside the public education system. Upon the completion of
6 initial impartial due process hearing officer training, the
7 Advisory Council on Education of Children with Disabilities,
8 applying objective selection criteria it has developed and made
9 available to the public, shall go into executive session and
10 select the number of active impartial due process hearing
11 officers deemed necessary by the State Board of Education from
12 those candidates who have successfully completed the initial
13 training. Fifty percent of the impartial due process hearing
14 officers appointed shall serve initial terms of 2 years, and
15 the remaining 50% shall serve initial terms of one year, such
16 terms to be determined by using a lottery system. After the
17 initial term all reappointments shall be for a term of 2 years.
18 The Screening Committee, based on its objective selection
19 criteria and the annual evaluation reports prepared by the
20 training entity, shall recommend whether the hearing officers
21 whose terms are expiring should be reappointed and shall
22 transmit its recommendations to the State Board of Education.
23 If, at any time, the State Board of Education, with the advice
24 of the Advisory Council on Education of Children with
25 Disabilities, determines that additional hearing officers are
26 needed, the hearing officer selection process described in this

1 Section shall be reopened to select the number of additional
2 hearing officers deemed necessary by the State Board of
3 Education.

4 Impartial due process hearing officers shall receive a base
5 annual stipend and per diem allowance for each hearing at a
6 rate established by the State Board of Education.

7 The State Board of Education shall provide impartial due
8 process hearing officers with access to relevant court
9 decisions, impartial hearing officer decisions with
10 child-specific identifying information deleted, statutory and
11 regulatory changes, and federal regulatory interpretations.
12 The State Board of Education shall index and maintain a
13 reporting system of impartial due process hearing decisions and
14 shall make such decisions available for review by the public
15 after deleting child-specific identifying information.

16 (e) An impartial due process hearing officer shall be
17 terminated by the State Board of Education for just cause if,
18 after written notice is provided, appropriate timely
19 corrective action is not taken. For purposes of this subsection
20 just cause shall be (1) failure or refusal to accept assigned
21 cases without good cause; (2) failure or refusal to fulfill
22 duties as a hearing officer in a timely manner; (3) consistent
23 disregard for applicable laws and regulations in the conduct of
24 hearings; (4) consistent failure to conduct himself or herself
25 in a patient, dignified, and courteous manner to parties,
26 witnesses, counsel, and other participants in hearings; (5)

1 failure to accord parties or their representatives a full and
2 fair opportunity to be heard in matters coming before him or
3 her; (6) violating applicable laws regarding privacy and
4 confidentiality of records or information; (7) manifesting, by
5 words or conduct, bias or prejudice based upon race, sex,
6 religion, disability, or national origin; (8) failure to recuse
7 himself or herself from a hearing in which he or she has a
8 personal, professional, or financial conflict of interest
9 which he or she knew or should have known existed at any time
10 prior to or during the hearing; (9) conviction in any
11 jurisdiction of any felony or of a misdemeanor involving moral
12 turpitude; and (10) falsification of a material fact on his or
13 her application to serve as a due process hearing officer. In
14 addition, an impartial hearing officer who, as a result of
15 events occurring after appointment, no longer meets the minimum
16 requirements set forth in this Section, shall be disqualified
17 to complete the balance of his or her contract term.

18 The State Board of Education shall monitor, review, and
19 evaluate the impartial due process hearing system on a regular
20 basis by a process that includes a review of written decisions
21 and evaluations by participants in impartial due process
22 hearings and their representatives. The State Board of
23 Education shall prepare an annual written report no later than
24 July 1 of each year, beginning in 1998, evaluating the
25 impartial due process hearing system. The reports shall be
26 submitted to the members of the State Board of Education, the

1 State Superintendent of Education, the Advisory Council on
2 Education of Children with Disabilities, and the Screening
3 Committee and shall be made available to the public.

4 The training entity under subsection (d) shall conduct
5 annual evaluations of each hearing officer and shall prepare
6 written evaluation reports to be provided to the Screening
7 Committee for its consideration in the reappointment process.
8 The evaluation process shall include a review of written
9 decisions and evaluations by participants in impartial due
10 process hearings and their representatives. Each hearing
11 officer shall be provided with a copy of his or her evaluation
12 report and shall have an opportunity to review the report with
13 the training entity and submit written comments.

14 (f) An impartial due process hearing shall be convened upon
15 the request of a parent or guardian, student if at least 18
16 years of age or emancipated, or a school district. A school
17 district shall make a request in writing to the State Board of
18 Education and promptly mail a copy of the request to the
19 parents or guardian of the student at their last known address.
20 A request made by the parent, guardian, or student shall be
21 made in writing to the superintendent of the school district in
22 which the student resides, who shall forward the request to the
23 State Board of Education within 5 days of receipt of the
24 request. Within 5 days after receipt of the request the State
25 Board of Education shall appoint a due process hearing officer
26 using a rotating appointment system and shall notify the

1 hearing officer of his or her appointment. No person who is an
2 employee of a school district that is involved in the education
3 or care of the student shall conduct the hearing. A hearing
4 officer having a personal or professional interest that would
5 conflict with his or her objectivity in the hearing shall so
6 notify the State Board of Education and shall be replaced by
7 the next scheduled impartial due process hearing officer under
8 the rotation system. For purposes of this subsection an
9 assigned hearing officer shall be considered to have a conflict
10 of interest if, at any time prior to the issuance of his or her
11 written decision, he or she knows or should know that he or she
12 may receive remuneration from a party to the hearing within 3
13 years following the conclusion of the due process hearing. A
14 party to a due process hearing shall be permitted one
15 substitution of hearing officer as a matter of right, in
16 accordance with procedures established by the rules adopted by
17 the State Board of Education under this Section. The State
18 Board of Education shall randomly select and appoint another
19 hearing officer within 5 days after receiving notice that the
20 appointed hearing officer is ineligible to serve or upon
21 receiving a proper request for substitution of hearing officer.
22 If a party withdraws its request for a due process hearing
23 after a hearing officer has been appointed, that hearing
24 officer shall retain jurisdiction over a subsequent hearing
25 that involves the same parties and is requested within one year
26 from the date of withdrawal of the previous request, unless

1 that hearing officer is unavailable.

2 A former employee or current resident of the school
3 district, special education cooperative, or other public
4 entity involved in the due process hearing shall recuse himself
5 or herself. A hearing officer shall disclose any actual or
6 potential conflicts of interests to the parties upon learning
7 of those conflicts. Any party may raise facts that constitute a
8 conflict of interest for the hearing officer at any time before
9 or during the hearing and may move for recusal.

10 For purposes of this Section, "days" shall be computed in
11 accordance with Section 1.11 of the Statute on Statutes.

12 (g) Impartial due process hearings shall be conducted
13 pursuant to this Section and rules and regulations promulgated
14 by the State Board of Education consistent with this Section
15 and other governing laws and regulations. The hearing shall be
16 closed to the public unless the parents or guardian request
17 that the hearing be open to the public. The parents or guardian
18 involved in the hearing shall have the right to have the
19 student who is the subject of the hearing present. The hearing
20 shall be held at a time and place which are reasonably
21 convenient to the parties involved. Upon the request of a
22 party, the hearing officer shall hold the hearing at a location
23 neutral to the parties if the hearing officer determines that
24 there is no cost for securing the use of the neutral location.
25 Once appointed, the impartial due process hearing officer shall
26 not communicate with the State Board of Education or its

1 employees concerning the hearing, except that, where
2 circumstances require, communications for administrative
3 purposes that do not deal with substantive or procedural
4 matters or issues on the merits are authorized, provided that
5 the hearing officer promptly notifies all parties of the
6 substance of the communication as a matter of record.

7 The hearing officer shall convene a prehearing conference
8 no later than 14 days before the scheduled date for the due
9 process hearing for the general purpose of aiding in the fair,
10 orderly, and expeditious conduct of the hearing. The hearing
11 officer shall provide the parties with written notice of the
12 prehearing conference at least 10 days in advance of the
13 conference. The written notice shall require the parties to
14 notify the hearing officer by a date certain whether they
15 intend to participate in the prehearing conference. The hearing
16 officer may conduct the prehearing conference in person or by
17 telephone. Each party shall disclose at the prehearing
18 conference (1) whether it is represented by legal counsel or
19 intends to retain legal counsel; (2) the matters it believes to
20 be in dispute in the case and the specific relief being sought;
21 (3) whether there are any additional evaluations for the
22 student that it intends to introduce into the hearing record
23 that have not been previously disclosed to the other parties;
24 (4) a list of all documents it intends to introduce into the
25 hearing record, including the date and a brief description of
26 each document; and (5) the names of all witnesses it intends to

1 call to testify at the hearing. The hearing officer shall
2 specify the order of presentation to be used at the hearing. If
3 the prehearing conference is held by telephone, the parties
4 shall transmit the information required in this paragraph in
5 such a manner that it is available to all parties at the time
6 of the prehearing conference. The State Board of Education
7 shall, by rule, establish additional procedures for the conduct
8 of prehearing conferences. The impartial due process hearing
9 officer shall not initiate or participate in any ex parte
10 communications with the parties, except to arrange the date,
11 time, and location of the prehearing conference and due process
12 hearing and to receive confirmation of whether a party intends
13 to participate in the prehearing conference. The parties shall
14 disclose and provide to each other any evidence which they
15 intend to submit into the hearing record no later than 5 days
16 before the hearing. Any party to a hearing has the right to
17 prohibit the introduction of any evidence at the hearing that
18 has not been disclosed to that party at least 5 days before the
19 hearing.

20 The school district shall present evidence that the special
21 education needs of the child have been appropriately identified
22 and that the special education program and related services
23 proposed to meet the needs of the child are adequate,
24 appropriate, and available. Any party to the hearing shall have
25 the right to (1) be represented by counsel and be accompanied
26 and advised by individuals with special knowledge or training

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

1 of providing a written or electronic verbatim record of the
2 proceedings. Any party may request that the due process hearing
3 officer issue a subpoena to compel the testimony of witnesses
4 or the production of documents relevant to the resolution of
5 the hearing. Whenever a person refuses to comply with any
6 subpoena issued under this Section, the circuit court of the
7 county in which that hearing is pending, on application of the
8 impartial hearing officer or the party requesting the issuance
9 of the subpoena, may compel compliance through the contempt
10 powers of the court in the same manner as if the requirements
11 of a subpoena issued by the court had been disobeyed.

12 (h) The impartial hearing officer shall issue a written
13 decision, including findings of fact and conclusions of law,
14 within 10 days after the conclusion of the hearing and mail a
15 copy of the decision to the parents, guardian, or student (if
16 the student requests the hearing), the school district, the
17 director of special education, legal representatives of the
18 parties, and the State Board of Education. Unless the hearing
19 officer has granted specific extensions of time at the request
20 of a party, a final decision, including the clarification of a
21 decision requested under this subsection, shall be reached and
22 mailed to the parties named above not later than 45 days after
23 the request for hearing is received by the school district,
24 public agency, or the State Board of Education, whichever is
25 sooner. The decision shall specify the educational and related
26 services that shall be provided to the student in accordance

1 with the student's needs. The hearing officer shall retain
2 jurisdiction for the sole purpose of considering a request for
3 clarification of the final decision submitted in writing by a
4 party to the impartial hearing officer within 5 days after
5 receipt of the decision. A copy of the request for
6 clarification shall specify the portions of the decision for
7 which clarification is sought and shall be mailed to all
8 parties of record and to the State Board of Education. The
9 request shall operate to stay implementation of those portions
10 of the decision for which clarification is sought, pending
11 action on the request by the hearing officer, unless the
12 parties otherwise agree. The hearing officer shall issue a
13 clarification of the specified portion of the decision or issue
14 a partial or full denial of the request in writing within 10
15 days of receipt of the request and mail copies to all parties
16 to whom the decision was mailed. This subsection does not
17 permit a party to request, or authorize a hearing officer to
18 entertain, reconsideration of the decision itself. The statute
19 of limitations for seeking review of the decision shall be
20 tolled from the date the request is submitted until the date
21 the hearing officer acts upon the request. Upon the filing of a
22 civil action pursuant to subsection (i) of this Section, the
23 hearing officer shall no longer exercise jurisdiction over the
24 case. The hearing officer's decision shall be binding upon the
25 school district and the parents or guardian unless a civil
26 action is commenced.

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

24 (j) During the pendency of any administrative or judicial
25 proceeding conducted pursuant to this Section, unless the
26 school district and the parents or guardian of the student

1 otherwise agree, the student shall remain in his or her present
2 educational placement and continue in his or her present
3 eligibility status and special education and related services,
4 if any. If the hearing officer orders a change in the
5 eligibility status, educational placement, or special
6 education and related services of the student, that change
7 shall not be implemented until 30 days have elapsed following
8 the date the hearing officer's decision is mailed to the
9 parties in order to allow any party aggrieved by the decision
10 to commence a civil action to stay implementation of the
11 decision. If applying for initial admission to the school
12 district, the student shall, with the consent of the parents or
13 guardian, be placed in the school district program until all
14 such proceedings have been completed. The costs for any special
15 education and related services or placement incurred following
16 60 school days after the initial request for evaluation shall
17 be borne by the school district if the services or placement is
18 in accordance with the final determination as to the special
19 education and related services or placement that must be
20 provided to the child, provided that during that 60 day period
21 there have been no delays caused by the child's parent or
22 guardian.

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

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

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

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

8 (Source: P.A. 89-652, eff. 8-14-96.)