

AN ACT concerning education.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The School Code is amended by changing Section 14-8.02a as follows:

(105 ILCS 5/14-8.02a)

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

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

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

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

(c) (Blank).

(d) (Blank).

(e) (Blank).

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

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

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

(3) A description of the nature of the problem

relating to the actual or proposed placement, identification, services, or evaluation of the student, including facts relating to the problem.

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

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

For a school district other than a school district located in a municipality having a population exceeding 500,000, a hearing officer who is a current resident of the school district, special education cooperative, or other public entity involved in the hearing shall recuse himself or herself. A hearing officer who is a former employee of the school district, special education cooperative, or other public entity involved in the hearing shall immediately disclose the former employment to the parties and shall recuse himself or herself, unless the parties otherwise agree in writing. A hearing officer having a personal or professional interest that may conflict with his or her objectivity in the hearing shall disclose the conflict to the parties and shall recuse himself or herself unless the parties otherwise agree in writing. For purposes of this subsection an assigned hearing officer shall be considered to have a conflict of interest if, at any time prior to the issuance of his or her

written decision, he or she knows or should know that he or she may receive remuneration from a party to the hearing within 3 years following the conclusion of the due process hearing.

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

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

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

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

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

following:

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

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

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

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

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

response, the school district shall assist the parent or student in providing the written response.

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

(g-20) Within 15 days after receiving a request for a hearing from a parent or student (if at least 18 years of age

or emancipated) or, in the event that the school district requests a hearing, within 15 days after initiating the request, the school district shall convene a resolution meeting with the parent and relevant members of the IEP team who have specific knowledge of the facts contained in the request for the purpose of resolving the problem that resulted in the request. The resolution meeting shall include a representative of the school district who has decision-making authority on behalf of the school district. Unless the parent is accompanied by an attorney at the resolution meeting, the school district may not include an attorney representing the school district.

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

In the event that the school district and the parent or

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

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

(g-30) If mutually agreed to in writing, the parties to a hearing request may waive the resolution process described in subsection (g-20) of this Section. Upon signing a written

agreement to waive the resolution process, the parties shall be required to forward the written waiver to the hearing officer appointed to the case within 2 business days following the signing of the waiver by the parties. The timeline for the impartial due process hearing shall commence on the date of the signing of the waiver by the parties.

(g-32) A mediation agreement, resolution agreement, or settlement agreement may include, as a condition of settlement, that a parent, a student who is at least 18 years of age or emancipated, the legal guardian of a student, or the designated representative of a student who is at least 18 years of age prospectively waives a legal right or claim if (i) the legal right or claim being waived is related only to the student who is the subject of the mediation, resolution meeting, or settlement negotiations, (ii) the legal right or claim being waived is related to the claims raised in the complaint being settled, and (iii) the prospective waiver is for a reasonable duration not to exceed the duration of the mediation agreement, resolution agreement, or settlement agreement.

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

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

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

(g-40) The hearing officer shall convene a prehearing conference no later than 14 days before the scheduled date for the due process hearing for the general purpose of aiding in the fair, orderly, and expeditious conduct of the hearing. The hearing officer shall provide the parties with written notice of the prehearing conference at least 7 days in advance of the conference. The written notice shall require the parties to notify the hearing officer by a date certain whether they intend to participate in the prehearing conference. The hearing officer may conduct the prehearing conference in person or by telephone. Each party shall at the prehearing conference (1) disclose whether it is represented by legal counsel or intends to retain legal counsel; (2) clarify matters it believes to be in dispute in the case and the specific relief being sought; (3) disclose whether there are any additional evaluations for the student that it intends to introduce into the hearing record that have not been previously disclosed to the other parties; (4) disclose a list of all documents it intends to introduce into the hearing record, including the date and a brief description of each document; and (5) disclose the names of all witnesses it intends to call to testify at the hearing. The hearing officer shall specify the order of presentation to be used at the

hearing. If the prehearing conference is held by telephone, the parties shall transmit the information required in this paragraph in such a manner that it is available to all parties at the time of the prehearing conference. The State Board of Education may, by rule, establish additional procedures for the conduct of prehearing conferences.

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

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

(g-55) All reasonable efforts must be made by the parties to present their respective cases at the hearing within a cumulative period of 7 days. When scheduling hearing dates, the hearing officer shall schedule the final day of the

hearing no more than 30 calendar days after the first day of the hearing unless good cause is shown. This subsection (g-55) shall not be applied in a manner that (i) denies any party to the hearing a fair and reasonable allocation of time and opportunity to present its case in its entirety or (ii) deprives any party to the hearing of the safeguards accorded under the federal Individuals with Disabilities Education Improvement Act of 2004 (Public Law 108-446), regulations promulgated under the Individuals with Disabilities Education Improvement Act of 2004, or any other applicable law. The school district shall present evidence that the special education needs of the child have been appropriately identified and that the special education program and related services proposed to meet the needs of the child are adequate, appropriate, and available. Any party to the hearing shall have the right to (1) be represented by counsel and be accompanied and advised by individuals with special knowledge or training with respect to the problems of children with disabilities, at the party's own expense; (2) present evidence and confront and cross-examine witnesses; (3) move for the exclusion of witnesses from the hearing until they are called to testify, provided, however, that this provision may not be invoked to exclude the individual designated by a party to assist that party or its representative in the presentation of the case; (4) obtain a written or electronic verbatim record of the proceedings within 30 days of receipt of a written

request from the parents by the school district; and (5) obtain a written decision, including findings of fact and conclusions of law, within 10 calendar days, excluding Saturday, Sunday, and any State holiday, after the conclusion of the hearing. If at issue, the school district shall present evidence that it has properly identified and evaluated the nature and severity of the student's suspected or identified disability and that, if the student has been or should have been determined eligible for special education and related services, that it is providing or has offered a free appropriate public education to the student in the least restrictive environment, consistent with procedural safeguards and in accordance with an individualized educational program. At any time prior to the conclusion of the hearing, the impartial due process hearing officer shall have the authority to require additional information and order independent evaluations for the student at the expense of the school district. The State Board of Education and the school district shall share equally the costs of providing a written or electronic verbatim record of the proceedings. Any party may request that the due process hearing officer issue a subpoena to compel the testimony of witnesses or the production of documents relevant to the resolution of the hearing. Whenever a person refuses to comply with any subpoena issued under this Section, the circuit court of the county in which that hearing is pending, on application of the impartial hearing officer or

the party requesting the issuance of the subpoena, may compel compliance through the contempt powers of the court in the same manner as if the requirements of a subpoena issued by the court had been disobeyed.

(h) The impartial hearing officer shall issue a written decision, including findings of fact and conclusions of law, within 10 calendar days, excluding Saturday, Sunday, and any State holiday, after the conclusion of the hearing and send by certified mail a copy of the decision to the parents or student (if the student requests the hearing), the school district, the director of special education, legal representatives of the parties, and the State Board of Education. Unless the hearing officer has granted specific extensions of time at the request of a party, a final decision, including the clarification of a decision requested under this subsection, shall be reached and mailed to the parties named above not later than 45 days after the initiation of the timeline for conducting the hearing, as described in subsection (g-35) of this Section. The decision shall specify the educational and related services that shall be provided to the student in accordance with the student's needs and the timeline for which the school district shall submit evidence to the State Board of Education to demonstrate compliance with the hearing officer's decision in the event that the decision orders the school district to undertake corrective action. The hearing officer shall retain jurisdiction for the sole purpose of

considering a request for clarification of the final decision submitted in writing by a party to the impartial hearing officer within 5 days after receipt of the decision. A copy of the request for clarification shall specify the portions of the decision for which clarification is sought and shall be mailed to all parties of record and to the State Board of Education. The request shall operate to stay implementation of those portions of the decision for which clarification is sought, pending action on the request by the hearing officer, unless the parties otherwise agree. The hearing officer shall issue a clarification of the specified portion of the decision or issue a partial or full denial of the request in writing within 10 days of receipt of the request and mail copies to all parties to whom the decision was mailed. This subsection does not permit a party to request, or authorize a hearing officer to entertain, reconsideration of the decision itself. The statute of limitations for seeking review of the decision shall be tolled from the date the request is submitted until the date the hearing officer acts upon the request. The hearing officer's decision shall be binding upon the school district and the parents unless a civil action is commenced.

(i) Any party to an impartial due process hearing aggrieved by the final written decision of the impartial due process hearing officer shall have the right to commence a civil action with respect to the issues presented in the impartial due process hearing. That civil action shall be

brought in any court of competent jurisdiction within 120 days after a copy of the decision of the impartial due process hearing officer is mailed to the party as provided in subsection (h). The civil action authorized by this subsection shall not be exclusive of any rights or causes of action otherwise available. The commencement of a civil action under this subsection shall operate as a supersedeas. In any action brought under this subsection the Court shall receive the records of the impartial due process hearing, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate. In any instance where a school district willfully disregards applicable regulations or statutes regarding a child covered by this Article, and which disregard has been detrimental to the child, the school district shall be liable for any reasonable attorney's fees incurred by the parent in connection with proceedings under this Section.

(j) During the pendency of any administrative or judicial proceeding conducted pursuant to this Section, including mediation (if the school district or other public entity voluntarily agrees to participate in mediation), unless the school district and the parents or student (if at least 18 years of age or emancipated) otherwise agree, the student shall remain in his or her present educational placement and continue in his or her present eligibility status and special

education and related services, if any. If mediation fails to resolve the dispute between the parties, or if the parties do not agree to use mediation, the parent (or student if 18 years of age or older or emancipated) shall have 10 days after the mediation concludes, or after a party declines to use mediation, to file a request for a due process hearing in order to continue to invoke the "stay-put" provisions of this subsection (j). If applying for initial admission to the school district, the student shall, with the consent of the parents (if the student is not at least 18 years of age or emancipated), be placed in the school district program until all such proceedings have been completed. The costs for any special education and related services or placement incurred following 60 school days after the initial request for evaluation shall be borne by the school district if the services or placement is in accordance with the final determination as to the special education and related services or placement that must be provided to the child, provided that during that 60-day period there have been no delays caused by the child's parent. The requirements and procedures of this subsection (j) shall be included in the uniform notices developed by the State Superintendent under subsection (g) of Section 14-8.02 of this Code.

(k) Whenever the parents of a child of the type described in Section 14-1.02 are not known or are unavailable or the child is a youth in care as defined in Section 4d of the

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

(1) At all stages of the hearing or mediation, the hearing officer or mediator shall require that interpreters licensed

pursuant to the Interpreter for the Deaf Licensure Act of 2007 be made available by the school district for persons who are deaf or qualified interpreters be made available by the school district for persons whose normally spoken language is other than English.

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

(Source: P.A. 102-1072, eff. 6-10-22.)

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