

1 AN ACT concerning education.

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

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

6 (105 ILCS 5/14-8.02a)

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

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

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

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

22 (c) (Blank).

23 (d) (Blank).

1 (e) (Blank).

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

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

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

26 (3) A description of the nature of the problem

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

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

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

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

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

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

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

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

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

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

1 following:

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

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

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

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

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

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

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

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

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

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

26 In the event that the school district and the parent or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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