**Section 108.130 Appeal process**

a) Either party aggrieved by the decision of the impartial hearing officer may appeal that decision to the State Superintendent of Education. The request for appeal shall be submitted in writing to the State Superintendent of Education and shall include a statement of the specific reasons upon which the appeal is predicated. It shall be postmarked within 15 days after the receipt of the hearing officer's decision. A copy of the request for an appeal shall be sent also to the other party to the hearing and the Secretary. Upon initiating a request for appeal, or upon receipt of notice of a parental request for appeal, the facility shall immediately undertake the preparation and compilation of transcripts and documents for submission to the Superintendent of the Illinois State Board of Education for review.

1) If a tape recorder was used to record the hearing procedures, then the facility shall make a verbatim typewritten transcript within 15 days which shall be reviewed by the parents within 10 days after receipt of the transcript. Inaccuracies shall be recorded and the transcript signed by the parents and the facility director.

2) The typewritten transcript and tape recording of the hearing shall be subject to the Act.

b) In all appeals pursuant to subsection (a) of this Section, the facility shall send a completed appeal form provided by the Department and five copies each of the typewritten transcript of the local hearing, of all documents presented at the hearing and of the hearing officer's decision to the State Superintendent of Education. If there are disputes concerning the accuracy of the transcript of the tape recording, the facility shall also send a statement of the inaccuracies and the original tape recording and copies of all documents relevant to the case.

c) The facility shall provide a copy of the transcript, which is being sent to the State Superintendent of Education, to the parents.

d) Pending the completion of the due process hearing, and any appeal to the State Superintendent of Education, the facility shall postpone any proposed change in the recipient's educational services, unless the Secretary decides that the health and safety of the recipient or others would be endangered. In such a case, the facility shall be responsible for developing an appropriate interim educational plan. Any change in placement shall not exceed 10 days. A facility director must request a change in placement from the Secretary, in writing.

e) Upon receipt of a request for a State level review, the State Superintendent of Education or designee shall designate a trained impartial hearing panel of five members, composed of three qualified mental health professionals or educational employees of the Department and two comparable employees of the Illinois State Board of Education recommended by the State Superintendent of Education. The State Superintendent of Education or designee may issue subpoenas requiring the attendance of witnesses at the State level review.

f) The impartial review panel shall consider the appeal based upon a study of the entire hearing record. It is at the discretion of the reviewing panel whether to afford the parties an opportunity for additional testimony. If additional testimony is allowed or additional evidence is to be considered, a hearing shall be convened and all due process rights shall be afforded the parties. Additional testimony is allowed or additional evidence is considered if new information comes to the attention of either party, which neither had at the time of the hearing, or to hear a claim from either party that all the issues of disagreement were not resolved by the hearing officer at the local level.

g) A report of the reviewing panel, including its recommendations, shall be submitted to the State Superintendent of Education, who shall decide the appeal within 30 days of receipt of the entire hearing record of the appeal.

1) If a hearing is convened for the purpose of receiving additional testimony or considering additional evidence, the 30 day deadline for a final decision may be extended for a specific period of time, not exceeding 30 days. The Superintendent may issue subpoenas requiring the attendance of witnesses at the hearing.

2) The State Superintendent of Education may dismiss any appeal he or she deems lacking in substance. The Superintendent shall dismiss an appeal in which the parents refuse to cooperate or to provide additional information requested.

h) Copies of the decision of the State Superintendent of Education shall be sent by certified mail to the facility and to the parents. The decision shall be written in English and in the language normally spoken by the parents if it is other than English.

i) The decision of the State Superintendent of Education shall be binding on all parties. Such decision shall not be contrary to the statutory powers of the Secretary and shall not require expenditure of money except as appropriated by the General Assembly.

j) The decision of the State Superintendent of Education shall be immediately transmitted to the Secretary who shall be responsible for seeing that the facility implements the decision of the State Superintendent.

k) Either party to the hearing aggrieved by the decision of the State Superintendent of Education shall have the right to bring a civil action with respect to the complaint, filed with the education agency which may be brought in a State court of competent jurisdiction or in a district court of the United States.

(Source: Amended at 15 Ill. Reg. 6122, effective April 15, 1991)